

INTERGOVERNMENTAL AGREEMENT

Concerning the Formation of a Drainage Authority Amongst County of Arapahoe, City of Centennial, Arapahoe County Water and Wastewater Authority, East Cherry Creek Valley Water and Sanitation District and Inverness Water and Sanitation District Pursuant to Section 29-1-204.2, C.R.S.

THIS INTERGOVERNMENTAL AGREEMENT (hereinafter "IGA") is made effective this ~~19th~~ day of September, 2006, by and between the County of Arapahoe, a political subdivision of the State of Colorado, by and through the Board of Commissioners of Arapahoe County, Colorado, with its principal office located at 5334 South Prince Street, Littleton, Colorado 80166 (hereinafter "the County"), the City of Centennial, a municipal corporation of the State of Colorado, with its principal office located at 12503 East Euclid Drive, Suite 200, Centennial, Colorado 80111 (hereinafter "the City"), the Arapahoe County Water and Wastewater Authority, a quasi-municipal corporation organized under the laws of the State of Colorado (hereinafter "ACWWA"), the East Cherry Creek Valley Water and Sanitation District, a quasi-municipal corporation organized under the laws of the State of Colorado (hereinafter "ECCV"), and the Inverness Water and Sanitation District, a quasi-municipal corporation organized under the laws of the State of Colorado (hereinafter "IWS"). The County, City, ACWWA, ECCV, and IWS are referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, the County, the City, ACWWA, ECCV, and IWS have been and currently are responsible individually for planning, constructing and maintaining various drainage and flood control facilities within each of their various jurisdictions;

WHEREAS, the County, the City, ACWWA, ECCV, and IWS have been and currently are responsible under the Federal Clean Water Act (40 C.F.R. 122.26) for the management of stormwater quality and, in some instances, compliance with requirements of the National Pollutant Discharge Elimination System ("NPDES MS4 Stormwater");

WHEREAS, the administrative staffs of the County, City, ACWWA, ECCV, and IWS initially determined that both the planning, constructing, acquiring, operating and maintaining various drainage and flood control facilities and the management of stormwater quality including complying with various NPDES MS4 Stormwater permits could be accomplished more efficiently and thus more economically through a coordinated and cooperative intergovernmental effort;

WHEREAS, the Parties desire to form and to participate in a drainage authority pursuant to section 29-1-204.2, C.R.S., as more specifically described in this IGA;

NOW, THEREFORE, the Parties agree as follows:

I. FORMATION, PURPOSE, AND POWERS OF AUTHORITY

1. Formation of Authority. There is hereby formed a drainage authority pursuant to section 29-1-204.2, C.R.S. (hereinafter the “Authority”). The Authority established by this IGA shall be a political subdivision of the State of Colorado. The Authority shall have perpetual existence unless dissolved as provided by this IGA and applicable law.

2. Name of Authority. The drainage authority shall be named the “Southeast Metro Stormwater Authority.” Such name shall not be altered or modified during the existence of the Authority except by unanimous approval of the board of directors of the Authority.

3. Jurisdictional Boundaries of the Authority. The jurisdictional boundaries of the Authority are described in Exhibit A. The jurisdictional boundaries of the Authority may be enlarged, decreased, modified, or amended only upon all of the following: (a) a finding by the board of directors that the change in boundaries will not materially and adversely impact the Authority’s ability to provide service to properties or unreasonably increase the cost of service to properties remaining within the revised boundaries of the Authority; and (b) the affirmative vote of not less than four (4) of the voting members of the board of directors of the Authority; and (c) the written consent of the governing bodies of both the County and the City. Following the required finding, vote, and consent, the board of directors shall substitute a revised Exhibit A to this IGA establishing the new jurisdictional boundaries of the Authority.

4. Purpose and Primary Powers of Authority. The purpose of the Authority shall be to plan, fund, construct, acquire, operate, and maintain drainage and flood control facilities determined by the board of directors of the Authority as necessary or desirable to the extent of the Authority’s financial ability. The Authority shall have and may exercise the following powers as specifically authorized by section 29-1-204.2, C.R.S., and as it may be amended from time to time:

- (a) To develop stormwater systems or facilities or drainage facilities in whole or in part for the benefit of the inhabitants of the contracting parties or others, at the discretion of the board of directors, subject to fulfilling any conditions or requirements set forth in this IGA and in any other contract concerning the Authority;
- (b) To make and enter into contracts;
- (c) To employ agents and employees;
- (d) To acquire, construct, manage, maintain, fund, plan and operate drainage and flood control systems, facilities, works, or improvements, or any interest therein;
- (e) To acquire, hold, lease (as lessor or lessee), sell, or otherwise dispose of any real or personal property utilized only for the purposes of providing drainage, flood control, or stormwater quality control;

- (f) To condemn property for use as rights-of-way including but not limited to easements only if such property is not owned by any public utility and devoted to such public use pursuant to state authority;
- (g) To incur debts, liabilities, or obligations;
- (h) To sue and be sued in its own name;
- (i) To have and use a corporate seal;
- (j) To fix, maintain, and revise fees, rates, and charges for functions, services, or facilities provided by the Authority;
- (k) To adopt, by resolution, regulations respecting the exercise of its powers and the carrying out of its purpose;
- (l) To exercise any other powers which are essential to the provision of functions, services, or facilities by the Authority and which are specified in this IGA or any other contract concerning the Authority;
- (m) To do and perform any acts and things authorized by section 29-1-204.2, C.R.S., under, through, or by means of an agent or by contracts with any person, firm, or corporation;
- (n) To permit other municipalities, special districts, or political subdivisions of this state that are authorized to provide drainage facilities to enter the IGA at the discretion of the board of directors, subject to fulfilling any and all conditions or requirements of the contract establishing the Authority; except that rates need not be uniform between the Authority and other contracting parties;
- (o) To provide for the rehabilitation of any surfaces adversely affected by the construction of pipelines, facilities, or systems or of drainage facilities through the rehabilitation of plant cover, soil stability, and other measures appropriate to the subsequent beneficial use of such lands; and
- (p) To the extent permitted by law, justly indemnify property owners or others affected for any losses or damages incurred, including reasonable attorney fees, or that may subsequently be caused by or which result from actions of the Authority.

5. Other Powers of the Authority. The Parties agree that there are certain requirements in the NPDES MS4 Stormwater Permits that must be met to ensure compliance. In addition to the express powers conferred by section 29-1-204.2, C.R.S. and this IGA, the Authority shall have and may exercise the following powers or duties and shall have the following obligations and limitations:

- (a) The Authority shall manage stormwater quality and comply, to the degree legally required, with provisions and permit requirements of NPDES MS4 Stormwater Permits transferred to the Authority by the Parties as well as those obtained in the name of the Authority. The Parties acknowledge that it will be necessary for each of them to assist the Authority in the implementation, compliance and enforcement of the NPDES MS4 Stormwater Permits that will be transferred to and obtained by the Authority. Some of these areas of assistance include, but are not limited to: (i) the consideration of conditions and mitigation measures to be imposed upon new development and land use approvals; and (ii) facilitating compliance with Permit requirements by the adoption or enactment of ordinances, resolutions, and regulations that will permit the enforcement of the Permits either by the City, County, or the Authority.

The Authority shall establish, in conjunction with the NPDES MS4 Stormwater Permits that are transferred to it or which it obtains, best management practices in the areas of facilities and municipal operations. The City and the County agree to follow such best management practices and shall be liable to the Authority for failure to comply.

To the extent permitted by law, the City and the County shall delegate to the Authority such police powers as may be necessary to enable the Authority to enforce any and all provisions of NPDES MS4 Stormwater Permits transferred to the Authority or obtained by the Authority.

The Authority shall promptly draft and submit to both the City and the County draft model ordinances, resolutions, and regulations designed to enable the Authority to use its delegated police powers to enforce and assure full compliance with all NPDES MS4 Stormwater Permits in the Authority's name. As long as the submitted ordinances, resolutions, and regulations address only compliance and enforcement by the Authority of NPDES MS4 Stormwater Permits, the City and the County shall promptly consider the submitted ordinances, resolutions, and regulations for adoption.

- (b) The Authority shall not exercise discretionary or final decision-making authority over land use and land development applications or projects within the County or City; except that, in instances where a decision would cause a NPDES MS4 Stormwater Permit violation, the Authority is empowered to veto such decision after giving the County or City sixty (60) days written notice within which to revise its approval so as such decision would not cause a NPDES MS4 Stormwater Permit violation or fund the stormwater facility necessary to correct the violation.
- (c) The Authority shall serve as an advisory or referral agency to the City and the County in all aspects of drainage, flood control, floodplain management, and stormwater quality and management. The City and County shall refer to the Authority for review and comment land use and development applications for

projects located within the jurisdictional boundaries of the Authority where such applications implicate issues of drainage, drainage improvements, modifications to drainage improvements or drainage patterns, or other matters within the purpose of the Authority. The City and the County may refer any other matter to the Authority for review and comment. Any review by the Authority pursuant to this subsection (c) shall include, but not be limited to:

- (i) Ensuring that stormwater improvements are required with land use actions.
 - (ii) Ensuring that improvements are properly designed and constructed in accordance with Authority's promulgated criteria and standards.
 - (ii) Requiring that certain improvements be constructed and guaranteed with all new development and redevelopment (Permanent BMPs).
 - (iii) Obtaining easements, right-of-way and/or license agreements for the construction and maintenance of stormwater improvements.
 - (iv) Requiring maintenance agreements with land use submittals to ensure ongoing maintenance of stormwater facilities.
 - (v) Requiring that certain water quality standards be followed with construction, e.g., compliance with grading, erosion, and sediment control (GESCC) regulations.
 - vii) Ensuring that the Authority is updated in regard to all new stormwater facilities, so that they are added to the Authority's inventory.
- (d) The Authority may establish and charge a reasonable fee related to the cost of performing review services for all reviews submitted to the Authority.
6. Amended Powers of the Authority. If all or any part of section 29-1-204.2 C.R.S., concerning general administrative matters or drainage matters, is amended, such amendment shall be deemed to modify this IGA to conform to such statutory amendment without further action of the Parties or board of directors. However, upon four (4) affirmative votes of the voting members of the board of directors, the Authority may reject the automatic amendment of this IGA and may make amendments to this IGA consistent with the statutory amendment as well as the Constitution of the State of Colorado, including, but not limited to, Article 2, Section 11.

II. TRANSFER OF PERMITS AND ASSETS TO AUTHORITY

1. Transfer of Permits, Interests in Land, and Improvements Held by a Party. Subject to a Party's conformance with this Part II, the Authority shall promptly accept, and may

not reject or deny, the assignment or transfer of any NPDES MS4 Stormwater Permit held by any Party and shall accept the conveyance by such Party of any interest in land or drainage improvement associated with such NPDES MS4 Stormwater Permit necessary for the accomplishment of the Authority's purposes. Until the transfer of the NPDES MS4 Stormwater Permit and the conveyance of any interest in land and/or drainage improvements associated with such NPDES MS4 Stormwater Permit is complete, the original holder of that Permit shall fully comply with that Permit. As a condition precedent to the Authority's required acceptance of a NPDES MS4 Stormwater Permit, interest in land, or improvement from a Party to this IGA, a Party shall submit to the Authority:

- (a) A written offer to assign or transfer a NPDES MS4 Stormwater Permit or to dedicate to the Authority, at no cost unless otherwise agreed by the Authority, any interest in land or a drainage improvement; and
- (b) A written description of the NPDES MS4 Stormwater Permit, or legal description of the interest in land, or a detailed description of the improvement, in a form acceptable to the Authority, with sufficient specificity to enable the lawful assignment, transfer, or dedication of the NPDES MS4 Stormwater Permit, interest, or improvement; and
- (c) A detailed description and copies of all documents related to any known, pending or threatened claim affecting the NPDES MS4 Stormwater Permit, land, or improvement or, if none, a clear written representation and opinion addressed to the Authority from the Party's legal counsel stating that there exists no such known, pending or threatened claim; and
- (d) For any interest in land or any improvement:
 - (i) Evidence of ownership or other interest in a form acceptable to the Authority; and
 - (ii) Written representation of ownership or other interest in the Party and the Party's agreement, in a form acceptable to the Authority, to insure and defend such ownership or interest against adverse claims for a period of three (3) years following the date of assignment, transfer, or dedication; and
 - (iii) In the case of an interest in land, a title insurance commitment agreeing to insure marketable title in the Authority; and
 - (iv) A written disclosure, by the then-current general manager or chief executive officer of a Party, of any known environmental hazard, condition or use of the land or improvement that may require action under the laws of the United States or the State of Colorado in regard to the cleanup or remediation of environmental hazards.

- (e) For any improvement:
 - (i) All deeds, covenants, easements, contracts, leases, building permits, certificates of completion or occupancy, inspection reports, surveys, construction documents, maintenance records, and any other documentation held by the Party related to such improvement;
 - (ii) A report describing the condition of the improvement, processes and procedures employed by the Party to operate and maintain the improvement, recommendations for any immediate and ongoing repair and maintenance, and specifically identifying any defects in design or construction, if known.; and
- (f) An executed document of assignment, deed, bill of sale, or other form of documentation deemed suitable by the Authority for the assignment, transfer, or dedication of the permit, interest, or improvement in a form acceptable to the Authority; and
- (g) The Authority may, in the best interests of the Authority and the Party, waive or partially waive any of the submissions required above.

2. Consideration for Transfer of NPDES MS4 Stormwater Permit, Land, and Improvements.

- (a) Provided that an NPDES MS4 Stormwater Permit (together with all interests in land or improvements associated with or necessary to such Permit) is assigned or transferred by a Party to the Authority in accordance with Paragraph II.1 of this IGA, the Authority shall accept all responsibility, obligation, liability and duty resulting from such NPDES MS4 Stormwater Permit and shall, to the fullest extent lawfully permitted, indemnify, defend, and hold the assignor-Party harmless including any of the Party's officials, officers, agents, or employees from any and all claims, damages, liability, or court awards, including costs and attorneys' fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by anyone, including but not limited to, any person, firm, partnership, or corporation, in connection with or arising out of:
 - (i) The Authority's failure to comply with the terms of the assigned or transferred NPDES MS4 Stormwater Permit. The Authority's responsibility to comply with a NPDES MS4 Stormwater Permit begins on the date that the Authority acknowledges, accepts and approves such assignment or transfer.
 - (ii) A claim against the Authority's ownership of an interest in land filed after the expiration of period of agreement to defend ownership referenced in Section II(1)(d)(ii) above.

- (iii) The Authority's operation or maintenance of the land or improvement assigned, transferred, or dedicated by a Party to the Authority and thus the Authority's liability begins on the date such transfer to the Authority takes place by written document signed by the Party transferring its interest and accepted by the Authority.
- (b) The Authority shall not accept any liability in regard to either compliance with a transferred NPDES MS4 Stormwater Permit or the operation of any transferred land or improvement that arose prior to transfer unless the Authority specifically, by the affirmative vote of four (4) voting members of the board of directors, assumes a specifically disclosed liability. This provision shall not apply to contracts that are assigned or transferred to the Authority under this IGA.
- (c) The Authority shall make no transfer of any asset constructed or acquired by a Party with tax exempt bond proceeds to private ownership or place the same in private use until any tax exempt bonds used for such asset or any refunding thereof are defeased. The Authority shall not take action to impair the tax-exempt status of the bonds or other instruments of any Party.
- (d) If the transfer of a NPDES MS4 Stormwater Permit to the Authority has not been approved by the State of Colorado within twenty-four (24) months from the date of submission to the State of the Authority's application for such transfer, which completed application for such transfer shall be submitted to the State of Colorado by April 1, 2007, then:
 - (i) The Authority shall consult with the Party that intended to transfer the Permit and either: (1) rebate any remaining uncommitted fees collected by the Authority that are related to such Permit to the then-owner of the property against which the fees were imposed and paid; or (2) if written request is made by a Party, pay such remaining uncommitted fees to the applicable Party to be used for the purpose for which they were collected by the Authority, provided, however, in either event that the method of any rebate or payment shall be determined by the Authority; and
 - (ii) The Party retaining the Permit shall decide whether to proceed jointly with the Authority under an amended agreement or to proceed pursuant to the Party's NPDES MS4 Stormwater Permit. If it is determined that the Party shall proceed alone with its Permit and the Party has previously conveyed facilities to the Authority covered by that Permit, the facilities shall be conveyed back to the Party.

3. No Duplication of Assessments for Drainage Management and Certain Fee Provisions.

- (a) If, upon the effective date of any assessment levied against a property by the Authority of a recurring fee or other monetary charge for drainage management

(i.e., a recurring charge for operation, maintenance, administration and improvements not paid for from System Development Fees or “SDF”), a Party also assesses a fee or other monetary charge for the purpose of drainage management for the same property, such Party shall promptly cease assessment of such fee or charge against such property. Nothing herein shall obligate a Party to cease assessment of any general tax, fee, or other charge imposed against property that is not restricted to drainage management; e.g., Arapahoe County shall not be obligated to reduce general property taxes for which a portion of the revenue of which is customarily budgeted and appropriated for drainage management. Amounts due and owing to a Party for drainage management assessed prior to the effective date of any assessment by the Authority may be collected and applied in accordance with the rules, regulations, and policies of the collecting Party.

However, the Parties will cease collecting these recurring fees or charges in a manner so as not to collect these fees and charges for drainage management after December 31, 2006. If the Authority is not able to assume drainage management in the jurisdiction of a Party on or before January 1, 2007, the Authority and the Party shall enter into an agreement that will authorize the Party to provide drainage management in its jurisdiction, on a monthly basis, until the Authority assumes that drainage management; in exchange for which, the Authority will compensate the Party, on a monthly basis, the amount of the fees and charges the Party would have collected each month.

- (b) If a Party is assessed a fine or penalty or ordered to perform certain remedial work on one or more of its facilities by a governmental regulatory agency or a court of law as a result of a violation of any of its NPDES MS4 Stormwater Permits that occurred prior to that Party’s transfer of the Permit to the Authority, or a Party incurs or settles a liability that must be paid under the Colorado Governmental Immunity Act or other law plus costs (hereinafter “Order”) that Party may assess a reasonable fee or charge which shall not be considered or identified as a stormwater management fee to permit the Party to address that violation in a timely manner and the limitations set forth in Paragraph 2.(a) above will not apply. In addition, if the Authority is, for some reason, subject to that Order and that Party has agreed to indemnify and hold the Authority harmless in regard to that Order, the provisions of this Paragraph shall continue to apply to permit a Party to assess a fee or charge to satisfy its obligation to the Authority.

4. Special Provisions Concerning System Development Fees.

- (a) Each Party may charge an SDF against developing property within each Party’s boundaries and use the proceeds of the SDF as allowed by this IGA. If the Authority determines to impose an addition to the SDFs of a Party (“Surcharge SDF”), the Surcharge SDF charged in one or more Party’s boundaries by the Authority shall be set to rationally, reasonably and equitably pay for the costs of collection, construction and, related costs of drainage and water quality facilities

that are not fully funded by the particular Party's SDF or other Authority revenues. Any increase or decrease in a SDF shall be based upon the same rational, reasonable and equitable criteria. The Authority is expected to, but is not required to, charge different SDFs in different drainage basins. Except as provided in Paragraph II.4.(b) below, from and after the date of this IGA, the Parties shall not construct new stormwater facilities except with the Authority's consent or to avoid or correct a NPDES MS4 Permit violation; provided, however, the Parties will complete all facilities currently under construction using SDF proceeds, grants, or developer reimbursement agreements. For purposes of this subsection (a), "under construction" shall mean, at a minimum, that a notice to proceed has been issued for the construction of the facility.

- (b) ECCV has built or is building stormwater facilities which meet the quantity and quality requirements for the 100-year flood and its NPDES MS4 stormwater permit for the Copperleaf and Tall Grass developments. The cost of those facilities are paid for, or are to be paid for, from SDFs imposed by ECCV upon those developments. ECCV represents to the best of its knowledge, information, and belief that there are no other stormwater facilities needed to provide stormwater management for these two developments. Therefore, notwithstanding any other provisions of this IGA, ECCV will continue to collect its SDF within those developments described on Exhibit B and the Authority shall not impose an SDF within those developments.
- (c) The Authority may, at its discretion and its expense and upon notice delivered to a Party, review any Party's financial and other records that support the Party's calculation of payments to the Authority. Such review shall be undertaken at the Authority's cost and expense. A Party shall reasonably cooperate with the Authority in such review by the prompt delivery of financial and other records requested by the Authority and the Party shall require the attendance of the Party's financial officer or advisor at Authority expense to assist in the review and understanding of such records. The purpose of such review shall be to determine the amount collected from the Party's system development fee, the amount paid from such collections for the Party's contractual obligations, construction, administration as provided in III.4.(b)(ii), maintenance prior to the formation of the Authority and payments to the Authority to determine that the amount paid to the Authority is in accordance with this IGA.
- (d) Any Party may, at the Party's expense, and upon notice delivered to the Authority, review the Authority's financial and other records to determine whether the Authority is using funds collected from the Authority's drainage management fee, systems development fee, revenue received from a Party, or any other Authority revenues for drainage purposes in accordance with this IGA.

5. Special Provisions Concerning Phosphorus Credits.

- (a) The Parties understand and acknowledge that ACWWA, ECCV, and/or IWS secured or may secure “phosphorus credits” from the Cherry Creek Basin Water Quality Authority, hereinafter “CCBWQA”, which credits authorize future water or wastewater practices and the deposition of phosphorus into designated water courses or other water resources. Phosphorus credits shall not be deemed transferred from ACWWA, ECCV, or IWS to the Authority with the transfer of any permit, land, or improvement and the Party holding such credits shall retain the credits unless specifically transferred or assigned by separate written agreement.
- (b) The Authority shall have no power to purchase or apply for phosphorus credits without the consent of ACWWA, ECCV, or IWS as applicable to the locations of the facility that may generate such credits. In the event the Authority obtains a phosphorus credit, it shall, on request of ACWWA, ECCV, or IWS, as applicable in which such credit exists, convey the same to the Party at no cost.
- (c) The Authority shall notify ACWWA, ECCV, or IWS, as applicable of any Authority construction project that may include the potential to obtain phosphorus credits and shall allow ACWWA, ECCV, or IWS to participate therein to allow them to obtain such credits. Following completion by ACWWA, ECCV, or IWS as applicable of a water quality facility by the CCBWQA for inclusion in the phosphorus credit program that is associated with an Authority drainage facility, the Authority shall accept such water quality facility for ownership, operation, and maintenance, and bill ACWWA, ECCV, or IWS the incremental maintenance costs for that drainage facility which is associated with those phosphorus credits.
- (d) The Authority shall not interfere with the CCBWQA phosphorus credit program and amendments thereto that are of benefit to the Parties.

6. Easements Across Authority Property. The Authority shall not charge any Party for an easement for any public purpose on, over, under or across any property of the Authority used for any stormwater related purpose as long as such easement and the facilities therein or on do not unreasonably interfere with the Authority’s use of the property. This may be implemented through reservations contained in the conveyancing documents.

7. Easements Across a Party’s Property. A Party shall not charge the Authority for an easement and shall grant an easement to the Authority (for any storm related purpose needed by the Authority) on, over, under or across any property of a Party as long as such easement and the facilities therein or on do not unreasonably interfere with the Party’s use of the property.

8. Transfer of Prior Collected Fees. After payment of outstanding construction and associated costs of its stormwater facilities, by December 31, 2006, each Party shall transfer to the Authority all SDFs collected prior to such date to the Authority, except SDFs shall not be

transferred to the Authority if those fees were collected for the construction of a facility that has not been constructed but which construction and other necessary costs that remain the responsibility of the Party in the future.

III. ASSIGNMENT OF DRAINAGE RELATED CONTRACTS

1. No Obligation to Offer to Assign or to Accept Assignment of Contracts. No Party shall be obligated to offer the assignment of any contract held by a Party and the Authority shall not be obligated to accept any offer of assignment of a contract except in accordance with this Section III. However, it is the intent of this IGA that Parties will offer to the Authority the assignment of contracts other than SDF Reimbursement Agreements (as defined below) which are necessary to enable the Authority to manage stormwater and to comply with requirements of NPDES MS4 Stormwater Permits held by the Authority. Such contracts should customarily include deeds, easements, maintenance agreements, and other contracts related to detention and other stormwater management facilities. SDF Reimbursement Agreements shall be addressed in accordance with Section III(4) below.

2. Certain Drainage Related Contracts May be Assigned. The Parties' creation of the Authority is intended to provide a reasonable and functional organization for the transfer and assumption of the obligation of management of drainage within the Parties' respective jurisdictions and within the jurisdictional boundaries of the Authority. In furtherance of this purpose, the Authority shall accept assignment of contracts determined by the Authority as necessary for the efficient management of drainage. Such Authority's acceptance of any contract shall be conditioned upon the Authority's determination that all of the following are satisfied unless waived by the Authority:

- (a) The contract must be lawfully assignable by the Party seeking assignment ("Assigning Party") without the prior approval or consent of another party or parties to the contract or, if not, whether all parties to the contract have lawfully consented to the proposed assignment;
- (b) The contract must include benefits and obligations that are within the purpose and power of the Authority;
- (c) The contract must concern the performance of actions, or affect property located entirely within, the jurisdictional boundaries of the Authority;
- (d) The contract assignment must be a full assignment of all benefits and obligations or, if a partial assignment, the obligations of the contract to be assigned to the Authority can be adequately performed by the Authority without full assignment;
- (e) The Assigning Party represents that no party to the contract is in breach or default and the Assigning Party has no knowledge of a threat of a breach or default;

- (f) Where the contract provides for the payment, retention, escrow, or deposit of funds with the Assigning Party for purposes of meeting the obligations of the contract, the Assigning Party shall provide an accounting of all moneys received, expended, and held by the Assigning Party pursuant to the contract and the Assigning Party must agree to promptly transfer all such funds held by the Assigning Party to the Authority contemporaneously with the assignment of the contract to the Authority;
- (g) The contract must not create significant unfunded expenditures or administrative burdens upon the Authority, e.g., the contract must not: (i) require payment(s) by the Authority in excess of the Authority's reasonably anticipated uncommitted revenues; or (ii) pertain to a construction project that has commenced and remains incomplete and which would require the substitution of new construction management, necessitate assignment of other related contracts with multiple parties in order to effectively perform, or require administrative expertise and assistance not readily available to the Authority;
- (h) The Assigning Party agrees to transfer all originals of the contract and the originals of all files pertaining to such contract, including contract drafts, correspondence, and memoranda in the possession of the Assigning Party (the Assigning Party may retain copies of any or all documents as they deem appropriate);

3. Acceptance of Assignment. Upon a determination made in accordance with section III(1) above, the Authority may accept the assignment of a contract provided that:

- (a) The Assigning Party fully executes a legally effective document of assignment suitable to the Authority and shall deliver such document to the Authority together with:
 - (i) All originals of such contract in the possession of the Assigning Party; and
 - (ii) The original of all files pertaining to such contract, including contract drafts, correspondence, and memoranda (the Assigning Party may retain copies of any or all documents as they deem appropriate); and
 - (iii) Documentation evidencing that the Assigning Party sent notice, via certified return receipt mail or other comparable service, to all parties to each contract advising the parties of the assignment of the contract to the Authority. The Assigning Party shall provide a copy of such notice and return receipt of mailing or service, to the Authority; and
 - (iv) Where such contract provides for the retention, escrow, or deposit of funds with the Assigning Party for purposes of meeting the obligations of the contract, the Assigning Party shall provide an accounting of all

moneys held by the Assigning Party pursuant to the contract and the Assigning Party shall transfer all applicable funds to the Authority contemporaneously with the assignment to the Authority.

- (v) A letter from the Party's governing body and a letter from its legal counsel that neither, respectively, knows of any material breach of any party to the contract; that the contract is assignable; that all consents required for that assignment have been obtained, and summarizing the current status of performance of the contract.

4. Special Provisions Concerning Assignment of SDF Reimbursement Agreements.

- (a) In accordance with the provisions of this Section III(2) and (3), a Party may offer to assign, and the Authority may accept assignment of, a contract associated with the past, current, or future construction of stormwater facilities which involves the periodic or scheduled payment or reimbursement of funds derived from SDFs for payment of the costs of such stormwater facilities (a "SDF Reimbursement Agreement").
- (b) If a Party chooses not to offer to assign to the Authority a SDF Reimbursement Agreement and to retain and perform the Party's obligations under such SDF Reimbursement Agreement, or if an offer by a Party to assign a SDF Reimbursement Agreement to the Authority is not accepted by the Authority, the Party agrees that it shall:
 - (i) Pay no more than the minimum periodic amount required under such retained SDF Reimbursement Agreement unless otherwise agreed by the Party and the Authority; and
 - (ii) Assess and collect SDFs and retain sufficient funds from the SDFs to make the minimum payments required by the retained SDF Reimbursement Agreement(s), plus an amount equal to the actual costs of the Party's collection of SDF, and all administration of such retained SDF Reimbursement Agreement(s) provided that such cost of administration does not annually exceed 10 % for calendar year 2007 and 5% thereafter of the amount of SDFs annually collected by the Party; and
 - (iii) Pay to the Authority all SDF funds collected by the Party which are in excess of the amount permitted to be retained by the Party by section III.4(b)(ii) above; and
 - (iv) In the event that a Party's cost of administration of retained SDF Reimbursement Agreement(s) exceeds the percentage amount permitted to be retained by the Party in accordance with III.(4)(b)(ii) above, the Party shall increase its SDF charge or provide for another source of revenue to meet the Party's costs of administration. The Authority shall

have no obligation for the payment of or reimbursement to the Party for administrative costs that exceed the percentage amount permitted to be retained by the Party in accordance with (4)(b)(ii) above; and

- (v) If, after increasing its SDF charges pursuant to III.4.(b)(iv) of this IGA, a Party's SDF revenues are insufficient to pay a minimum payment due on a Party's retained SDF Reimbursement Agreement, such Party may make such minimum payment from revenues that the Party makes available for such purpose and the Party may reimburse the Party's fund or enterprise from which such minimum payment was made from SDF revenue collected in the future by such Party; and
- (vi) To the extent that the County and/or the City have created and funded, from general revenue, special project accounts to fund future drainage and/or flood control projects that require the accumulation of the necessary funds over a number of years; the County and/or the City agree that at the time the Authority is prepared to begin the construction of one of those projects the Authority and the County and/or the City will enter into an intergovernmental agreement regarding the use of such funds for any specific project.

5 ACWWA and IWS Matters.

- (a) Any ACWWA NPDES MS4 Stormwater Permits, and stormwater-related contracts, lands, facilities, and other interests serving or located in Douglas County, Colorado shall be subject to the same terms and conditions of this IGA as if those Permits, and stormwater-related contracts, lands, facilities, and other interests, pertained to or were located in Arapahoe County, Colorado.
- (b) The ACWWA "Jordan-Arapahoe Settlement" as set forth in the *Order Approving Settlement Agreement of the Parties and, Subject Thereto, Dismissing the Action with Prejudice* entered in Arapahoe County District Court, Case No. 04 CV 413, Division 206, on April 10, 2005 by Judge J. Mark Hannen shall be considered to be an SDF Reimbursement Agreement for purposes of this Agreement.
- (c) The Authority shall calculate impervious area for each application for development within ACWWA for purposes of determining the SDF charged by ACWWA to that development and shall supply such calculations in a timely manner as requested by ACWWA.
- (d) ACWWA is currently in negotiations on three agreements commonly known as: (i) Concord Phase 3 Reimbursement; (ii) Airport Pond W1-W2; and (iii) Highfield Business Park Upper Detention Pond. ACWWA and the Authority shall work together to complete these agreements, which may be completed with or without ACWWA as a party. If ACWWA is a party, the Authority shall consider acceptance of an assignment of any or all of these contracts (or

ACWWA will retain these contracts) on the same terms as comparable contracts that existed prior to the date of this Agreement. The Authority becoming a party to these agreements in negotiation is subject to the terms and conditions of Paragraph II of this IGA

- (e) Upon written request of IWS to the Authority, the Authority shall enlarge its boundaries to include that portion of IWS located in Douglas County, Colorado unless prohibited by law.

6. Inverness Reimbursements. IWS constructed stormwater facilities using money from its general fund. IWS has a policy of replenishing its general fund for the costs of construction of stormwater facilities from revenues derived from a Systems Development Fee imposed by IWS of \$8,325.00 per impervious acre. After organization of the Authority, IWS shall continue to collect this SDF and use the proceeds of the IWS SDF to replenish its general fund in accordance with the IWS policy that existed prior to organization of the Authority. IWS's SDF shall be no more than \$8,325.00 per impervious acre and shall not be increased without the prior written consent of the Authority. The Authority shall have no obligation or liability for payment to IWS in the event that the revenues derived from the IWS SDF imposed against the remaining properties subject to the SDF are insufficient to compensate IWS for IWS' cost of construction of the stormwater facilities. IWS shall provide an annual accounting to the Authority detailing the SDFs collected, the remaining un-reimbursed costs of stormwater facilities' construction and the remaining undeveloped area in IWS.

IV. ORGANIZATION OF AUTHORITY

1. Board of Directors; Appointment. All affairs of the Authority shall be governed by a six (6) member board of directors comprised of five voting members and one ex-officio non-voting member. Two voting members shall be appointed by the Arapahoe County Board of County Commissioners. Three voting members shall be appointed by the City of Centennial City Council. One ex-officio non-voting member shall be designated and jointly appointed by ACWWA, ECCV, and IWS; provided that ACWWA, ECCV, and IWS may at any time unanimously agree to terminate the ex-officio non-voting representation on the board of directors by written declaration delivered to the County and City which declaration shall be irrevocable unless otherwise agreed to unanimously by the board of directors and shall effectively reduce the board of directors to a five member board. The Party or Parties appointing regular members to the board of directors may designate one person to serve as the Party's alternate member of the board to serve in the event of an absence of a Party's regularly appointed member and such designation of an alternate member shall be made in a written notice delivered to each of the Parties. In the case of a City or a County alternate member, such alternate member shall have all of the rights, duties and responsibilities of the regular member he is acting for while acting in that regular member's place. Members of the board of directors may, but need not, be elected officials of the appointing Party. The term of board membership shall be four (4) years from the date of appointment without limitation on the total number of terms that may be served by any person provided, however, that: (i) an appointing Party may appoint one or more members for a term of less than four years; and (ii) an appointing Party may remove and may replace a Party's

appointed board member at any time without cause or reason. A vacancy on the board prior to the expiration of a term shall be filled within forty-five (45) days by the Party responsible for the initial appointment of the vacant position; an appointment to fill a vacancy shall be made only for the remainder of the vacant term.

2. Employment and Compensation of Board Members. An appointed member of the board of directors shall not be an employee of the Authority. Board members shall hold no employment or consultancy position with the Authority. Unless compensation is waived by a board member, as permitted by this section, board members shall receive One Hundred Dollars (\$100.00) per Board Meeting attended. A board member shall receive no retirement, health, or other benefits. A member of the board may elect to waive any right to all monetary compensation otherwise available to a member of the board provided that such election is made in writing delivered to the Authority prior to attending his/her first board meeting. Such election may be changed upon written notice delivered to the entire board of Directors and shall be effective the next-following Board Meeting. The board of directors shall adopt a reasonable written policy for reimbursement of actual out-of-pocket expenses incurred by a board member in direct service to the Authority. The board of directors may approve reasonable travel, lodging, and per diem expenses for board members or employees for attendance at professional conferences and training seminars related to matters within the purpose of the Authority provided that such approval is made prior to any member or employee incurring such expense or cost.

3. Officers of the Authority Board. The officers of the Authority board of directors shall be a chairperson, a vice-chairperson, a secretary, and a treasurer elected by the voting members of the board of directors. The chairperson and vice-chairperson shall be voting members of the board of directors. The offices of secretary and treasurer may be combined into one office if deemed appropriate by the board of directors. Officer functions and duties shall be those duties traditionally carried out by persons holding those offices.

4. Rules of Procedure; Quorum. The board of directors shall adopt written rules of procedure to govern required attendance, conduct and scheduling of meetings, voting practices and processes, and any other procedural actions or activities of the board of directors and any board committees or subcommittees. Such rules of procedure shall provide that four (4) voting members of the board of directors shall constitute a quorum and that a majority of a quorum shall be necessary for any action taken by the board of directors with the exception of procedural matters such as adjournment, scheduling, and cancellation of meetings. The Authority shall comply with the Colorado Sunshine Act of 1972, as amended.

5. Executive Director. The board of directors shall employ or contract for the services of an executive director (or another position or title) to serve the Authority as the chief executive officer and principal administrative manager of the Authority. The executive director shall serve at the pleasure of the board of directors provided that the board of directors may enter into an employment agreement with the executive director which provides for benefits upon termination provided that such benefits are consistent with benefits, in terms of both benefit type and value, provided to other comparable positions within similarly sized political subdivisions of the state of Colorado and subject to the provision of 24-19-101 *et.seq.* C.R.S.

6. Other Employees of the Authority. The Authority shall provide for positions of employment necessary and desirable to manage the operations and administrative affairs of the Authority. Initially, the staff of Arapahoe County, Colorado dealing with drainage, flood control and NPDES matters shall be offered employment at the Authority on comparable employment terms as at the County. However, the benefits that those employees will receive, subject to board of directors' approval, will be commensurate with those of other governmental entities of similar size, revenue and budget. The Authority shall not be responsible for any Arapahoe County wages or benefits of the staff. These Authority employees initially shall be at will employees. However, their status may be changed by the Authority upon adoption of its personnel policies.

7. Contractor Positions of the Authority. The Authority may contract for the performance of functions and services necessary and desirable to manage the affairs of the Authority.

V. FINANCIAL MATTERS OF AUTHORITY

1. Compliance with Applicable Law Required. In addition to any budgeting and appropriation requirement imposed by applicable law, the provisions of articles 10.5 and 47 of title 11, C.R.S., shall apply to moneys of the entity.

2. Other Financial Matters.

- (a) The bonds, notes, and other obligations of the Authority shall not be the debts, liabilities, or obligations of any Party or the Parties to this IGA.
- (b) The Authority shall be authorized to issue bonds, notes, or other obligations payable solely from the revenues derived from facilities or services provided by the Authority.
- (c) Undeveloped property that comes under development that is located within the current Authority's boundaries, but has never been assessed either a System Development Fee or a recurring maintenance and operation fee, may be assessed the currently established fees by the executive director or designee without the assessment being submitted to a vote of the board of directors of the Authority.
- (d) It is the intent that revenue received by the Authority in the form of service charges from areas within the jurisdictional boundaries of the Authority should be expended as determined by the board of directors. The board shall consider expenditures in a roughly proportional manner, on a five year average, within drainage basins or other geographic areas in the form of operations and maintenance, regulatory, water quality, and/or capital/remedial projects.
- (e) The Authority and/or the County and the City jointly will, if determined by their governing bodies as beneficial and in the interests of the Authority, form a water activity enterprise pursuant to section 37-45.1-101 *et seq.*, C.R.S., which shall

have as its purposes the generation of sufficient funds to finance the purposes of the Authority and specifically the performance of the responsibilities described in this IGA.

- (f) The Authority shall be authorized to impose reasonable fees to reimburse it for its direct costs for any service requested by and provided to a Party and a Party may impose reasonable fees to reimburse it for its direct costs for any service requested by and provided to the Authority.

VI. INDEMNIFICATION OF PARTY BY AUTHORITY

1. To the fullest extent lawfully permitted, the Authority shall indemnify, defend, and hold each Party harmless including any of the Party's officials, officers, agents, or employees from claims, damages, liability, including costs and attorneys' fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by anyone, including but not limited to, any person, firm, partnership, or corporation, in connection with or arising out of the Authority's actions in the operation, maintenance or management of stormwater drainage after the effective date of this IGA.

2. Further, provided that such claim, damage, or liability described above is found by the Authority to specifically relate to drainage obligations or drainage improvements that are within the scope of power and jurisdiction of the Authority, the Authority shall by written confirmation to the Party accept and extend indemnification as provided in this IGA to the Party.

VII. ADDITION OR RELEASE OF PARTY TO INTERGOVERNMENTAL AGREEMENT

1. Addition of Party. The County and City may mutually agree to the inclusion of one or more additional parties to this IGA. Addition of a party shall neither alter or modify the composition of the board of directors of the Authority nor grant to such added party a voting membership on the Authority. Terms and conditions of inclusion, including the extension of any indemnification of such party, shall be subject to mutual agreement of the County, City, and the added party. The board of directors shall make a finding that the addition of a Party does not adversely affect the then existing Parties or their constituents.

2. Release of Party. Upon written request of any Party other than the County or City, the County and City may mutually agree to terminate the participation in this IGA of such Party and thereby release such Party from any further obligation or responsibility under the IGA. Such termination and release shall be made in writing, be under such terms as may be approved by the Authority and the Party seeking the release and such termination and release shall, unless otherwise approved by both the County and City, terminate any obligation of the Authority to indemnify or hold such Party harmless as provided by this IGA, except for prior acts already subject to indemnification by this IGA.

VIII. DISSOLUTION OF AUTHORITY

1. Dissolution. The Authority may be dissolved and cease operation only by unanimous vote of all voting members of the board of directors and only if there exist no bonds, notes, or other financial obligations outstanding for the Authority unless provision for full payment of such obligations, by escrow or otherwise, has been made.

2. Distribution of Property and Assets. Upon dissolution of the Authority, its property, assets and debt associated with that property or asset will be distributed in accordance with all then existing legal requirements.

IX. MISCELLANEOUS PROVISIONS

1. Enforcement. The laws of the State of Colorado shall govern the IGA. Venue for any action for the enforcement of this IGA shall be in the appropriate court for Arapahoe County, Colorado. Any judgment shall be limited to specific performance and/or injunctive relief and no Party shall have any claim or remedy for monetary damages arising from an alleged breach of the IGA against another Party. Notwithstanding the foregoing, the prevailing party in any judicial action to enforce the IGA shall be entitled to reasonable attorneys' fees and costs. The IGA is not intended to modify or eliminate the standing the Parties may possess independent of the IGA. The Parties agree that the rule that ambiguities in a contract are to be construed against the drafting party shall not apply to the interpretation of this IGA.

2. No Waiver of Rights. A waiver by any Party to this IGA of the breach of any term or provision of this IGA shall not operate or be construed as a waiver of any subsequent breach by a Party.

3. No Waiver of Governmental Immunity. Nothing in this IGA shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the Authority, any Party, its officials, employees, contractors, or agents, or any other person acting on behalf of the Authority or a Party and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

4. Binding Effect. The Parties agree that this IGA, by its terms, shall be binding upon the successors, legal representatives, and assigns of the Parties; provided that this Section shall not authorize assignment.

5. No Third Party Beneficiaries. Nothing contained in this IGA is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party. Absolutely no third party beneficiaries are intended by this IGA. Any third-party receiving a benefit from this IGA is an incidental and unintended beneficiary only.

6. Survival of Terms and Conditions. The Parties understand and agree that all terms and conditions of the IGA that require continued performance, compliance, or effect

beyond the termination date of the IGA shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.

7. Paragraph Captions. The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this IGA.

8. Severability. Invalidation of any of the provisions of this IGA or any paragraph sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this IGA.

9. Incorporation of Exhibits. Unless otherwise stated in this IGA, exhibits, appendices, or documents referenced in this IGA shall be incorporated into this IGA for all purposes. In the event of a conflict between any incorporated exhibit and this IGA, the provisions of this IGA shall govern and control.

10. Notices. Unless otherwise specifically required by a provision of this IGA any notice required or permitted by this IGA shall be in writing and shall be deemed to have been sufficiently given for all purposes if hand delivered or sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other Parties. Such notice shall be deemed to have been given when deposited in the United States Mail properly addressed to the intended recipient.

If to the City:

City Manager
City of Centennial
12503 E. Euclid Drive, Suite 200
Centennial, Colorado 80111

With Copy to:

City Attorney
12503 E. Euclid Drive, Suite 200
Centennial, Colorado 80111

If to ACWWA:

Manager
Arapahoe County Water and Wastewater
13031 East Caley Avenue
Centennial, Colorado 80111-6507

With Copy to:

Norman F. Kron, Jr., Esq.
Grimshaw & Haring, P.C.
1700 Lincoln St., Suite 3800
Denver, Colorado 80203-4538

If to the County

Chairman of the Board
Arapahoe County
5334 S. Prince St.
Littleton, Colorado 80166

With Copy to:

County Attorney
5334 S. Prince St.
Littleton, Colorado 80166

If to ECCV:

Manager
East Cherry Creek Valley Water
And Sanitation District
6201 S. Gun Club Road
Aurora, Colorado 80016

With Copy to:

David J. Hahn, Esq.
Hahn, Smith, Walsh & Mancuso, PC
717 17th St., Suite 1520
Denver, Colorado 80202-3315

If to IWS:

Inverness Water and Sanitation District
Attn: Patrick F. Mulhern, P.E.
Mulhern MRE, Inc.
2 Inverness Drive East, Suite 200
Englewood, Colorado 80112

With Copy to:

John W. Smith III, Esq.
Hahn, Smith, Walsh & Mancuso, PC
717 17th St., Suite 1520
Denver, Colorado 80202-3315

11. ACWWA, ECCV, IWS – County IGAs. This IGA supersedes and replaces the Intergovernmental Agreement for Cooperation on Storm Water Facilities Within the Lone Tree Creek, Windmill Creek and Dove Creek Basin, as amended, by and between ACWWA and the County as well as the Intergovernmental Agreement for Cooperation on Storm Water Facilities Within the Cottonwood Creek Drainage Basin by and between Inverness Water and Sanitation District and the County and the Intergovernmental Agreement by and between East Cherry Creek Valley Water and Sanitation District and the County dated March 24, 1988.
12. ACWWA & ECCV– City IGAs. This IGA supersedes and replaces the Intergovernmental Agreements for Cooperation on Storm Water Facilities and NPDES Compliance Operations Within the City of Centennial entered into between the City of Centennial and ACWWA (unknown initial date but extended and amended on December 19, 2005) and ECCV (initially dated March 1, 2004 and as extended and amended in subsequent years).

X. STEERING GROUP RECOMMENDATIONS

Attached to this IGA as Exhibit C are “Recommendations of the City, County, and Stormwater Steering Group on the Formation of a Stormwater Authority.” The Exhibit is intended to memorialize basic operating principles agreed to by the original organizers of the Authority and should be used as a reference source in future discussions and decisions of the Authority.

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals the day and year first above written.

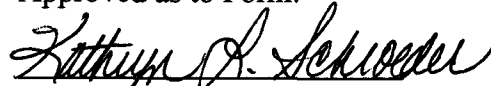
COUNTY OF ARAPAHOE

By 
Rod Bockenfeld, Chairperson

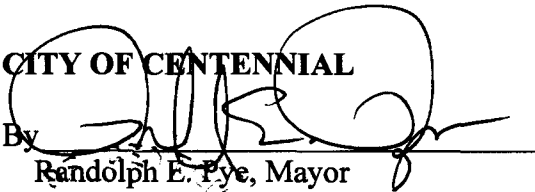
ATTEST:

By  Deputy
County Clerk


Approved as to Form:


Kathryn L. Schroeder, County Attorney

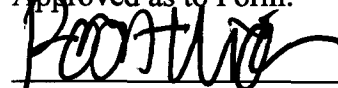
CITY OF CENTENNIAL

By 
Randolph E. Pye, Mayor


ATTEST:

By 
City Clerk or Deputy City Clerk

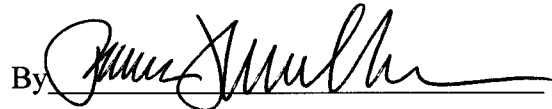
Approved as to Form:


Robert C. Widner, City Attorney

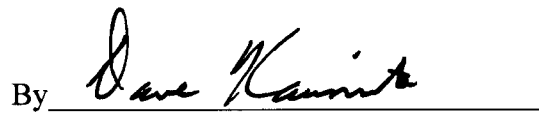
ARAPAHOE COUNTY WATER AND WASTEWATER AUTHORITY

By 
Bernie Zimmer, Chairperson

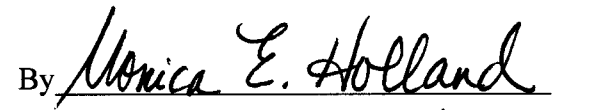
ATTEST:

By 
Secretary

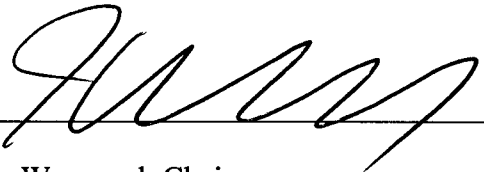

EAST CHERRY CREEK VALLEY WATER AND SANITATION DISTRICT

By 
Dave Kaunisto, Manager


ATTEST:

By 
~~Secretary~~ Asst. District Manager

INVERNESS WATER AND SANITATION DISTRICT

By 
~~John Woodward, Chairperson~~
Woodward, President 

ATTEST:

By 
Secretary

Acceptance of terms and conditions of this INTERGOVERNMENTAL AGREEMENT this
20th day of September, 2006:

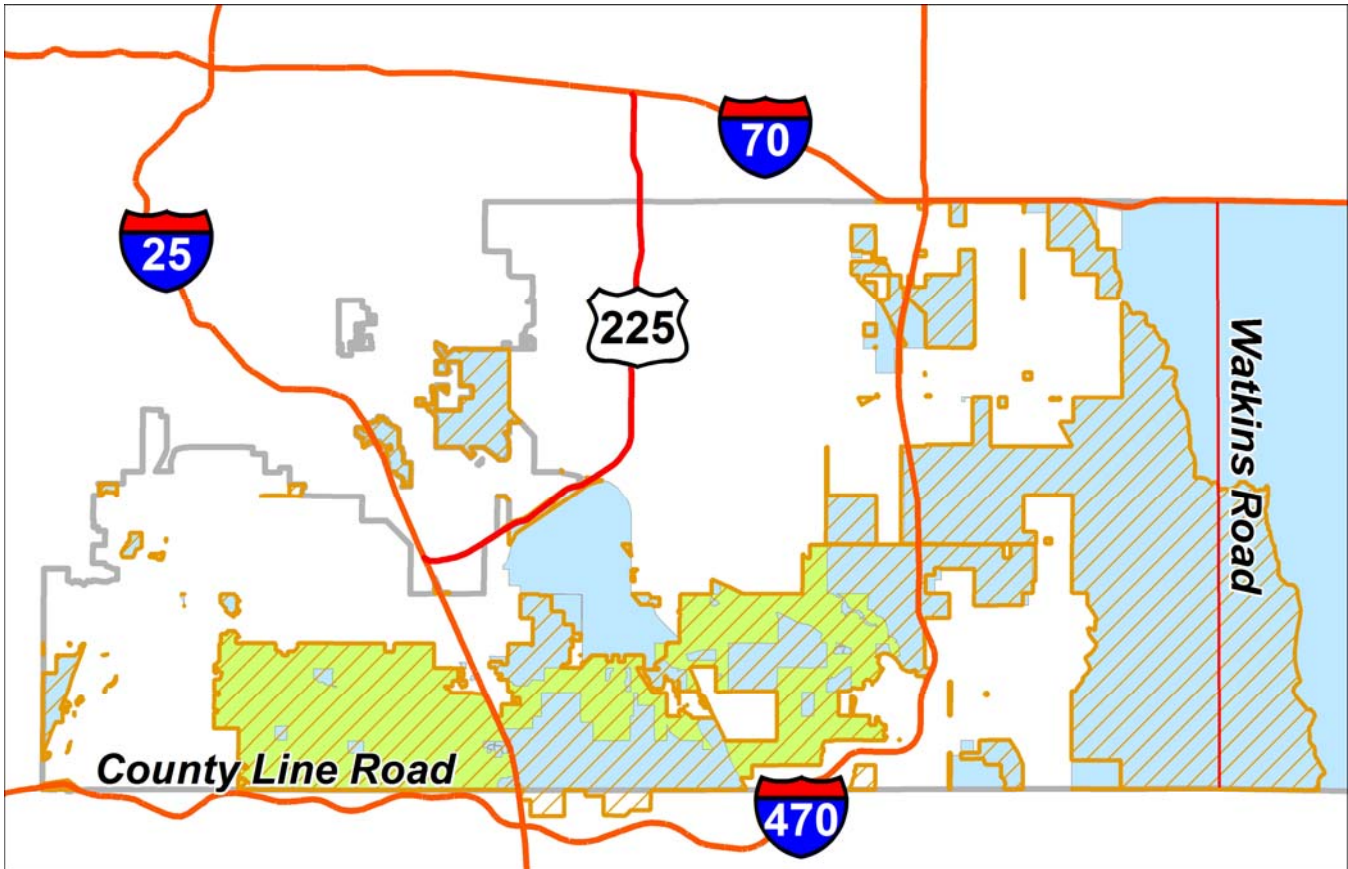
SOUTHEAST METRO STORMWATER AUTHORITY

By Bart W. Miller
_____, Chairperson

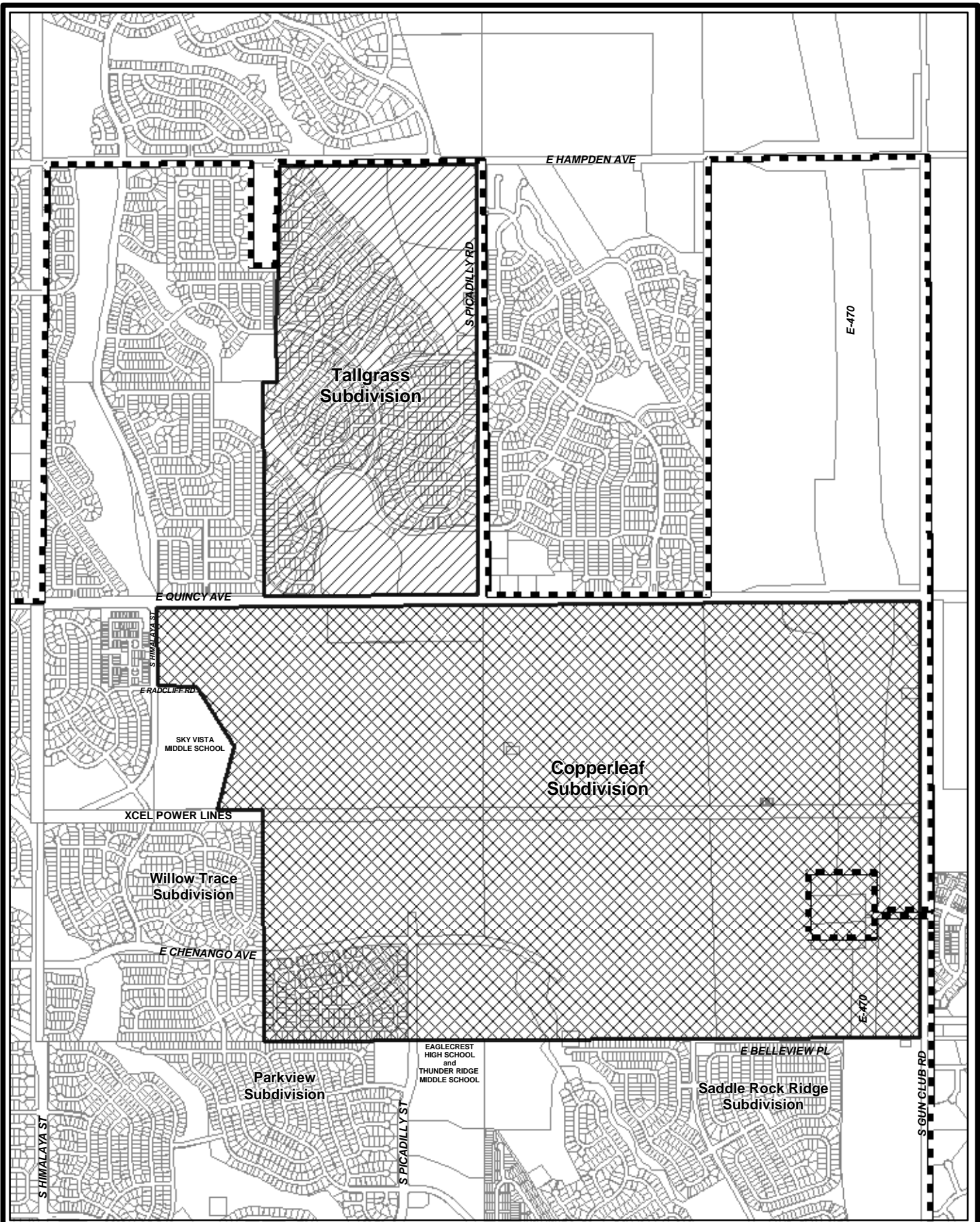
ATTEST:

By Ronald W. Williams
Secretary

EXHIBIT A
JURISDICTIONAL BOUNDARIES OF DRAINAGE AUTHORITY



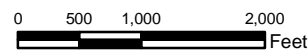
- | | |
|--|--|
|  City of Centennial |  Arapahoe County Boundary |
|  Unincorporated Arapahoe County |  Major Highways |
| |  Authority Boundary |



**Tallgrass and Copperleaf Developments
Exhibit B**

Legend	
	ECCV District Boundary
	Tallgrass Subdivision
	Copperleaf Subdivision

DISCLAIMER
ECCV MAKES NO REPRESENTATION OR WARRANTY AS TO THE ACCURACY OF THESE MAPS, AND ASSUMES NO RESPONSIBILITY OR LIABILITY TO ANY USER. THIS MAP IS NOT A LEGAL DOCUMENT, IT IS INTENDED TO SERVE AS AN AID IN GRAPHIC REPRESENTATION ONLY.



Drawing Information	
•	Drawn By: PFS
•	Checked by: DK
Sheet No. Overview	Date: 8/24/06

EXHIBIT C

Recommendations of the City, County, and Stormwater Steering Group on the Formation of a Stormwater Authority

Background

Since 2004, representatives from the City of Centennial, Arapahoe County, Arapahoe County Water and Wastewater Authority, East Cherry Creek Valley Water and Sanitation District, and Inverness Water and Sanitation District have been studying and discussing important financial, legal, and governance issues pertaining to the formation of a new Stormwater Authority. Although most of the key issues have been discussed and are included in the IGA, several remaining issues must still be decided by the Stormwater Authority board shortly after its members are appointed. The Stormwater Steering Group (SSG) has assembled the following recommendations with respect to the basic operating principles and safeguards of the new Stormwater Authority for the new board's consideration.

Basic Operating Principles

- The Authority will establish an enterprise under the TABOR amendment.
- The Authority will be funded through a service charge assessed against the residential and non-residential properties based on impervious area, as well as system development fees that are one-time charges to developers by the Authority, also based on impervious area. The service charge will likely be collected once each year as part of the annual property tax billing.
- The recurring service charges and system development charges are fees, not taxes. The charges will be set by the Authority board based on the stormwater problems and needs.
- The recurring service charges and system development charges should be subject to an adequacy review by the Authority at least every three years to ensure that rates are adequate and equitable to address problems and needs.
- The Authority Board should establish a reserve fund to ensure that important drainage improvements can be designed and constructed in a manner that keeps pace with key development projects.
- The Authority Board should consider creating a program to award a monetary credit against either or both the service charge and any system development charges where a rate payer can demonstrate that a credit is necessary to mitigate extraordinary or atypical impacts upon the rate payer's property resulting from major regional stormwater improvements.
- The reasonable costs advanced by both the City and County to start up the Authority should be reimbursed to them as soon as practical after the Authority begins collecting fees. Those costs should be submitted to the board of directors as soon as possible after formation of the Authority. Once approved by the board of directors those costs should be reimbursed within five (5) years of the Authority's formation.
- Subject to the discretion and approval of the Authority's board of directors, the Authority shall provide for employment benefits generally commensurate with benefits and practices of similarly sized and comparable political subdivisions of the State of Colorado. At least initially, the Authority shall operate as an at-will employer. In order to timely and most efficiently commence initial operations of the Authority, the Authority shall extend offers of new employment to current employees of Arapahoe County with the experience and training for appropriate positions with the Authority. Within the first year of operation and as determined by the board of directors for future years, the Authority shall commission or undertake a job and salary survey to determine the appropriate range of salaries for comparable positions held within the Authority in order to establish a compensation program for future hiring and salary increases.
- All current County employees accepting new employment with the Authority shall be compensated by the County for accrued benefits (e.g., earned by unused sick leave, vacation time, or compensatory time). In the alternative and subject to the approval of the Authority's board of directors, the County can propose to the Authority a program to transfer some or all of an existing County employee's accrued benefits to the Authority provided that the County fully funds the Authority's incurred expense for such benefit prior to the hiring of the County employee.

- The Authority will collect service charges that will be used to fund operations and maintenance, regulatory, water quality, and/or capital/remedial projects. It is intended that at least half of the funds allocated by the Authority for capital/remedial projects will be used for projects within the drainage basin or geographic area from which it was collected.
- The Authority will accept the assignment from the Parties of all real property transfers associated with Stormwater Facilities and NPDES MS4 Permits transferred to the Authority as well as all non-financial contracts offered to be assigned to it by a Party.

Safeguards

- With the exception of water quality issues that are mandated by the NPDES MS4 Stormwater permit, approval of a land use or development application by the Authority shall not be a condition of approval for the City or County in determining approval for land use cases.
- The Authority should prepare one-year and five-year operating and CIP plans for annual review by the City and County to ensure adequate project coordination.