

STORMWATER FACILITY CONSTRUCTION AND REIMBURSEMENT
AGREEMENT
ARAPAHOE COUNTY WATER AND WASTEWATER AUTHORITY AND
CONCORD METROPOLITAN DISTRICT B PHASE 3

THIS AGREEMENT, made and entered into this 10th day of January 2007, by and between the ARAPAHOE COUNTY WATER AND WASTEWATER AUTHORITY, hereinafter referred to as "ACWWA", and CONCORD METROPOLITAN DISTRICT, hereinafter referred to as "District", both quasi-municipal corporations, operating and existing under and by virtue of the laws of the State of Colorado (collectively, hereinafter referred to as the "Parties")

RECITALS

1 ACWWA and TC DC Land, L P (Trammell Crow Company) entered into a Stormwater Facility Construction and Reimbursement Agreement dated June 28, 2000 which was amended for the first time on August 23, 2001, assigned to the District on August 23, 2001, and amended for a second time on January 1, 2003, and Stormwater Facility Construction and Reimbursement Agreement - Phase 2, dated August 23, 2001 (together, the "Original Agreement")

2. District has designed and constructed certain oversized Phase 3 stormwater facilities within its boundaries as described in Exhibit A attached hereto (APhase 3 Stormwater Facilities@) that will ultimately be conveyed to ACWWA and incorporated into the assets of the regional stormwater management program

3 The Parties desire to enter into this Agreement for purposes of describing the Phase 3 Stormwater Facilities, defining the terms and conditions under which the Phase 3 Stormwater Facilities are conveyed to ACWWA, and providing for reimbursement of the cost of the Phase 3 Stormwater Facilities to the District.

4. ACWWA currently does not have adequate funds on hand to pay the full construction costs of the Phase 3 Stormwater Facilities ACWWA expects to collect revenues through its stormwater system development fee adequate to defray costs of construction of the Phase 3 Stormwater Facilities.

5 The District completed the Phase 3 Stormwater Facilities at the District's initial expense, with the expectation of reimbursement from ACWWA.

6. ACWWA and the District desire to settle their dispute concerning the Phase 3 Stormwater Facilities and the payment therefor

7. ACWWA, together with the County and others has contracted to create the South East Metro Storm Water Authority ("SEMSWA") that will, over time, take ownership, control, operation and maintenance of the ACWWA stormwater assets and program. ACWWA may assign this Agreement to SEMSWA District agrees with such assignment as provided herein.

AGREEMENT

In consideration of the mutual advantages accruing to the Parties herein, and promises of performance of the obligations contained in this Agreement, the Parties hereby agree as follows:

8 Conveyance of Facilities

a. District shall convey the Phase 3 Stormwater Facilities to ACWWA as regional facilities under the terms and conditions of ACWWA's standard Conveyance and Acceptance agreements. Provided that the aforementioned terms and conditions are satisfied, ACWWA shall accept the Phase 3 Stormwater Facilities for ownership and maintenance.

b. The status or classification of the Phase 3 Stormwater Facilities by the Urban Drainage and Flood Control District shall have no effect on the acceptance thereof.

9. **Payment for Facilities** District has paid for the construction cost for the Phase 3 Stormwater Facilities which amount was in excess of standard ACWWA-reimbursable construction costs due to development considerations on the property. ACWWA and District have analyzed the cost differential and, based on a reasonable determination by the Parties, agree that the total amount to be reimbursed to the District for construction of the Phase 3 Stormwater Facilities shall be \$120,900 ("Reimbursement Sum"). The remainder of this paragraph explains the derivation of the Reimbursement Sum: the \$120,900 was calculated by estimating the reasonable cost of an open channel per linear foot (\$158) times the average length of the approximately 700 linear feet of pipeline constructed as the Phase 3 Stormwater Improvements and the 560 feet of open channel that could have been constructed north of the Cardinal Health Building diagonally across the site (such average being 630 feet), thus $630 \times \$158 = \$99,540$ and adding to that the approximate cost of \$4 per inch of diameter per linear foot to upsize the drainage pipe from 54 to 60 inches in diameter (\$24 per linear foot) for the agreed-upon 890 linear feet from the upstream beginning of the theoretical open channel to the start of the pipe at the District-Bradbury property line or $\$24 \times 890 = \$21,360$ for a total of $(\$158 \times 630) + (\$24 \times 890) = \$120,900$.

10. **Reimbursement** ACWWA shall reimburse to the District an initial amount of \$24,900, due within 30 days of execution of this Agreement. The remaining balance of ACWWA's reimbursement obligation (\$96,000) (the "Remaining Balance") will be paid as semi-annual payments to the District by ACWWA in an amount equal to five percent (5%) of all stormwater system development fees collected by ACWWA within its entire stormwater service area during each such semi-annual period. The semi-annual payments shall continue to be paid until the Remaining Balance has been paid in full. ACWWA payments to the District shall be made on a semi-annual basis each April 1 and October 1 for those periods for which

stormwater system development fees have been collected from the property within the ACWWA stormwater service area as such service area. No interest shall accrue on the reimbursement amount.

11. Use of Phase 1 Stormwater Facilities. The District and ACWWA agree that the Phase 1 Stormwater Facilities described in the Amended 2000 Agreement were designed and constructed of sufficient capacity to serve the Subject Property (as defined in the Amended 2000 Agreement) ACWWA agrees that it will make capacity available as needed to accept the stormwater flows from the Subject Property to accommodate development of the properties within the Subject Property

12. Enforcement of Contract District and ACWWA acknowledge and agree that this Agreement may be enforced in law or equity, by a decree of specific performance, damages, or such other legal and equitable relief as may be available to either party

13. Survival of Obligations. The provisions of this Agreement shall be deemed to survive the transfer of the Phase 3 Stormwater Facilities to ACWWA and shall be binding upon and inure to the benefit of the successors, transferees and assigns of the Parties

14 Receipt of Notice Notice shall be deemed given and received when mailed by first class United States mail, postage pre-paid, to the Parties at the following addresses, or as they may be otherwise designated by notice given from time to time.

Arapahoe County Water and Wastewater Authority
Manager
13031 East Caley Avenue
Centennial, CO 80111
Voice: 303-790 4830 x324
Fax: 303-790 9364

Concord Metropolitan District
c/o R S Wells, LLC, Wayne Monson
Fiddlers Green Center, Building 1
6399 South Fiddler's Green Circle, Suite 102
Greenwood Village, CO 80111-4974
Voice: 303-779-4525
Fax: 303-773-2050

With copy to.


Russ Dykstra
Grimshaw & Harring
1700 Lincoln Street, Suite 3800
Denver, Colorado 80203

15 Complimentary Agreement This Agreement is not intended to supersede or replace any previous agreements between the Parties

16 Assignment ACWWA may assign this Agreement to SEMSWA, in which case, District accepts SEMSWA's performance of ACWWA's obligations hereunder.

IN WITNESS WHEREOF, the Parties hereto have caused their names and seals to be affixed the date and year first above written.

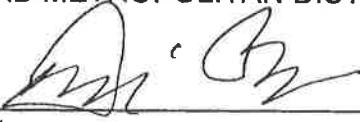
ARAPAHOE COUNTY WATER AND WASTEWATER AUTHORITY

By 
President

ATTEST.


Secretary X

CONCORD METROPOLITAN DISTRICT


President

ATTEST


Secretary

Attachments:
Exhibit A Phase 3 Stormwater Facilities

EXHIBIT A

CONCORD METROPOLITAN DISTRICT - PHASE 3

This map shows the Phase 3 facilities from their connection at the Bradbury Property to their outfall on the Cardinal property

EXHIBIT A
Conceptual Drawing - Concord Phase 3
Stormwater Facilities
NOT TO SCALE

