

MS4 PERMIT SECURITY AGREEMENT FOR PUBLIC AGENCY (GESC)

This MS4 Security Agreement ("Agreement") is made as of the 6 day of 10 2011 by and between the Southeast Metro Stormwater Authority ("SEMSWA") and Parker Jordan Metropolitan District (the "Owner").

WHEREAS, the Owner is to construct Cherry Creek Stream Reclamation in the Parker Jordan Open Space (Case#D10-1012 & D10-2015), located within the SEMSWA Service Area boundaries; and

WHEREAS, the Project requires land disturbance of the site; and

WHEREAS, the Project requires a Grading, Erosion and Sediment Control (GESC) Permit for the site; and

WHEREAS, the Owner has prepared a GESC Plan and Report, and such plans have been approved by SEMSWA; and

WHEREAS, SEMSWA requires security that the controls specified on the GESC Plan are installed and maintained during the course of the Project until Final Close-out of the Project.

NOW THEREFORE, for and in consideration of the premises and promises herein, SEMSWA and Owner agree as follows:

1. Owner shall require Owner's Contractor that performs the applicable work on the Project ("Contractor") to perform the following:
  - a. Contractor shall complete an application for and obtain a GESC Permit for the Project in compliance with all requirements of SEMSWA and the GESC Manual.
  - b. Owner has submitted to SEMSWA a payment in the amount of \$41,200.00 which represents 10% of the GESC Initial/Interim Engineers Cost Estimate (ECE) for the Project.
  - c. Contractor shall implement the GESC controls in compliance with the approved GESC Plan and any other requirements specified by the SEMSWA GESC Inspector resulting from a change in field conditions.
  - d. Contractor shall rectify any non-compliance identified within the time frame specified in the written notice of non-compliance.
  - e. Contractor shall comply with all requirements of the GESC Permit.
2. In the event that the Contractor ceases work on the Project for longer than 30 days for any reason, becomes insolvent, files a voluntary petition for bankruptcy, is adjudicated as bankrupt pursuant to an involuntary petition in bankruptcy, or a receiver is appointed for the Contractor, then Owner shall be responsible to complete all requirements of

Paragraphs 1.c, 1.d and 1.e until the Project is completed or until the GESC Permit is assigned to a replacement Contractor.

3. In the event that the Contractor fails to meet its responsibilities as described in Paragraphs 1.a through 1.e, or the Owner fails to take on the responsibilities as described in Paragraph 2, and the Owner fails to rectify the default within the time specified in a written notice from SEMSWA, then SEMSWA may act to rectify the default through its personnel or that of a contractor, immediately drawing on the 10% cash collateral posted of \$41,200.00. If the amount for rectification exceeds the 10% cash collateral SEMSWA may invoice the Owner any and all documented expenses up to but not exceeding the full GESC collateral amount of \$412,007.00. The Owner shall reimburse such expenses to SEMSWA within 14 days of the receipt of a SEMSWA invoice for such services, and shall also pay the reasonable costs and expenses of SEMSWA in connection with such default, including reasonable attorneys' fees. SEMSWA hereby agrees to draw on collateral and request reimbursement only as necessary for stabilization items in accordance with the GESC Manual and/or for imminent threats to water quality that could result in an MS4 violation(s).
3. The Owner understands that the higher of the Initial/Interim or Final ECE for the GESC controls for this Project is \$412,007.00, and the Owner acknowledges that sufficient funds are available within their budgeted contingencies for the Project to fund the requirements of Paragraph 2 should the need arise.
4. The Owner understands that any security provided in accordance with the terms of this Agreement shall be returned at the time SEMSWA grants Final Close Out of the GESC permit(s), provided the security has not been utilized to meet obligations outlined in Paragraphs 2 or 3.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first written above.

SOUTHEAST METRO STORMWATER AUTHORITY

By John A. McEarty  
Executive Director

OWNER: PARKER JORDAN METRO DISTRICT

By Norman Sheldon  
Manager, PRESIDENT