

SOUTHEAST METRO STORMWATER AUTHORITY
Acting by and through
SEMSWA WATER ACTIVITY ENTERPRISE

RESOLUTION NO 12-23

Authorization to Enter into an Intergovernmental Agreement with Arapahoe County
for Construction Funding of the Mexico Pond Retrofit Modification

WHEREAS, in the past, the stormwater pond located on East Mexico Avenue, west of Dayton Street in Arapahoe County was designed to hold stormwater without a storm drain outlet; and

WHEREAS, standing water in the pond has at times been a nuisance, and the subject of complaints from the public; and

WHEREAS, SEMSWA and Arapahoe County agree that the most cost effective solution is to install a pre-fabricated outlet structure in the pond to allow it to function as a detention and water quality pond so that it drains to the existing storm drain system in East Mexico Avenue; and

WHEREAS, Arapahoe County has agreed to provide materials and incur rental equipment costs as its cost share of the pond retrofit; and

WHEREAS, the Arapahoe County cost share for the pond retrofit is estimated to be \$13,970; and

WHEREAS, an *Intergovernmental Agreement Regarding Construction Funding of the Mexico Pond Retrofit Modification* has been prepared by SEMSWA staff and legal counsel in cooperation with Arapahoe County staff and is attached hereto.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Executive Director is authorized to execute the *Intergovernmental Agreement Regarding Construction Funding of the Mexico Pond Retrofit Modification* with Arapahoe County for construction funding of the Mexico Pond Retrofit Modification.

SOUTHEAST METRO STORMWATER AUTHORITY
acting by and through
SEMSWA WATER ACTIVITY ENTERPRISE

Date: _____

ATTEST:

Secretary

Chairperson

APPROVED AS TO FORM:

Attorney for
Southeast Metro Stormwater Authority

By _____
Edward J. Krisor

**INTERGOVERNMENTAL AGREEMENT REGARDING
CONSTRUCTION FUNDING OF THE MEXICO POND RETROFIT MODIFICATION**

This INTERGOVERNMENTAL AGREEMENT REGARDING CONSTRUCTION FUNDING OF THE MEXICO POND RETROFIT MODIFICATION (the “Agreement”) is made and entered into this _____ day of _____ 2012, by and between the COUNTY OF ARAPAHOE, COLORADO, a body corporate and politic of the State of Colorado (the “County”), and SOUTHEAST METRO STORMWATER AUTHORITY, a political subdivision and a public corporation of the State of Colorado (“SEMSWA”) (collectively, the “Parties”).

RECITALS

WHEREAS, the County is authorized to coordinate and participate in the provision of certain public infrastructure improvements within its boundaries in the State of Colorado; and

WHEREAS, SEMSWA was formed to plan, design, construct, acquire, operate and maintain various drainage and flood control facilities and manage the stormwater quality within its boundary in the County and the City of Centennial, Colorado, (City); and

WHEREAS, there are stormwater improvement needs that exist within SEMSWA’s boundary and the County and SEMSWA are authorized to provide certain stormwater improvements; and

WHEREAS, in the past, the stormwater pond located on East Mexico Avenue, west of Dayton Street, and just west of the Garden Square Apartments, was designed to hold stormwater runoff without a storm drain outlet; and

WHEREAS, standing water in the pond has at times been a nuisance, and the subject of complaints from the public; and

WHEREAS, in the last few years a storm drain pipe system was installed in the East Mexico Avenue right-of-way, along with a pipe extended from the system to a point within the existing County pond easement, providing a stormwater outlet opportunity for the pond; and

WHEREAS, continuing to allow standing water in the pond without a drain will have a significant adverse impact on the safety and welfare of the general public; and

WHEREAS, SEMSWA and the County agree that the most cost effective solution is to install a pre-fabricated outlet structure in the pond to allow it to function as a detention and water quality pond, and so that it drains to the storm drain system in East Mexico Avenue; and

WHEREAS, SEMSWA and the County wish to install the outlet structure in the existing pond to be known as the Mexico Pond Retrofit Modification, (the “Project”); and

WHEREAS, SEMSWA has budgeted funds necessary to complete the construction of

the Project in 2012; and

WHEREAS, SEMSWA and the County have estimated the total cost of the pond modification to be \$35,100.00; and

WHEREAS, the Parties desire to cooperate in the funding and construction of the Project as set forth herein.

NOW, THEREFORE, in consideration of the covenants and mutual agreements herein contained, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

COVENANTS AND AGREEMENTS

1. Purpose. The purpose of this Agreement is to identify the funding and cost allocation between the Parties for the Project

2. Project Funding and Budgeting. The Parties hereby agree to cooperate in the funding and construction of the Project, as described more fully in this Agreement. It is anticipated that construction of the Project will be completed in 2012. The total estimated cost for the Project and each Party's respective estimated share thereof is set forth below:

<u>ITEM</u>	<u>AMOUNT</u>
Total Construction Cost	\$35,100.00
Each Party's Estimated Share of <u>Cost of the Project</u>	
SEMSWA	\$21,130.00
<u>County</u>	<u>\$13,970.00</u>
Total	\$35,100.00

Final costs will be based on the actual costs and adjustments that may be necessary during construction.

SEMSWA agrees to initially fund the entire cost of the Project and the County agrees to reimburse SEMSWA for the County's share of the Project's cost within 60 days of execution of this agreement.

3. Project Construction Details.
The following provisions regarding construction, funding, and accounting shall apply to the

construction of the Project.

a) SEMSWA Responsible for Project Construction. SEMSWA shall be responsible for the construction of the Project. SEMSWA maintenance staff will install the outlet structure and complete the Project in accordance with the approved plans and specifications. SEMSWA's share of the costs will include SEMSWA personnel labor cost, and the cost of SEMSWA owned equipment.

b) County to reimburse SEMSWA. The County agrees to reimburse SEMSWA for the County's share of the cost which includes materials, and the cost of rental equipment not owned by SEMSWA and used in the construction of the Project.

c) Accounting. SEMSWA shall provide the County with copies of all invoices for outlet structure materials and rental equipment used in constructing the Project. In the event that SEMSWA determines that the cost of the Project is in excess of the approved budget, SEMSWA will notify the County to resolve the discrepancy between the actual costs and the amount which has been budgeted. The Parties will mutually determine how to resolve the increase in costs. Any SEMSWA written request made to the County for additional Project funding above the County's estimated share of the project cost, as given in this agreement (\$13,970.00), shall be accompanied by a written report from SEMSWA's accountant or construction administrator summarizing the reason(s) the additional or supplemental funds are sought. For purposes of this Agreement, the Project shall be considered substantially complete upon inspection and conditional acceptance of the Project by SEMSWA. Within ninety (90) days of substantial completion of the Project, unless the Parties mutually agree in writing to a different time period, SEMSWA shall provide the County with a final accounting of total Project costs, showing the total costs allocated to each of the Parties. In the event that the County disputes any of the costs, the County shall notify SEMSWA within thirty (30) days of its receipt of SEMSWA's final accounting. SEMSWA shall have thirty (30) days to review the records to verify the costs and provide the County with a final cost reconciliation. In the event that the County does not agree with SEMSWA's final reconciliation, the County shall be entitled within sixty (60) days of receipt of the final accounting to have an independent Certified Public Accountant ("CPA"), mutually agreed to by the Parties, examine the financial records including all invoices, change orders, and bank statements to determine if each party has paid its allocable share of the costs. The independent accountant examination fee shall be paid by SEMSWA if the CPA determines that the final accounting was in error and by the County if the CPA determines that the final accounting was not in error. If no discrepancy is found, but the County continues to contest the allocation of the costs, SEMSWA shall be entitled to file a declaratory judgment action in the District Court in and for Arapahoe County, Colorado. The Parties do hereby consent to such declaratory judgment action by SEMSWA.

4. Failure to Provide Funds/Termination. In the event that one of the Parties fails to fund the amounts required for the completion of the Project or as required herein, the other Party may enforce the terms of this Agreement in accordance with any legal remedies available at law or in equity.

5. Miscellaneous.

a) Governing Law and Jurisdiction. This Agreement and all disputes arising hereunder shall be governed by the laws of the State of Colorado, and the Parties agree that the venue and jurisdiction over any claim arising from this Agreement shall lie in the District Court of Arapahoe County.

b) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors, assigns, and legal representatives.

c) Third Party Beneficiary. It is specifically agreed between the Parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain any claim under this Agreement. The duties, obligations and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed by law.

d) Entire Agreement; Amendments. This Agreement, including its exhibits, contains the entire understanding of the Parties with respect to this subject matter. This Agreement supersedes all prior agreements and understandings between the Parties with respect to its subject matter. This Agreement may be amended only by a written instrument duly executed by the Parties or their respective successors or assigns.

e) Notice and Communications. Any notice pursuant to the terms and conditions of this Agreement shall be in writing and delivered personally, or sent by certified mail, return receipt requested, or sent by a recognized overnight mail or courier services, with delivery receipt requested, to the following addresses (or to such other address as may from time to time be specified in writing by the Parties):

If to the County:

Chair
Board of County Commissioners
County of Arapahoe
5334 South Prince Street
Littleton, Colorado 80126-0001

With a copy to:

Ron Carl, Esq.
Arapahoe County Attorney
Arapahoe County

5334 South Prince Street
Littleton, Colorado 80126-000

If to SEMSWA:

John A. McCarty, Executive Director
Southeast Metro Stormwater Authority
76 Inverness Drive East, Suite A
Centennial, CO 80112-5106

With a copy to:

Edward J. Krisor, Esq.
3900 South Wadsworth Blvd, Suite 320
Lakewood, CO 80235

Notices shall be effective when received by the party to whom addressed.

f) Binding Representative. In regard to change orders, the County designates the County Manager or his or her designee as its representative with power to bind the County.

g) Default/Remedies. In the event of a breach or default of this Agreement by any party, the non-defaulting party shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or monetary damages. In the event of any litigation, arbitration or other proceeding to enforce the terms, covenants or conditions hereof, the prevailing party in such litigation, arbitration or other proceeding shall be entitled to obtain as part of its judgment or award its costs and reasonable attorneys' fees.

h) Force Majeure. Wherever there is provided in this Agreement a time limitation for performance by the Parties for any obligations related to construction, the time provided for shall be extended for as long as and to the extent that the delay is due to an act of God, strikes, labor disputes, inability to obtain labor or materials or reasonable substitutes therefor, fire or other casualty and other causes beyond the control of the Parties.

i) Counterpart Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

j) Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then the legality, validity and enforceability of the remaining provisions of this Agreement will not be affected thereby; and in lieu of each such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a provision as

similar in terms to such illegal, invalid or unenforceable provision as may be possible and which will be legal, valid and enforceable.

k) Governmental Immunity. Nothing herein shall be construed as a waiver of the rights and privileges of the County or SEMSWA pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S., as amended from time to time.

[This space left intentionally blank. The signature page follows.]

Made and entered into as of the date and year first above written.

For the Board of County Commissioners

David M. Schmit, P.E., Director, Public Works & Development
Authorization pursuant to Resolution No. 120113

SEMSWA

By: _____
John A. McCarty, P.E., Executive Director

ATTEST:

By: _____

MEXICO POND RETROFIT

