

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

RESOLUTION 21-25

Authorization to enter into a Memorandum of Understanding between the Southeast Metro Stormwater Authority and Littleton Public Schools regarding an MS4 Participation Agreement

WHEREAS, the Colorado Department of Public Health and Environment (CDPHE) issues and administers discharge permits and other control mechanisms as provided by the Colorado Water Quality Control Act (25-8-101 et seq., CRS, 1973, as amended) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.; the “Act”); and

WHEREAS, the Southeast Metro Stormwater Authority (SEMSWA) was issued a CDPS General Permit COR080021 for Stormwater Discharges Associated with MS4s that Discharge to the Cherry Creek Reservoir Drainage Basin from CDPHE, issued on April 15, 2016, effective July 1, 2016, and expiring June 30, 2021, and administratively extended, hereinafter referred to as the “Standard Permit”; and

WHEREAS, Littleton Public Schools, Arapahoe County School District Number 6, (LPS) was issued a CDPS General Permit COR070067 for Stormwater Discharges Associated with Municipal Separate Storm Sewer System (MS4) from CDPHE on April 30, 2021, effective on November 1, 2021, and expiring on October 31, 2026, hereinafter referred to as the “Non-standard Permit”, applicable to LPS’s Non-standard Permit area, a portion of which is located within SEMSWA’s Service Area in the City of Centennial; and

WHEREAS, SEMSWA must implement, enforce, and administer the Standard Permit Requirements within the associated jurisdictional boundary and LPS must implement, enforce, and administer the Non-standard Permit requirements within the associated jurisdictional boundary, hereinafter collectively referred to as the “MS4 Permits”; and

WHEREAS, since 2007 SEMSWA and LPS have partnered to implement the construction and post-construction program MS4 permit requirements within the LPS Non-standard Permit area within SEMSWA’s Service Area in the City of Centennial; and

WHEREAS, LPS’s Non-standard Permit, issued on April 30, 2021, requires that the SEMSWA and LPS partnership be documented in an MS4 participation agreement whereby the non-standard permittee is excluded from the non-standard permit requirements for applicable construction and post construction activities and allows the standard permittee full authority to implement its construction and post-construction programs within the non-standard permittee’s jurisdictional boundary in accordance with the standard permit requirements; and

WHEREAS, this Memorandum of Understanding (MOU) meets the requirements of an MS4 participation agreement within the Non-standard permit; and

WHEREAS, this agreement will continue to promote sound stormwater quality management practices within LPS's Non-standard permit area within SEMSWA's Service Area in the City of Centennial, while using staff resources suitably and efficiently.

NOW THEREFORE, BE IT RESOLVED THAT:

1. The Board authorizes the Executive Director to execute the MOU between SEMSWA and Littleton Public Schools regarding an MS4 Participation Agreement, attached hereto as Exhibit A. This authorization is valid only with concurrent Littleton Public Schools Chief Operations Officer approval and execution of the MOU.
2. The Board authorizes the Executive Director to make any minor non-substantive modifications to the MOU in full cooperation and agreement with Littleton Public School management and staff without prior Board approval.

SOUTHEAST METRO STORMWATER AUTHORITY
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SEMSWA WATER ACTIVITY ENTERPRISE

Date: September 22, 2021

ATTEST:

Secretary

Chairperson

APPROVED AS TO FORM
Attorney for
Southeast Metro Stormwater Authority

By: _____
Edward J. Krisor

**Memorandum of Understanding Regarding a Municipal Separate Storm Sewer System (MS4)
Participation Agreement**

Between Littleton Public Schools (Arapahoe County School District Number Six) and
Southeast Metro Stormwater Authority

This Memorandum of Understanding (“MOU”) regarding continuation of the partnership as documented in this MOU is made and entered into as of the date upon which all parties have signed the MOU (the “Effective Date”), by Littleton Public Schools - Arapahoe County School District Number Six (“LPS”), and the Southeast Metro Stormwater Authority (SEMSWA), hereinafter referred to as the “Parties”.

The purpose of this MOU is to allow Littleton Public Schools, a Municipal Separate Storm Sewer System (MS4) Non-standard Permit holder, to rely on and comply with SEMSWA’s Construction and Post-construction program requirements within the City of Centennial. SEMSWA holds an MS4 Standard Permit for the City of Centennial. By signing this MOU, and as allowable through the Non-standard Permit, LPS is seeking the exclusion of the Non-standard Permit’s Construction and Post-construction program criteria. LPS must therefore enter into this MOU and adhere to SEMSWA’s Standard Permit’s requirements for those programs.

Recitals

WHEREAS, LPS and SEMSWA desire to continue their partnership as documented in this MS4 Participation Agreement; and

WHEREAS, SEMSWA was issued a CDPS General Permit COR080021 for Stormwater Discharges Associated with MS4s that Discharge to State Waters within the jurisdictional boundary of the City of Centennial, including Discharge to the Cherry Creek Reservoir Drainage Basin from the Colorado Department of Public Health and Environment (CDPHE), hereinafter referred to as the “Standard Permit”; and

WHEREAS, LPS was issued a CDPS General Permit for Stormwater Discharges Associated with MS4 from the CDPHE, hereinafter referred to as the “Non-standard Permit”, located at least partially within the City of Centennial; and

WHEREAS, SEMSWA must implement, enforce, and administer the Standard Permit requirements within the associated jurisdictional boundary and LPS must implement, enforce, and administer the Non-standard Permit requirements within the associated jurisdictional boundary, hereinafter collectively referred to as the “MS4 Permits”; and

WHEREAS, both SEMSWA and LPS are required to develop Program Description Documents PDD and supporting documents to describe how the permittee will comply with their MS4 Permit requirements; and

WHEREAS, SEMSWA has adopted the Grading, Erosion, and Sediment Control (GESC) Manual in May of 2012, most recently amended and adopted in June of 2019, and as may be further amended from time-to-time, in accordance with SEMSWA's Standard Permit; and

WHEREAS, SEMSWA adopted the Stormwater Management Manual, most notably Chapter 14, "Stormwater Quality" in April of 2012, most recently amended in July of 2019, and as may be further amended from time-to-time, in accordance with SEMSWA's Standard Permit; and

WHEREAS, previously the Parties have partnered to implement the Construction and Post-construction program requirements within LPS's Non-standard Permit area in the jurisdictional boundary of the City of Centennial; and

WHEREAS, LPS's Non-standard Permit requires that LPS and SEMSWA partnership be documented in an MS4 participation agreement whereby the Non-standard Permittee is excluded from the Non-standard Permit requirements for applicable Construction and Post-construction activities and allows the Standard Permittee full authority to implement its Construction and Post-construction programs within the Non-standard Permittee's jurisdictional boundary in accordance with the Standard Permit requirements; and

WHEREAS, the Parties acknowledge that the activities conducted by SEMSWA do not constitute full compliance with all requirements of LPS's Non-standard Permit.

Agreement

NOW THEREFORE, the Parties understand and agree as follows:

1. Services.

- a. SEMSWA agrees to allow LPS to continue to rely on SEMSWA's Construction and Post-construction program requirements of SEMSWA's Standard Permit for the portion of LPS's Non-standard Permit located within the jurisdiction of the City of Centennial.
- b. SEMSWA agrees to continue to provide plan review and approval, permitting, inspection, and acceptance consistent with all applicable SEMSWA requirements for LPS's Non-standard Permit jurisdictional boundary within the City of Centennial as provided for in this Agreement. These services will be in accordance with the SEMSWA's standards for the Construction and Post-construction program documents of their Standard Permit.

- c. LPS, their contractors, or assigns, agree to continue to follow SEMSWA's land development process consistent with all applicable City of Centennial regulations and SEMSWA resolutions, and SEMSWA will forward applicable records and documentation to LPS within thirty (30) days of any request by the LPS for the recordkeeping requirements of the Non-standard Permit and annual report to CDPHE.
- d. LPS hereby grants, bargains, and conveys to SEMSWA and its agents, employees, and contractors the right to access and utilize property owned by LPS within the SEMSWA jurisdictional boundary for access from public rights-of-way, abutting private roadway, and/or private driveway, including all other rights the Owner possesses to access LPS Property, for the purpose of inspecting, operating, installing, constructing, reconstructing, maintaining, repairing or replacing construction or post-construction facilities as may be necessary in accordance with SEMSWA's Standard Permit program requirements. SEMSWA shall notify LPS of such required entry in advance and if possible within twenty-four (24) hours before such entry. In case of an emergency, SEMSWA shall notify LPS by phone (LPS Security Department 24/7 line: 303-347-3420) as soon as possible but no later than twenty-four hours after such entry.
- e. SEMSWA will not provide support for any of LPS Non-standard Permit requirements related to Public Education and Outreach, Illicit Discharge Detection and Elimination, Pollution Prevention/Good Housekeeping for Permittee's Operations, or other sections of the LPS Non-standard Permit not specified above.

2. Standard of Performance.

- a. SEMSWA agrees to use its best efforts to comply with SEMSWA's Standard Permit but cannot guarantee that all activities will comply with the LPS Non-standard Permit. SEMSWA assumes no responsibility for compliance with the LPS Non-standard Permit. The LPS acknowledges that the SEMSWA Standard Permit program requirements may be more stringent than the Non-standard Permit requirements, and if so, the LPS will be subject to those requirements for the Construction and Post-construction programs as applicable in this agreement.
- b. Under this MOU and in accordance with the Non-standard Permit, LPS would be in violation of their permit if they fail to comply with SEMSWA's Standard Permit Construction and Post-construction programs.

3. Enforcement. LPS agrees to comply with SEMSWA's Standard Permit Construction and Post-construction programs and to allow for SEMSWA to fully enforce SEMSWA's Standard Permit programs consistent with SEMSWA's Standard Permit for all applicable construction activities in the LPS Non-standard Permit jurisdictional boundary within the City of Centennial for which LPS owns, operates or has implementation authority over.

4. Geographic Area Applicability. This Agreement will only apply to the geographical area as shown on the attached map (Exhibit A LITTLETON PUBLIC SCHOOLS IN CENTENNIAL), or as otherwise amended and agreed upon by both parties, in accordance with MS4 Permit requirements.

5. Responsibility/Liability. Each Party to this Agreement shall be responsible for that Party's own performance under this Agreement and each Party shall be responsible for its own defense in connection with any claims made against such Party by reason of that Party's performance of the matters covered by this Agreement.

6. Notice. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if 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 Party. Such notice shall be deemed to have been given when deposited in the United States mail.

Littleton Public Schools – District #6
5776 S. Crocker Street, Littleton, CO 80201
Attention: Sarah Kruger, Assistant Director of Operations
With an electronic copy to Brad Leitner, Director of Operations:
bleitner@lps.k12.co.us

SEMSWA
7437 South Fairplay Street
Centennial, CO 80112-4480
Attention: Paul Danley, Executive Director
With an electronic copy to Ed Krisor ejkrisor@me.com

7. Additional Documents. The Parties agree to execute any additional documents or take any additional action that is necessary to carry out the intent of this Agreement.

8. Colorado Law. The laws of the State of Colorado shall govern this Agreement. Venue for any action hereunder shall be in the District Court, Arapahoe County, State of Colorado and the Parties waive any right to remove any action to any other court, whether state or federal.

9. Separate Entities. The Parties enter into this Agreement as separate, independent governmental entities and shall maintain such status throughout.

10. No Third-Party Beneficiaries. The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under such Agreement. Any beneficiary of the terms and conditions of this Agreement are not intended beneficiaries but are incidental beneficiaries only.

11. No Waiver of Governmental Immunity Act. The Parties hereto understand and agree that this Agreement is relying on, and in no way is intended to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, sections 24-10-101 to 120, C.R.S., or otherwise available to the Parties.

12. Amendment. This Agreement may only be amended in writing signed by the parties hereto.

13. Effect of Invalidity. Invalidation of any of the provisions of this Agreement or any paragraph, sentence, clause, phrase or word herein, or the application thereof in any given circumstance, shall not result in the termination of this Agreement.

14. Term. This Agreement shall remain in full force and effect until terminated by either Party. Either Party may terminate this Agreement upon providing one hundred eighty (180) days written notice to the other party.

IN WITNESS WHEREOF, the Parties have executed this MOU as of the dates noted on by the signature.

SOUTHEAST METRO STORMWATER AUTHORITY:

Date: _____

By: _____

Paul Danley, Executive Director

LITTLETON PUBLIC SCHOOLS – District #6:

Date: _____

By: _____

Terry Davis, Chief Operations Officer

Littleton School District Boundary and Properties (SEMSWA)

EXHIBIT A - LPS in Centennial

