

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

RESOLUTION 22-23

Authorization to Execute Agreement regarding Funding of Outfall Systems Plan (OSP)
for Four Square Mile with Mile High Flood District (MHFD)

WHEREAS, SEMSWA wishes to participate in an Outfall Systems Plan (OSP) for Four Square Mile with MHFD; and

WHEREAS, MHFD has included the OSP for Four Square Mile in its 2022 Work Program at the request of the SEMSWA; and

WHEREAS, SEMSWA will be a co-sponsor of the OSP; and

WHEREAS, MHFD will pay 50 percent of the total project cost (\$200,000) for the OSP, City and County of Denver will pay \$45,000 (22.5%), City of Aurora will pay \$10,000 (5.0%), and SEMSWA will pay \$45,000 (22.5%) of the local cost share; and

WHEREAS, FEMA floodplain mapping is available for Four Square Mile; and the OSP will support a future FHAD update to reflect existing and/or future conditions if needed based on the outcome of the OSP; and

WHEREAS, Four Square Mile was previously studied in an OSP in 1985; and

WHEREAS, SEMSWA desires to study Four Square Mile to update the effective hydrologic and hydraulic models with the updated and accepted hydrology information; investigate locations, alignments, and sizing of storm sewers, channels, detention/retention basins, and other facilities and appurtenances needed to provide efficient stormwater drainage; identify areas of flood risk and/or drainage problems; and evaluate and recommend design solutions to address such drainage problems and reduce flood risk; and

WHEREAS, SEMSWA has adopted a budget for calendar year 2022 subsequent to public hearing which includes funds for the OSP.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board authorizes the Executive Director to execute an Agreement, attached as Exhibit A, regarding Funding of Outfall Systems Plan for Four Square Mile with MHFD.
2. Total cost for the work authorized herein, without prior authorization of the Board, is \$45,000 payable to MHFD.

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

Date: September 21, 2022

ATTEST:

Secretary

Chairperson

APPROVED AS TO FORM:
Attorney for
Southeast Metro Stormwater Authority

By _____
Edward J. Krisor

AGREEMENT REGARDING FUNDING OF
MAJOR DRAINAGEWAY PLANNING FOR
FOUR SQUARE MILE OSP

Agreement No. 22-05.40
Project No. 109070
Agreement Amount \$200,000

THIS AGREEMENT, made by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT D/B/A MILE HIGH FLOOD DISTRICT (hereinafter called "DISTRICT"), CITY AND COUNTY OF DENVER, a municipal corporation duly organized and existing under and by virtue of the Constitution of the State of Colorado (hereinafter called "DENVER"), SOUTHEAST METRO STORMWATER AUTHORITY (hereinafter called "SEMSWA), and CITY OF AURORA, Colorado, a Colorado municipal corporation of the counties of Adams, Arapahoe, and Douglas, acting by and through its Utility Enterprise (hereinafter called "CITY"); (hereinafter DENVER, SEMSWA and CITY shall be collectively known as "PROJECT SPONSORS" and DISTRICT and PROJECT SPONSORS shall be collectively known as "PARTIES");

WITNESSETH THAT:

WHEREAS, DISTRICT in a policy statement previously adopted (Resolution No. 14, Series of 1970), expressed an intent to assist public bodies which have heretofore enacted floodplain zoning measures; and

WHEREAS, DISTRICT has previously established a Work Program for 2022 (Resolution No. 78, Series of 2021) which includes master planning; and

WHEREAS, PARTIES now desire to proceed with development of a drainageway outfall systems plan for FOUR SQUARE MILE OSP (hereinafter called "PROJECT"); and

WHEREAS, DISTRICT's Board of Directors has authorized DISTRICT financial participation for PROJECT (Resolution No. 50, Series of 2022); and

WHEREAS, PARTIES desire to acquire mapping needed to conduct the engineering studies for PROJECT; and

WHEREAS, PARTIES desire to engage an engineer to render certain technical and professional advice and to compile information, evaluate, study, and recommend design solutions to such drainage problems for PROJECT, which are in the best interest of PARTIES.

NOW, THEREFORE, in consideration of the mutual promises contained herein, PARTIES hereto agree as follows:

1. SCOPE OF AGREEMENT

This Agreement defines the responsibilities and financial commitments of PARTIES with respect to PROJECT.

2. PROJECT AREA

DISTRICT shall engage an engineer and obtain mapping as needed to perform or supply necessary services in connection with and respecting the planning of PROJECT of the area and watershed shown on the attached Exhibit A dated April 11, 2022, (hereinafter called "AREA").

3. SCOPE OF PROJECT

The purpose of PROJECT is to develop a drainageway outfall system plan, including hydrologic information and the locations, alignments, and sizing of storm sewers, channels, detention/retention basins, and other facilities and appurtenances needed to provide efficient stormwater drainage within AREA. The proposed work shall include, but not be limited to, mapping; compilation of existing data; necessary field work; and development and consistent evaluation of all reasonable alternatives so that the most feasible drainage and flood control master plan can be determined and justified for AREA. Consideration shall be given to costs, existing and proposed land use, existing and proposed drainage systems, known drainage or flooding problems, known or anticipated erosion problems, stormwater quality, right-of-way needs, existing wetlands and riparian zones, open space and wildlife habitat benefits, and legal requirements. Schematic alternative plans shall be developed such that comparison with other alternatives can be made.

Drainage system planning shall be done in three phases by the engineer engaged by DISTRICT culminating in a drainage master plan report. During the first phase, the selected engineer shall perform all data gathering and modeling needed to prepare the baseline hydrology section of the master plan report containing an introduction, study area description, and hydrologic analysis description. During the second phase, the engineer shall perform all studies and data gathering needed to prepare the alternatives analysis sections of the master plan report containing a hydraulic analysis discussion, schematics of alternatives developed and their costs along with a discussion of the pros and cons of each alternative and a recommended plan. PARTIES will select a single alternative after the review and evaluation of the alternatives analysis report. During the third phase, the engineer shall be directed to prepare a conceptual design for the selected alternative and prepare the conceptual design section of the master plan report.

4. PUBLIC NECESSITY

PARTIES agree that the work performed pursuant to this Agreement is necessary for the health, safety, comfort, convenience, and welfare of all the people of the State, and is of particular benefit to the inhabitants of PARTIES and to their property therein.

5. PROJECT COSTS

PARTIES agree that for the purposes of this Agreement PROJECT costs shall consist of, and be limited to, mapping, master planning, and related services and contingencies mutually agreeable to PARTIES. Project costs are estimated not to exceed \$200,000.

6. FINANCIAL COMMITMENTS OF PARTIES

PARTIES shall each contribute the following percentages and maximum amounts for PROJECT costs as defined in Paragraphs 5:

	Master Plan <u>Percentage Share</u>	Maximum <u>Contribution</u>
DISTRICT	50.00%	\$100,000
DENVER	22.50%	\$45,000
SEMSWA	22.50%	\$45,000
CITY	5.00%	\$10,000
TOTAL	100.00%	\$200,000

Notwithstanding any other provision of the Agreement, PARTIES maximum payment obligation shall not exceed the financial commitments stated herein. PARTIES are not obligated to execute an Agreement or any amendments for any further services or costs beyond that specifically described in this Agreement. Any services performed or costs incurred beyond those set forth herein are performed without authorization under the Agreement.

Each PARTY’S payment obligation, whether direct or contingent, extends only to funds appropriated annually by each PARTY’S governing body, paid into the treasury of that PARTY, and encumbered for the purpose of this AGREEMENT. Each PARTY does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. This Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of each PARTY.

7. MANAGEMENT OF FINANCES

As set forth in DISTRICT policy (Resolution No. 11, Series of 1973, Resolution No. 49, Series of 1977, and Resolution No. 37, Series of 2009), the funding of a local body’s share may come from its own revenue sources or from funds received from state, federal, or other sources of funding without limitation and without prior DISTRICT approval.

Payment of each party's full share (DENVER - \$45,000; SEMSWA - \$45,000; CITY - \$10,000; DISTRICT - \$100,000) shall be made to DISTRICT subsequent to execution of this Agreement and within 30 days of request for payment by DISTRICT. The payments by PARTIES shall be held by DISTRICT in a special fund to pay for increments of PROJECT as authorized by PARTIES, and as defined herein. DISTRICT shall provide a periodic accounting of PROJECT funds as well as a periodic notification to PROJECT SPONSORS of any unpaid obligations. Any interest earned by the monies contributed by PARTIES shall be accrued to the special fund established by DISTRICT for PROJECT and such interest shall be used only for PROJECT upon approval by the contracting officers (Paragraph 13).

Within one year of completion of PROJECT if there are monies including interest earned remaining which are not committed, obligated, or disbursed, each party shall receive a share of such monies, which shares shall be computed as were the original shares; or, at PROJECT SPONSORS request, PROJECT SPONSORS share of remaining monies shall be transferred to another special fund held by DISTRICT.

8. PROJECT MAPPING

DISTRICT will provide elevation point cloud in LAS data format and elevation contour mapping of AREA with a contour interval of one-foot. Upon execution of this Agreement DISTRICT will engage a land surveyor judged by DISTRICT to be responsible and qualified to perform the work to supplement the LAS data at hydraulic structures. No new mapping is anticipated under this Agreement for PROJECT. Upon execution of this Agreement, PROJECT SPONSORS shall provide copies of the most recent mapping within their jurisdictional area in digital format to DISTRICT to the extent such mapping is available without additional cost.

9. MASTER PLANNING

Upon execution of this Agreement, PARTIES shall select an engineer mutually agreeable to PARTIES. DISTRICT, with the approval of PROJECT SPONSORS, shall contract with the selected engineer, shall administer the contract, and shall supervise and coordinate the planning for the development of alternatives and of conceptual design.

10. PUBLISHED REPORTS AND PROJECT DATA

DISTRICT will provide to each of PROJECT SPONSORS access to the draft and final electronic report files.

Upon completion of PROJECT, electronic files of all mapping, drawings, and hydrologic and hydraulic calculations developed by the engineer contracted for PROJECT shall be provided to any PROJECT SPONSORS requesting such data.

11. TERM OF THE AGREEMENT

The term of this Agreement shall commence upon date of final execution by all PARTIES and shall terminate two years after the final outfall systems plan is delivered to DISTRICT and the final accounting of funds on deposit at DISTRICT is provided to all PARTIES pursuant to Paragraph 7 herein.

12. LIABILITY

Each party hereto shall be responsible for any suits, demands, costs or actions at law resulting from its own acts or omissions and may insure against such possibilities as appropriate.

13. CONTRACTING OFFICERS

- A. The contracting officer for DENVER shall be Manager of Department of Transportation and Infrastructure,, 201 W. Colfax Ave, Denver, CO 80202.
- B. The contracting officer for SEMSWA shall be Executive Director, 7437 South Fairplay Street, Centennial, CO 80112-4486.
- C. The contracting officer for CITY shall be Director of Utilities, 15151 E. Alameda Ave Aurora, CO 80012.
- D. The contracting officer for DISTRICT shall be the Executive Director, 2480 West 26th Avenue, Suite 156B, Denver, Colorado 80211.

The contracting officers for PARTIES each agree to designate and assign a PROJECT representative to act on the behalf of said PARTIES in all matters related to PROJECT undertaken pursuant to this Agreement. Each representative shall coordinate all PROJECT-related issues between PARTIES, shall attend all progress meetings, and shall be responsible for providing all available PROJECT-related file information to the engineer upon request by DISTRICT or PROJECT SPONSOR. Said representatives shall have the authority for all approvals, authorizations, notices, or concurrences required under this Agreement. However, in regard to any amendments or addenda to this Agreement, said representative shall be responsible to promptly obtain the approval of the proper authority.

14. RESPONSIBILITIES OF PARTIES

DISTRICT shall be responsible for coordinating with PROJECT SPONSORS the information developed by the various consultants hired by DISTRICT and for obtaining all concurrences from PROJECT SPONSORS needed to complete PROJECT in a timely manner. PROJECT SPONSORS agree to review all draft reports and to provide comments within 21 calendar days after the draft reports have been provided by DISTRICT to PROJECT SPONSORS. PROJECT SPONSORS also agree to evaluate the alternatives presented in the alternatives analysis sections of the report, to select an alternative, and to notify DISTRICT of their decision(s) within 30 calendar days after the alternatives analysis report is provided to PROJECT SPONSORS by DISTRICT.

15. AMENDMENTS

This Agreement contains all of the terms agreed upon by and among PARTIES. Any amendments to this Agreement shall be in writing and executed by PARTIES hereto to be valid and binding.

16. SEVERABILITY

If any clause or provision herein contained shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such invalid or unenforceable clause or provision shall not affect the validity of the Agreement as a whole and all other clauses or provisions shall be given full force and effect.

17. APPLICABLE LAWS

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Jurisdiction for any and all legal actions regarding this Agreement shall be in the State of Colorado and venue for the same shall lie in the County where the Project is located.

18. ASSIGNABILITY

No PARTY to this Agreement shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the nonassigning party or parties to this Agreement.

19. BINDING EFFECT

The provisions of this Agreement shall bind and shall inure to the benefit of PARTIES hereto and to their respective successors and permitted assigns.

20. ENFORCEABILITY

PARTIES hereto agree and acknowledge that this Agreement may be enforced in law or in equity, by decree of specific performance or damages, or such other legal or equitable relief as may be available subject to the provisions of the laws of the State of Colorado.

21. TERMINATION OF AGREEMENT

This Agreement may be terminated upon thirty (30) days' written notice by any PARTY to this Agreement, but only if there are no contingent, outstanding contracts. If there are contingent, outstanding contracts, this Agreement may only be terminated upon the cancellation of all contingent, outstanding contracts. All costs associated with the cancellation of the contingent contracts shall be shared between PARTIES in the same ratio(s) as were their contributions.

22. PUBLIC RELATIONS

It shall be at PROJECT SPONSOR's sole discretion to initiate and to carry out any public relations program to inform the residents in PROJECT area as to the purpose of PROJECT and what impact it may have on them. Technical information shall be presented to the public by the selected engineer. In any event DISTRICT shall have no responsibility for a public relations program, but shall assist PROJECT SPONSOR as needed and appropriate.

23. GOVERNMENTAL IMMUNITIES

The PARTIES hereto intend that nothing herein shall be deemed or construed as a waiver by any PARTY of any rights, limitations, or protections afforded to them under the Colorado Governmental Immunity Act (§ 24-10-101, *et seq.*, C.R.S.) as now or hereafter amended or otherwise available at law or equity.

24. NO DISCRIMINATION IN EMPLOYMENT

In connection with the performance of work under the Agreement, the PARTIES agree not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The PARTIES shall insert the foregoing provision in all subcontracts.

25. APPROPRIATIONS

Notwithstanding any other term, condition, or provision herein, each and every obligation of PROJECT SPONSORS and/or DISTRICT stated in this Agreement is subject to the requirement of a prior appropriation of funds therefore by the appropriate governing body of each PROJECT SPONSOR and/or DISTRICT.

26. NO THIRD PARTY BENEFICIARIES

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to PARTIES, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of PARTIES that any person or party other than any one of PROJECT SPONSORS or DISTRICT receiving services

or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

27. WORKER WITHOUT AUTHORIZATION

A. Paragraph 27.A of this Agreement shall only apply to DENVER. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").

PARTIES agree that any public contract for services executed as a result of this intergovernmental agreement shall prohibit the employment of workers without authorization in compliance with §8-17.5-101 C.R.S. *et seq.* The following language shall be included in any contract for public services:

1. At the time of execution of this Agreement, CONTRACTOR does not knowingly employ or contract with a worker without authorization who will perform work under this Agreement.
2. CONTRACTOR shall participate in the E-Verify Program, as defined in § 8 17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.
3. CONTRACTOR shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement.
4. CONTRACTOR shall not enter into a contractor with a subconsultant or subcontractor that fails to certify to CONTRACTOR that it shall not knowingly employ or contact with a worker without authorization to perform work under this Agreement.
5. CONTRACTOR shall confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in the E-Verify Program.
6. CONTRACTOR is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligation under this Agreement, and that otherwise requires CONTRACTOR to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.
7. If CONTRACTOR obtains actual knowledge that a subconsultant or subcontractor performing work under this Agreement knowingly employs or contract with a worker without authorization, it will notify such subconsultant or subcontractor and PARTIES within three (3) days. CONTRACTOR shall also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the worker without authorization, unless during such three (3) day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor

has not knowingly employed or contracted with a worker without authorization.

8. CONTRACTOR shall comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S or, in the case of DENVER, the City Auditor, under authority of D.R.M.C. 20-90.3.

CONTRACTOR shall, within twenty days after hiring an employee who is newly hired for employment to perform work under this Agreement, affirms that it has examined the legal work status of such employees, retained file copies of the documents required by 8 U.S.C. Section 1324a, and not altered or falsified the identification documents for such employees. CONTRACTOR shall provide a written, notarized copy of the affirmation to PARTIES.

- B. The portion of this provision (27.C.) of this Agreement regarding the Certification Ordinance shall only apply to DENVER. CONTRACTOR is liable for any violations as provided in this section and the Certification Ordinance. If CONTRACTOR violates any provision of this section or the Certification Ordinance, PARTIES or DENVER, as the case may be, constitute grounds for disqualifying CONTRACTOR from submitting bids or proposals for future contracts with PARTIES or DENVER.

28. EXECUTION IN COUNTERPARTS – ELECTRONIC SIGNATURES

This Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement, may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. PARTIES approve the use of electronic signatures for execution of this Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement. Only the following two forms of electronic signatures shall be permitted to bind PARTIES to this Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement.

- A. Electronic or facsimile delivery of a fully executed copy of a signature page; or
 - B. The image of the signature of an authorized signer inserted onto PDF format documents.
- Documents requiring notarization may also be notarized by electronic signature, as provided above. All use of electronic signatures shall be governed by the Colorado Uniform Electronic Transactions Act, §§ 24-71.3-101-121, C.R.S.

WHEREFORE, PARTIES hereto have caused this instrument to be executed by properly authorized signatures as of the date and year written below.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

CONTRACT CONTROL NUMBER:

PWADM-XXXXXXXX-00

CONTRACTOR NAME: Urban Drainage and Flood Control District
Agreement No. 22-05.40

THE PARTIES have executed this Agreement as of the date first written above.

ATTEST:

CITY AND COUNTY OF DENVER

By _____
DEBRA JOHNSON, Clerk and Recorder,
Ex-Officio Clerk of the City and
County of Denver

By _____
Mayor

RECOMMENDED AND APPROVED:

By _____
Executive Director of Public Works

APPROVED AS TO FORM:
KRISTIN BRONSON
CITY ATTORNEY for the City and
County of Denver

REGISTERED AND COUNTERSIGNED:

By _____
Manager of Finance

By _____
Assistant City Attorney

Contract Control Number

By _____
Auditor

SOUTHEAST METRO
STORMWATER AUTHORITY

By _____

Name _____

Title _____

Date _____

MILE HIGH FLOOD DISTRICT

By _____

Name Laura A. Kroeger

Title Executive Director

Date _____

Checked By

AGREEMENT REGARDING FUNDING OF
MAJOR DRAINAGEWAY PLANNING FOR
FOUR SQUARE MILE OSP

Agreement No. 22-05.40
Project No. 109070
Agreement Amount \$200,000

