

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

RESOLUTION 21-24

Authorization to enter into an Intergovernmental Agreement between the Southeast Metro Stormwater Authority and the Douglas County Board of County Commissioners 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 COR070225 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 SEMSWA’s Non-standard Permit area, a portion of which is located within unincorporated Douglas County; and

WHEREAS, Douglas County (County) was issued a CDPS General Permit COR080003 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, the County must implement, enforce, and administer the Standard Permit Requirements within the associated jurisdictional boundary and SEMSWA 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 the County and SEMSWA have partnered to implement the construction and post-construction program MS4 permit requirements within the SEMSWA Non-standard Permit area in Douglas County; and

WHEREAS, SEMSWA’s Non-standard Permit, issued on April 30, 2021, requires that the SEMSWA and County 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 Intergovernmental Agreement (IGA) 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 SEMSWA's service area within the County, while using staff resources suitably and efficiently.

NOW THEREFORE, BE IT RESOLVED THAT:

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

SOUTHEAST METRO STORMWATER AUTHORITY  
acting by and through  
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

**INTERGOVERNMENTAL AGREEMENT BETWEEN  
\_\_\_\_\_ AND THE BOARD OF COUNTY  
COMMISSIONERS OF THE COUNTY OF DOUGLAS, STATE OF COLORADO,  
REGARDING AN MS4 PARTICIPATION AGREEMENT**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into this day of \_\_\_\_\_, 2021, by and between \_\_\_\_\_ ("Local Agency"), and the Board of County Commissioners of Douglas County, State of Colorado, (the "County"), hereinafter collectively referred to as the "Parties."

**RECITALS**

WHEREAS, the Local Agency and the County desire to continue their partnership as documented in this MS4 Participation Agreement; and

WHEREAS, the County was issued a CDPS General Permit COR080003 for Stormwater Discharges Associated with Municipal Separate Storm Sewer System (MS4) that Discharge to the Cherry Creek Reservoir Drainage Basin from the Colorado Department of Public Health and Environment (CDPHE) effective on April 15, 2016, expiring June 30, 2021, and administratively extended, hereinafter referred to as the "Standard Permit"; and

WHEREAS, the Local Agency was issued a CDPS General Permit for Stormwater Discharges Associated with Municipal Separate Storm Sewer System (MS4) from the Colorado Department of Public Health and Environment (CDPHE), hereinafter referred to as the "Non-standard Permit", located partially within unincorporated Douglas County; and

WHEREAS, the County must implement, enforce, and administer the Standard Permit requirements within the associated jurisdictional boundary and the Local Agency 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 the County and the Local Agency are required to develop Program Description Documents and supporting documents to describe how the permittee will comply with their MS4 Permit requirements; and

WHEREAS, the County has adopted the Grading, Erosion, and Sediment Control (GESC) Manual in March of 2004, most recently amended in July of 2019, and as may be further amended from time-to-time, in accordance with the County's Standard Permit; and

WHEREAS, the County adopted the Storm Drainage Design and Technical Criteria Manual, most notably Chapter 14, "Stormwater Quality", in 1986, most recently amended in June of 2019, and as may be further amended from time-to-time, in accordance with the County's Standard Permit; and

WHEREAS, the County adopted the Roadway Design and Construction Standards in April 1990, most recently amended in June of 2020, and as may be further amended from time-to-time, in accordance with the County's Standard Permit; and

WHEREAS, previously the County and the Local Agency have partnered to implement the

Construction and Post-construction program requirements within the Local Agency's Non-standard Permit area in the County; and

WHEREAS, the Local Agency Non-standard Permit requires that the Local Agency and County 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 the County do not constitute full compliance with all requirements of the Local Agency's Non-standard Permit.

**NOW, THEREFORE**, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which are mutually acknowledged, the Parties hereto agree as follows:

1. **Services.**

a. The County agrees to allow the Local Agency to continue to rely on the County's Construction and Post-construction program requirements of the County's Standard Permit for the portion of the Local Agency's Non-standard Permit located within the jurisdiction of the County.

b. The County agrees to continue to provide plan review and approval, permitting, inspection, and acceptance consistent with all applicable County regulations for the Local Agency's Non-standard Permit jurisdictional boundary within the County as provided for in this Agreement. These services will be in accordance with the County's standards for the Construction and Post-construction program documents of their Standard Permit.

c. The Local Agency, their contractors, or assigns, agree to continue to follow the County's Land Use process consistent with all applicable County regulations, and the County will forward applicable records and documentation to the Local Agency within thirty (30) days of any request by the Local Agency for the recordkeeping requirements of the Non-standard Permit and annual report to CDPHE.

d. The Local Agency hereby grants, bargains, and conveys to Douglas County and its agents, employees, and contractors the right to access and utilize property owned by the Local Agency within the Standard Permit jurisdictional boundary for access from public rights-of-way, abutting private roadway, and/or private driveway, including all other rights the Local Agency possesses to access their Property, for the purpose of inspecting, operating, installing, constructing, reconstructing, maintaining, repairing or replacing Post-construction stormwater facilities as may be necessary in accordance with the Standard Permit program requirements.

e. The County will not provide support for any of the Local Agency's 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 Local Agency's Non-standard Permit not specified above.

2. **Standard of Performance.** The County agrees to use its best efforts to comply with the County's Standard Permit but cannot guarantee that all activities will comply with the Local Agency's Non-standard Permit. The County assumes no responsibility for compliance with the Local Agency's Non-standard Permit. The Local Agency acknowledges that the County Standard Permit program requirements may be more stringent than the Non-standard Permit requirements, and if so, the Local Agency will be subject to those requirements for the Construction and Post-construction programs as applicable in this agreement.

3. **Enforcement.** The Local Agency agrees to comply with the County's Standard Permit Construction and Post-construction programs and to allow for Douglas County to fully enforce the County's Standard Permit programs consistent with the County's Standard Permit for all applicable construction activities in the Local Agency's Non-standard Permit jurisdictional boundary within the County for which the Local Agency 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), 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.

Local Agency: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, Colorado 8\_\_\_\_\_  
Attention: \_\_\_\_\_  
With an electric copy to \_\_\_\_\_

Douglas County: Douglas County  
100 Third Street  
Castle Rock, Colorado 80104  
Attention: Ryan Adrian, Environmental Program Manager  
With an electronic copy to [attorney@douglas.co.us](mailto:attorney@douglas.co.us)

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, County of Douglas, 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.

15. **Previous Agreements.** This Agreement supersedes any previous agreement between the Parties regarding shared MS4 responsibilities making those previous agreements, or portions thereof that dealt with MS4 responsibilities, null and void.

IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto as of the date first written above.

\_\_\_\_\_  
**Local Agency**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**BOARD OF COUNTY COMMISSIONERS  
OF DOUGLAS COUNTY**

\_\_\_\_\_, Chair

ATTEST:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Kristin Randlett  
Deputy Clerk to the Board

\_\_\_\_\_  
Douglas J. DeBord,  
County Manager

APPROVED AS TO FORM:

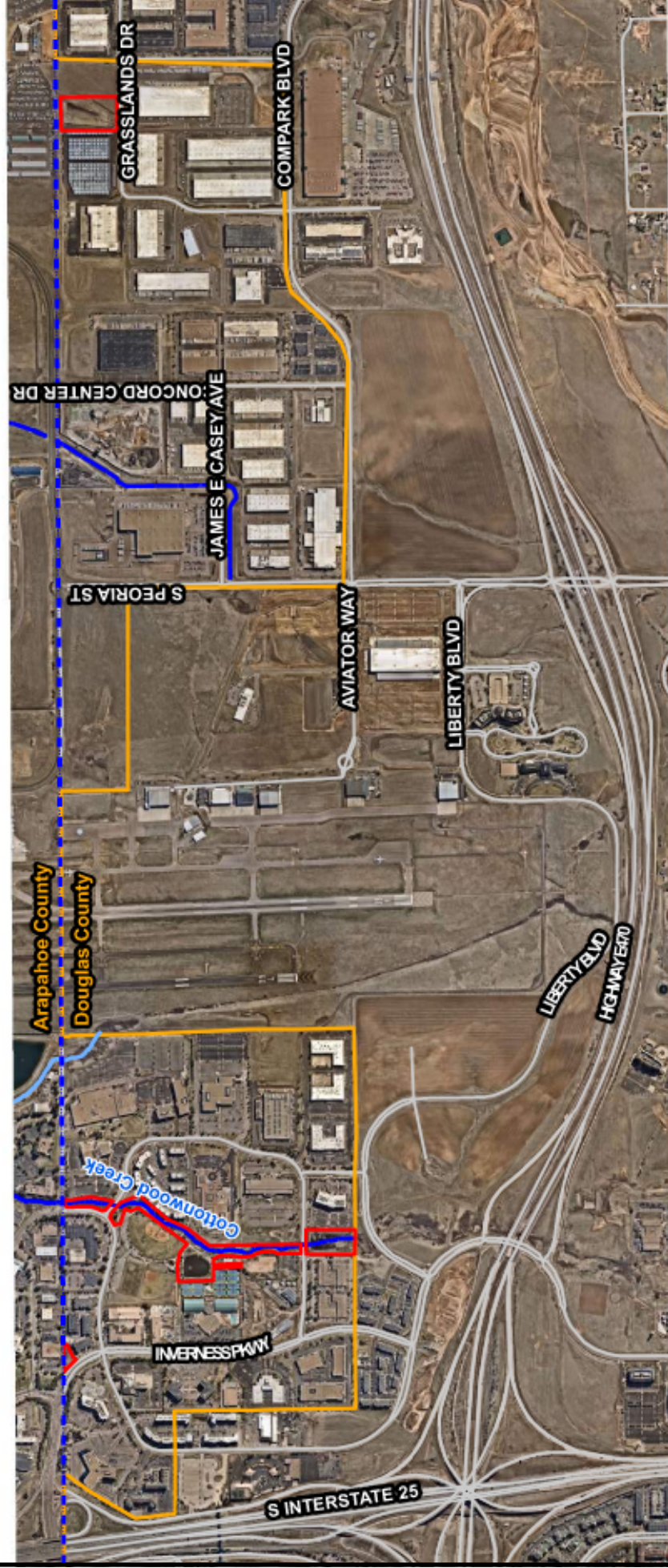
APPROVED AS TO FISCAL CONTENT:

\_\_\_\_\_  
Christopher Pratt,  
Assistant County Attorney

\_\_\_\_\_  
Andrew Copeland,  
Director of Finance



**Exhibit A. LIMITS OF GEOGRAPHICAL AREA OF SOUTHEAST METRO STORMWATER AUTHORITY'S  
NON-STANDARD PERMIT AREA WITHIN UNINCORPORATED DOUGLAS COUNTY**



**Legend**

- SEMSWA Non-Standard Permit Area within Douglas County
- SEMSWA Service Area
- County Boundary

