

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

RESOLUTION 14-25

Authorization to Execute Agreement regarding Funding of Alternatives Analysis Report for Coal Mine Avenue at Platte Canyon Road area with UDFCD

WHEREAS, SEMSWA wishes to participate in an Alternatives Analysis Report for the area surrounding the intersection of Coal Mine Avenue and Platte Canyon Road area with UDFCD; and

WHEREAS, UDFCD has included the Coal Mine Avenue and Platte Canyon Road Alternatives Analysis Report in its 2014 schedule at the request of Arapahoe County and SEMSWA; and

WHEREAS, UDFCD will pay 50 percent of the total project cost (\$60,000) for the Alternatives Analysis Report, obligating SEMSWA's local cost share to \$30,000; and

WHEREAS, the Coal Mine Avenue area was not included in the study area of the 2008 Dutch Creek Master Drainage Planning study; and

WHEREAS, in 2012 Arapahoe County identified stormwater conveyance problems in the area of Coal Mine Avenue and Platte Canyon Road; and

WHEREAS, the Alternatives Analysis Report will identify locations, alignments, and sizing of storm sewers, channels, detention basins, and other facilities and appurtenances needed to provide efficient stormwater drainage within the study area; and

WHEREAS, \$30,000 is available in the 2014 Master Planning budget category.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board authorizes the Executive Director to execute an Agreement regarding Funding of Alternatives Analysis for Coal Mine Avenue at Platte Canyon Road with UDFCD.
2. The necessary funds are available in the Master Planning budget category.
3. Total cost for the work authorized herein, without prior authorization of the Board, is \$30,000 payable to UDFCD.

SOUTHEAST METRO STORMWATER AUTHORITY
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SEMSWA WATER ACTIVITY ENTERPRISE

Date: _____

ATTEST:

Secretary

Chairperson

APPROVED AS TO FORM:
Attorney for
Southeast Metro Stormwater Authority

By _____
Edward J. Krisor

AGREEMENT REGARDING FUNDING OF
ALTERNATIVES ANALYSIS FOR
COAL MINE AVENUE AT PLATTE CANYON ROAD

Agreement No. 14-09.09

THIS AGREEMENT, made this _____ day of _____, 2014, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT") and SOUTHEAST METRO STORMWATER AUTHORITY (hereinafter called "SEMSWA"); (hereinafter DISTRICT and SEMSWA 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 2014 (Resolution No. 53, Series of 2013) which includes master planning; and

WHEREAS, PARTIES now desire to proceed with development of an alternatives analysis report for the area around the intersection of Coal Mine Avenue and Platte Canyon Road (hereinafter called "PROJECT"); 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 September 2014, (hereinafter called "AREA").

3. SCOPE OF PROJECT

The purpose of PROJECT is to develop an alternatives analysis report, 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. Conceptual alternative plans shall be developed such that comparison with other alternatives can be made.

Drainage system planning shall be done in two phases by the engineer engaged by DISTRICT, culminating in a drainage master plan report. During the first phase, the selected engineer shall perform all studies and data gathering needed to prepare the alternatives analysis portion of the report containing a brief PROJECT description, study history, schematics of alternatives developed, their costs, and a discussion of the pros and cons of each alternative. A single alternative will be selected by PARTIES after the review and evaluation of the alternatives analysis report. During the second phase, the engineer shall be directed to prepare a preliminary design for the selected alternative, which shall be included in the final drainage 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 \$60,000.

6. FINANCIAL COMMITMENTS OF PARTIES

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

	Percentage	Maximum
	<u>Share</u>	<u>Contribution</u>
DISTRICT	50.00%	\$30,000
<u>SEMSWA</u>	<u>50.00%</u>	<u>\$30,000</u>
Total	100.00%	\$60,000

7. MANAGEMENT OF FINANCES

Payment by DISTRICT of \$30,000 and by SEMSWA of \$30,000 shall be made to DISTRICT subsequent to execution of this Agreement and within thirty (30) calendar 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 SEMSWA 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 and will not require an amendment to this Agreement.

In the event that it becomes necessary and advisable to change the scope of work to be performed, the need for such changes shall first be discussed with PARTIES, and their general concurrence received before issuance of any amendments or addenda. No changes shall be approved that increase the costs beyond the funds available in the PROJECT fund unless and until the additional funds needed are committed by PARTIES by an amendment to this Agreement.

Within one year of completion of PROJECT if there are monies including interest earned remaining which are not committed, obligated, or dispersed, each party shall receive a share of such monies, which shares shall be computed as were the original shares.

8. PROJECT MAPPING

No new mapping will be procured under this Agreement for PROJECT. Upon execution of this Agreement, SEMSWA 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 SEMSWA, shall contract with the selected engineer, shall administer the contract, and shall supervise and coordinate the planning for the development of alternatives and of preliminary design.

10. PUBLISHED REPORTS AND PROJECT DATA

DISTRICT will provide to SEMSWA access to the draft and final electronic alternatives analysis report files and the draft and final conceptual design report in electronic plan (ePlan) format.

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 SEMSWA upon request.

11. TERM OF THE AGREEMENT

The term of this Agreement shall commence upon final execution by all PARTIES and shall terminate two years after the final master planning report 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 SEMSWA shall be the Executive Director, 7437 South Fairplay Street, Centennial, Colorado 80112.

B. The contracting officer for DISTRICT shall be the Executive Director, 2480 West 26th Avenue, Suite 156B, Denver, Colorado 80211.

- C. 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 SEMSWA. 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 SEMSWA the information developed by the various consultants hired by DISTRICT and for obtaining all concurrences from SEMSWA needed to complete PROJECT in a timely manner. SEMSWA agrees to review all draft reports and to provide comments within 21 calendar days after the draft reports have been provided by DISTRICT to SEMSWA. SEMSWA also agrees to evaluate the alternatives presented in the alternatives analysis report, to select an alternative, and to notify DISTRICT of their decision(s) within 60 calendar days after the alternatives analysis report is provided to SEMSWA 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 SEMSWA'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 SEMSWA 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 (Section 24-10-1-1, C.R.S., et seq.) 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 this Agreement, PARTIES agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified on the basis of race, color, ancestry, creed, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability and further agrees to insert the foregoing provision in all subcontracts hereunder.

25. APPROPRIATIONS

Notwithstanding any other term, condition, or provision herein, each and every obligation of SEMSWA 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 SEMSWA 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 SEMSWA or DISTRICT receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

27. ILLEGAL ALIENS

PARTIES agree that any public contract for services executed as a result of this intergovernmental agreement shall prohibit the employment of illegal aliens in compliance with §8-17.5-101 C.R.S. et seq. The following language shall be included in any contract for public services: "The Consultant or Contractor shall not and by signing this Agreement certifies that it does not knowingly employ or contract with an illegal alien to perform work under this Agreement. Consultant or Contractor shall not enter into a subcontract with a subcontractor that fails to certify to the Consultant or Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services. Consultant or Contractor affirms that they have verified through participation in the Colorado Employment Verification program established pursuant to 8-17.5-102 (5)(c) C.R.S. or the Electronic Employment Verification Program administered jointly by the United States Department of Homeland Security and the Social Security Administration that Consultant or Contractor does not employ illegal aliens. Consultant or Contractor is prohibited from using these procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.

In the event that the Consultant or Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Consultant or Contractor shall be required to:

- A. Notify the subcontractor and PARTIES within three days that the Consultant or Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- B. Terminate the subcontract with the subcontractor if within three days of receiving the notice required the Subcontractor does not stop employing or contracting with the illegal alien; except that the Consultant or Contractor shall not terminate the contract with the Subcontractor if during such three days the Subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Consultant or Contractor is required under this Agreement to comply with any reasonable request by the Colorado Department of Labor and Employment (CDLE) made in the course of an investigation CDLE is undertaking pursuant to its legal authority.

Violation of this section of this Agreement shall constitute a breach of this Agreement and may result in termination by PARTIES. Consultant or Contractor shall be liable to PARTIES for actual and consequential damages to PARTIES resulting from such breach pursuant to §8-17.5-101(3) C.R.S. PARTIES shall also report any such breach to the Office of the Secretary of State.

Consultant or Contractor acknowledges that CDLE may investigate whether Consultant or Contractor is complying with the provision of the Agreement. This may include on-site inspections and the review of documentation that proves the citizenship of any person performing work under

this Agreement and any other reasonable steps necessary to determine compliance with the provisions of this section."

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

URBAN DRAINAGE AND
FLOOD CONTROL DISTRICT

(SEAL)

By_____

ATTEST:

Title Executive Director

Date_____

SOUTHEAST METRO STORMWATER
AUTHORITY

By_____

Date_____

AGREEMENT REGARDING FUNDING OF
ALTERNATIVES ANALYSIS FOR
COAL MINE AVENUE AT PLATTE CANYON ROAD

Agreement No. 14-09.09



EXHIBIT A
Coal Mine Avenue at Platte Canyon Road
Alternatives Analysis
Approximate Study Limits
September 2014

