

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

RESOLUTION 13-09

Authorization to Sign Memorandum of Understanding with the Public Service Company of Colorado  
and the City of Centennial Regarding Franchise Agreement

WHEREAS, from time to time the Southeast Metro Stormwater Authority (SEMSWA) has a need to construct stormwater facilities in the City of Centennial's (City) street right of ways and cause the relocation/adjustment of gas and electric service facilities, which are owned and operated by the Public Service Company of Colorado (Company); and

WHEREAS, the Company has entered into a Franchise Agreement with City which grants it the right to install its facilities in the City's street right of ways; and

WHEREAS, the Franchise Agreement provides that the Company shall relocate, at its expense, its facilities in the City's street right of ways that interfere with a public project undertaken and paid for by the City with public funds; and

WHEREAS, SEMSWA's planning, funding, constructing, acquiring, operating and maintaining drainage and flood control facilities within the City's boundaries are undertaken by SEMSWA under an assumption of the City's obligation to fund and manage drainage and flood control facilities within the City's jurisdictional boundaries, and such activities are paid for with public funds; and

WHEREAS, SEMSWA, the City and the Company (collectively, the Parties) desire to clarify and memorialize in a Memorandum of Understanding (MOU) the financial responsibilities under the Franchise Agreement for relocating the Company's facilities in the City's street right of ways caused by SEMSWA activities in planning, funding, constructing, operating and maintaining drainage and flood control facilities within the City according to the terms and conditions set forth in the Franchise Agreement; and

WHEREAS, the Parties have prepared a MOU, which they collectively agree adequately addresses the financial responsibilities of the Parties with respect to the Franchise Agreement.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board approves the MOU which is attached.
2. The Chairman of the Board is authorized to execute the MOU.

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

## MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING ("MOU") is entered into between the CITY OF CENTENNIAL, a home rule municipality of the State of Colorado (the "City"), the SOUTHEAST METRO STORMWATER AUTHORITY, a political subdivision of the State of Colorado, and PUBLIC SERVICE COMPANY OF COLORADO ("Public Service" or the "Company") (collectively, the "Parties").

WHEREAS, Public Service and the City entered into a franchise agreement with an effective date of May 30, 2002 ("Franchise Agreement"); and

WHEREAS, the City approved the Franchise Agreement pursuant to Ordinance No. 2002-24; and

WHEREAS, the Franchise Agreement grants to Public Service the right, *inter alia*, to use City streets ("Streets"<sup>1</sup>) for the placement of facilities ("Facilities"<sup>2</sup>) in association with the provision of gas and electricity service to the City and residents of the City; and

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<sup>1</sup> For purposes of this memorandum of understanding, "Streets" shall have the same definition as set forth in §1.9 of the Franchise Agreement.

<sup>2</sup> For purposes of this memorandum of understanding, "Facilities" shall have the same definition as set forth in §1.5 of the Franchise Agreement.

WHEREAS, the Franchise Agreement provides that the Company shall relocate, at its expense, Facilities in the Streets that interfere with a public project undertaken and paid for by the City with public funds; and

WHEREAS, on September 19, 2006, the City, the County of Arapahoe, the Arapahoe County Water and Wastewater Authority, the East Cherry Creek Valley Water and Sanitation District, and the Inverness Water and Sanitation District entered into an intergovernmental agreement pursuant to C.R.S. § 29-1-204.2 (the "IGA") to form and participate in a drainage authority named the "Southeast Metro Stormwater Authority" ("SEMSWA"); and

WHEREAS, the purpose of SEMSWA is to plan, fund, construct, acquire, operate and maintain drainage and flood control facilities as determined by SEMSWA's Board of Directors, including but not limited to drainage and flood control facilities within the City's jurisdictional boundaries, as the same may change from time to time through annexation or otherwise; and

WHEREAS, such activities of planning, funding, constructing, acquiring, operating and maintaining drainage and flood control facilities within the City's boundaries are undertaken by SEMSWA under an assumption of the City's obligation to fund and manage drainage and flood control facilities within the City's jurisdictional boundaries as more fully set forth in the IGA, and are paid for with public funds; and

WHEREAS, from time to time the activities of SEMSWA in planning, funding, constructing, operating and maintaining drainage and flood control facilities within the City require Public Service to relocate Facilities that are located in the Streets; and

WHEREAS, the Parties wish to clarify the financial responsibility under the Franchise Agreement for relocating Facilities in the Streets caused by SEMSWA activities in planning, funding, constructing, operating and maintaining drainage and flood control facilities within the City according to the terms and conditions set forth in the Franchise Agreement; and

WHEREAS, the Parties desire to memorialize the agreement contained within this MOU.

NOW, THEREFORE, in consideration of the terms and conditions contained in this MOU and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed by and between the Parties as follows:

1. SEMSWA Projects. In those instances when Public Service is required to relocate its Facilities in the Streets as a result of SEMSWA activities in constructing, operating and maintaining drainage and flood control improvements or projects in the Streets, such activities shall be deemed to be public projects undertaken and paid for by the City with public funds for purposes of interpreting

the Franchise Agreement. In those instances, Public Service shall relocate its Facilities in accordance with, and subject to, the terms of the Franchise Agreement, but not at the expense of the City or SEMSWA.

2. Joint Projects Involving SEMSWA. In those instances when Public Service is required to relocate its Facilities in the Streets as a result of a joint project of which the City and SEMSWA are participants along with third parties, whether such third parties are private or public participants in the joint project, Public Service shall retain: (a) the right to seek payment of a portion of the Company's relocation costs in advance from the other private or public participants in the joint project; or (b) the right to seek reimbursement of a portion of the Company's relocation costs from the other private or public participants in the joint project. The proportion of relocation costs that may be collected by the Company shall be the percentage of the financial participation of the other participant(s) in the joint project, excluding the City and SEMSWA. By way of example but not limitation, if the City's and SEMSWA's financial participation in a joint project is a combined forty percent (40%), Public Service shall bear the cost of relocating its Facilities caused by the joint project, but shall be entitled to seek payment or recovery of sixty percent (60%) of the cost of such relocation from the other private or public participant(s) in the joint project. However, in no event shall the Company's seeking either payment or reimbursement unreasonably delay the Company's relocation of its Facilities.



3. Authority. Each party executing this MOU represents and warrants that he or she is duly authorized and has all necessary power to execute this MOU.
4. Successors and Assigns. The rights, conditions, agreements and provisions of this MOU shall inure to the benefit of the parties hereto and their permitted successors and assigns.
5. No Third Party Beneficiaries. No third-party beneficiaries are intended by this MOU. Any third party receiving a benefit hereunder is an incidental and unintended beneficiary only. Nothing contained in this MOU shall be construed to provide rights to third parties.
6. Severability. Should any one or more provisions of this MOU be determined to be illegal, invalid, or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the Parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft a substitute term that will achieve the original intent of the Parties under this MOU.
7. Amendment. This MOU may be modified or amended only by an instrument in writing signed by each of the parties. The Parties do not intend to modify or amend the Franchise Agreement by executing this MOU.

8. Colorado Law. This MOU and all matters arising hereunder or in connection herewith shall be governed by and construed in accordance with the laws of the State of Colorado.
9. Venue. The District Court for Arapahoe County, Colorado shall have the sole and exclusive venue to decide disputes arising out of this MOU, excluding any federal question actions or actions that are within the exclusive jurisdiction of the Colorado Public Utilities Commission.
10. Effective Date. The effective date of this MOU shall be the date on which all parties to this MOU have executed the same.
11. Expiration and Termination. This MOU shall expire or terminate at the same time as the Franchise Agreement.

**CITY OF CENTENNIAL**, a home rule municipality of the State of Colorado

\_\_\_\_\_  
Cathy A. Noon, Mayor

Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk, City of Centennial



APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney, City of Centennial

**SOUTHEAST METRO STORMWATER  
AUTHORITY**, a political subdivision of the  
State of Colorado

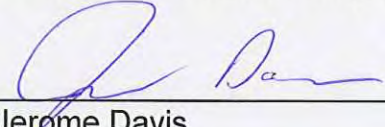
\_\_\_\_\_  
Bart Miller, Chairman

Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary

**PUBLIC SERVICE COMPANY OF  
COLORADO**, a Colorado corporation

By:   
Jerome Davis  
Regional Vice President  
Customer and Community Relations  
Public Service Company of Colorado

Dated: 2-12-13

**Reviewed  
Legal**

