

RESOLUTION NO. 123 - 23

A RESOLUTION AUTHORIZING THE CITY OF COLORADO SPRINGS TO ENTER INTO INTERGOVERNMENTAL AGREEMENTS BETWEEN THE CITY OF COLORADO SPRINGS BY AND THROUGH ITS STORMWATER ENTERPRISE AND NON-STANDARD PERMITTEES CONCERNING THE COORDINATION AND IMPLEMENTATION OF THE COR070000 NON-STANDARD MS4 PERMIT

WHEREAS, municipal separate storm sewer systems ("MS4") are systems of storm sewers, gutters, storm drain inlets, and similar features that are owned by cities, counties, and other government entities. They collect and discharge stormwater to local waterbodies; and

WHEREAS, there are individual MS4 permits, where an entity is large and needs their own permit to cover the work they do, such as the City of Colorado Springs ("City"); and

WHEREAS, the Statewide non-standard MS4 general permit (COR070000) ("Non-Standard") is held by entities that are smaller governmental agencies, school districts, recreation districts, and similar, with a publicly owned system that has stormwater conveyances in an urban area and serves at least 1,000 people; and

WHEREAS, Non-Standard permittees oftentimes do not have the necessary stormwater administrative infrastructure to implement and enforce all aspects of the Non-Standard; and

WHEREAS, the Non-Standard permittee may enter into an agreement with another MS4 permittee for implementation of construction and/or post construction programs; and

WHEREAS, the purpose of an intergovernmental agreement ("IGA") between the City's Stormwater Enterprise and a Non-Standard permittee is to detail the joint enforcement and compliance of the Non-Standard; and

WHEREAS, the Non-Standard permittee and the City, collectively referred to herein as "Parties," are authorized to enter into intergovernmental agreements pursuant to Article XIV, Section 18 of the Colorado Constitution and Title 29, Article 1, Part 2 of the Colorado Revised Statutes, C.R.S.; and

WHEREAS, City Council believes it is appropriate for the City to enter into Intergovernmental Agreements with Non-Standard permittees to address the coordination and implementation of the CO07000 Non-Standard MS4 Permit.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. The City Council of Colorado Springs hereby approves IGAs between the City of Colorado Springs by and through its Stormwater Enterprise and Non-Standard permittees within the City's MS4 Permit boundary concerning the coordination and implementation of the COR070000 Non-Standard MS4 Permit in substantially the same form as Exhibit A.

Section 2. The City of Colorado Springs Stormwater Enterprise Manager is authorized to execute, administer, and amend the IGA, as necessary.

Dated at Colorado Springs, Colorado this 12th day of September 2023.


Randy Helms, Council President

ATTEST:


Sarah B. Johnson, City Clerk



INTERGOVERNMENTAL AGREEMENT BETWEEN CITY OF COLORADO SPRINGS BY AND THROUGH ITS STORMWATER ENTERPRISE AND COLORADO SPRINGS HARRISON SCHOOL DISTRICT 2 CONCERNING THE COORDINATION AND IMPLEMENTATION OF THE COR070000 NON-STANDARD MS4 PERMIT

THIS INTERGOVERNMENTAL AGREEMENT (hereafter "Agreement") is entered into as of the day of _____, 2023 (Effective Date), by and between the City of Colorado Springs, a home rule city and Colorado municipal corporation, by and through its Stormwater Enterprise (SWENT) and Colorado Springs Harrison School District 2, a school district organized and existing pursuant to law (District), referred to individually as "Party" or together referred to as "Parties."

The purpose of the IGA is to detail the joint enforcement and compliance of the District's COR070000 Non-Standard Municipal Separate Storm Sewer System Permit ("District's MS4 Permit") and to identify responsibilities of both SWENT and the District.

RECITALS

1. Article XIV, Section 18, of the Colorado Constitution, and C.R.S. §§ 29-1-201, et seq., provide for and encourage political subdivisions of the State of Colorado to make the most efficient and effective use of their powers and responsibility by cooperating and contracting with each other.
2. The Colorado Department of Public Health and Environment (CDPHE) writes and issues the Statewide Non-Standard MS4 General Permit, COR070000, that covers publicly owned systems similar to MS4s in cities and counties that are designed for maximum daily user population of at least 1,000 located in an urbanized area, including school districts.
3. The District requests SWENT to assist with implementation of the District's MS4 Permit. Specific permit requirements for Implementation by Other Parties may be found in section I.F.5 of the District's MS4 Permit.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

AGREEMENT

Section 1. Definitions

City Stormwater Management Plan (CSWMP): A written plan required under the City's Grading and Erosion Control Permit that identifies potential measures that will be implemented to

minimize erosion within construction sites and minimizes the discharge of pollutants in stormwater runoff from construction sites.

City's Municipal Separate Storm Sewer System (MS4) Permit: Permit issued to the City by CDPHE that authorizes discharges of the City stormwater into State waters within City limits.

GEC Plan: A prepared Grading and Erosion Control Plan required under the City GEC Permit identifying measures that will be implemented to minimize the discharge of pollutants in stormwater.

Non-Standard MS4 Permit: A permit that covers a publicly owned (MS4) serving at least 1,000 people in an urbanized area.

Program Description Documents (PDD): Required by both the City's MS4 Permit and the Non-Standard's MS4 Permit that describes how the permittee will meet the requirements of their permit and includes a list of citations for documents and electronic record used to comply with the permit requirements; and a current organizational chart.

Section 2. Program Description Documents (PDD)

- A. The District will be responsible for the development of all PDD for the District's MS4 Permit.
- B. For sections where SWENT is providing District MS4 Permit compliance support, the District will need to follow SWENT's PDD. The relevant City PDD will be added as an attachment to this document.

Section 3. Public Education and Outreach:

- A. SWENT will provide programs necessary for the District to utilize for permit compliance with the Public Education and Outreach component of the permit.
- B. SWENT will provide the documentation for recordkeeping that is provided in SWENT's annual report.
- C. The District is encouraged to have staff participate in one of SWENT's many waterway clean-up and trash removal events or a water festival event annually.

Section 4. Illicit Discharge Detection and Elimination:

- A. SWENT will provide recorded online training courses for illicit discharge detection and elimination.
- B. SWENT will provide guidance as requested for any spills/discharges that occur on District property.
- C. The District is responsible for all site reclamation/remediation for all spills/discharges that occur on District property and any spills/discharges that leave District property.

- D. The District will be responsible for maintaining developing and maintaining a GIS database to track District MS4 infrastructure.
- E. The District will be responsible for recordkeeping and spill reporting.

Section 5. Construction Sites:

- A. SWENT will provide oversight for the Construction Sites program to include plan review, GEC plan and CSWMP review through the City's electronic review system and grading and erosion control inspections. Standard review fees will be due to the City, payable through the City's electronic review system.
- B. SWENT will provide GEC permit oversight through Accela software, or similar, including enforcement and permit closeout following City code and the processes identified in the Stormwater Construction Manual.
- C. SWENT will maintain records in accordance with the recordkeeping requirements in the City's MS4 Permit. Records will be available to the District upon request.
- D. The District acknowledges that SWENT processes are subject to change without notice and the District construction projects will be bound to SWENT processes in place at the time of construction.

Section 6. Post-Construction Stormwater Management in New Development and Redevelopment:

- A. SWENT will provide oversight for the Post-Construction program to include review for the following documents:
 - i. Final Drainage Report
 - ii. Preliminary Drainage Report
 - iii. Final Drainage Letter
 - iv. Drainage Memo
 - v. Master Development Drainage Plan
 - vi. Channel Design Report
 - vii. Channel Design Plan
 - viii. Permanent Control Measure Plan
 - ix. Drainage Plan/Profile
 - x. Variance Requests
 - xi. Appendix I
 - xii. Statement of Authority
- B. Standard review fees will be due to the City, payable through the City's electronic review system.
- C. The City will review documents according to City criteria in place at the time of review unless an alternate criteria is agreed upon by the City and the District.
- D. Permanent Control Measure construction inspection and acceptance.

- i. SWENT will provide construction oversight including inspection and enforcement following City criteria and standard operating procedures.
 - ii. SWENT will approve District permanent control measures following City criteria and Private Permanent Control Measures standard operating procedures (SOP), attached as **Exhibit A** and incorporated herein. SWENT will provide the District with a copy of the acceptance letter to document construction close out. This acceptance letter will reference a specific Inspection and Maintenance (IM) Plan for the facility.
 - iii. Non-compliance with the District's recordkeeping requirements does not constitute non-compliance under the City's MS4 permit.
 - iv. The District is responsible for providing all necessary records to SWENT to maintain compliance under the District's MS4 Permit.
- E. Permanent Control Measure long term maintenance and inspections:
- i. SWENT will provide long term maintenance oversight and compliance inspections every three years according to the Private Permanent Control Measures SOP.
 - ii. The District will be responsible for annual inspections and maintenance operations of all PCMs located on District property following City code and all relevant criteria, policies, and processes.
 - iii. The District will provide inspection and maintenance records to SWENT annually by May 31st of each year.
 - iv. The District shall inspect and maintain permanent control measures in accordance with the IM Plan referenced in the City's acceptance letter.
- F. SWENT will have the ability to pursue enforcement following City Code and the processes identified in the Private Permanent Control Measures SOP.
- G. **Exhibit 2** is a list, location, and type of all PCMs on District property as of the date of this agreement.

Section 7. Pollution Prevention/Good Housekeeping for Permittee Operations

- A. SWENT will provide the District with templates for the Pollution Prevention/Good Housekeeping Program to include a Runoff Control Plan and an inspection template.
- B. The District will be responsible for compliance, maintenance, and recordkeeping for their facilities.

Section 8. Water Quality Monitoring and Sampling

- A. The District will be responsible for all water quality monitoring, sampling, reporting, and recordkeeping on District property.
- B. The District may reference water quality monitoring from SWENT's annual report. SWENT is not responsible for verifying that water quality monitoring conducted by SWENT will meet the District's MS4 Permit requirements.

1. SWENT will not conduct monitoring at the monitoring points specified in the District's MS4 Permit.

Section 9.

- A. Any portions of the District's MS4 Permit not detailed within this Agreement shall be the sole responsibility of the District.
- B. The District shall remain responsible for compliance of its District MS4 Permit.

Section 10. Fees

SWENT will charge an annual fee of \$30,000, the District will be responsible to pay this fee for permit assistance. SWENT will issue an invoice to the District annually on XX.

Section 11. Term

This Agreement shall be for an initial term of one year, beginning on the Effective Date, and will automatically renew on a yearly basis unless sooner terminated by either Party.

Section 12. Contact Information

For SWENT:

Richard Mulledy
Stormwater Enterprise Manager
richard.mulledy@coloradosprings.gov
719-200-1466

Jeff Besse
Water Quality Program Manager
jeff.besse@coloradosprings.gov
719-385-5566

For the DISTRICT:

[Fill in contact information]

Section 13. General Terms

- a. Choice of Law. This Agreement is subject to, and shall be interpreted and performed under, the laws of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs.

The District acknowledges that City Code, criteria, SOPs, review and permitting fees, and processes are subject to change without notice.

- b. Jurisdiction and Venue. Court jurisdiction shall exclusively be in the District Court for El Paso County Colorado.
- c. Appropriations. This Agreement is expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Colorado Springs, contrary to Article X, § 20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of the City which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Agreement at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Agreement, including any sub-agreement, attachment, schedule, or exhibit thereto, by the City. As used herein, the term "appropriation" shall mean and include the due adoption of an appropriation ordinance and budget and the approval of a Budget Detail Report (Resource Allocations) which contains an allocation of sufficient funds for the performance of fiscal obligations arising under this Agreement.
- d. Dispute Resolution. In the event of a dispute between the parties, the parties agree that they will use their best efforts to resolve that dispute in an informal fashion through consultation and communication between the parties.
- e. Entire Agreement. This Agreement, together with all appendixes attached, constitutes the entire Agreement between the Parties, and all other representations or statements made, verbal or written, are merged herein, and this Agreement may be amended only in writing, and executed by duly authorized representatives of the Parties.
- f. Governmental Immunity. Nothing in this Agreement shall be interpreted to limit or prevent the protections afforded to either Party under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq.
- g. Headings. The headings of the several articles and sections of this Agreement are inserted only as a matter of convenience and for reference and do not define or limit the scope or intent of any provisions of this Agreement and shall not be

construed to affect in any manner the terms and provisions or the interpretation or construction of the Agreement.

- h. Indemnification. Each party agrees to be responsible for its own liability incurred as a result of its participation in this Agreement. In the event any claim is litigated, each party will be responsible for its own expenses of litigation or other costs associated with enforcing this Agreement. No provision of this Agreement shall be deemed or construed to be a relinquishment or waiver of any kind of the applicable limitations of liability provided to the City by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et. seq. and Article XI of the Colorado Constitution.
- i. Liability for MS4 Compliance. In the performance of the obligations under this Agreement, the Parties agree the Parties are separate legal entities and are acting independently. The City shall neither have, nor exercise, any control or direction over the manner and means by which the District performs its obligations pursuant to the District's MS4 Permit. The District shall retain full liability for its own compliance of the District's MS4 Permit. The City shall not be liable for any noncompliance of the District's MS4 Permit.
- j. Personnel Control and Liability. Nothing in this Agreement shall be construed to place the personnel of either Party under the control or employment of the other Party. Each Party remains responsible for all pay, entitlement, employment decisions, and workers' compensation liabilities, for its own personnel. Nothing in this Agreement is intended to create or grant to any third party or person any right or claim for damages or the right to bring or maintain any action at law, nor does either Party waive its immunities at law, including immunity granted under the Colorado Governmental Immunity Act.
- k. Amendment. No amendment or modification of the Agreement shall be valid unless expressed in writing and executed by the authorized representatives of the Parties.
 - i. The Stormwater Enterprise Manager is authorized to administer and amend this Agreement on behalf of the City/SWENT.
- l. Severability. If any provisions of this Agreement shall be held unconstitutional, illegal, or void, such finding shall not affect any other provisions of this contract.
- m. Termination. Either Party may terminate this Agreement for convenience upon sixty (60) days prior written notice to the other Party, which notice shall state

the actual termination date. If SWENT terminates the Agreement, the District shall be refunded the pro-rated fee amount for the year. The District shall not be entitled to a refund of the yearly fee, or any portion thereof, if the District terminates the Agreement.

- n. Waiver. The City's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or the City's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.

This Agreement shall be effective as of the Effective Date above, signed by the Parties below and dated for reference.

FOR COLORADO SPRINGS HARRISON SCHOOL DISTRICT 2

Date: _____

Name

Position

FOR THE CITY OF COLORADO SPRINGS




Date: 09/21/23

Blessing A. Mobolade

Mayor

Approved as to Form



Senior Attorney, Office of the City Attorney