

Development Fee-In-Lieu Improvement (FILI)

Frequently Asked Questions

Background

The Mile High Flood District's (MHFD) mission and vision are to Protect People, Property and the Environment from flood risks through Preservation, Mitigation, and Education. To achieve our goals, we partner with local governments to mitigate stream and watershed impacts caused by land development.

Our overall objective is to maintain a network of high functioning and low maintenance streams capable of safely conveying flood flows. The MHFD has observed several decades of land development and the subsequent impacts to streams. While preserving the mapped floodplain corridor is a helpful starting point to mitigate the risk of flood damages to the built environment, we've found that without additional mitigation work in the stream we do not accomplish our goal of a high functioning and sustainable system.

Although a healthy looking stream is often observed in greenfield development sites, we've found it absolutely vital that the stream be prepared for the changes that are an inevitable consequence of development. It's also necessary to preserve a stream management corridor, which may differ from the mapped floodplain, within new developments to ensure that adequate space is available for a stream to be high functioning and low maintenance.



What is the FILI Program?

The MHFD Board of Directors established a Development Service Enterprise in 2017. The purpose of the enterprise is to provide an alternative to the development community to partner with the MHFD to construct stream improvements within or adjacent to their property. Where stream improvements are required, and where requested by the local government, the MHFD can assume responsibility for managing the design, permitting, and construction of the stream improvements on behalf of the developer. The developer pays for all related project costs, including an administrative fee to cover the MHFD's staff time devoted to the project, and vegetation establishment and monitoring costs related to permitting.

When to Consider a FILI Approach?

1. **A major drainageway is on your site and you want to engage the stream as an amenity.** Stream work is a niche field of expertise that is continually evolving. If your project has a central focus around the stream corridor, then having a team of specialized designers and builders will facilitate achieving your objectives.
2. **You need a 404 permit.** The MHFD has a strong working relationship with the United States Army Corp of Engineers (USACE) and has more permitting options than developers, which may help your project get permitted.
3. **You want to streamline the drainageway approval process.** The MHFD will take the lead in managing design and construction which may allow the required drainageway improvements to be disconnected from the rest of the development approval process.

Who is Responsible for Managing the FILI Projects?

MHFD staff, with the assistance of a local government representative, will manage the project from conceptual design through construction and the eventual permit monitoring and project closeout. The developer and their representatives will be included on the team to ensure effective communication and coordination of the inevitable overlaps between the adjacent development project and the stream mitigation project. All vendor procurement processes and project management will follow standard MHFD procedures.

How is a FILI Project Initiated?

1. **Meeting with Development Team and Local Government (Prior to Annexation or Platting)**

The sooner we can meet the more options there are for how to move forward with stream improvements, so it's important to initiate these discussions prior to annexation or platting.

Discussion items include:

- Development goals and objectives
- Site challenges and opportunities
- Required stream improvements
- Options for implementing stream improvements

2. **If FILI is the selected option then the process is broken down into three phases of execution.**
At the end of any of the three phases the developer may choose to pull out of the program and then follow the local government's standard approval process. A flow-chart of the FILI process and how it integrates with the local government development approval process will be created.

What are the Three Phases of a FILI Project?

1. Conceptual Design Phase

The conceptual design phase of the project involves hiring one of the MHFD's prequalified consultants and their team to assist with the following:

- a. Land – we will determine the corridor that is necessary to reserve for the stream such that a high functioning and low maintenance stream can be constructed.
- b. Time – we will work with an environmental consultant to determine what the most likely permitting scenario will be, which is typically the most critical schedule driver.
- c. Cost – our consultant will develop a conceptual design that lays out the general alignment, configuration, and scale of the stream improvements, which enables us to provide a construction cost estimate with contingency.

2. Final Design and Permitting Phase

During the final design and permitting phase we will continue to work with the design team on the following elements:

- a. Final Design – a construction ready set of drawings will be prepared and all necessary MHFD and local government approvals will be received. A more refined estimate of construction costs will be created by the engineer and kept separate from the contractor's pricing. The construction drawings will be stamped by the engineer as "Field Ready for Construction by named contractor".
- b. Permitting – we will submit applications for the necessary environmental and stormwater permits. The MHFD will be listed as the owner on the permits.
- c. Construction Pricing – one of the MHFD's prequalified contractors will be brought on to the team to assist with value engineering and formal construction pricing.

3. Construction, Establishment, and Monitoring Phase

The following steps are involved during the final phase of the FILI project:

- a. Construction – construction plans get signed and sealed by the engineer. The MHFD will contract with the contractor involved during final design and permitting to build the project. Timing and limits of construction will be coordinated with construction of the adjacent development to maximize efficiency and minimize costs.

- b. Establishment – the MHFD will work with one of our revegetation contractors to establish native vegetation and meet permitting requirements.
- c. Monitoring – the MHFD will conduct all necessary monitoring and reporting to closeout environmental and stormwater permits. This can take anywhere from one to five years, depending on the permitting scenario.

How does the MHFD Select Consultants and Contractors?

The MHFD utilizes an alternative project delivery approach called Project Partners. This process was established in 2012 to achieve better value in our projects as a response to numerous unsatisfactory outcomes experienced in the traditional design-bid-build process.

Project Partners involves a qualifications based selection of one of the MHFD's prequalified consultants. As we transition from conceptual design to preliminary design, we use a qualifications based selection to incorporate one of the MHFD's prequalified contractors into the design team.

The team develops project goals that give focus through a unified project purpose, which then enables better decision-making and efficiencies in delivering the project. The team collectively identifies the project solutions, schedule, permitting needs, key project elements, risks, and other unknowns.

During design, the contractor is actively involved in offering input to means and methods, material selection, and access, and assists with developing alternatives and obtaining permits. The engineer, in return, will have more of a presence in the field during construction to assist with decision making, adapting to field conditions, ensuring the design vision is materializing, and taking advantage of value engineering opportunities.

Construction pricing is based on a negotiated price with the selected contractor who assisted us with value engineering during design. At the end of final design, if the contractor's price is within 10% of the engineer's estimate, the contract will be awarded.

Benefits of Project Partners include:

- Produces the best combination of cost and quality (i.e. value)
- Saves cost by minimizing unanticipated change orders and through equitable risk sharing
- Reduces assumptions and clarifies or eliminates uncertainty
- Encourages a collaborative team environment
- Reliably high quality construction
- Responsiveness of vendors
- Encourages creative problem solving
- Leads to predictable construction timing and duration
- Saves administrative time and reduces cost through long term relationships and familiarity

Will the MHFD Solicit Multiple Bids for Construction and Pick the Lowest Bid?

The FILI project management mirrors how the MHFD administers its own projects. Therefore, the Project Partners alternative delivery process will be used. See the preceding section for the specific details of the approach.

We do not solicit pricing from another contractor if the contractor's price is within 10% of the engineer's estimate.

How does the MHFD Determine if the Construction Price is Fair?

There are three check points:

- 1) MHFD staff is experienced in stream projects and knows the business well. Each watershed team constructs 10-20 stream projects a year and has extensive knowledge in construction and material pricing.
- 2) Design engineers provide construction cost estimating based on their experience within and outside of the MHFD. Their pricing is kept separate from the contractor's so there can be a fair comparison of unit costs.
- 3) We keep a database of contractor unit costs that includes not only our own projects, but also open low bid contracts from the Southeast Metro Stormwater Authority. The database is used to inform our engineer's cost estimates to make sure we're staying up to date with the latest cost trends within our niche of the construction industry.

Why doesn't Final Design Include Signed and Sealed Construction Documents?

The Project Partner model engages the selected consulting engineer and the selected contractor at the outset, and they work together to create a design and set of construction plans that is sufficient for the contractor to get started. The consulting engineer is retained throughout construction to assist the contractor in adjusting the design to fit the field conditions.

The contract documents for final design with this approach is called a "field-ready" design. In some cases, it may be 90% complete, and in other cases much less, but the plan set is not 100% complete and bid ready, and therefore cannot be stamped and sealed by the consulting engineer unless the engineer knows that they will be engaged during construction with the same prequalified contractor that participated during design to adjust the design to fit the field conditions. This tactic is used because we have found, through experience, that a highly skilled contractor with years of experience doing work in waterways adds value during design and does not need a 100% plan set to achieve the project goals — and not spending more time than necessary finalizing plans saves time and money.

How is the Money Collected for FILI Projects?

Typically money from the developer is collected in three phases to limit risks of unknown costs for both the MHFD and the developer.

The three phases are:

1. Conceptual Design Phase
2. Final Design and Permitting Phase
3. Construction, Establishment, and Monitoring Phase

Construction costs include a contingency agreed upon at final design and on a case-by-case basis depending on identified project risks. Construction management direct costs from the design team, as well as vegetation establishment and permit monitoring, will also be included in construction costs.

For each of the three phases, all costs associated with that phase shall be paid for by the developer as a lump sum, up front, prior to that phase starting.

How are FILI Agreements Structured?

There are two types of agreements for the MHFD to collect the project funds:

1. An agreement directly between the MHFD and the developer, with a memorandum of understanding with the local government outlining the process.
2. The developer and the local government enter into an agreement that brings in the money for the project. Then the MHFD and the local government enter into an Inter-Governmental Agreement to transfer the funds to the MHFD for the project.

How are Administrative Costs Calculated?

MHFD administrative costs will be charged for final design and construction phases of the FILI process. There are no administrative costs charged for the conceptual design phase. MHFD staff time spent during the conceptual design phase is considered part of the general services the MHFD provides to the development community. There is minimal project management time required, and the conceptual design phase helps determine if the FILI project is viable to move forward.

The final design phase administrative fee is calculated based on the schedule proposed to complete the final design. The price includes flat costs for start-up and close-out, in addition to a monthly charge for project management.

The construction phase fee is calculated as a percentage of the overall construction costs and pays for start-up, close-out, project management, vegetation establishment beyond the first year, annual permit monitoring, and permit close-out costs.

What Happens if a FILI Project is Initiated but Later Gets Abandoned?

In the event that a FILI project is initiated but either the developer or the local government chooses to abandon the process prior to funding the Construction, Establishment, and Monitoring phase, then any stream related improvements will revert back to review through the MHFD's Maintenance Eligibility Program. In addition, neither the developer nor the local government would not be allowed to use any in progress or approved permits that show the MHFD as the owner or permittee.