

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

RESOLUTION NO. 10-12
(Authorization to Award the Construction Contract for the
Cherrywood Circle Storm Sewer Project)

WHEREAS, a storm sewer system for the Cherrywood Circle area (Project) is identified in the “Big Dry Creek (ARAPCO) Tributary Watersheds Outfall Systems Planning Preliminary Design Report,” dated August 2000; and

WHEREAS, the SEMSWA Board authorized the design funding (\$170,000) and construction funding (\$350,000) for the Project with Resolution No. 08-46 and Resolution No. 09-29, respectively; and

WHEREAS, the Urban Drainage and Flood Control District (UDFCD) has entered into an agreement with SEMSWA to contribute \$350,000 to the Project; and

WHEREAS, the City of Centennial has budgeted up to \$40,041.65 to the Project for certain Project related pavement improvements; and

WHEREAS, the City of Centennial has also budgeted and scheduled other non-Project related pavement improvements in the Project area to follow the storm sewer construction; and

WHEREAS, the bidding process for the construction of the Project has been completed, and a lowest responsible bidder selected; and

WHEREAS, the selected bid for construction is \$626,385.50; and

WHEREAS, the selected bid includes the Project related pavement improvements which the City of Centennial has budgeted for; and

WHEREAS, the City of Centennial’s budget is adequate to pay for those Project related pavement improvements which are scheduled for the Project area and will be completed as part of the Project; and

WHEREAS, the lowest responsible bidder is Edge Contracting, Inc.; and

WHEREAS, it is typical in the industry to budget the bid amount plus an additional ten (10) percent to cover contingencies that may be encountered during construction; and

WHEREAS, the bid amount (\$626,385.50) plus an additional ten (10) percent (\$62,638.55) is a total of \$689,024.05 for the construction; and

WHEREAS, the design, engineering construction observation services, construction, and miscellaneous costs are estimated to be \$952,600; and

WHEREAS, SEMSWA had adopted a budget for calendar year 2009 subsequent to public hearing, which includes funds for construction of the Project.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Executive Director is authorized to execute an agreement with the City of Centennial for the funding and construction of pavement related improvements.
2. The Executive Director is authorized to enter into a construction contract with Edge Contracting, Inc. in the amount of \$626,385.50 on behalf of SEMSWA for the construction of the Project.
3. The funding for the Project is limited to \$952,600 without prior approval of the Board.

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

**INTERGOVERNMENTAL AGREEMENT REGARDING
DESIGN AND CONSTRUCTION FUNDING OF THE CHERRYWOOD CIRCLE
STORM SEWER AND PAVING**

This INTERGOVERNMENTAL AGREEMENT REGARDING DESIGN AND CONSTRUCTION FUNDING OF THE CHERRYWOOD CIRCLE STORM SEWER AND PAVING (the "Agreement") is made and entered into this _____ day of _____ 2010, by and between the CITY OF CENTENNIAL, a Colorado home rule municipality (the "City"), and SOUTHEAST METRO STORMWATER AUTHORITY, a quasi-municipal corporation and political subdivision of the State of Colorado ("SEMSWA") (collectively, the "Parties").

RECITALS

WHEREAS, the City is authorized to coordinate and participate in the provision of certain public infrastructure improvements within its boundaries in the State of Colorado, including, but not limited to, street improvements, storm drainage, landscaping, signalization, sidewalks and other improvements; and

WHEREAS, SEMSWA was formed to plan, construct, acquire, operate and maintain various drainage and flood control facilities and manage the stormwater quality within its boundaries; and

WHEREAS, there are regional stormwater needs that exist within SEMSWA's boundaries and the City and SEMSWA are authorized to provide certain stormwater infrastructure improvements; and

WHEREAS, the City plans for and executes an annual street paving program, and intends to resurface Pinewood Avenue and Rosewood Drive; and

WHEREAS, the City and SEMSWA wish to provide for the construction of a regional storm sewer to Big Dry Creek, and street curb, gutter and paving along the storm sewer route, to be known as the Cherrywood Circle Outfall (the "Project"); and

WHEREAS, the City and SEMSWA have discussed the nature, scope, and timing of the Project, and have determined that the Project benefits both the immediately surrounding area and the region as a whole; and

WHEREAS, the Parties desire to cooperate in the funding, and construction of the Project as set forth herein; and

WHEREAS, the Parties are authorized to contract with one another pursuant to Section 29-1-201, *et seq.*, C.R.S., and Article XIV, Section 18(2)(a) of the Colorado Constitution.

NOW, THEREFORE, in consideration of the covenants and mutual agreements herein contained, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

COVENANTS AND AGREEMENTS

1. Purpose. The purpose of this Agreement is to identify certain public infrastructure improvements to be funded by the Parties and the allocation of the costs thereof between the Parties, to establish dates regarding the construction thereof, and to establish the process by which such public infrastructure improvements will be designed and constructed. Storm sewer, curb and gutter, and paving have been designed along an alignment beginning at Big Dry Creek and Cherrywood Circle, and extending south to Pinewood Avenue, then west along Pinewood Avenue to Clarkson Street (See Exhibit A).

2. General Description of the Project Funding. The Parties hereby agree to cooperate in the funding and construction of the Project, as described more fully in this Agreement. The Parties anticipate that the Project will be bid on or about February 2, 2010, and that construction of the Project will be completed in 2010. The total estimated costs for the Project (including construction costs and a 10% construction contingency) and each Party's respective estimated share thereof is set forth below:

Project costs for the various elements of the effort are estimated as follows:

<u>ITEM</u>	<u>AMOUNT</u>
Construction	\$1,199,735.50
<u>Contingency</u>	<u>\$119,973.55</u>
Total	\$1,319,709.05

Each Party's Estimated Share of Cost of the Project

SEMSWA	\$1,279,667.40
<u>City</u>	<u>\$40,041.65</u>
Total	\$1,319,709.05

The Project costs defined in this Agreement are estimates. Final costs will be based on the awarded bid and adjustments that may be necessary during construction.

3. Project Design and Construction Details.

a) Budgeting/Appropriations. The City and SEMSWA have budgeted and appropriated their respective shares of the Project costs, and hereby expressly acknowledge and agree that the funds are available for such purpose as of the date of execution of this Agreement. The following provisions regarding design and construction, funding, and contract administration and accounting shall apply to the design and construction of the Project.

b) City Responsible for Design of Curb, Gutter and Paving. The City shall be responsible for the design of the curb, gutter and paving elements of the Project where these elements are different than the existing conditions. The City has engaged an engineer to design the curb, gutter and paving elements of the Project and to prepare an estimate of construction costs.

c) City Responsible for Design and Construction of Pinewood Avenue and Rosewood Drive Final Paving. The design and construction of the final paving of Pinewood Avenue and an asphalt overlay of Rosewood Drive shall be the responsibility of the City. The final paving construction of Pinewood Avenue and the asphalt overlay of Rosewood Drive shall follow the construction of the Project and the cost thereof is not a cost of the Project.

d) SEMSWA Responsible for Design of Storm Sewer. SEMSWA shall be responsible for the design of the storm sewer elements of the Project. The storm sewer elements are defined as inlets, manholes, pipes, headwalls, wingwalls, and erosion protection associated with the discharge of the storm sewer into Big Dry Creek. SEMSWA has engaged an engineer to design the storm sewer elements of the Project and prepare an estimate of construction costs.

e) SEMSWA Responsible for Construction of Project. SEMSWA shall be responsible for the construction of the Project, including storm sewer, curb and gutter, temporary pavement along Pinewood Avenue and Rosewood Drive, and permanent pavement patching along Cherrywood Circle and Clarkson Street.

f) Funding and Contract Administration.

i) The Project will be bid by SEMSWA and the contract awarded to the lowest responsible bidder. In the event that the lowest responsible bid is in excess of the Project cost estimate set forth in Section 2 above for either party, the Parties agree that SEMSWA shall not be authorized to issue a notice to proceed or award a contract for construction of the Project, until the Parties have agreed on an appropriate course of action, in accordance with the procedures set forth below. In the event that the lowest responsible bid exceeds the Project cost estimate, SEMSWA shall notify the City and the Parties shall mutually determine whether to: (1) proceed with the Project and deposit additional moneys into the Project Account, as that term is defined below; (2) proceed with the Project and reduce the scope of the Project; or (3) terminate this Agreement. In the event that the Parties are unable to mutually agree to either (1) or (2), SEMSWA will reject the bid and terminate the Agreement. Upon termination, the City will be refunded its share of funds actually deposited into the Project Account, if any.

ii) Prior to the award of the contract to construct the Project, the City shall pay the City's respective share of the Project costs to SEMSWA. SEMSWA shall deposit the funds received from the City, along with SEMSWA's share of the

Project costs into a separate account (the "Project Account"), and shall thereafter keep separate accounting records of all transfers into and out of the Project Account.

No contract award or notice to proceed shall be given by SEMSWA to the contractor selected to complete the Project until the Project Account has been fully funded by the Parties.

iii) Upon award of the contract, SEMSWA shall proceed to cause the Project to be completed in accordance with the approved plans and specifications. All payments to contractors shall be subject to withholding for retention in accordance with law, and shall be made in accordance with SEMSWA's construction administrator's recommendation that such payments be made in accordance with work performed to the satisfaction of SEMSWA. Field orders not resulting in an increase in the contract price or contract time may be processed by SEMSWA without prior approval by, but with notice to the City. Except for SEMSWA field order changes to handle emergency situations, the Parties must approve in writing any change orders which increase the contract price or time. Such approval shall not be unreasonably withheld and the City shall promptly respond to any request from SEMSWA for approval of a field order change. Concurrently with the approval of any change order which increases the Project costs, each Party shall immediately cause its respective share of the Project cost increase to be deposited into the Project Account. SEMSWA shall not make its final payment to the contractor that constructs the Project prior to publishing a Notice of Final Payment in The Villager, or other paper of general circulation within Arapahoe County, Colorado.

g) Accounting. SEMSWA shall provide the City with a monthly report evidencing i) the Project Account balance, ii) the total Project costs as compared to the Project budget, and iii) copies of all invoices/pay requests. In the event that SEMSWA determines that the cost of the Project is in excess of the approved budget, SEMSWA will notify the City to resolve the discrepancy between the actual costs and the amount which has been budgeted. The Parties will mutually determine how to resolve the increase in costs through the payment of additional money or a reduction in the scope of the Project. Any SEMSWA written request made to the City for additional Project funding above the City's initial deposit into the Project Account, shall be accompanied with a written report of SEMSWA's accountant or construction administrator summarizing the reason(s) the additional or supplemental funds are sought. For purposes of this Agreement, the Project shall be considered substantially complete upon inspection and conditional acceptance of the Project by SEMSWA. Within ninety (90) days of substantial completion of the Project, unless the Parties mutually agree in writing to a different time period, SEMSWA shall provide the City with a final accounting of total Project costs, showing the total costs allocated to each of the Parties. In the event that the City disputes any of the costs, the City shall notify SEMSWA within thirty (30) days of its receipt of SEMSWA's final accounting. SEMSWA shall have thirty (30) days to review the records to verify the costs and provide the City with a final cost reconciliation. In the event that the City does not agree with SEMSWA's final reconciliation, the City shall be entitled within sixty (60) days of receipt of the final accounting to have an independent Certified Public Accountant ("CPA"), mutually agreed to by the Parties, examine the financial records including all invoices, change orders,

and bank statements to determine if each party has paid its allocable share of the costs. The independent accountant examination fee shall be paid by SEMSWA if the CPA determines that the final accounting was in error and by the City if the CPA determines that the final accounting was not in error. If no discrepancy is found, but the City continues to contest the allocation of the costs, SEMSWA shall be entitled to file a declaratory judgment action in the District Court in and for Arapahoe County, Colorado and may deposit the remaining funds with the registry of said court. The Parties do hereby consent to such declaratory judgment action by SEMSWA. Any City funds remaining in the Project Account after all Project costs have been paid shall be returned to the City within 120 days of the completion of the Project.

h) Operation and Maintenance of the Project. The storm sewer elements of the Project shall be operated and maintained by SEMSWA, subject to any applicable warranty periods with respect to contractors responsible for construction of the Project and budgeting and appropriation of necessary funds by the SEMSWA Board of Directors, after the Project has received final acceptance. The curb, gutter and paving elements of the Project shall be operated and maintained by the City, subject to any applicable warranty periods with respect to contractors responsible for construction of the Project and budgeting and appropriation of necessary funds by the City, after the Project has received final acceptance.

4. Failure to Provide Funds/Termination. The funding obligation of the Parties is, in addition to the other limitations contained in this Agreement, expressly conditioned upon annual budget and appropriation by each party. In the event that one of the Parties fails to either appropriate funds, or fund its respective obligations hereunder by the date prescribed, or to exercise any other funding options as described in Paragraph 3 of this Agreement, the other Party shall be entitled to terminate this Agreement without liability or obligation to the other Party. Notwithstanding the foregoing, in the event any Notice to Proceed has been issued as provided in this Agreement with respect to the Project hereunder, then the obligation of the Parties to fund amounts required for the completion of the Project shall be enforceable in accordance with any legal remedies available at law or in equity.

5. Miscellaneous.

a) Governing Law and Jurisdiction. This Agreement and all disputes arising hereunder shall be governed by the laws of the State of Colorado, and the Parties agree that the venue and jurisdiction over any claim arising from this Agreement shall lie in the District Court of Arapahoe County.

b) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors, assigns, and legal representatives.

c) Third Party Beneficiary. It is specifically agreed between the Parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain any claim under this Agreement. The duties, obligations and responsibilities of the Parties to this Agreement with respect to third parties shall remain as

imposed by law.

d) Entire Agreement; Amendments. This Agreement, including its exhibits, contains the entire understanding of the Parties with respect to this subject matter. This Agreement supersedes all prior agreements and understandings between the Parties with respect to its subject matter. This Agreement may be amended only by a written instrument duly executed by the Parties or their respective successors or assigns.

e) Notice and Communications. Any notice pursuant to the terms and conditions of this Agreement shall be in writing and delivered personally, or sent by certified mail, return receipt requested, or sent by a recognized overnight mail or courier services, with delivery receipt requested, to the following addresses (or to such other address as may from time to time be specified in writing by the Parties):

If to the City:

City of Centennial
Attn: City Manager
13133 East Arapahoe Road
Centennial, CO 80112

With a copy to:

City Attorney's Office
City of Centennial
13133 East Arapahoe Road, Suite 100
Centennial, CO 80112

If to SEMSWA:

John A. McCarty, Executive Director
Southeast Metro Stormwater Authority
76 Inverness Drive East, Suite A
Centennial, CO 80112-5106

With a copy to:

Edward J. Krisor, Esq.
3900 South Wadsworth Blvd, Suite 320
Lakewood, CO 80235

Notices shall be effective when received by the party to whom addressed.

f) Binding Representative. In regard to change orders, the City designates the City Manager or his or her designee as its representative with power to bind the City.

g) Default/Remedies. In the event of a breach or default of this Agreement by any party, the non-defaulting party shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or monetary damages. In the event of any litigation, arbitration or other proceeding to enforce the terms, covenants or conditions hereof, the prevailing party in such litigation, arbitration or other proceeding shall be entitled to obtain as part of its judgment or award its costs and reasonable attorneys' fees.

h) Force Majeure. Wherever there is provided in this Agreement a time limitation for performance by the Parties for any obligations related to construction, the time provided for shall be extended for as long as and to the extent that the delay is due to an act of God, strikes, labor disputes, inability to obtain labor or materials or reasonable substitutes therefor, fire or other casualty and other causes beyond the control of the Parties.

i) Counterpart Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

j) Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then the legality, validity and enforceability of the remaining provisions of this Agreement will not be affected thereby; and in lieu of each such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and which will be legal, valid and enforceable.

k) Governmental Immunity. Nothing herein shall be construed as a waiver of the rights and privileges of the City or SEMSWA pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S., as amended from time to time.

[This space left intentionally blank. The signature page follows.]

Made and entered into as of the date and year first above written.

CITY OF CENTENNIAL, COLORADO

By: _____
Cathy A. Noon, Mayor

ATTEST:

APPROVED AS TO FORM:

By: _____
Deputy City Clerk

By: _____
For the City Attorney's Office

DEPARTMENT OF ORIGINATION: _____

FINANCE DEPARTMENT REVIEW:

Finance has reviewed this agreement and the funds:

- ☐ *are appropriated and available for this agreement.*
- ☐ *are not available for this agreement.*

By: _____

Budgeted Item/Account: _____

DEPARTMENT/POSITION RESPONSIBLE FOR ADMINISTRATION OF CONTRACT:

**SOUTHEAST METRO STORMWATER
AUTHORITY**

By: _____
John A. McCarty, Executive Director

ATTEST:

By: _____
Secretary

EXHIBIT A

ORCHARD ROAD

BIG DRY CREEK

PINEWOOD AVENUE

Storm Sewer Project

CLARKSON STREET

ROSEWOOD DRIVE

CHERRYWOOD CIRCLE



0 150 300 600 Feet

