

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

RESOLUTION 18-28

Authorization to Enter into an Agreement with Arapahoe County to Fund the Construction of East Toll Gate Creek Con-Span Crossing at Gun Club Road Drainage Crossing.

WHEREAS, SEMSWA was formed to plan, construct, acquire, operate and maintain various drainage and flood control facilities within its boundary; and

WHEREAS, there are regional stormwater needs that exist within SEMSWA's and the County's boundary and SEMSWA is authorized to provide stormwater infrastructure improvements; and

WHEREAS, the County and SEMSWA wish to provide for the construction of a drainage crossing structure to convey the 100-year event under Gun Club Road (the "Project"); and

WHEREAS, the County and SEMSWA have discussed the nature, scope, and timing of the project which represents a benefit to the area as a whole region; and

WHEREAS, the Project is located within SEMSWA's and the County's boundary;

WHEREAS, the County will be responsible for the construction of the Project and, upon final acceptance after construction, will be maintained and operated by SEMSWA; and

WHEREAS, the County has authority to acquire and own Easements as may be necessary to construct, operate and maintain the project;

WHEREAS, SEMSWA and the County (the "Parties") desire to cooperate in the funding, with SEMSWA contributing \$300,000 toward the construction of the Project; and

WHEREAS, SEMSWA has adopted a budget for the calendar year 2018 subsequent to public hearing, which includes funds for the project; and

WHEREAS, attached to this Resolution is an Intergovernmental Agreement Regarding Construction Funding Of East Toll Gate Creek Con-Span Crossing At Gun Club Road Drainage Crossing ("Agreement") which describes the individual responsibilities of both the County and SEMSWA regarding the Project.

NOW, THEREFORE, BE IT RESOLVED THAT:

The Executive Director is authorized to enter into the attached Agreement with the County to provide funding from SEMSWA to the County in the amount of \$300,000.00 for the construction of the Project.

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
CONSTRUCTION FUNDING OF THE EAST TOLL GATE CREEK CON- SPAN CROSSING
AT GUN CLUB ROAD

This INTERGOVERNMENTAL AGREEMENT REGARDING CONSTRUCTION FUNDING OF EAST TOLL GATE CREEK CON-SPAN CROSSING AT GUN CLUB ROAD DRAINAGE CROSSING (the "Agreement") is made and entered into as of this _____ day of _____ 2018 by and between the COUNTY OF ARAPAHOE, COLORADO, a body corporate and politic of the State of Colorado (the "County"), and SOUTHEAST METRO STORMWATER AUTHORITY, a quasi-municipal corporation and political subdivision of the State of Colorado ("SEMSWA"), collectively (the "Parties").

RECITALS

WHEREAS, the County 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 boundary including the County; and

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

WHEREAS, the County and SEMSWA wish to provide for the construction of a drainage structure crossing below Gun Club Road to allow the 100 year storm event to pass (the "Project"); and

WHEREAS, the County and SEMSWA, have discussed the nature, scope, and timing of the Project which represents a benefit to the area as a whole and to the region; and

WHEREAS, the Project will be located within SEMSWA's boundary, and within the County, and upon final acceptance after construction, will be maintained and operated by SEMSWA; and

WHEREAS, the County has authority to acquire and own Easements as may be necessary to construct, operate and maintain the project; and

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

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.

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 construction of the Project will begin in the year 2018. Further description of, and an estimate of the costs for the Project are set forth in Exhibit A, attached hereto and incorporated herein by this reference.

The Project costs will include cost sharing for a 120 foot long con span arch approximately 32 feet wide. The con span structure is designed to pass the 100 year storm event below Gun Club Road. As part of the con span crossing design, a pedestrian underpass will be incorporated and accommodate pedestrians up to the 10 year storm event. As part of the Project, rip rap will be used to stabilize the stream and to limit further degradation of the stream near Gun Club Road.

This cost breakdown is for estimating purposes only and SEMSWA's contribution will not increase or decrease based on the actual bid amount. The total contribution by SEMSWA will consist of a lump sum payment of \$300,000.00 for use by the County in the design and construction of the con span crossing.

3. Project Design and Construction Details.

a) Scoping/Appropriations. The County and SEMSWA intend to budget and appropriate their respective shares of the funds for the Project, such that the funds are available for such purpose at time of execution of this agreement. The following provisions regarding construction funding and contract administration and accounting shall apply to the Project.

b) County Responsible for Design. The County shall be responsible for the design of the Project. The County has engaged an engineer to design the Project and prepare an estimate of construction costs. However, SEMSWA shall have the right to review and approve the design of the con span portion of the Project, in advance of construction, which approval shall not be unreasonably withheld.

c) Easement Acquisition. The County shall be responsible for pursuing acquisition of necessary ROW easements for the project. The County shall hire a Right-of-Way agent/negotiator and appraiser in accordance with the Federal Uniform Right of Way

Act as stipulated in a separate IGA established with CDOT. Such easement shall provide for SEMSWA's access to and maintenance of the con span.

d) Funding and Contract Administration. Within sixty days of signature of this Agreement, SEMSWA will issue payment to the County in the amount of \$300,000.00 for their respective share of the Project costs as described in Paragraph 2 of this Agreement.

e) The Project Shall be Operated by the County and maintained by SEMSWA. The Project shall be operated, subject to any applicable warranty periods with respect to contractors responsible for construction of the Project and appropriation of necessary funds by the County Board of County Commissioners and the SEMSWA Board of Directors. After the Project has been issued a Notice of Final Completion, SEMSWA will then take over maintenance operations of the con span excluding the pedestrian underpass which shall be maintained by the County.

f) Construction Observation. SEMSWA shall be obligated to maintain the con span portion of the Project as stated in this Agreement, provided that SEMSWA is allowed reasonable access to job site to observe the construction and provided that the con span is constructed in accordance with the approved plans and specifications.

g) Each party agrees, to the extent permitted by law, to defend, indemnify and hold the other harmless regarding each of their maintenance obligations involving the con span and pedestrian underpass portions of the Project and claims involving injury or death involving those portions of the Project.

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. The Parties agree this Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

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 County:

Chairman
Board of County Commissioners
County of Arapahoe
5334 South Prince Street
Littleton, Colorado 80126-0001

With a copy to:

Robert Hill, Esq.
Senior Assistant Arapahoe County Attorney
Arapahoe County
5334 South Prince Street
Littleton, Colorado 80126-0001

David Schmit, Director
Department of Development Services
Arapahoe County
6924 S. Lima Street
Littleton, Colorado 80012

If to SEMSWA:

John A. McCarty, Executive Director
Southeast Metro Stormwater Authority
7437 S. Fairplay Street

Centennial, Colorado 80012

With a copy to:

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

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

f) Binding Representative. In regard to change orders, the County designates The Director of Public Works or his/her designee as its representative with power to bind the County.

g) Acceptance of the Project. Upon construction contract final acceptance of the Project and expiration of all applicable warranties, SEMSWA shall operate and maintain the Project, excluding the pedestrian underpass which shall be maintained by the County, conditioned upon the annual budget and appropriation of necessary funds for such operation and maintenance by SEMSWA's Board of Directors and appropriation of necessary funds by the County Board of County Commissioners.

h) 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.

i) 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 in compliance with such limitation 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.

j) 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.

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

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

SEMSWA

By: _____

ATTEST

By: _____
Secretary

COUNTY OF ARAPAHOE, COLORADO

By: 

David M. Schmit, P.E., Director
Arapahoe County Public Works and Development
Pursuant to Resolution No. 180098

ATTEST

By: 

County Clerk

EXHIBIT A

Detailed Estimate of Costs

Con Span cost estimate

Page 59 of FOR Plans identify Con Span work items
 Page 67 of FOR plans identify Wall and Headwall items
 Wall cost includes Headwalls for con span. See page 64 and 71 - Headwall total = 37 feet out of 180 wall feet. OR 20% Wall Cost
 Did not include Paving over Con Span, sidewalk railing

