

AGREEMENT REGARDING
FINAL DESIGN, RIGHT-OF-WAY ACQUISITION AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
PINEY CREEK AT CALEY AVENUE

Agreement No. 06-08.03

THIS AGREEMENT, made this _____ day of _____, 2006, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT") and SOUTHEAST METRO STORMWATER AUTHORITY, acting by and through SEMSWA WATER ACTIVITY ENTERPRISE (hereinafter called "SEMSWA") and collectively known as "PARTIES";

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WITNESSETH:

WHEREAS, DISTRICT, in a policy statement previously adopted (Resolution No. 14, Series of 1970 and Resolution No. 11, Series of 1973) expressed an intent to assist public bodies which have heretofore enacted floodplain regulation measures; and

WHEREAS, DISTRICT and ARAPAHOE COUNTY, participated in a stream stabilization plan titled "Piney Creek and Tributaries" by Greenhorne and O'Mara, dated October 1989 (hereinafter called "PLAN"); and

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WHEREAS, PARTIES now desire to proceed with the design, right-of-way acquisition and construction of drainage and flood control improvements for Piney Creek at Caley Avenue (hereinafter called "PROJECT"); and

WHEREAS, DISTRICT has adopted at a public hearing a Five-Year Capital Improvement Program (Resolution No. 81, Series of 2005) for drainage and flood control facilities in which PROJECT was included in the 2006 calendar year; and

WHEREAS, DISTRICT has heretofore adopted a Special Revenue Fund Budget for calendar year 2006 subsequent to public hearing (Resolution No. 67, Series of 2005) which includes funds for PROJECT; and

WHEREAS, DISTRICT's Board of Directors has authorized DISTRICT financial participation for PROJECT (Resolution No. 40, Series of 2006); and

WHEREAS, the Board of Directors of SEMSWA and the Board of Directors of DISTRICT have authorized, by appropriation or resolution, all of PROJECT costs of the respective PARTIES.

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NOW, THEREFORE, in consideration of the mutual promises contained herein, PARTIES hereto agree as follows:

1. SCOPE OF THIS AGREEMENT

This Agreement defines the responsibilities and financial commitments of PARTIES with respect to PROJECT.

2. SCOPE OF PROJECT

A. Final Design. PROJECT shall include the final design of improvements in accordance with the recommendations defined in PLAN. Specifically, the final design of facilities shall be at Caley Avenue, as shown on Exhibit A.

- B. Right-of-Way Delineation and Acquisition. Right-of-way for the improvements as set forth in the final design and an estimate of costs for acquisition shall be determined. Maps, parcel descriptions and parcel plats shall also be prepared.
- C. Construction. PROJECT shall include construction by DISTRICT of the drainage and flood control improvements as set forth in the final design.

3. PUBLIC NECESSITY

PARTIES agree that the work performed pursuant to this Agreement is necessary for the health, safety, comfort, convenience, and welfare of all the people of the State, and is of particular benefit to the inhabitants of DISTRICT and the property therein.

4. PROJECT COSTS AND ALLOCATION OF COSTS

A. PARTIES agree that for the purposes of this Agreement PROJECT costs shall consist of and be limited to the following:

- 1. Final design services;
- 2. Delineation, description and acquisition of required rights-of-way/easements;
- 3. Construction of improvements;
- 4. Contingencies mutually agreeable to PARTIES.

B. It is understood that PROJECT costs as defined above are not to exceed \$100,000 without amendment to this Agreement.

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

<u>ITEM</u>	<u>AMOUNT</u>
1. Final Design	\$100,000
2. Right-of-way *	
3. Construction *	
4. Contingency *	
Grand Total	\$100,000

This breakdown of costs is for estimating purposes only. Costs may vary between the various elements of the effort without amendment to this Agreement provided the total expenditures do not exceed the maximum contribution by all PARTIES plus accrued interest.

*It is anticipated that construction funding shall be encumbered in a future year.

C. Based on total PROJECT costs, the maximum percent and dollar contribution by each party shall be:

	<u>Percentage Share</u>	<u>Maximum Contribution</u>
DISTRICT	50.00%	\$ 50,000
<u>SEMSWA</u>	50.00%	50,000
TOTAL	100.00%	\$ 100,000

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5. MANAGEMENT OF FINANCES

As set forth in DISTRICT policy (Resolution No. 11, Series of 1973 and Resolution No. 49, Series of 1977), the cost sharing shall be after subtracting state, federal, or other sources of funding from third parties. However, monies SEMSWA may receive from federal funds, the Federal Revenue Sharing Program, the Federal Community Development Program, or such similar discretionary programs as approved by DISTRICT's Board of Directors may be considered as and applied toward SEMSWA's share of improvement costs.

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Payment of each party's full share (SEMSWA - \$50,000; DISTRICT - \$50,000) shall be made to DISTRICT subsequent to execution of this Agreement and within 30 days of request for payment by DISTRICT. The payments by PARTIES shall be held by DISTRICT in a special fund to pay for increments of PROJECT as authorized by PARTIES, and as defined herein. DISTRICT shall provide a periodic accounting of PROJECT funds as well as a periodic notification to SEMSWA of any unpaid obligations. Any interest earned by the monies contributed by PARTIES shall be accrued to the special fund established by DISTRICT for PROJECT and such interest shall be used only for PROJECT upon approval by the contracting officers (Paragraph 13).

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Within one year of completion of PROJECT if there are monies including interest earned remaining which are not committed, obligated, or disbursed, each party shall receive a share of such monies, which shares shall be computed as were the original shares.

6. FINAL DESIGN

The contracting officers for PARTIES, as defined under Paragraph 13 of this Agreement, shall select an engineer mutually agreeable to both PARTIES. DISTRICT shall contract with selected engineer and shall supervise and coordinate the final design including right-of-way delineation subject to approval of the contracting officer for SEMSWA. Payment for final design services shall be made by DISTRICT as the work progresses from the PROJECT fund established as set forth above.

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Final design services shall consist of, but not be limited to, the following:

- A. Preparation of a work plan schedule identifying the timing of major elements in the design;
- B. Delineation of required right-of-way/easements;
- C. Preparation of detailed construction plans and specifications;
- D. Preparation of an estimate of probable construction costs of the work covered by the plans and specifications;
- E. Preparation of an appropriate construction schedule.

DISTRICT shall provide any written work product by the engineer to SEMSWA.

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7. RIGHT-OF-WAY

SEMSWA, with DISTRICT assistance, shall be responsible for acquiring, subject to approval of DISTRICT, such land or interests in land needed to implement construction of the drainage and flood control improvements as defined herein. The cost to be shared by PARTIES for right-of-way acquisition may include relocation costs of existing occupants. Appraisal costs and costs

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associated with condemnation (including outside legal costs) will also be considered a PROJECT cost. Right-of-way acquisition shall be in accordance with DISTRICT policy attached hereto as Exhibit B. Within Exhibit B, references to purchasing agency will be references to SEMSWA. In reference to Paragraph 1.D and 2.D of Exhibit B, the Purchasing Agency shall pay the reasonable costs of the property owners appraisal only when the Purchasing Agency's appraisal is \$5,000 or greater. DISTRICT shall serve as the paying agency.

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A. Coordination of Right-of-Way Acquisition. Cost sharing by PARTIES will be based on supporting documentation such as formal appraisals, reasonable relocation cost settlements, legal description of the property, and other information deemed appropriate to the acquisition. Furthermore, cost sharing will be only for the properties, or portions thereof, approved by PARTIES to be needed for the drainage and flood control portions of PROJECT. Request for such approval shall include appraisals of property, legal description of the property, and other information deemed appropriate to the acquisition by PARTIES to this Agreement. SEMSWA shall purchase the right-of-way only after receiving prior approval of DISTRICT.

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B. Payment for Right-of-Way Acquisition. Following purchase or receipt of executed memorandum of agreement between SEMSWA and property owner for the needed right-of-way that commits the property owner to sell property to SEMSWA at a price certain and on a date certain, SEMSWA shall so advise DISTRICT and request payment as provided above. DISTRICT shall make payment within 30 days of receipt of request accompanied by the information set forth above.

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C. Ownership of Property and Limitation of Use. SEMSWA shall own the property either in fee or non-revocable easement and shall be responsible for same. It is specifically understood that the right-of-way is being used for drainage and flood control purposes. The properties upon which PROJECT is constructed shall not be used for any purpose that will diminish or preclude its use for drainage and flood control purposes. SEMSWA may not dispose of or change the use of the properties without approval of DISTRICT. If, in the future, SEMSWA disposes of any portion of or all of the properties acquired upon which PROJECT is constructed pursuant to this Agreement; changes the use of any portion or all of the properties upon which PROJECT is constructed pursuant to this Agreement; or modifies any of the improvements located on any portion of the properties upon which PROJECT is constructed pursuant to this Agreement; and SEMSWA has not obtained the written approval of DISTRICT prior to such action, SEMSWA shall take any and all action necessary to reverse said unauthorized activity and return the properties and improvements thereon, acquired and constructed pursuant to this Agreement, to the ownership and condition they were in immediately prior to the unauthorized activity at SEMSWA's sole expense. In the event SEMSWA breaches the terms and provisions of this Paragraph 7.C

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and does not voluntarily cure as set forth above, DISTRICT shall have the right to pursue a claim against SEMSWA for specific performance of this portion of the Agreement.

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DISTRICT may, subsequent to the recording by SEMSWA of any document transferring title or another interest to property acquired pursuant to this Agreement to SEMSWA, record a memorandum of this Agreement (Exhibit C), specifically a verbatim transcript of

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Paragraph 7.C. Ownership of Property and Limitation of Use except for this sub-paragraph which shall not be contained in the memorandum. The memorandum shall reference by

legal description the property being acquired by SEMSWA and shall be recorded in the records of the Clerk and Recorder of Arapahoe County immediately following the recording

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of the document transferring title or another interest to SEMSWA. SEMSWA authorizes the recording of that memorandum and acknowledges that the same is meant to encumber the

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property with its restrictions.

8. MANAGEMENT OF CONSTRUCTION

A. Costs. Construction costs shall consist of those costs as incurred by the lowest acceptable bidder(s) including detour costs, licenses and permits, utility relocations, and construction related engineering services as defined in Paragraph 4 of this Agreement.

B. Construction Management and Payment

1. DISTRICT, with the assistance of SEMSWA, shall administer and coordinate the construction-related work as provided herein.

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2. DISTRICT, with assistance and approval of SEMSWA, shall advertise for construction bids; conduct a bid opening; prepare construction contract documents; and award construction contract(s).

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3. DISTRICT shall require the contractor to provide adequate liability insurance that includes SEMSWA. The contractor shall be required to indemnify SEMSWA. Copies of the insurance coverage shall be provided to SEMSWA.

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4. DISTRICT, with assistance of SEMSWA, shall coordinate field surveying; staking; inspection; testing; acquisition of right-of-way; and engineering as required to construct PROJECT. DISTRICT, with assistance of SEMSWA, shall assure that

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construction is performed in accordance with the construction contract documents including approved plans and specifications and shall accurately record the quantities and costs relative thereto. Copies of all inspection reports shall be furnished to SEMSWA on a weekly basis. DISTRICT shall retain an engineer to perform all or a part of these duties.

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5. DISTRICT, with approval of SEMSWA, shall contract with and provide the services of the design engineer for basic engineering construction services to include addendum preparation; survey control points; explanatory sketches; revisions of contract plans; shop drawing review; as-built plans; weekly inspection of work; and final inspection.

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6. PARTIES shall have access to the site during construction at all times to observe the progress of work and conformance to construction contract documents including plans and specifications.

7. DISTRICT shall review and approve contractor billings and send them to SEMSWA for approval. DISTRICT shall remit payment to contractor based on billings approved by PARTIES.

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8. DISTRICT, with assistance and written concurrence by SEMSWA, shall prepare and issue all written change or work orders to the contract documents.

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9. PARTIES shall jointly conduct a final inspection and accept or reject the completed PROJECT in accordance with the contract documents.

10. DISTRICT shall provide SEMSWA a set of mylar reproducible "as-built" plans.

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C. Construction Change Orders. In the event that it becomes necessary and advisable to change the scope or detail of the work to be performed under the contract(s), such changes shall be rejected or approved in writing by the contracting officers. No change orders shall be approved that increase the costs beyond the funds available in the PROJECT fund, including interest earned on those funds, unless and until the additional funds needed to pay for the added costs are committed by all PARTIES.

9. MAINTENANCE

PARTIES agree that SEMSWA shall own and be responsible for maintenance of the completed and accepted PROJECT. PARTIES further agree that DISTRICT, at SEMSWA's request, shall assist SEMSWA with the maintenance of all facilities constructed or modified by virtue of this

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Agreement to the extent possible depending on availability of DISTRICT funds. Such maintenance assistance shall be limited to drainage and flood control features of PROJECT. Maintenance assistance may include activities such as keeping flow areas free and clear of debris and silt, keeping culverts free of debris and sediment, repairing drainage and flood control structures such as drop structures and energy dissipaters, and clean-up measures after periods of heavy runoff. The specific nature of the maintenance assistance shall be set forth in a memorandum of understanding from DISTRICT to SEMSWA, upon acceptance of DISTRICT's annual Maintenance Work Program.

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DISTRICT shall have right-of-access to right-of-way and storm drainage improvements at all times for observation of flood control facility conditions and for maintenance when funds are available.

10. FLOODPLAIN REGULATION

SEMSWA agrees to regulate and control the floodplain of Piney Creek within SEMSWA in the manner prescribed by the National Flood Insurance Program and prescribed regulations thereto as a minimum.

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PARTIES understand and agree, however, that SEMSWA cannot obligate itself by contract to exercise its police powers. If SEMSWA fails to regulate the floodplain of Piney Creek within SEMSWA in the manner prescribed by the National Flood Insurance Program and prescribed

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regulations thereto as a minimum, DISTRICT may exercise its power to do so and SEMSWA shall cooperate fully.

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11. TERM OF AGREEMENT

The term of this Agreement shall commence upon final execution by all PARTIES and shall terminate three (3) years after the final payment is made to the construction contractor and the final accounting of funds on deposit at DISTRICT is provided to all PARTIES pursuant to Paragraph 5 herein, except for Paragraph 10. FLOODPLAIN REGULATION, Paragraph 7.C. Ownership of Property and Limitation of Use, and Paragraph 9. MAINTENANCE, which shall run in perpetuity.

12. LIABILITY

Each party hereto shall be responsible for any suits, demands, costs or actions at law resulting from its own acts or omissions and may insure against such possibilities as appropriate.

13. CONTRACTING OFFICERS AND NOTICES

A. The contracting officer for SEMSWA shall be the Executive Director, 10730 E. Briarwood Ave., Suite 100, Centennial, Colorado 80112.

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B. The contracting officer for DISTRICT shall be the Executive Director, 2480 West 26th Avenue, Suite 156B, Denver, Colorado 80211.

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C. Any notices, demands or other communications required or permitted to be given by any provision of this Agreement shall be given in writing, delivered personally or sent by registered mail, postage prepaid and return receipt requested, addressed to PARTIES at the addresses set forth above or at such other address as either party may hereafter or from time to time designate by written notice to the other party given when personally delivered or mailed, and shall be considered received in the earlier of either the day on which such notice is actually received by the party to whom it is addressed or the third day after such notice is mailed.

D. The contracting officers for PARTIES each agree to designate and assign a PROJECT representative to act on the behalf of said PARTIES in all matters related to PROJECT undertaken pursuant to this Agreement. Each representative shall coordinate all PROJECT-related issues between PARTIES, shall attend all progress meetings, and shall be responsible for providing all available PROJECT-related file information to the engineer upon request by DISTRICT or SEMSWA. Said representatives shall have the authority for all approvals, authorizations, notices or concurrences required under this Agreement or any amendments or addenda to this Agreement.

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14. AMENDMENTS

This Agreement contains all of the terms agreed upon by and among PARTIES. Any amendments or modifications to this Agreement shall be in writing and executed by PARTIES hereto to be valid and binding.

15. SEVERABILITY

If any clause or provision herein contained shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such invalid or unenforceable clause or provision shall not affect the validity of the Agreement as a whole and all other clauses or provisions shall be given full force and effect.

16. APPLICABLE LAWS

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any and all legal actions regarding the transaction covered herein shall lie in District Court in and for the County of Denver, State of Colorado.

17. ASSIGNABILITY

No party to this Agreement shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the nonassigning party or parties to this Agreement.

18. BINDING EFFECT

The provisions of this Agreement shall bind and shall inure to the benefit of PARTIES hereto and to their respective successors and permitted assigns.

19. ENFORCEABILITY

PARTIES hereto agree and acknowledge that this Agreement may be enforced in law or in equity, by decree of specific performance or damages, or such other legal or equitable relief as may be available subject to the provisions of the laws of the State of Colorado.

20. TERMINATION OF AGREEMENT

This Agreement may be terminated upon thirty (30) day's written notice by any of PARTIES, but only if there are no contingent, outstanding contracts. If there are contingent, outstanding contracts, this Agreement may only be terminated upon mutual agreement of all PARTIES and only upon the cancellation of all contingent, outstanding contracts. All costs associated with the cancellation of the contingent contracts shall be shared between PARTIES in the same ratio(s) as were their contributions and subject to the maximum amount of each party's contribution as set forth herein.

21. PUBLIC RELATIONS

It shall be at SEMSWA's sole discretion to initiate and to carry out any public relations program to inform the residents in PROJECT area as to the purpose of PROJECT and what impact it may have on them. Technical and final design recommendations shall be presented to the public by the selected engineer. In any event DISTRICT shall have no responsibility for a public relations program, but shall assist SEMSWA as needed and appropriate.

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22. NO DISCRIMINATION IN EMPLOYMENT

In connection with the performance of work under this Agreement, PARTIES agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified because of race, color, ancestry, creed, religion, national origin, gender,

age, military status, sexual orientation, marital status, or physical or mental disability and further agree to insert the foregoing provision in all subcontracts hereunder.

23. APPROPRIATIONS

Notwithstanding any other term, condition, or provision herein, each and every obligation of SEMSWA and/or DISTRICT stated in this Agreement is subject to the requirement of a prior appropriation of funds therefore by the appropriate governing body of SEMSWA and/or DISTRICT.

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24. NO THIRD PARTY BENEFICIARIES

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to PARTIES, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of PARTIES that any person or party other than any one of PARTIES receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

WHEREFORE, PARTIES hereto have caused this instrument to be executed by properly authorized signatories as of the date and year first above written.

URBAN DRAINAGE AND
FLOOD CONTROL DISTRICT

(SEAL)

By _____

ATTEST:

Title Executive Director

Date _____

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

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By _____

L. Scott Tucker

Deleted: David M. Schmit, P.E.

ATTEST:

Title Executive Director

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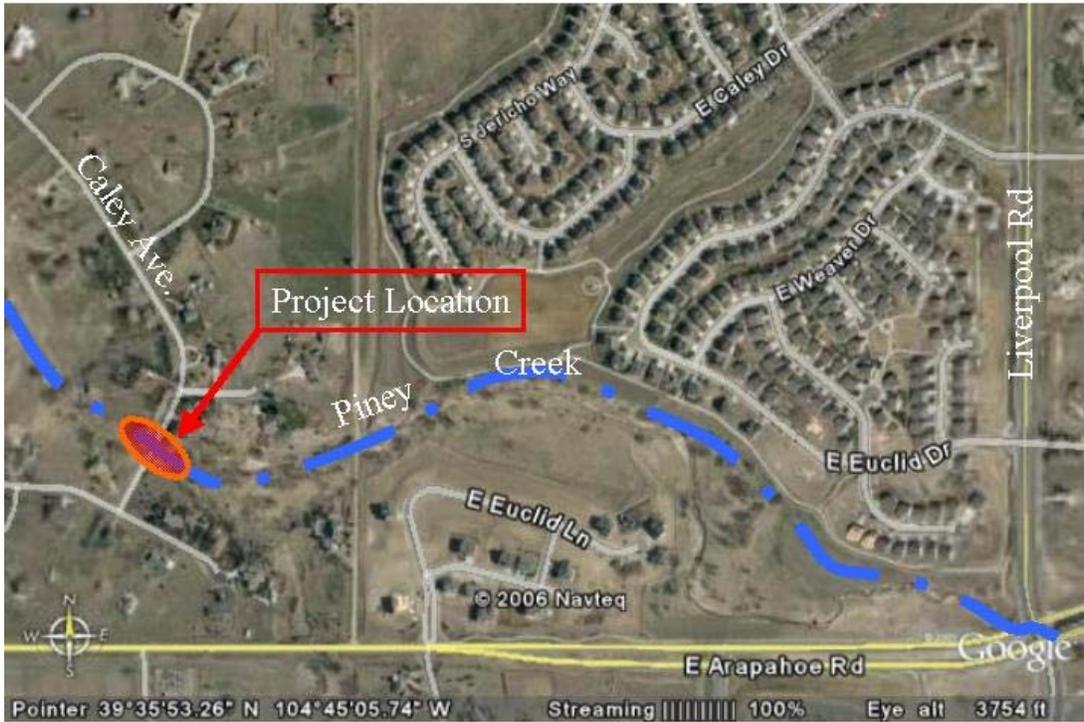
Date _____

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Authorization pursuant to Resolution 2002-4

AGREEMENT REGARDING
FINAL DESIGN, RIGHT-OF-WAY ACQUISITION AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
PINEY CREEK AT CALEY AVENUE

Agreement No. 06-08.03

Exhibit A



SAMPLE

AGREEMENT REGARDING
FINAL DESIGN, RIGHT-OF-WAY ACQUISITION AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
PINEY CREEK AT CALEY AVENUE

Agreement No. 06-08.03

Exhibit B

REAL PROPERTY ACQUISITION POLICY
April 1982
(Amended March 1985)

WHEREAS, DISTRICT participates in construction and maintenance projects and in floodplain preservation efforts wherein it is necessary to acquire by purchase or condemnation, title to, easements over, or right of entry to real property for flood control purposes; and

WHEREAS, in some cases local governments are the purchasing agency with DISTRICT participating in the cost of the acquisition, and in other cases DISTRICT is the purchasing agency; and

WHEREAS, when local governments are the purchasing agency it is desirable for DISTRICT to have guidelines that will serve as a basis for DISTRICT sharing in the cost of the acquisition; and

WHEREAS, when DISTRICT is the purchasing agency it is also desirable to have guidelines for the purchase or condemnation of real property by DISTRICT.

NOW THEREFORE, the following policy shall be used in the acquisition of real property when DISTRICT funds are involved:

1. LOCAL GOVERNMENT IS PURCHASING AGENCY

- A. DISTRICT shall participate to the extent set forth in an interagency agreement in the cost to acquire by purchase or condemnation, title to, easements over, or right of entry to real property needed for PROJECT. Such property shall be described by the use of boundary survey data and shall include only the parcels needed for the flood control project or flood control portions of PROJECT.
- B. The purchasing agency shall cause an appraisal to be made by an appraiser approved by DISTRICT of the real property subject to acquisition. The appraiser shall possess an MAI designation for acquisitions estimated to cost more than \$10,000.
- C. The property owner should be advised informally and as early as possible of the interest of the agency in acquisition of the property. Further informal discussions and negotiations as appropriate should be held prior to completion of the appraisal.
- D. Negotiations shall be continued with the owner(s) on the basis of the appraisal once it is completed. If the appraised price is unacceptable to the owner(s) the purchasing agency, in accordance with all applicable Colorado State laws, shall provide a formal notice of intent to acquire the property together with a description of the property to be acquired to anyone

having an interest of record in the property involved. Such owner(s) may employ one appraiser of their choosing to appraise the property to be acquired. Such appraisal shall be made using sound, fair, and recognized appraisal practices which are consistent with law. If a copy of the appraisal obtained by the property owner(s) is submitted to the purchasing agency within 90 days of the date formal notice was provided, the purchasing agency shall pay the reasonable costs of the appraisal.

- E. Assuming the second appraisal is based upon sound appraisal principles and data and is reasonable and valid, the purchasing agency shall negotiate a purchase, with the price of the land or property actually taken being the fair market value thereof. In no event shall the negotiated purchase price exceed the highest of the two appraisals. Factors such as the effect of time between the dates of the two appraisals, the basis for each appraisal, and ameliorating factors that can be handled during construction work (if any is to take place) shall be considered.
- F. In those cases where the property owner and the purchasing agency cannot agree on a price as set forth in Paragraph E above, DISTRICT will not share in any costs exceeding the higher appraisal assuming it is based on sound appraisal principles and data and is reasonable and valid. The purchasing agency may:
 - 1. Decide not to pursue the purchase, or
 - 2. Negotiate a price in excess of the higher appraisal and be responsible for all costs exceeding the higher appraisal, or
 - 3. Initiate and conduct eminent domain proceedings in any court having jurisdiction, under such statutes and in such manner as the purchasing agency deems necessary and proper to protect the interests of the purchasing agency and DISTRICT. All costs associated with the condemnation shall be shared by the purchasing agency and DISTRICT on the basis set forth in the interagency agreement.

If eminent domain proceedings are initiated and a settlement is negotiated prior to a court determination, the maximum settlement in which DISTRICT will participate is the higher appraisal, as long as it was based on sound appraisal principles and data and was considered reasonable and valid, plus costs incurred to date that would normally be the responsibility of a condemning agency. Such costs may include filing fees, expert witness fees, and non-expert witness fees.

2. DISTRICT IS PURCHASING AGENCY

The same policy and procedure as set forth above shall be the case except that DISTRICT is the purchasing agency. Specifically,

- A. When approved by the Board of Directors DISTRICT may acquire by purchase or condemnation, title to, easements over, or right of entry to real property needed for the approved flood control purpose. Such property shall be described by the use of a boundary survey.

- B. DISTRICT shall cause an appraisal to be made by an appraiser of the property subject to acquisition. The appraiser shall possess an MAI designation for acquisitions estimated to cost more than \$10,000. An appraisal is not necessarily required for acquisitions less than \$1,000 or for right of entry permits being sought for maintenance purposes. In most of these cases the right of entry permit is temporary in nature and involves little or no funds.
- C. The property owner should be advised informally and as early as possible of the interest of DISTRICT in acquisition of the property. Preliminary negotiations as appropriate should be held with the owner(s) before the appraisal is completed.
- D. Negotiations shall be continued with the owner(s) on the basis of the appraisal (except for right of entry and acquisitions less than \$1,000). If the appraisal price is unacceptable to owner, DISTRICT, in accordance with § 38-1-121, CRS 1973, shall provide a formal notice of intent to acquire the property together with a description of the property to be acquired to anyone having an interest of record in the property involved. Such owner(s) may employ an appraiser of their choosing to appraise the property to be acquired. Such appraisal shall be made using sound, fair, and recognized appraisal practices which are consistent with law. If a copy of the appraisal obtained by the property owner(s) is submitted to DISTRICT within 90 days of the date the formal notice was provided, DISTRICT shall pay the reasonable costs of the appraisal.
- E. Assuming the second appraisal is based on sound appraisal principles and data and is reasonable and valid, DISTRICT shall negotiate a purchase price between the two appraisals, with the price of the land or property actually taken being the fair market value thereof. Factors such as the effect of time between the dates of the two appraisals, the basis for each appraisal, and ameliorating factors that can be handled during construction work (if any is to take place) shall be considered.
- F. In those cases where the property owner and DISTRICT cannot agree on a price representing the fair market value somewhere between the two appraisals DISTRICT may:
 - 1. Decide not to pursue the purchase, or
 - 2. Initiate and conduct eminent domain proceedings in any court having jurisdiction, under such statutes and in such manner as DISTRICT deems necessary and proper to protect the interests of DISTRICT.

If eminent domain proceedings are initiated and a settlement is negotiated prior to a court determination, the settlement shall not exceed the total of the highest appraisal, assuming it is based on sound appraisal principles and data and is reasonable and valid, plus costs incurred to date that would normally be the responsibility of a condemning agency. Such costs might include filing fees, expert witness fees, and non-expert witness fees.

SAMPLE

**AGREEMENT REGARDING
FINAL DESIGN, RIGHT-OF-WAY ACQUISITION AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
PINEY CREEK AT CALEY AVENUE**

Agreement No. 06-08.03

Exhibit C

MEMORANDUM

This MEMORANDUM is entered into this _____ day of _____, 20__ by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT, a quasi-governmental entity, whose address is 2480 West 26th Avenue, Suite 156-B, Denver, Colorado 80211 (hereinafter called "DISTRICT") and SOUTHEAST METRO STORMWATE AUTHORITY, acting by and through SEMSWA WATER ACTIVITY ENTERPRISE, a governmental entity, whose address is 10730 E. Briarwood Ave., Suite 100, Centennial, Colorado 80112 (hereinafter called "SEMSWA") and collectively known as "PARTIES";

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WHEREAS, PARTIES entered into "Agreement Regarding Final Design, Right-of-Way Acquisition and Construction of Drainage and Flood Control Improvements for _____," Agreement No. _____ on or about _____, 20__, (hereinafter called "AGREEMENT"); and

WHEREAS, AGREEMENT is unrecorded, however PARTIES have agreed in AGREEMENT to record this MEMORANDUM in the records of the Clerk and Recorder of _____, State of Colorado, in order to put all who inquire on notice of AGREEMENT and in particular Paragraph 7.C of AGREEMENT; and

WHEREAS, in AGREEMENT, PARTIES agreed to participate equally (up to a maximum of \$ _____ each) in the cost of the construction of drainage and flood control improvements for _____ within CITY boundaries which include _____ (hereinafter called "PROJECT"); and

WHEREAS, construction of PROJECT may require the acquisition by CITY of real property; and

WHEREAS, AGREEMENT further provides that CITY will own all real property required to construct the improvements and that CITY ownership of that real property shall be subject to the terms and conditions of AGREEMENT and in particular Paragraph 7.C of AGREEMENT; and

WHEREAS, Paragraph 7.C of AGREEMENT provides in appropriate part as follows:

"7.C. Ownership of Property and Limitation of Use. CITY shall own the property either in fee or non-revocable easement and shall be responsible for same. It is specifically understood that the right-of-way is being used for drainage and flood control purposes. The properties upon

which PROJECT is constructed shall not be used for any purpose that will diminish or preclude its use for drainage and flood control purposes. CITY may not dispose of or change the use of the properties without approval of DISTRICT. If, in the future, CITY disposes of any portion of or all of the properties acquired upon which PROJECT is constructed pursuant to this Agreement, changes the use of any portion or all of the properties upon which PROJECT is constructed pursuant to this Agreement, or modifies any of the improvements located on any portion of the properties upon which PROJECT is constructed pursuant to this Agreement, and CITY has not obtained the written approval of DISTRICT, prior to such action, CITY shall take any and all action necessary to reverse said unauthorized activity and return the properties and improvements thereon, acquired and constructed pursuant to this Agreement, to the ownership and condition they were in immediately prior to the unauthorized activity at CITY's sole expense. In the event CITY breaches the terms and provisions of this Paragraph 7.C and does not voluntarily cure as set forth above, DISTRICT shall have the right to pursue a claim against CITY for specific performance of this portion of the Agreement."; and

WHEREAS, CITY has just acquired the real property described in Exhibit Z attached hereto and incorporated herein by reference, as if set forth verbatim herein, pursuant to the terms and conditions of AGREEMENT for the construction of PROJECT; and

WHEREAS, PARTIES intend that the terms and provisions of AGREEMENT, including but not limited to Paragraph 7.C of AGREEMENT set forth verbatim above, shall apply to and control the real property described in Exhibit Z.

IT HAS BEEN AGREED previously in AGREEMENT by and between PARTIES that the terms and provisions of AGREEMENT, including but not limited to Paragraph 7.C of AGREEMENT set forth verbatim above shall apply to and control the real property described in Exhibit Z, now owned by CITY and that this MEMORANDUM be placed of record for the purposes of encumbering the real property described in Exhibit Z with the limitations and restrictions set forth in this MEMORANDUM.

This MEMORANDUM is not a complete summary of AGREEMENT. Provisions in this MEMORANDUM shall not be used in interpreting AGREEMENT's provision. In the event of conflict between this MEMORANDUM and the unrecorded AGREEMENT, the unrecorded AGREEMENT shall control.

URBAN DRAINAGE AND
FLOOD CONTROL DISTRICT

(SEAL)

ATTEST:

By _____

Title Executive Director

Date _____

STATE OF COLORADO)

) ss.

COUNTY OF _____)

Subscribed and sworn to before me this _____ day of _____, 20__, by

_____.

WITNESS my hand and official seal.

(SEAL)

Notary Public

My Commission Expires _____.