

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

RESOLUTION 16-25

Authorization for Funding Agreement Amendment for the Piney Creek at Caley Avenue Project

WHEREAS, Resolution 16-04 authorized funding of \$700,000 and participation in an agreement for the Piney Creek at Caley Avenue Project with Urban Drainage and Flood Control District (UDFCD) for the design and construction of Piney Creek improvements; and

WHEREAS, an additional \$290,000 has been committed by UDFCD's 2016 Capital Project Budget for the Piney Creek at Caley improvements to be used for construction of that Project; and

WHEREAS, an additional \$150,000 has been committed by CCBWQA's 2016 Capital Project Budget the for Piney Creek at Caley improvements to be used for construction of that Project; and

WHEREAS, SEMSWA will assume contract administration responsibilities for the completion of design and construction of the Piney Creek at Caley improvements allowing SEMSWA to consolidate the project funding with the anticipated \$7M loan disbursement in January 2017; and

WHEREAS, UDFCD, upon the assumption of contract administration by SEMSWA, will estimate and transfer the remaining unencumbered funds for the Piney Creek at Caley improvements to SEMSWA for completion of design and construction of the Piney Creek at Caley improvements.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Executive Director is authorized to execute an amendment to the Funding Agreement for Piney Creek at Caley Avenue with the UDFCD setting forth the amendments described above.

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

AMENDMENT TO
AGREEMENT REGARDING
FINAL DESIGN, RIGHT-OF-WAY ACQUISITION AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
PINEY CREEK AT CALEY AVENUE IN CITY OF CENTENNIAL, ARAPAHOE COUNTY

Agreement No. 06-08.03M
Project No. 100263

THIS AGREEMENT, dated _____, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT") and SOUTHEAST METRO STORMWATER AUTHORITY (hereinafter called "SEMSWA"), ARAPAHOE COUNTY (hereinafter called "COUNTY"), and CHERRY CREEK BASIN WATER QUALITY AUTHORITY (hereinafter called "CCBWQA") and collectively known as "PARTIES";

WITNESSETH:

WHEREAS, DISTRICT and SEMSWA have entered into "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) dated December 22, 2006, as amended; and CCBWQA was added as a party (Agreement No. 06-08.03H) dated September 3, 2014; and

WHEREAS, PARTIES now desire to fund construction for the next phase of work; and

WHEREAS, PARTIES desire to increase the level of funding by \$440,000; and

WHEREAS, DISTRICT's Board of Directors has authorized additional DISTRICT financial participation for PROJECT (Resolution No. 39, Series of 2016); and

WHEREAS, the Board of Directors of CCBWQA, 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; and

WHEREAS, COUNTY is a voting member of SEMSWA and PROJECT is located in COUNTY; and

WHEREAS, COUNTY has not delegated its land use and police powers in regard to the regulation and control of floodplains located within COUNTY to SEMSWA; and

WHEREAS, COUNTY therefore is the only governmental entity that can make the agreement contained in Paragraph 10 of this Agreement.

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

1. Paragraph 4. PROJECT COSTS AND ALLOCATION OF COSTS is deleted and replaced as follows:

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 \$8,806,000 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 | \$950,000 |
| 2. Right-of-way | 100,000 |
| 3. Construction | 6,876,000 |
| 4. Contingency | 880,000 |
| Grand Total | \$8,806,000 |

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.

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

| | <u>Percentage Share</u> | <u>Previously Contributed</u> | <u>Additional Contribution</u> | <u>Maximum Contribution</u> |
|----------|-------------------------|-------------------------------|--------------------------------|-----------------------------|
| DISTRICT | 47.67% | \$3,908,000 | \$290,000 | \$4,198,000 |
| SEMSWA | 37.57% | \$3,308,000 | \$0.00 | \$3,308,000 |
| CCBWQA | 14.76% | \$1,150,000 | \$150,000 | \$1,300,000 |
| TOTAL | 100.00% | \$8,366,000 | \$440,000 | \$8,806,000 |

- C. DISTRICT acknowledges that (i) CCBWQA does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) it is understood and agreed that notwithstanding any other provision contained herein to the contrary, any additional contribution obligation of CCBWQA hereunder, whether direct or contingent, shall extend only to funds duly and lawfully appropriated and encumbered by the Board of Directors of CCBWQA for the purposes of the Agreement as hereby amended, and paid into the Treasury of CCBWQA, and shall

under no circumstances exceed \$1,300,000 without CCBWQA's prior express written consent.

2. Paragraph 5. MANAGEMENT OF FINANCES is deleted and replaced as follows:

5. MANAGEMENT OF FINANCES

As set forth in DISTRICT policy (Resolution No. 11, Series of 1973, Resolution No. 49, Series of 1977, and Resolution No. 37, Series of 2009), the funding of a local body's share may come from its own revenue sources or from funds received from state, federal or other sources of funding without limitation and without prior Board approval.

To the extent not previously paid, payment of each party's full share (CCBWQA - \$1,300,000; SEMSWA - \$3,308,000; DISTRICT - \$4,108,000) 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 and CCBWQA of any unpaid obligations. Such periodic accounting shall continue until all remaining funds held by the DISTRICT have been transmitted to SEMSWA for construction. 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).

Upon full execution of this AMENDMENT, DISTRICT shall estimate the funds necessary for the completion of the existing encumbered contracts with the DISTRICT. All remaining monies including interest earned which are not committed, obligated, or disbursed for completion of Final Design shall be promptly transmitted to SEMSWA for construction. Notwithstanding the foregoing, from and after the date SEMSWA receives funds from DISTRICT, SEMSWA shall thereafter assume and agrees to perform all of DISTRICT'S periodic accounting and notification services, including holding all monies in a special fund.

3. Paragraph 7. RIGHT OF WAY shall be amended by the addition of the following sentence:

7. RIGHT OF WAY

Notwithstanding any other provision contained in this Agreement to the contrary (including this paragraph), CCBWQA shall not pay for any cost or expense related to the condemnation of the easements or rights-of-way, including any relocation costs arising from condemnation.

4. Paragraph 8. MANAGEMENT OF CONSTRUCTION is amended by deleting and replacing Paragraph 8.B as follows:

B. Construction Management and Payment

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

2. SEMSWA, with assistance and approval of DISTRICT and CCBWQA, shall advertise for construction bids; conduct a bid opening; prepare construction contract documents; and award construction contract(s).
 3. SEMSWA shall require the contractor to provide adequate liability insurance that includes DISTRICT and CCBWQA. The contractor shall be required to indemnify DISTRICT and CCBWQA. Copies of the insurance coverage shall be provided to DISTRICT and CCBWQA.
 4. SEMSWA with assistance of DISTRICT and CCBWQA, shall coordinate field surveying; staking; inspection; testing; acquisition of right-of-way; and engineering as required to construct PROJECT. SEMSWA, with assistance of DISTRICT and CCBWQA, shall assure that 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 DISTRICT and CCBWQA on a weekly basis. SEMSWA shall retain an engineer to perform all or a part of these duties.
 5. SEMSWA, with approval of DISTRICT and CCBWQA, 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.
 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. SEMSWA shall review and approve contractor billings and send them to DISTRICT and CCBWQA for approval. SEMSWA shall remit payment to contractor based on billings approved by PARTIES.
 8. SEMSWA, with assistance and written concurrence by DISTRICT and CCBWQA, shall prepare and issue all written change or work orders to the contract documents.
 9. PARTIES shall jointly conduct a final inspection and accept or reject the completed PROJECT in accordance with the contract documents.
 10. SEMSWA shall provide DISTRICT and CCBWQA a set of "as-built" plans.
- 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.

5. Paragraph 13. CONTRACTING OFFICERS AND NOTICES is amended by including the following:

13. CONTRACTING OFFICERS AND NOTICES

E. The contracting officer for CCBWQA shall be James R. "Jim" Swanson, P.E., JRS Engineering Consultant, LLC, 6013 East Briarwood Drive, Centennial Colorado 80112. The contracting officer for CCBWQA shall also serve as the CCBWQA representative to PROJECT.

6. Add a new Paragraph: DISTRICT FIVE YEAR CAPITAL IMPROVEMENT PLAN to read as follows:

DISTRICT FIVE YEAR CAPITAL IMPROVEMENT PLAN

The construction of the PROJECT will extend into the years 2017 and 2018. The DISTRICT has included in its current Five Year Capital Improvement Plan funds for the PROJECT for the years 2017 and 2018. However, any appropriation of funds for the PROJECT in 2017 and 2018 shall be subject to the approval of the Board of Directors of the DISTRICT for each of those years.

7. All other terms and conditions of Agreement No. 06-08.03 shall remain in full force and effect. CCBWQA shall have such rights under Agreement No. 06-08.03 as it would have had it been an original signatory to the Agreement, including the same approval and enforcement rights as DISTRICT possesses under Paragraph 7.C of the Agreement.

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

By _____

Name Paul A. Hindman

Title Executive Director

Checked By

SOUTHEAST METRO
STORMWATER AUTHORITY

(SEAL)

By_____

ATTEST:

Name_____

Title_____

CHERRY CREEK BASIN
WATER QUALITY AUTHORITY

(SEAL)

ATTEST:

By _____

Name _____

Title _____

ARAPAHOE COUNTY

By _____

Title Director, Public Works & Development

Authorized by Resolution Number 150211

As to the obligations contained in
Paragraphs 10 and 11 only

Date _____

