

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

RESOLUTION 16-30

Authorization to Fund the Construction of Nameless Tributary, The Mesa - Filing 1, Tract C  
Improvements

WHEREAS, SEMSWA is the property owner of Tract C, a tract of land that is part of The Mesa 1<sup>st</sup> Filing; and

WHEREAS, Arapahoe Park and Recreation District (the District) operates and maintains a recreational concrete trail network on Tract C; and

WHEREAS, Nameless Tributary's drainage way flows through and along Tract C and the District's trail network crosses Nameless Tributary's drainage way; and

WHEREAS, the drainage way has aggraded, restricting drainage flows and is resulting in unsafe passage for pedestrians and bicyclists and the necessity to close portions of the District's trail network; and

WHEREAS, the District has requested that SEMSWA develop a solution and participate in a cost share for the project with the District for improvements on Tract C; and

WHEREAS, SEMSWA developed and completed the design for improvements on Tract C, completed the bidding process and selected the lowest responsible bidder; and

WHEREAS, the selected bid for construction of the Project is \$229,040 submitted by Edge Contracting, Inc.; and

WHEREAS, SEMSWA has estimated the cost of contracting for materials testing, and post construction re-vegetation services at \$15,000; and

WHEREAS, it is typical to budget the construction bid amount plus an additional ten (10) percent (\$24,404) to cover contingencies that may be encountered during construction; and

WHEREAS, SEMSWA has adopted a budget for calendar year 2016 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 enter into an intergovernmental agreement with the District and collect the District's appropriate, cost share portion on behalf of SEMSWA for the construction of the Project which shall not be less than 40% of the total Project cost.
2. The Executive Director is authorized to enter into a contract in the amount of \$229,040 with Edge Contracting , Inc. on behalf of SEMSWA for the construction of the Project.
3. The Executive Director is authorized to enter into contracts with Ground Engineering Consultants, and Erosion Controls of Colorado, Inc. and expend an amount not to exceed \$15,000 for materials testing, and post construction re-vegetation services associated with the Project.
4. Total funding for the construction of the Project, including contingency, including costs associated with materials testing, and post construction re-vegetation services, is limited to \$268,444 without prior approval of the Board.

SOUTHEAST METRO STORMWATER AUTHORITY  
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Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Chairperson

APPROVED AS TO FORM:  
Attorney for  
Southeast Metro Stormwater Authority

By \_\_\_\_\_  
Edward J. Krisor

INTERGOVERNMENTAL AGREEMENT REGARDING  
FUNDING OF NAMELESS TRIBUTARY MESA FILING 1 TRACT C IMPROVEMENTS

This INTERGOVERNMENTAL AGREEMENT REGARDING CONSTRUCTION FUNDING OF NAMELESS TRIBUTARY MESA FILING 1 TRACT C IMPROVEMENTS (the “Agreement”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_ 2016 by and between the ARAPAHOE PARK AND RECREATION DISTRICT, a body corporate and politic of the State of Colorado (“APRD”), and the SOUTHEAST METRO STORMWATER AUTHORITY, a quasi-municipal corporation and political subdivision of the State of Colorado (“SEMSWA”), collectively (the “Parties”).

RECITALS

WHEREAS, APRD is authorized to coordinate and participate in the provision of certain Open Space improvements within its boundaries in the State of Colorado, including, but not limited to, trails, park amenities, and other improvements; and

WHEREAS, SEMSWA was formed to plan, design, construct, acquire, operate and maintain various drainage and flood control facilities and manage the stormwater quality within its boundary in Arapahoe County and the City of Centennial, Colorado; and

WHEREAS, there are drainage ways and trails within APRD’s and SEMSWA’s properties that exist within SEMSWA’s boundary, and APRD and SEMSWA are authorized to provide certain trail and drainage way improvements respectively; and

WHEREAS, APRD and SEMSWA wish to complete drainage way and trail improvements through construction of the Nameless Tributary Mesa Filing 1 Tract C Improvements, (the “Project”); and

WHEREAS, APRD and SEMSWA, have discussed the nature, scope, and timing of the Project which is a benefit for pedestrian and bicyclist safety, to the neighboring Dakota Valley Elementary School and local community as a whole; and

WHEREAS, the Project is located on property owned by SEMSWA, and is within SEMSWA’s and APRD’s service boundaries.

WHEREAS, the Parties desire to cooperate in the funding for the 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 provide funds for the construction of the Project, to allocate the Project costs between the Parties, and to establish the process by which the Project will be managed and contracts administered.
  
2. Project Funding. The Parties hereby agree to cooperate in the funding of the construction of the Project, as described more fully in this Agreement. It is agreed by the Parties that:
  - a. SEMSWA will fund the construction costs associated with overall drainage way improvements including overall earthwork and an appropriate portion of other bid item, construction costs associated with the Project. SEMSWA has already solely funded the design and will continue to solely fund all costs for permitting and project management of the project.
  
  - b. APRD will fund the construction costs associated with the removal and replacement of the concrete trail, trail crossing, trail signage, trail amenities, material testing and an appropriate portion of other bid item, construction costs associated with the Project.
  
  - c. SEMSWA shall provide APRD with an invoice for APRD’s share of funds (including a 10% contingency) and APRD shall make funds available to SEMSWA prior to SEMSWA issuing the selected low-bidder a notice of award.

The total estimated construction costs based on low bidder’s base bid, bid prices, and proposals for revegetation and material testing for the Project (including a 10% contingency) for each of the Parties is set forth below:

<u>Item</u>	<u>Total Cost</u>	<u>SEMSWA</u>	<u>APRD</u>
Construction	\$ 243,815.00	\$ 144,385.00	\$ 99,430.00
Contingency	\$ 24,381.50	\$ 14,438.50	\$ 9,943.00
<b>Total:</b>	\$ 268,196.50	\$ 158,823.50	\$ 109,373.00

A detailed breakdown of the estimated construction cost is given in Attachment A of this Agreement.

3. Construction Contracting and Administration. The following provisions regarding construction contracting and administration shall apply:
  - a) The Parties have previously reviewed and approved contract documents, including bid documents, prepared by SEMSWA. At the request of APRD, the bid package includes a base bid and bid alternates for additional trail improvements. APRD will review these bid alternates and may elect to negotiate final costs with the Project’s contractor. APRD understands that the bid alternate totals on the bid

schedule do not reflect the true overall cost of completing any alternate's work. The Agreement does not include any of APRD's requested bid alternates.

- b) SEMSWA completed the bid process through a preferred list of SEMSWA's contractors and selected the low bidder based on the base bid amount.
  - c) SEMSWA will take the lead on behalf of the Parties in administering the construction contract, and managing the Project.
  - d) SEMSWA will be responsible and self-perform construction observation and inspection specifically for the drainage way improvements.
  - e) SEMSWA will perform courtesy construction observations and inspections on the trail improvements for and on behalf of APRD when convenient for SEMSWA. APRD may assign third party representatives or their own staff to observe and inspect specific trail improvements at APRD's sole cost, not accounted for in the Agreement.
  - f) SEMSWA will routinely communicate and coordinate with APRD and schedule weekly progress meetings on-site when weather allows. APRD will be invited to these meetings.
  - g) The parties shall notify each other when they notice any discrepancies while visiting the project site and performing construction inspections.
  - h) SEMSWA will manage the funds, including contingency; administer progress payments and update APRD on progress and the project fund balance for each pay application.
  - i) SEMSWA shall immediately notify APRD when there are any overruns on APRD appropriate bid item quantities or material testing costs; and get APRD approval to authorize any additional work. In the event, APRD's fund balance, including contingency, has been depleted, the Agreement can be amended for APRD to appropriate additional funds.
  - j) Upon final acceptance of the Project by both Parties and after final payment to the contractor; SEMSWA shall release any remaining funds from APRD's cost share back to APRD.
4. Project Maintenance. After the Project has received final acceptance, each of the Parties shall be responsible for maintaining the portions of the Project as generally described below, subject to any applicable warranty periods with respect to contractors responsible for construction of the Project.

- a. SEMSWA Maintenance Responsibility:
    - 1. Perform periodic inspection and maintenance along the drainage way at storm outfalls and on SEMSWA's property at SEMSWA's convenience.
    - 2. Re-establish vegetation from the project disturbance.
  - b. APRD Maintenance Responsibility:
    - 1. Perform periodic inspection and maintenance of the trail, the crossing, all trail amenities and trail signage at APRD's convenience.
    - 2. Perform any mowing and maintaining any earth grading along the trail at APRD's convenience.
5. 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.
6. 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 APRD:

Lynn Cornell, District Manager  
Arapahoe Park and Recreation District  
16799 E. Lake Avenue  
Centennial, CO 80016

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, APRD designates the District Manager or his or her designee as its representative with power to bind the District.
- 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 District 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.

Southeast Metro Stormwater Authority

By: \_\_\_\_\_

ATTEST

By: \_\_\_\_\_

Arapahoe Park and Recreation District

By: \_\_\_\_\_

ATTEST

By: \_\_\_\_\_

INTERGOVERNMENTAL AGREEMENT REGARDING  
FUNDING OF NAMELESS TRIBUTARY MESA FILING 1 TRACT C IMPROVEMENTS  
ATTACHMENT A



CONTRACTOR: EDGE CONTRACTING  
DATE: 11/9/2016

BID ITEM	BID ITEM CODE	DESCRIPTION	QUANTITY	PAY UNIT	UNIT PRICE	TOTAL
1	GN-02-001	Mobilization	1.0	LS	\$18,000.00	\$ 18,000.00
2	GN-07-001	Project Sign	1.0	EA	\$2,000.00	\$ 2,000.00
3	GN-04-001	Construction Survey	1.0	LS	\$6,000.00	\$ 6,000.00
4	GN-03-001	Potholing	3.0	EA	\$300.00	\$ 900.00
5	GN-05-001	Traffic Control	1.0	LS	\$5,500.00	\$ 5,500.00
6	GN-06-001	Water Control	1.0	LS	\$6,000.00	\$ 6,000.00
7	ESC-01-002	Erosion and Sediment Control	1.0	LS	\$10,000.00	\$ 10,000.00
8	FN-01-004	Construction Fence	1,300.0	LF	\$2.00	\$ 2,600.00
9	ESC-20-001	Vehicle Tracking Control	110.0	SY	\$30.00	\$ 3,300.00
10	ESC-17-002	Stabilized Staging Area	150.0	SY	\$30.00	\$ 4,500.00
11	ESC-03-001	Check Dam	5.0	CY	\$150.00	\$ 750.00
12	ESC-05-001	Concrete Washout Area	1.0	EA	\$2,000.00	\$ 2,000.00
13	ESC-10-001	Curb Sock	10.0	LF	\$20.00	\$ 200.00
14	ESC-13-001	Sediment Control Log	1,100.0	LF	\$6.00	\$ 6,600.00
15	RR-06-014	Remove Concrete Trail	184.0	SY	\$15.00	\$ 2,760.00
16	RR-06-011	Remove Existing Storm Culvert, 12-Inch CMP	22.0	LF	\$20.00	\$ 440.00
17		Remove Tree	1.00	EA	\$1,000.00	\$ 1,000.00
18	ESP-07-003	Topsoil - Catail Biomass and Soil, Remove and Haul Off Site (12-Inch Thick)	280.0	CY	\$60.00	\$ 16,800.00
19	ESP-07-001	Topsoil, Excavate, Stockpile and Replace (4-Inch Thick)	384.0	CY	\$25.00	\$ 9,600.00
20	ESP-02-001	Earthwork, Excavation and Fill On Site	193.0	CY	\$20.00	\$ 3,860.00
21	ESP-02-002	Earthwork, Excavation and Haul Off Site	428.0	CY	\$30.00	\$ 12,840.00
22	ESP-06-001	Excavation, Rock, Fill On Site	50.0	CY	\$50.00	\$ 2,500.00
23	ESP-05-001	Excavation, Muck, Replace with Approved Material	50.0	CY	\$50.00	\$ 2,500.00
24	GG-02-001	Geotextile - Non-Woven Filter Fabric	150.0	SY	\$5.00	\$ 750.00
25	RW-02-002	Stabilization Material	30.0	CY	\$50.00	\$ 1,500.00
26	SC-01-001	8-Foot Wide X 4-Foot Tall Cast-In-Place Concrete Box Culvert with Wingwalls	29.8	CY	\$1,300.00	\$ 38,740.00
27	SC-09-100	Concrete Trail Chase with Trench Plates (2-Foot Wide)	6.0	LF	\$500.00	\$ 3,000.00
28	SC-08-003	Concrete Trail, 6-Inch Thick With Fibermesh	225.0	SY	\$70.00	\$ 15,750.00
29	RW-08-004	Boulders, UngROUTed, 36-Inch	28.0	SY	\$250.00	\$ 7,000.00
30	RW-10-003	Riprap with Bedding, Type M	16.0	CY	\$150.00	\$ 2,400.00
31	RW-11-002	Riprap, Void Filled, Type L	223.0	CY	\$150.00	\$ 33,450.00
32	UD-06-080	Underdrain, 6-Inch Schedule 80, Solid Pipe	20.0	LF	\$25.00	\$ 500.00
33	UD-04-080	Underdrain, 4-Inch Schedule 80, Slotted Pipe	60.0	LF	\$30.00	\$ 1,800.00
34	UD-16-080	Cleanout, 6-Inch Schedule 80 Pipe, with Concrete Collar	2.0	EA	\$500.00	\$ 1,000.00
35	UD-14-080	Cleanout, 4-Inch Schedule 80 Pipe, with Concrete Collar	2.0	EA	\$500.00	\$ 1,000.00
36	SC-10-100	Underdrain Concrete Anchor	3	EA	\$500.00	\$ 1,500.00
<b>Base Bid Total:</b>						<b>\$ 229,040.00</b>

SEMSWA	APRD	SEMSWA	APRD
%	%	Share	Share
50	50	\$ 9,000.00	\$ 9,000.00
50	50	\$ 1,000.00	\$ 1,000.00
50	50	\$ 3,000.00	\$ 3,000.00
50	50	\$ 450.00	\$ 450.00
50	50	\$ 2,750.00	\$ 2,750.00
50	50	\$ 3,000.00	\$ 3,000.00
50	50	\$ 5,000.00	\$ 5,000.00
50	50	\$ 1,300.00	\$ 1,300.00
50	50	\$ 1,650.00	\$ 1,650.00
50	50	\$ 2,250.00	\$ 2,250.00
50	50	\$ 375.00	\$ 375.00
0	100	\$ -	\$ 2,000.00
50	50	\$ 100.00	\$ 100.00
50	50	\$ 3,300.00	\$ 3,300.00
0	100	\$ -	\$ 2,760.00
0	100	\$ -	\$ 440.00
100	0	\$ 1,000.00	\$ -
100	0	\$ 16,800.00	\$ -
100	0	\$ 9,600.00	\$ -
100	0	\$ 3,860.00	\$ -
100	0	\$ 12,840.00	\$ -
100	0	\$ 2,500.00	\$ -
100	0	\$ 2,500.00	\$ -
100	0	\$ 750.00	\$ -
100	0	\$ 1,500.00	\$ -
0	100	\$ -	\$ 38,740.00
0	100	\$ -	\$ 3,000.00
0	100	\$ -	\$ 15,750.00
100	0	\$ 7,000.00	\$ -
100	0	\$ 2,400.00	\$ -
100	0	\$ 33,450.00	\$ -
100	0	\$ 500.00	\$ -
100	0	\$ 1,800.00	\$ -
100	0	\$ 1,000.00	\$ -
100	0	\$ 1,000.00	\$ -
100	0	\$ 1,500.00	\$ -
<b>Total:</b>		<b>\$ 133,175.00</b>	<b>\$ 95,865.00</b>

	Total	APRD	SEMSWA	Total Check
Base Bid	\$ 229,040.00	\$ 95,865.00	\$ 133,175.00	\$ 229,040.00
Ground Engineering - Materials Testing	\$ 2,975.00	\$ 2,975.00	\$ -	\$ 2,975.00
Erosion Controls of Colorado - Revegetation	\$ 11,800.00	\$ 590.00	\$ 11,210.00	\$ 11,800.00
<b>Subtotal:</b>	<b>\$ 243,815.00</b>	<b>\$ 99,430.00</b>	<b>\$ 144,385.00</b>	<b>\$ 243,815.00</b>
<b>10% Contingency:</b>	<b>\$ 24,381.50</b>	<b>\$ 9,943.00</b>	<b>\$ 14,438.50</b>	<b>\$ 24,381.50</b>
<b>Total Cost Share:</b>	<b>\$ 268,196.50</b>	<b>\$ 109,373.00</b>	<b>\$ 158,823.50</b>	<b>\$ 268,196.50</b>
<b>Cost Share %:</b>		<b>41%</b>	<b>59%</b>	

Nameless Tributary Mesa Filing 1 Tract C Improvements

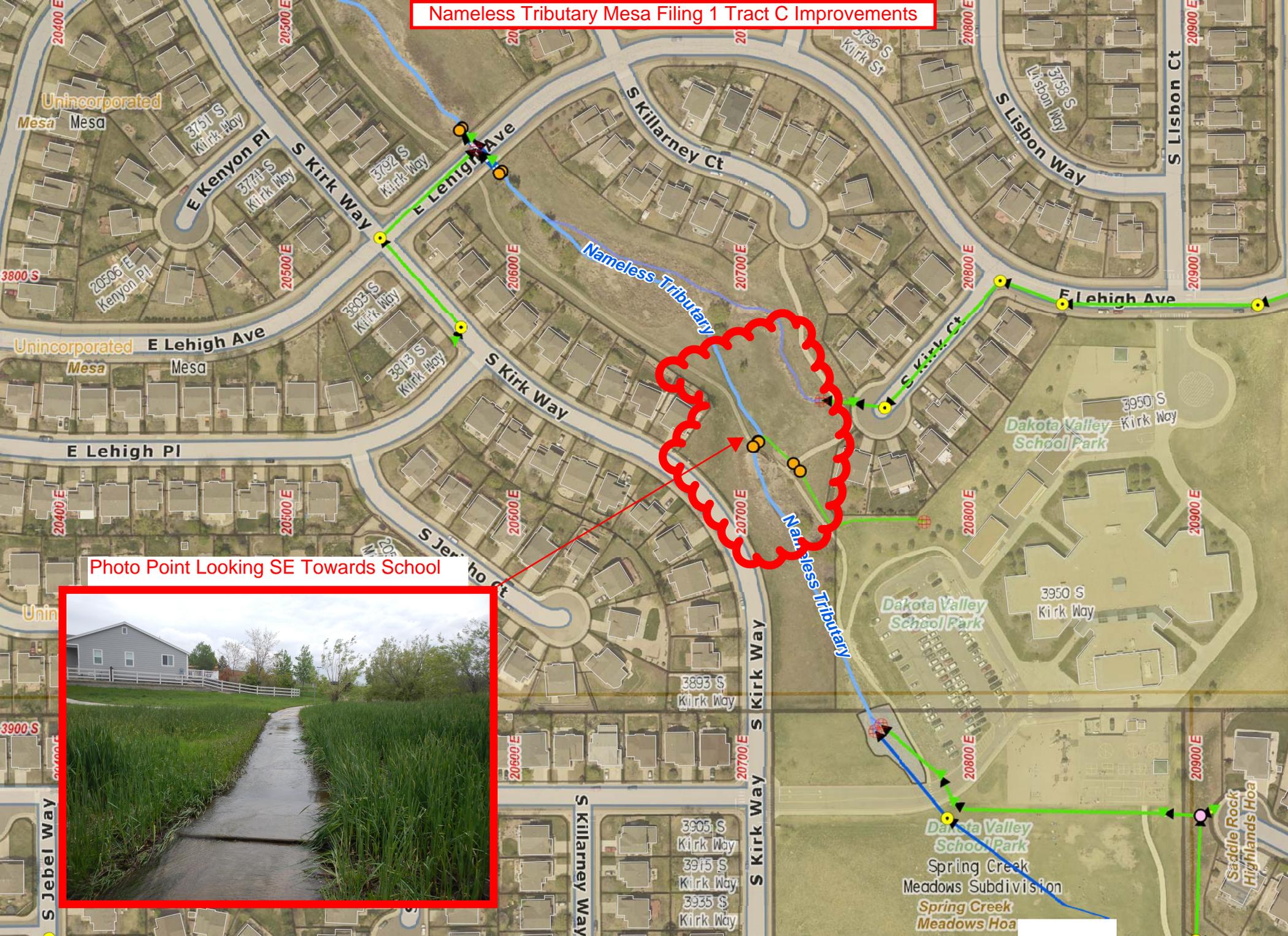


Photo Point Looking SE Towards School

