

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

RESOLUTION 18-08

Authorization for Additional Funding for the Willow Creek Stream Stabilization Improvements

WHEREAS, Willow Creek has eroded vertically and horizontally creating steep banks in the area between Quebec Street and Dry Creek Road adjacent to public trails and residential property, creating a hazard to life and property; and

WHEREAS, Willow Creek between Quebec Street and Dry Creek Road is located on property owned by the South Suburban Parks and Recreation District and Dry Creek Townhome Owners Association; and

WHEREAS, SEMSWA and the Urban Drainage and Flood Control District (UDFCD) participated in a planning study titled "Willow Creek, Little Dry Creek, and Greenwood Gulch Outfall Systems Planning Study" dated February 2010 (OSP), which identified the need for channel stabilization measures on Willow Creek between Quebec Street and Dry Creek Road (Project); and

WHEREAS, SEMSWA and UDFCD completed the first phase of the Project pursuant to Resolution Nos. 10-46 and 12-12; and

WHEREAS, the stream channel bottom and banks in the second and final phase area of the Project have continued to erode significantly, threatening sanitary sewer crossings and private property; and

WHEREAS, pursuant to resolution 16-14 the board authorized Project funding of \$200,000 for the engineering and design related services for the second and final phase of the Project; and

WHEREAS, pursuant to Resolution 17-29 the board increased the Project funding to \$1,784,119.63 and authorized the Executive Director to enter into an IGA with Southgate Sanitation District (Southgate) for Project funding and into contracts for construction of the Project; and

WHEREAS, Willows Water District (the District) now wishes to participate in the Project with SEMSWA to lower a District waterline which crosses Willow Creek within the Project limits due to the fact that SEMSWA's contractor is now on site constructing SEMSWA's second and final phase of the Project; and

WHEREAS, ESCO Construction Company has agreed to lower a District waterline which crosses Willow Creek within the Project limits; and

WHEREAS, SEMSWA and the District desire to enter into an intergovernmental agreement (IGA) to complete the waterline lowering as part of the Project; and

WHEREAS, Southgate has no objection to the issuance of a contract change order to ESCO Construction Company for the lowering of a District waterline which crosses Willow Creek within the Project limits; and

WHEREAS, the District shall fund 100% of all costs associated with lowering the waterline and restoring the associated work area; and

WHEREAS, the costs, including 10% contingency for lowering the waterline and restoring the associated work area, as identified in the IGA, are \$\_\_\_\_\_; and

WHEREAS, SEMSWA has adopted a budget for calendar year 2018 subsequent to public hearing, which includes funds for the construction of the second and final phase of the Project.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Executive Director is authorized to enter into an IGA with the District and collect the District's funds for the waterline lowering and associated restoration costs.
2. The Executive Director is authorized to issue a contract change order to ESCO Construction Company to complete the waterline lowering work with the Project.
3. Total funding for the construction of the Projects, including contingency, construction management services, materials testing services, re-vegetation services, and post construction engineering services is limited to \$\_\_\_\_\_, which includes no less than \$1,077,000 previously contributed by Southgate and \$\_\_\_\_\_ contribution by the District, 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  
FUNDING OF WILLOW CREEK PHASE II EAST DRY CREEK ROAD TO  
SOUTH QUEBEC STREET IMPROVEMENT PROJECT

This INTERGOVERNMENTAL AGREEMENT REGARDING CONSTRUCTION FUNDING OF WILLOW CREEK PHASE II EAST DRY CREEK ROAD TO SOUTH QUEBEC STREET IMPROVEMENT PROJECT (the “Agreement”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_ 2018 by and between the WILLOWS WATER DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (“the DISTRICT”), and the SOUTHEAST METRO STORMWATER AUTHORITY acting by and through the SEMSWA WATER ACTIVITY ENTERPRISE, a political subdivision and a public corporation of the State of Colorado (“SEMSWA”), collectively (the “Parties”).

RECITALS

WHEREAS, THE DISTRICT is authorized to coordinate and participate in the provision of certain water systems within its boundaries in the State of Colorado; 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, the reach of Willow Creek between East Dry Creek Road and South Quebec Street is within the Parties’ respective boundaries; and

WHEREAS, SEMSWA maintains the Willow Creek drainageway and the DISTRICT operates and maintains water lines along, across and adjacent to Willow Creek and beyond; and

WHEREAS, the Parties are authorized to provide certain water and drainageway improvements respectively; and

WHEREAS, SEMSWA currently has ESCO Construction Company (“ESCO”) under contract for the construction of Willow Creek Phase II East Dry Creek Road to South Quebec Street Improvement Project (the “Project”); and

WHEREAS, SEMSWA currently has Erosion Controls of Colorado (“ECC”) under a separate contract for site restoration and revegetation services to the restore the disturbance from the Project; and

WHEREAS, the Project is nearly completed by ESCO and ECC’s revegetation services are underway; and

WHEREAS, the DISTRICT wishes to lower their waterline that crosses Willow Creek within the Project limits; and

WHEREAS, the DISTRICT has prepared and approved a waterline lowering design and

specifications for this waterline lowering, (the “Waterline Lowering Documents”); and

WHEREAS, additional site restoration and revegetation services will be needed specifically for and upon completion of the waterline lowering work; and

WHEREAS the Parties wish to cooperate and complete the waterline lowering, including site restoration and revegetation (the “Waterline Lowering”) as part of the Project under SEMSWA’s contract with ESCO (the “Project Change Order”); and

NOW, THEREFORE, in consideration of the covenants and mutual agreements herein contained, and 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 Waterline Lowering; and to establish the process by which the Project Change Order, and this Agreement will be managed and administered.
2. Project Funding. The Parties hereby agree to cooperate in the funding of the Waterline Lowering, as described more fully in this Agreement. It is agreed by the Parties that:
  - a. The DISTRICT will be solely responsible for the costs for the Waterline Lowering and site restoration and revegetation services as a result thereof, as described and set forth in Exhibit A hereto (the “Waterline Lowering Costs”).
  - b. SEMSWA shall invoice the DISTRICT for the Waterline Lowering Costs, plus a 10% contingency, as further set forth in Exhibit A hereto, and the DISTRICT shall make payment of these costs to SEMSWA (“The DISTRICT Deposit”) prior to SEMSWA issuing a change order to ESCO and ECC under the contracts for the Project authorizing the Waterline Lowering (the “Project Change Order”).
  - c. The DISTRICT Deposit shall be based on the estimate of Waterline Lowering Costs that are the responsibility of the DISTRICT pursuant to Exhibit A of this Agreement and shall be segregated and accounted for separate from SEMSWA Funds. The DISTRICT, at any time during this Agreement shall have the right, at its own expense, to audit the account and SEMSWA shall provide documentation as requested for such purpose.
3. Construction Contracting and Administration. The following provisions regarding construction contracting and administration shall apply:
  - a) Prior to executing this Agreement, the DISTRICT prepared and approved the Waterline Lowering Documents and SEMSWA agreed to coordinate the Waterline Lowering and site restoration and revegetation services as a result thereof with the completion of its Project

- b) Upon this agreement being fully executed by the parties and SEMSWA collecting the DISTRICT Deposit, the DISTRICT will become a project sponsor and signatory on the Project Change Order and all future change orders and contract documents for the Project.
- c) SEMSWA shall issue the Project Change Order with the DISTRICT's signed approval to ESCO and ECC consistent with the Waterline Lowering Documents.
- d) SEMSWA shall have no liability under the Project Change Order, or responsibility for the performance of any agreement, covenant, or obligation of the DISTRICT under the Project Change Order. The DISTRICT shall absolve SEMSWA from any responsibility for damage or other liability, including costs and attorney's fees, arising under the Project Change Order.
- e) SEMSWA will manage the DISTRICT Deposit, including contingency, and be solely responsible for payment of the DISTRICT Deposit funds to ESCO and ECC for the Waterline Lowering and site restoration and revegetation services as a result thereof in compliance with the terms and conditions of the contracts for the Project Contract and this Agreement. No additional work, change orders or Project Change Order cost increases related to the Waterline Lowering and site restoration and revegetation services as a result thereof shall be authorized by SEMSWA without notice to, and prior approval by, the DISTRICT.
- f) SEMSWA will administer monthly pay applications for the Project Change Order, including the Waterline Lowering and site restoration and revegetation services as a result thereof and the DISTRICT will promptly review and approve these monthly pay applications related to the Waterline Lowering and site restoration and revegetation services as a result thereof which approval shall not be unreasonably withheld by the DISTRICT. In the event that the DISTRICT does not approve any monthly pay application, in part or in whole (the "Disputed Pay Application"), SEMSWA shall withhold from ESCO and/or ECC all payments of the DISTRICT Deposit related to the Disputed Pay Application, until DISTRICT shall first cure the Disputed Pay Application on behalf of SEMSWA using the dispute resolution procedures set forth in the contracts for the Project. Such review and approval will be completed in sufficient time so as to permit SEMSWA to make timely payment to ESCO or for the DISTRICT to timely exercise the dispute resolution procedures under the contracts for the Project. If either ESCO or ECC seek damages for delay as a result of DISTRICT'S failure to approve a pay application, the DISTRICT shall be responsible for those damages and will defend, indemnify and hold SEMSWA harmless as a result thereof, to extent permitted by law.
- g) The DISTRICT may perform its own field measurements, at its own expense, to confirm the monthly pay applications related to the Waterline Lowering and site restoration and revegetation services as a result thereof. SEMSWA shall have no

obligation to perform field measurements to confirm the monthly pay applications related to the Waterline Lowering; the DISTRICT shall have no obligation to perform field measurements otherwise related to the Project.

- h) SEMSWA will solely fund and contract separately for construction inspection and management services and geotechnical services for the inspection and oversight of the Project, including, all drainageway related work and shall be responsible for the oversight and quality control related thereto (“Project Oversight”); except that, the DISTRICT will solely fund and contract separately for construction inspection and management services and geotechnical services for the inspection and oversight of the Waterline Lowering work and site restoration and revegetation services as a result thereof and shall be responsible for the oversight and quality control related thereto (“Waterline Lowering Oversight”).
- i) The Parties and/or their respective representatives shall notify each other when they become aware of any discrepancies while performing Project Oversight or Waterline Lowering Oversight. In the event that the Waterline Lowering Oversight reveals any material defect(s) or other work or products unacceptable to the DISTRICT in or related to the Waterline Lowering (“Defective Work”), the DISTRICT shall promptly notify SEMSWA of the Defective Work, and SEMSWA shall withhold from ESCO and / or ECC all payments of the DISTRICT Deposit related to the Defective Work, until DISTRICT shall first cure the Defective Work using the dispute resolution procedures set forth in the contracts for the Project. If either ESCO or ECC seek damages for delay as a result of DISTRICT’S failure to approve a payment, DISTRICT shall be responsible for those damages and will defend, indemnify and hold SEMSWA harmless as a result thereof, to extent permitted by law.
- j) In the event the DISTRICT Deposit, including contingency, has been depleted due to a change order or other circumstances previously authorized by the DISTRICT, the Agreement shall be amended requiring the DISTRICT to appropriate and promptly pay to SEMSWA the necessary additional funds prior to any additional waterline work or site restoration and revegetation services as a result thereof being authorized. If the DISTRICT is unwilling or unable to fund the overrun or additional work, the work associated with that overrun or additional work shall be deleted from the Project Change Order. If the DISTRICT’S funds are at any time insufficient to fund the DISTRICT’S obligations under this Agreement or the Project Change Order, SEMSWA shall immediately notify the DISTRICT and the DISTRICT shall take all appropriate actions pursuant to the contracts for the Project to minimize any financial penalties, damages or obligations of the DISTRICT. However, the DISTRICT agrees to promptly pay SEMSWA for any overruns regarding the Waterline Lowering work and site restoration and revegetation services as a result thereof. Under no circumstances shall the DISTRICT Deposit be utilized to pay for any SEMSWA Project shortfalls or the failure of SEMSWA to fund its obligations under this Agreement or the Project Contract.

- k) Upon final acceptance of the Waterline Lowering by the DISTRICT, which shall occur 1-year after final payment to ESCO and ECC for all work related to the Waterline Lowering and site restoration and revegetation services as a result thereof, SEMSWA shall release any remaining funds from the DISTRICT Deposit back to the DISTRICT.
4. Project Maintenance. After the Project has received final acceptance, the DISTRICT shall be responsible for maintaining the Waterline Lowering, and SEMSWA shall be responsible for otherwise maintaining the Project subject to any applicable warranty periods with respect to the contractor responsible for construction of the Project.
5. Failure to Provide Funds/Termination. In the event the DISTRICT fails to make the DISTRICT Deposit to SEMSWA as described in this Agreement, SEMSWA shall be entitled to terminate this Agreement without liability or obligation to the DISTRICT.
6. Inability to Execute Change Order or Complete Waterline Work due to a Dispute. In the event SEMSWA and ESCO are unable to agree upon terms of the Project Change Order, SEMSWA shall be entitled to terminate this Agreement and refund the DISTRICT Deposit without further liability or obligation to the DISTRICT. In the event that ESCO or ECC is unable to complete the Waterline Lowering due to a Disputed Pay Application and/or Defective Work, and the DISTRICT, acting in good faith, has been unable to cure the Disputed Pay Application and/or Defective Work, SEMSWA shall be entitled to terminate this Agreement and refund the DISTRICT Deposit, minus all moneys due ESCO and ECC for their completed work on the Waterline Lowering and site restoration and revegetation services as a result thereof, without further liability or obligation to SEMSWA.
7. Inability to Complete Waterline Lowering due to Time Constraints. In the event the Waterline Lowering cannot be completed before the rest of the Project or before the high runoff season where flows in Willow Creek prohibit the Waterline Lowering and the site restoration and revegetation services as a result thereof from taking place, SEMSWA shall be entitled to terminate this Agreement and refund the DISTRICT Deposit, minus all moneys due ESCO and ECC for their completed work on the Waterline Lowering and site restoration and revegetation services as a result thereof, without further liability or obligation to SEMSWA.
8. 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 DISTRICT:

Deborrah Pilon, District Manager  
Willows Water District  
6930 S. Holly Circle  
Centennial, CO 80112  
Email: [jbaile@willowswater.org](mailto:jbaile@willowswater.org)

With a copy to:

Matthew A. Montgomery, Esq.  
Hill & Robbins, P.C.  
1660 Lincoln Street, Suite 2720  
Denver, CO 80264  
Email: [matthewmontgomery@hillandrobbsins.com](mailto:matthewmontgomery@hillandrobbsins.com)

If to SEMSWA:

John A. McCarty, Executive Director  
Southeast Metro Stormwater Authority  
76 Inverness Drive East, Suite A  
Centennial, CO 80112-5106  
Email: [jmccarty@semswa.org](mailto:jmccarty@semswa.org)

With a copy to:

Edward J. Krisor, Esq.  
3900 South Wadsworth Blvd, Suite 320  
Lakewood, CO 80235  
ejkrisor@iCloud.com

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

- f. Binding Representative. In regard to change orders, the DISTRICT designates the District Manager or his or her designee as its representative with power to bind the District to such change orders; provided that the total amount of such change orders shall not exceed twenty-five thousand dollars (\$25,000.00) over the term of this Agreement.
- 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 attorney's 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.

- l. Indebtedness. No provision, covenant or agreement contained in this Agreement, nor any obligation imposed upon the DISTRICT or SEMSWA, shall constitute or create an indebtedness or debt of the DISTRICT or SEMSWA within the meaning of any Colorado constitutional provision or statutory limitation.
- m. Subject to Annual Budget and Appropriation. Neither the DISTRICT nor SEMSWA intend to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever as a product of this Agreement. The performance of those obligations of the DISTRICT and/or SEMSWA hereunder requiring budgeting and appropriations of funds are subject to annual budgeting and appropriations.

*[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: \_\_\_\_\_  
John A. McCarty, Executive Director

ATTEST

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

Willows Water District

By: \_\_\_\_\_  
Deborrah G. Pilon, District Manager

ATTEST

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

**INTERGOVERNMENTAL AGREEMENT REGARDING  
FUNDING OF WILLOW CREEK PHASE II EAST DRY CREEK ROAD TO  
SOUTH QUEBEC STREET IMPROVEMENT PROJECT**

**EXHIBIT A**

**Willows Water District Waterline Lowering Costs**

Item No.	Description	Qty	Unit	Unit Price	Total
1	Replacement of existing 20" steel water line with 20" DR 18 C905 PVC water pipe, including fittings and connections, per plans	1	LS	\$ 166,360.00	\$ 166,360.00
2	Removal and Replacement of one existing blow-off hydrant (furnished by Willows Water District)	1	LS	\$ 7,430.00	\$ 7,430.00
3	6" DR 18 C900 PVC Water Pipe between 20" main and hydrant	1	LS	\$ 2,820.00	\$ 2,820.00
4	6" Resilient Seated Gate Valve and Box	1	EA	\$ 2,430.00	\$ 2,430.00
5	Silt Fence	30	LF	\$ 7.75	\$ 232.50
6	Sediment Control Log	100	LF	\$ 7.75	\$ 775.00
7	Stream Crossing, Temporary, with Culvert	1	EA	\$ 5,010.00	\$ 5,010.00
8	Water Control and Dewatering (Weekly Rental Rate Used) 6 Weeks	1	LS	\$ 58,334.00	\$ 58,334.00
9	Clearing and Grubbing	1	LS	\$ 5,254.00	\$ 5,254.00
10	Topsoil, Excavate, Stockpile, and Replace	20	CY	\$ 73.10	\$ 1,462.00
11	Earthwork, Excavation, and Fill On Site	55	CY	\$ 65.40	\$ 3,597.00
12	Export Excess Materials	20	CY	\$ 29.30	\$ 586.00
13	Topsoil, Imported	5	CY	\$ 383.50	\$ 1,917.50
14	Soil Riprap, Type L	80	CY	\$ 120.00	\$ 9,600.00
15	DWB Cutoff Walls, If Needed	2	EA	\$ 7,850.00	\$ 15,700.00
				<b>Subtotal:</b>	<b>\$ 281,508.00</b>

**Waterline Lowering Site Restoration and Revegetation Services Costs**

Item No.	Description	Qty	Unit	Unit Price	Total
16	Project Meetings	2	EA	\$ 330.00	\$ 660.00
17	Soil Preparation	0.16	AC	\$ 1,824.00	\$ 291.84
18	Soil Amendment	0.16	AC	\$ 6,400.00	\$ 1,024.00
19	Seeding (Broadcast) Upland	0.14	AC	\$ 4,626.00	\$ 647.64
20	Seeding (Broadcast) Transitional	0.02	AC	\$ 5,500.00	\$ 110.00
21	Hydra Mulch (Hydra CX2)	0.14	AC	\$ 5,800.00	\$ 812.00
22	Koir Mat 700	0.02	AC	\$ 92,665.00	\$ 1,853.30
23	Relocate Existing Straw Wattle	100	LF	\$ 1.50	\$ 150.00
				<b>Subtotal:</b>	<b>\$ 5,548.78</b>
				<b>Total:</b>	<b>\$ 287,056.78</b>
				<b>Total with 10% Contingency:</b>	<b>\$ 315,762.46</b>



