

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

RESOLUTION 20-30

Authorization to Execute Agreement regarding Funding of Major Drainageway Plan [MDP] for
Cottonwood, Lone Tree, Windmill and Dove Creeks with MHFD

WHEREAS, SEMSWA wishes to participate in a Major Drainageway Plan (MDP) for Cottonwood, Lone Tree, Windmill and Dove Creeks with Mile High Flood District (MHFD); and

WHEREAS, MHFD has included the MDP for Cottonwood, Lone Tree, Windmill and Dove Creeks in its 2020 Work Program at the request of SEMSWA; and

WHEREAS, MHFD will pay 50 percent of the total project cost (\$180,000) for the MDP, obligating SEMSWA's local cost share to \$90,000 (100.0 %) as the single local sponsor of the MDP; and

WHEREAS, FEMA floodplain mapping is not available for Windmill and Dove Creeks; the Flood Hazard Area Delineation (FHAD) mapping for Windmill and Dove Creeks has not been updated since the FHAD was completed in 2009; and the MDP will support a future FHAD update to reflect existing conditions and completed regional detention improvements; and

WHEREAS, Cottonwood Creek was previously studied in an Outfall Systems Plan dated 2010 and Lone Tree, Windmill and Dove Creeks were previously studied in an MDP dated 2010 and as amended in 2011; and

WHEREAS, SEMSWA completed a local study dated June 2020 to update the hydrology for Cottonwood, Lone Tree, Windmill and Dove Creeks using MHFD Urban Storm Drainage Design Criteria and software that resulted in is lower peak runoff rates; and

WHEREAS, MHFD has accepted the SEMSWA Cottonwood, Lone Tree, Windmill and Dove Creeks Hydrology Update dated June 2020 in a memorandum dated June 4, 2020; and

WHEREAS, SEMSWA desires to study Cottonwood, Lone Tree, Windmill and Dove Creeks to update the effective hydrologic and hydraulic models with the updated and accepted hydrology information; evaluate capacity of the existing regional detention and water quality basins to support development and redevelopment; investigate opportunities to recognize effectiveness of on-site water quality improvements; identify areas of flood risk and/or drainage problems; evaluate and recommend design solutions to address such drainage problems and reduce flood risk; and to prioritize and program future SEMSWA capital improvement and/or maintenance projects; and

WHEREAS, SEMSWA has adopted a budget for calendar year 2020 subsequent to public hearing which includes funds for the MDP.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board authorizes the Executive Director to execute an Agreement regarding Funding of Major Drainageway Plan for Cottonwood, Lone Tree, Windmill and Dove Creeks with MHFD.
2. Total cost for the work authorized herein, without prior authorization of the Board, is \$90,000 payable to MHFD.

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

Date: November 18, 2020

ATTEST:

Secretary

Chairperson

APPROVED AS TO FORM:
Attorney for
Southeast Metro Stormwater Authority

By _____
Edward J. Krisor

AGREEMENT REGARDING FUNDING OF
MAJOR DRAINAGEWAY PLANNING FOR
COTTONWOOD, LONETREE, WINDMILL, AND DOVE CREEKS

Agreement No. 20-08.26
Project No. 108254
Agreement Amount \$180,000

THIS AGREEMENT, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT D/B/A MILE HIGH FLOOD DISTRICT (hereinafter called "DISTRICT") and SOUTHEAST METRO STORMWATER AUTHORITY (hereinafter called "SEMSWA"); (hereinafter SEMSWA shall be known as "PROJECT SPONSOR" and DISTRICT and PROJECT SPONSOR shall be collectively known as "PARTIES");

WITNESSETH THAT:

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

WHEREAS, DISTRICT has previously established a Work Program for 2020 (Resolution No. 64, Series of 2019) which includes master planning; and

WHEREAS, PARTIES now desire to proceed with development of a drainageway master plan report for Cottonwood, Lonetree, Windmill, and Dove Creeks (hereinafter called "PROJECT"); and

WHEREAS, DISTRICT's Board of Directors has authorized DISTRICT financial participation for PROJECT (Resolution No. 68, Series of 2020); and

WHEREAS, PARTIES desire to acquire mapping needed to conduct the engineering studies for PROJECT; and

WHEREAS, PARTIES desire to engage an engineer to render certain technical and professional advice and to compile information, evaluate, study, and recommend design solutions to such drainage problems for PROJECT which are in the best interest of PARTIES.

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

1. SCOPE OF AGREEMENT

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

2. PROJECT AREA

DISTRICT shall engage an engineer and obtain mapping as needed to perform or supply necessary services in connection with and respecting the planning of PROJECT of the area and watershed shown on the attached Exhibit A dated August 31, 2020, (hereinafter called "AREA").

3. SCOPE OF PROJECT

The purpose of PROJECT is to develop a drainageway master plan, including hydrologic information and the locations, alignments, and sizing of storm sewers, channels, detention/retention

basins, and other facilities and appurtenances needed to provide efficient stormwater drainage within AREA. The proposed work shall include, but not be limited to, mapping; compilation of existing data; necessary field work; and development and consistent evaluation of all reasonable alternatives so that the most feasible drainage and flood control master plan can be determined and justified for AREA. Consideration shall be given to costs, existing and proposed land use, existing and proposed drainage systems, known drainage or flooding problems, known or anticipated erosion problems, stormwater quality, right-of-way needs, existing wetlands and riparian zones, open space and wildlife habitat benefits, and legal requirements. Schematic alternative plans shall be developed such that comparison with other alternatives can be made.

Drainage system planning shall be done in three phases by the engineer engaged by DISTRICT, culminating in a drainage master plan report. During the first phase, the selected engineer shall perform all data gathering and modeling needed to prepare the baseline hydrology section of the master plan report containing an introduction, study area description and hydrologic analysis description. During the second phase, the engineer shall perform all studies and data gathering needed to prepare the alternatives analysis sections of the master plan report containing a hydraulic analysis discussion, schematics of alternatives developed and their costs along with a discussion of the pros and cons of each alternative and a recommended plan. A single alternative will be selected by PARTIES after the review and evaluation of the alternatives analysis report. During the third phase, the engineer shall be directed to prepare a conceptual design for the selected alternative and prepare the conceptual design section of the master plan report.

4. 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 PARTIES and to their property therein.

5. PROJECT COSTS

PARTIES agree that for the purposes of this Agreement PROJECT costs shall consist of, and be limited to, mapping, master planning, and related services and contingencies mutually agreeable to PARTIES. Project costs are estimated not to exceed \$180,000.

6. FINANCIAL COMMITMENTS OF PARTIES

PARTIES shall each contribute the following percentages and maximum amounts for PROJECT costs as defined in Paragraphs 5:

| | Master Plan Percentage Share | Maximum Contribution | FHAD Contribution |
|---------------|---------------------------------|-------------------------|----------------------|
| DISTRICT | 50.00% | \$90,000 | \$0 |
| <u>SEMSWA</u> | 50.00% | \$90,000 | \$0 |
| TOTAL | 100.00% | \$180,000 | \$0 |

Each PARTY'S payment obligation, whether direct or contingent, extends only to funds appropriated annually by each PARTY'S governing body, paid into the treasury of that PARTY,

and encumbered for the purpose of this AGREEMENT. Each PARTY does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. This Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of each PARTY.

7. 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 one-half 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 DISTRICT approval.

Payment of each party's full share (SEMSWA - \$90,000; DISTRICT - \$90,000) 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).

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; or, at SEMSWA request, SEMSWA share of remaining monies shall be transferred to another special fund held by DISTRICT.

8. PROJECT MAPPING

Upon execution of this Agreement DISTRICT will solicit priced proposals for mapping services and engage the mapping firm submitting the lowest priced proposal that is also judged by DISTRICT to be responsible and qualified to perform the work. DISTRICT reserves the right to reject any proposal and to waive any formal requirements during the evaluation of the proposals. DISTRICT will administer the contract with the mapping firm. The mapping services contracted by DISTRICT will provide for topographic mapping at a two-foot contour interval and a scale of 1-inch = 100-feet.

No new mapping is anticipated under this Agreement for PROJECT. Upon execution of this Agreement, PROJECT SPONSOR shall provide copies of the most recent mapping within their jurisdictional area in digital format to DISTRICT to the extent such mapping is available without additional cost.

9. MASTER PLANNING

Upon execution of this Agreement, PARTIES shall select an engineer mutually agreeable to PARTIES. DISTRICT, with the approval of PROJECT SPONSOR, shall contract with the

selected engineer, shall administer the contract, and shall supervise and coordinate the planning for the development of alternatives and of conceptual design.

10. PUBLISHED REPORTS AND PROJECT DATA

DISTRICT will provide to PROJECT SPONSOR access to the draft and final electronic FHAD report files and draft and final electronic report files.

Upon completion of PROJECT, electronic files of all mapping, drawings, and hydrologic and hydraulic calculations developed by the engineer contracted for PROJECT shall be provided to PROJECT SPONSOR upon request.

11. TERM OF THE AGREEMENT

The term of this Agreement shall commence upon the execution by all PARTIES and shall terminate two years after the final master planning report is delivered to DISTRICT and the final accounting of funds on deposit at DISTRICT is provided to all PARTIES pursuant to Paragraph 7 herein.

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

- A. The contracting officer for PROJECT SPONSOR shall be Executive Director, 7437 South Fairplay Street, Centennial, Colorado, 80112-4486.
- B. The contracting officer for DISTRICT shall be the Executive Director, 2480 West 26th Avenue, Suite 156B, Denver, Colorado 80211.
- C. 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 PROJECT SPONSOR. Said representatives shall have the authority for all approvals, authorizations, notices, or concurrences required under this Agreement.
However, in regard to any amendments or addenda to this Agreement, said representative shall be responsible to promptly obtain the approval of the proper authority.

14. RESPONSIBILITIES OF PARTIES

DISTRICT shall be responsible for coordinating with PROJECT SPONSOR the information developed by the various consultants hired by DISTRICT and for obtaining all concurrences from PROJECT SPONSOR needed to complete PROJECT in a timely manner. PROJECT SPONSOR agrees to review all draft reports and to provide comments within 21 calendar days after the draft reports have been provided by DISTRICT to PROJECT SPONSOR. PROJECT SPONSOR also agrees to evaluate the alternatives presented in the alternatives analysis sections of the report, to

select an alternative, and to notify DISTRICT of their decision(s) within 30 calendar days after the alternatives analysis report is provided to PROJECT SPONSOR by DISTRICT.

15. AMENDMENTS

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

16. 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.

17. APPLICABLE LAWS

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Jurisdiction for any and all legal actions regarding this Agreement shall be in the State of Colorado and venue for the same shall lie in the SEMSWA where the Project is located.

18. 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.

19. 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.

20. 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.

21. TERMINATION OF AGREEMENT

This Agreement may be terminated upon thirty (30) days' written notice by any party to this Agreement, but only if there are no contingent, outstanding contracts. If there are contingent, outstanding contracts, this Agreement may only be terminated 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.

22. PUBLIC RELATIONS

It shall be at PROJECT SPONSOR'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 information 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 PROJECT SPONSOR as needed and appropriate.

23. GOVERNMENTAL IMMUNITIES

The PARTIES hereto intend that nothing herein shall be deemed or construed as a waiver by any PARTY of any rights, limitations, or protections afforded to them under the Colorado Governmental Immunity Act (§ 24-10-101, *et seq.*, C.R.S.) as now or hereafter amended or otherwise available at law or equity.

24. 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 on the basis of race, color, ancestry, creed, religion, national origin, gender, age, military status, sexual orientation, gender identity, marital status, or physical or mental disability and further agrees to insert the foregoing provision in all subcontracts hereunder.

25. APPROPRIATIONS

Notwithstanding any other term, condition, or provision herein, each and every obligation of PROJECT SPONSOR 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 PROJECT SPONSOR and/or DISTRICT.

26. 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 PROJECT SPONSOR or DISTRICT receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

27. ILLEGAL ALIENS

- A. PARTIES agree that any public contract for services executed as a result of this intergovernmental agreement shall prohibit the employment of illegal aliens in compliance with §8-17.5-101 C.R.S. *et seq.* The following language shall be included in any contract for public services:
1. At the time of execution of this Agreement, CONTRACTOR does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.
 2. CONTRACTOR shall participate in the E-Verify Program, as defined in § 8 17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.
 3. CONTRACTOR shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
 4. CONTRACTOR shall not enter into a contractor with a subconsultant or subcontractor that fails to certify to CONTRACTOR that it shall not knowingly employ or contact with an illegal alien to perform work under this Agreement.

5. CONTRACTOR shall confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in the E-Verify Program.
6. CONTRACTOR is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligation under this Agreement, and that otherwise requires CONTRACTOR to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.
7. If CONTRACTOR obtains actual knowledge that a subconsultant or subcontractor performing work under this Agreement knowingly employs or contract with an illegal alien, it will notify such subconsultant or subcontractor and PARTIES within three (3) days. CONTRACTOR shall also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three (3) day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.
8. CONTRACTOR shall comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S
9. CONTRACTOR shall, within twenty days after hiring an employee who is newly hired for employment to perform work under this Agreement, affirms that it has examined the legal work status of such employees, retained file copies of the documents required by 8 U.S.C. Section 1324a, and not altered or falsified the identification documents for such employees. CONTRACTOR shall provide a written, notarized copy of the affirmation to PARTIES.

28. EXECUTION IN COUNTERPARTS – ELECTRONIC SIGNATURES

This Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement, may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. PARTIES approve the use of electronic signatures for execution of this Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement. Only the following two forms of electronic signatures shall be permitted to bind PARTIES to this Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement.

- A. Electronic or facsimile delivery of a fully executed copy of a signature page; or
- B. The image of the signature of an authorized signer inserted onto PDF format documents.

Documents requiring notarization may also be notarized by electronic signature, as provided above. All use of electronic signatures shall be governed by the Colorado Uniform Electronic Transactions Act, §§ 24-71.3-101-121, C.R.S.

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

URBAN DRAINAGE AND
FLOOD CONTROL DISTRICT D/B/A
MILE HIGH FLOOD DISTRICT

By_____

Name Ken A. MacKenzie

Title Executive Director

Date_____

Checked By

SOUTHEAST METRO
STORMWATER METRO AUTHORITY

By_____

Name_____

Title_____

Date_____

AGREEMENT REGARDING FUNDING OF
MAJOR DRAINAGEWAY PLANNING FOR
COTTONWOOD, LONETREE, WINDMILL, AND DOVE CREEKS

Agreement No. 20-08.26
Project No. 108254

Exhibit A:

