

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

RESOLUTION 17-18

Authorization for Nameless Tributary, Mesa Filing No. 1 Tract B Improvements

WHEREAS, Nameless Tributary flows through and along Mesa Filing No. 1 Tract B; and

WHEREAS, Mesa Filing No. 1 Tract B is owned by SEMSWA; and

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

WHEREAS, Mesa Filing No. 1 Tract B was left undisturbed and natural during development of the adjacent real property with no well-defined drainage channel; and

WHEREAS, Mesa Filing No. 1 Tract B is now experiencing sediment and vegetation buildup that causes storm runoff to spill over and along the concrete trail resulting in unsafe passage for the public and trail closures (Project); and

WHEREAS, with Resolution 16-20 the Board authorized a total funding of \$54,200 for the cost of engineering design and related services for the Project; and

WHEREAS, SEMSWA and the District wish to enter into an intergovernmental agreement (IGA) to participate in a cost share for construction of the Project; and

WHEREAS, SEMSWA and the District have recently entered into an IGA, as amended, authorized by the Board through Resolutions 16-30 and 17-05 for the Nameless Tributary, The Mesa-Filing 1, Tract C Improvements (the Tract C Improvements); and

WHEREAS, construction of the Tract C Improvements were completed by Edge Contracting, Inc. on March 31, 2017; and

WHEREAS, the Project's site conditions, scope of work and contract bid items are nearly identical to the Tract C Improvements; and

WHEREAS, Edge Contracting, Inc. has provided excellent performance on the Tract C improvements, completing the project on time and within budget, along with a high level of customer service; and

WHEREAS, SEMSWA and the District have mutually agreed to negotiate a contract price with Edge Contracting, Inc. on the basis of the Tract C Improvements project and current contract prices; and

WHEREAS, EDGE Contracting, Inc.'s negotiated construction proposal is \$459,738; and

WHEREAS, it is typical to budget the construction proposal amount plus an additional ten (10) percent (\$45,974) to cover contingencies that may be encountered during construction; and

WHEREAS, SEMSWA has estimated the cost of contracting for materials testing, construction management services, revegetation services and post construction engineering services at \$94,300; and

WHEREAS, SEMSWA has adopted a budget for calendar year 2017 subsequent to public hearing, which includes funds for the design and 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 agreed upon cost share portion for the construction of the Project which shall not be less than 40% of the construction cost.
2. The Executive Director is authorized to enter into a contract in the amount of \$459,738 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, Muller Engineering Company and Erosion Controls of Colorado, Inc. and expend an amount not to exceed \$94,300 for materials testing, construction management services, revegetation services and post construction engineering services associated with the Project.
4. Total funding for the construction of the Project; including contingency, including costs associated with materials testing, construction management services, revegetation services and post construction engineering services, is limited to \$600,012, which includes no less than \$240,000 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 NAMELESS TRIBUTARY MESA FILING 1 TRACT B IMPROVEMENTS

This INTERGOVERNMENTAL AGREEMENT REGARDING CONSTRUCTION FUNDING OF NAMELESS TRIBUTARY MESA FILING 1 TRACT B IMPROVEMENTS (the “Agreement”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_ 2017 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 B 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 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 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 contractor(s) a notice of award.

The total estimated construction costs based on negotiated 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	\$ 500,273.00	\$ 278,175.00	\$ 222,098.00
Contingency	\$ 50,027.30	\$ 27,817.50	\$ 22,209.80
<b>Total:</b>	\$ 550,300.30	\$ 305,992.50	\$ 244,307.80

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 construction drawings prepared by Muller Engineering Company and contract documents prepared by SEMSWA.
  - b) SEMSWA and APRD mutually agreed to negotiate a contract price with Edge Contracting Inc. based on unit bid prices from the recent completion of Nameless Tributary Mesa Filing 1 Tract C Improvements along with negotiated prices for

new bid items.

- 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 for funding and contracting construction management and inspection services for the Project.
  - e) APRD may perform courtesy construction observations and inspections on the trail improvements for and on behalf of APRD when convenient for APRD. 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, underdrain outfalls and on SEMSWA's property at SEMSWA's convenience.

2. Re-establish vegetation from the project disturbance.
  3. SEMSWA will jointly participate in inspections and maintenance of the underdrain system along the trail with APRD while solely maintaining the underdrain outfall pipes and underdrain outfalls.
- b. APRD Maintenance Responsibility:
  1. Perform periodic inspection and maintenance of the trail, the crossing, the trail trench drains, 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.
  3. APRD will jointly participate in inspections and maintenance of the underdrain system along the trail with SEMSWA and will solely maintain the area drains located adjacent to the trail, keeping the area drains clean and clear of debris.
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  
Email: Lynncor@APRD.org

With a copy to:

John Smith  
3801 E. Florida Avenue, Suite 400  
Denver, CO 80202  
Email: jws3@hswmlaw.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

With a copy to:

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

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  
NAMELESS TRIBUTARY MESA FILING 1, TRACT B TRAIL AND DRAINAGE IMPROVEMENTS  
ATTACHMENT A**



CONTRACTOR: **EDGE CONTRACTING INC.**  
DATE: **5/31/2017**

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	\$ 500.00	\$ 500.00
3	GN-04-001	Construction Survey	1.0	LS	\$ 11,000.00	\$ 11,000.00
4	GN-03-001	Potholing	11.0	EA	\$ 300.00	\$ 3,300.00
5	GN-05-001	Traffic Control	1.0	LS	\$ 6,500.00	\$ 6,500.00
6	GN-06-001	Water Control	1.0	LS	\$ 19,000.00	\$ 19,000.00
7	ESC-01-002	Erosion and Sediment Control	1.0	LS	\$ 15,000.00	\$ 15,000.00
8	FN-01-004	Construction Fence	2,825.0	LF	\$ 2.00	\$ 5,650.00
9	ESC-20-001	Vehicle Tracking Control	112.0	SY	\$ 30.00	\$ 3,360.00
10	ESC-17-002	Stabilized Staging Area	281.0	SY	\$ 30.00	\$ 8,430.00
11		Inlet Protection - Street	1.0	EA	\$ 250.00	\$ 250.00
12	ESC-10-001	Inlet Protection - RRB or Curb Sock (Area Inlet)	16.0	LF	\$ 20.00	\$ 320.00
13		Reinforced Rock Berm (Sill Wall)	30.0	LF	\$ 30.00	\$ 900.00
14	ESC-05-001	Concrete Washout Area	1.0	EA	\$ 2,000.00	\$ 2,000.00
15	ESC-13-001	Sediment Control Log	1,495.0	LF	\$ 5.50	\$ 8,222.50
16	RR-06-014	Remove Concrete Trail	687.0	SY	\$ 15.00	\$ 10,305.00
17		Remove Trees	2.0	EA	\$ 1,000.00	\$ 2,000.00
18		Trim Trees	2.0	EA	\$ 275.00	\$ 550.00
19	RR-06-011	Remove Trail Culvert Pipe	20.0	LF	\$ 20.00	\$ 400.00
20	ESP-07-003	Topsoil - Catail Biomass and Soil, Remove and Haul Off Site (12-Inch Thick)	865.0	CY	\$ 60.00	\$ 51,900.00
21	ESP-07-001	Topsoil, Excavate, Stockpile and Replace (4-Inch Thick)	855.0	CY	\$ 25.00	\$ 21,375.00
22	ESP-02-001	Earthwork, Excavation and Fill On Site	564.0	CY	\$ 20.00	\$ 11,280.00
23	ESP-02-002	Earthwork, Excavation and Haul Off Site	264.0	CY	\$ 30.00	\$ 7,920.00
24	ESP-06-001	Excavation, Rock, Fill On Site	50.0	CY	\$ 50.00	\$ 2,500.00
25	ESP-05-001	Excavation, Muck, Replace with Approved Material	50.0	CY	\$ 50.00	\$ 2,500.00
26	GG-02-001	Geotextile - Non-Woven Filter Fabric	150.0	SY	\$ 5.00	\$ 750.00
27	RW-02-002	Stabilization Material - Trail	90.0	CY	\$ 55.00	\$ 4,950.00
28		Modify Sill Wall	1.0	LS	\$ 2,500.00	\$ 2,500.00
29	SC-01-001	12-Foot Wide X 4-Foot Tall Cast-In-Place Concrete Box Culvert with Wingwalls	27.3	CY	\$ 1,375.00	\$ 37,537.50
30		Reinforced Trail Approach Sections to RCBC with Toe walls	18.3	CY	\$ 1,375.00	\$ 25,162.50
31		Special Trail Trench Drain Reinforced Toe walls	2.0	CY	\$ 1,850.00	\$ 3,700.00
32		Scarify and Recompact Trail Subgrade (12" Minimum)	831.0	SY	\$ 5.50	\$ 4,570.50
33		Standard Trail Trench Drain 12" Wide x 8' Long	3.0	EA	\$ 3,350.00	\$ 10,050.00
34		Special Trail Trench Drain 24" Wide x 10' Long	1.0	EA	\$ 5,000.00	\$ 5,000.00
35	SC-08-003	Concrete Trail, 6-Inch Thick With Fibermesh	773.0	SY	\$ 68.00	\$ 52,564.00
36		Drain Outlet Structure	3.0	EA	\$ 600.00	\$ 1,800.00
37		Underdrain, 6-Inch Schedule 40, Solid Pipe	60.0	LF	\$ 34.00	\$ 2,040.00
38		Underdrain, 4-Inch Schedule 40, Solid Pipe	52.0	LF	\$ 34.00	\$ 1,768.00
39		Underdrain, 4-Inch Schedule 40, Slotted Pipe	394.0	LF	\$ 32.00	\$ 12,608.00
40		Cleanout, 4-Inch Schedule 40 Pipe, with Concrete Collar	5.0	EA	\$ 500.00	\$ 2,500.00
41		Locate, Expose and Cleanup Residential Sump Discharge	7.0	EA	\$ 200.00	\$ 1,400.00
42		10-Inch Nyloplast Inlet with Locking Lid and Concrete Collar	2.0	EA	\$ 800.00	\$ 1,600.00
43	RW-08-004	Boulders, Ungrouted, 36-Inch	40.0	SY	\$ 325.00	\$ 13,000.00
44	RW-11-002	Riprap, Void Filled, Type I	435.0	CY	\$ 145.00	\$ 63,075.00
					<b>Base Bid Total:</b>	<b>\$ 459,738.00</b>

SEMSWA	APRD	SEMSWA	APRD
%	%	Share	Share
50	50	\$ 9,000.00	\$ 9,000.00
50	50	\$ 250.00	\$ 250.00
50	50	\$ 5,500.00	\$ 5,500.00
50	50	\$ 1,650.00	\$ 1,650.00
50	50	\$ 3,250.00	\$ 3,250.00
50	50	\$ 9,500.00	\$ 9,500.00
50	50	\$ 7,500.00	\$ 7,500.00
50	50	\$ 2,825.00	\$ 2,825.00
50	50	\$ 1,680.00	\$ 1,680.00
50	50	\$ 4,215.00	\$ 4,215.00
50	50	\$ 125.00	\$ 125.00
50	50	\$ 160.00	\$ 160.00
50	50	\$ 450.00	\$ 450.00
50	50	\$ 1,000.00	\$ 1,000.00
80	20	\$ 6,578.00	\$ 1,644.50
0	100	\$ -	\$ 10,305.00
100	0	\$ 2,000.00	\$ -
100	0	\$ 550.00	\$ -
100	0	\$ 400.00	\$ -
100	0	\$ 51,900.00	\$ -
100	0	\$ 21,375.00	\$ -
100	0	\$ 11,280.00	\$ -
100	0	\$ 7,920.00	\$ -
100	0	\$ 2,500.00	\$ -
100	0	\$ 2,500.00	\$ -
100	0	\$ 750.00	\$ -
0	100	\$ -	\$ 4,950.00
100	0	\$ 2,500.00	\$ -
0	100	\$ -	\$ 37,537.50
0	100	\$ -	\$ 25,162.50
0	100	\$ -	\$ 3,700.00
0	100	\$ -	\$ 4,570.50
0	100	\$ -	\$ 10,050.00
0	100	\$ -	\$ 5,000.00
0	100	\$ -	\$ 52,564.00
100	0	\$ 1,800.00	\$ -
50	50	\$ 1,020.00	\$ 1,020.00
100	0	\$ 1,768.00	\$ -
50	50	\$ 6,304.00	\$ 6,304.00
50	50	\$ 1,250.00	\$ 1,250.00
100	0	\$ 1,400.00	\$ -
50	50	\$ 800.00	\$ 800.00
100	0	\$ 13,000.00	\$ -
100	0	\$ 63,075.00	\$ -
		<b>Subtotal:</b>	<b>\$ 247,775.00 \$ 211,963.00</b>

	Total	APRD	SEMSWA	Total Check
Edge Contracting Base Bid	\$ 459,738.00	\$ 211,963.00	\$ 247,775.00	\$ 459,738.00
Ground Engineering - Material Testing	\$ 8,535.00	\$ 8,535.00	\$ -	\$ 8,535.00
Erosion Controls of Colorado	\$ 32,000.00	\$ 1,600.00	\$ 30,400.00	\$ 32,000.00
<b>Construction Subtotal:</b>	<b>\$ 500,273.00</b>	<b>\$ 222,098.00</b>	<b>\$ 278,175.00</b>	<b>\$ 500,273.00</b>
<b>10% Contingency:</b>	<b>\$ 50,027.30</b>	<b>\$ 22,209.80</b>	<b>\$ 27,817.50</b>	<b>\$ 50,027.30</b>
<b>Total Cost Share:</b>	<b>\$ 550,300.30</b>	<b>\$ 244,307.80</b>	<b>\$ 305,992.50</b>	<b>\$ 550,300.30</b>
<b>Cost Share %:</b>		<b>44%</b>	<b>56%</b>	



# Nameless Tributary, Mesa Filing No. 1 Tract B Improvements

