

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

RESOLUTION 23-19

Authorization for the Executive Director to Enter Into a Public Use Easement Agreement with
Dove Valley Metropolitan District

WHEREAS, SEMSWA has been organized to manage and maintain regional stormwater facilities within its boundaries; and

WHEREAS, Dove Valley Metropolitan District is proposing to construct an eight-foot-wide trail within the first 15-ft of Tract C Centennial East Corporate Center 2nd Flg; and

WHEREAS, SEMSWA owns and maintains Tract C Centennial East Corporate Center 2nd Flg; and

WHEREAS, SEMSWA staff has determined that the installation of the proposed eight-foot-wide trail will not impact the existing storm infrastructure also located in Tract C Centennial East Corporate Center 2nd Flg; and

WHEREAS, attached hereto is a Public Use Easement Agreement, which Dove Valley Metropolitan District requires in order to construct and maintain the eight-foot-wide trail; and

WHEREAS, attached hereto is an exhibit showing the boundaries of the easement on Tract C Centennial East Corporate Center 2nd Flg.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board authorizes the Executive Director of SEMSWA to enter into a Public Use Easement Agreement granting an easement to Dove Valley Metropolitan District to construct and maintain its eight-foot-wide trail on property owned and maintained by SEMSWA.

SOUTHEAST METRO STORMWATER AUTHORITY
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SEMSWA WATER ACTIVITY ENTERPRISE

Date: September 20, 2023

ATTEST:

Secretary

Chairperson

APPROVED AS TO FORM:
Attorney for
Southeast Metro Stormwater Authority

By _____
Edward J. Krisor

**PUBLIC USE EASEMENT AGREEMENT
FREMONT AVENUE TRAIL**

For and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, **SOUTHEAST METRO STORMWATER AUTHORITY**, a Political Subdivision of the State of Colorado, whose legal address is 7437 South Fairplay St., Centennial, CO 80112 (the “**Grantor**”), hereby grants, bargains, sells and conveys to the **DOVE VALLEY METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado, whose address is 141 Union Boulevard, Suite 150, Lakewood, Colorado 80228 (the “**Grantee**”), its successors and permitted assigns, a perpetual non-exclusive easement (the “**Easement**”) to construct and maintain a public trail, associated slopes, cuts, fills, erosion control devices, and vegetative cover; to construct or reconstruct, install, operate, use, maintain, repair, replace and/or remove certain utilities, including but not limited to, gas, electric, irrigation, underground telephone lines, street lights, and appurtenances thereto, and certain public signage (collectively the “**Improvements**”); and for the purpose of maintenance, including but not limited to, snow removal and/or storage, trash removal, and periodic mowing, in, to, through, over, under and across a certain parcel of real property located in Arapahoe County, Colorado, as more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the “**Premises**”), pursuant to the following terms and conditions:

1. The Grantee, its agents, successors and permitted assigns, shall have and exercise the right of ingress and egress in, to, through, over, under and across the Premises for any purpose necessary for the construction, reconstruction, installation, operation, use, maintenance, repair, replacement and/or removal of the Improvements.

2. The Grantor shall not construct or place any structure or building, street light, power pole, yard light, mail box or sign, whether temporary or permanent, or plant any shrub, tree, woody plant, nursery stock, garden or other landscaping design feature on any part of the Premises, except with the prior consent of the Grantee. Any structure or building, street light, power pole, yard light, mail box or sign, whether temporary or permanent, or shrub, tree, woody plant, nursery stock, garden or other landscaping design feature of any kind situated on the Premises as of the date of this Easement or subsequently placed thereon may, except where the Grantee has consented thereto, be removed by the Grantee without liability for damages arising therefrom. Grantee shall not unreasonably deny Grantor permission to construct and maintain improvements necessary to the successful development of the adjacent property.

3. Upon completion of its activities, the Grantee, to the extent practicable, shall restore the Premises, including the surface of the ground and all landscaping, reasonably to the condition it was in immediately prior to the initiation of construction, except as necessarily modified to accommodate the Improvements.

4. The Grantee shall have the right to enter upon the Premises and to survey, construct, reconstruct, operate, use, maintain, repair, replace, and remove the Improvements, and to remove objects interfering therewith, including but not limited to these items placed on the Premises under paragraph 2 hereof. In addition, the Grantee shall have the right, subject to the Grantor's prior written approval, to use so much of the adjoining premises of the Grantor during surveying, construction, reconstruction, use, maintenance, repair, replacement and/or removal of the Improvements as may be reasonably required.

5. The Grantee shall have and exercise the right of subjacent and lateral support to whatever extent is necessary or desirable for the operation and maintenance of the Improvements. It is specifically agreed between and among the parties that, except as provided in this Agreement, the Grantor shall not take any action which would impair the lateral or subjacent support for the Improvements.

6. It is expressly acknowledged and agreed that the Grantee shall have the right and authority to assign to any appropriate local governmental entity or to any public utility provider all rights to use, and all obligations associated with, the Easement as are granted to and assumed by the Grantee herein. In addition, within the limits of the subject Easement, the Grantee shall have the right and authority to grant temporary construction easements or license agreements to any appropriate local governmental entity or public utility provider for purposes authorized herein with respect to the Improvements.

7. The Grantee agrees that at such time and in the event that the Easement described herein be abandoned by the Grantee and any permitted assignee under paragraph 6 hereof, such Easement shall terminate, and the real property interest represented by such Easement shall revert to the Grantor, its heirs, successors and/or assigns.

8. The Grantee shall, to the extent permitted by law, defend, indemnify and hold the Grantor harmless from any and all claims regarding Grantee's and the public's use of the Easement. Nothing set forth herein shall waive or be construed as a waiver of the rights, privileges, and immunities of Grantee pursuant to the Colorado Governmental Immunity Act, Section 24-10-101, et. seq., C.R.S., as the same may be amended from time to time.

9. Each and every one of the benefits and burdens of this Easement shall inure to and be binding upon the respective legal representatives, heirs, administrators, successors and permitted assigns of the Grantor and the Grantee.

10. No Third Party Beneficiaries. Nothing in this Agreement shall, be deemed to create any third party benefits or beneficiaries, or create a right or cause of action for the enforcement of its terms, in any entity or person not a party to this Agreement.

11. Severability. If any portion of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, it is the intent of the parties hereto that the remaining provisions of this Agreement shall be full force and effect.

12. Extent of Agreement. This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representatives, or agreements, either written or oral.

13. Amendments. Any amendments to this Agreement shall be in writing and signed by both parties.

14. Attorney Fees. In the event of litigation between the parties hereto to enforce the terms of this Agreement, the prevailing party in such litigation shall be entitled to an award of its reasonable costs and expenses, including reasonable attorney fees and expert witness fees, from the opposing party.

[SIGNATURE PAGES FOLLOW]

[SIGNATURE PAGE 1 OF 2 TO PUBLIC USE EASEMENT AGREEMENT FREMONT AVENUE TRAIL]

GRANTOR:

SOUTHEAST METRO STORMWATER AUTHORITY, a Political Subdivision of the State of Colorado

By: _____
Name: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, as _____ of Southeast Metro Stormwater Authority.

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT A

(Premises)

The first 15-feet from the north property line of Tract C Centennial East Corporate Center 2nd Flg

