

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

RESOLUTION 18-06

Authorization to Execute Agreement regarding Funding of Major Drainageway Plan [MDP] and Flood Hazard Area Delineation [FHAD] for Cherry Creek Tributaries upstream of Cherry Creek Reservoir with UDFCD

WHEREAS, SEMSWA wishes to participate in a Major Drainageway Plan (MDP) and Flood Hazard Area Delineation (FHAD) study for Cherry Creek Tributaries upstream of the Cherry Creek Reservoir ("Reservoir") with UDFCD and Aurora; and

WHEREAS, the Cherry Creek Tributaries upstream of the Reservoir are generally identified on Exhibit A of the Agreement regarding Funding of Major Drainageway Planning and Flood Hazard Area Delineation for Cherry Creek Tributaries upstream of the Reservoir, and include the Unnamed Tributary (generally follows S. Havana Street in Unincorporated Arapahoe County, CO), Joplin Tributary, Valley Club Acres Tributary, Chenango Tributary and the Unnamed Tributary (generally parallels E. Long Avenue in Centennial, CO); and

WHEREAS, UDFCD has included the MDP and FHAD for Cherry Creek Tributaries upstream of the Reservoir in its 2018 Work Program at the request of SEMSWA; and

WHEREAS, UDFCD will pay 50 percent of the total project cost (\$150,000) for the MDP, obligating SEMSWA's local cost share to \$60,000 (40.0 %) and the City of Aurora to \$15,000 (10.0 %), based on the percent area of the watershed in each jurisdiction; and

WHEREAS, UDFCD will pay 100 percent of the total project cost (\$40,000) for the FHAD; and

WHEREAS, there is no FEMA floodplain information available for the Cherry Creek Tributaries upstream of the Reservoir; and

WHEREAS, the Cherry Creek Tributaries upstream of the Reservoir have not been studied through a MDP to date; and

WHEREAS, the Kings Point development in Aurora will impact the hydrology of the Unnamed Tributary that parallels E. Long Avenue in Centennial, CO, as shown on Exhibit A; and

WHEREAS, SEMSWA desires to study the Cherry Creek Tributaries upstream of the Reservoir to identify areas of flood risk and/or drainage problems; to evaluate and recommend design solutions to address such drainage problems and reduce flood risk; to evaluate and recommend water quality enhancements for the impaired Cherry Creek watershed; and to prioritize and program future SEMSWA capital improvement and/or maintenance projects; and

WHEREAS, the MDP and FHAD for the Cherry Creek Tributaries upstream of the Reservoir will serve as a guide for new development and redevelopment; and

WHEREAS, \$60,000 is available in the 2018 Master Planning budget category.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board authorizes the Executive Director to execute an Agreement regarding Funding of Major Drainageway Planning and Flood Hazard Area Delineation for Cherry Creek Tributaries upstream of the Reservoir with UDFCD and Aurora.
2. The necessary funds are available in the Master Planning budget category.
3. Total cost for the work authorized herein, without prior authorization of the Board, is \$60,000 payable to UDFCD.

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

AGREEMENT REGARDING FUNDING OF
MAJOR DRAINAGEWAY PLANNING AND
FLOOD HAZARD AREA DELINEATION FOR
CHERRY CREEK TRIBUTARIES UPSTREAM OF RESERVOIR

Agreement No. 18-01.35
Project No. 106972
Agreement Amount \$190,000

THIS AGREEMENT, dated _____, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT"), SOUTHEAST METRO STORMWATER AUTHORITY (hereinafter called "SEMSWA") and CITY OF AURORA, acting by and through its Utility Enterprise (hereinafter called "AURORA"); (hereinafter SEMSWA and AURORA shall be collectively known as "PROJECT SPONSORS" and DISTRICT and PROJECT SPONSORS 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 2018 (Resolution No. 59, Series of 2017) which includes master planning; and

WHEREAS, PARTIES now desire to proceed with development of a drainageway master plan and a flood hazard area delineation (FHAD) report for streams tributary to Cherry Creek upstream of the Cherry Creek Reservoir (hereinafter called "PROJECT"); and

WHEREAS, DISTRICT's Board of Directors has authorized DISTRICT financial participation for PROJECT (Resolution No. 73, Series of 2017); 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 December 2017, (hereinafter called "AREA").

3. SCOPE OF PROJECT

The purpose of PROJECT is to develop a drainageway master plan and FHAD, 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. The FHAD report preparation and submittal will be concurrent with the second phase of the master plan. 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, FHAD and related services and contingencies mutually agreeable to PARTIES. Project costs are estimated not to exceed \$190,000.

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 | Maximum | FHAD |
|---------------|-------------------------|---------------------|---------------------|
| | <u>Percentage Share</u> | <u>Contribution</u> | <u>Contribution</u> |
| DISTRICT | 50.00% | \$ 75,000 | \$40,000 |
| SEMSWA | 40.00% | \$ 60,000 | -0- |
| <u>AURORA</u> | <u>10.00%</u> | <u>\$ 15,000</u> | <u>-0-</u> |
| TOTAL | 100.00% | \$150,000 | \$40,000 |

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 - \$60,000; AURORA - \$15,000; DISTRICT - \$115,000) 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 COUNTY 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 COUNTY request, COUNTY share of remaining monies shall be transferred to another special fund held by DISTRICT.

8. PROJECT MAPPING

No new mapping is anticipated under this Agreement for PROJECT. Upon execution of this Agreement, PROJECT SPONSORS 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 AND FHAD

Upon execution of this Agreement, PARTIES shall select an engineer mutually agreeable to PARTIES. DISTRICT, with the approval of PROJECT SPONSORS, 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 each of PROJECT SPONSORS 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 any PROJECT SPONSORS requesting such data.

11. TERM OF THE AGREEMENT

The term of this Agreement shall commence upon final 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 SEMSWA shall be the Executive Director, 7437 South Fairplay Street, Centennial, Colorado 80112-4486.
- B. The contracting officer for AURORA shall be the Director of Utilities, 15151 East Alameda Avenue, Aurora, Colorado 80012.
- C. The contracting officer for DISTRICT shall be the Executive Director, 2480 West 26th Avenue, Suite 156B, Denver, Colorado 80211.
- D. 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 SPONSORS the information developed by the various consultants hired by DISTRICT and for obtaining all concurrences from PROJECT SPONSORS needed to complete PROJECT in a timely manner. PROJECT SPONSORS agree to review all draft reports and to provide comments within 21 calendar days after the draft reports have been provided by DISTRICT to PROJECT SPONSORS. PROJECT SPONSORS also agree 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 SPONSORS 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 County 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, 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 SPONSORS 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 each 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 any one of PROJECT SPONSORS or DISTRICT receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

27. ILLEGAL ALIENS

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: "The contractor certifies, warrants, and agrees that the contractor does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and will confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the United States Department of Homeland Security and the Social Security Administration E-Verify Program or the Colorado Department of Labor and Employment (CDLE) program established pursuant to 8-17.5-102 (5)(c) C.R.S. The contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a subcontract with a subcontractor that fails to certify to the contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under Agreement. The contractor shall (a) not use the E-Verify Program or the CDLE program established pursuant to 8-17.5-102 (5)(c) C.R.S., to undertake pre-employment screening of job

applicants while this Agreement is being performed, (b) notify the subcontractor and DISTRICT within three days if the contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Agreement, (c) terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) comply with the reasonable request made in the course of an investigation, undertake pursuant to 8-17.5-102 (5)(c) C.R.S, by the CDLE. If the contractor participates in the CDLE program, the contractor shall, within twenty days after hiring an employee who is newly hired for employment to perform work under this Agreement, deliver to DISTRICT a written, notarized affirmation, affirming that the contractor has examined the legal work status of such employee, 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. If the contractor fails to comply with any requirement of this Section or 8-17.5-101 *et seq.* C.R.S, DISTRICT may terminate this Agreement for breach and, if so terminated, the contractor shall be liable for actual and consequential damages.

DISTRICT shall notify the Colorado Office of the Secretary of State if the contractor violates this Section and DISTRICT terminates this Agreement for such a breach.

The contractor acknowledges that the CDLE may investigate whether the contractor is complying with this Section of the Agreement. This may include on-site inspections and the review of documentation that proves the citizenship of any person performing work under this Agreement and any other reasonable steps necessary to determine compliance with the provisions of this Section."

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 signatures as of the date and year above written.

URBAN DRAINAGE AND
FLOOD CONTROL DISTRICT

Signature _____

Printed Name Ken MacKenzie

Title Executive Director

Checked By

SOUTHEAST METRO STORMWATER
AUTHORITY

Signature _____

Printed Name _____

Title _____

CITY OF AURORA, COLORADO,
ACTING BY AND THROUGH ITS
UTILITY ENTERPRISE

Stephen D. Hogan

Date

ATTEST:

Janice Napper, City Clerk

Date

APPROVED AS TO FORM FOR AURORA:

Christine McKenney, Assistant City Attorney

Date

ACS #

STATE OF COLORADO)
) ss
COUNTY OF ARAPAHOE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014,
by Stephen D. Hogan, Mayor, and attested by Janice Napper, as City Clerk, acting on behalf of
the Utility Enterprise of the City of Aurora, Colorado.

Witness my hand and official seal. _____
Notary Public

My commission expires: _____

(SEAL)

AGREEMENT REGARDING FUNDING OF
MAJOR DRAINAGEWAY PLANNING AND
FLOOD HAZARD AREA DELINEATION FOR
CHERRY CREEK TRIBUTARIES UPSTREAM OF RESERVOIR

Agreement No. 18-01.35
Project No. 106972

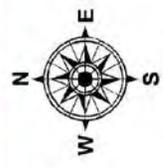
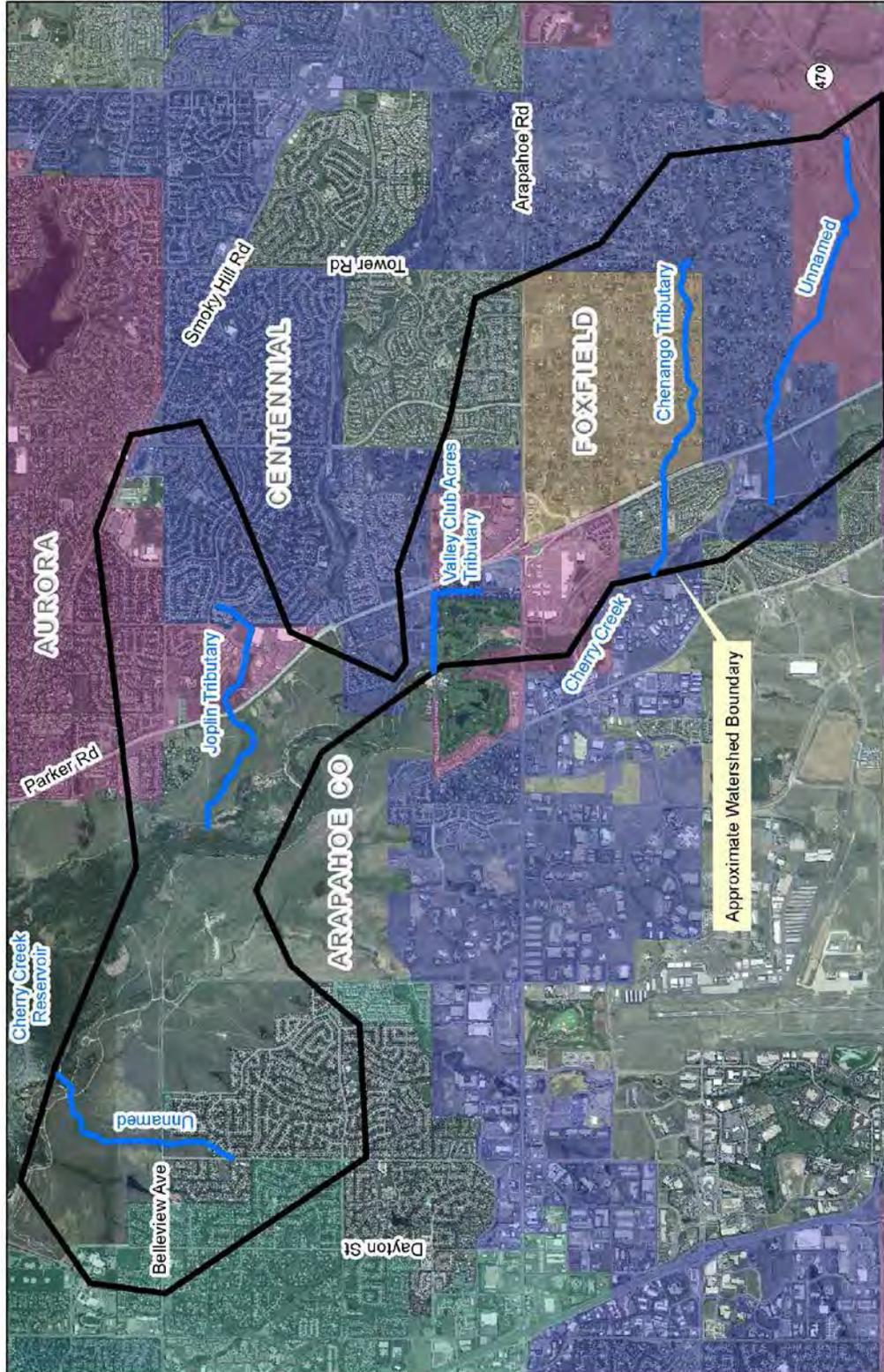


EXHIBIT A
Cherry Creek Tributaries MDP & FHAD
Approximate Study Limits
December 2017