

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

RESOLUTION 21-20

Authorization to Execute a Consent Agreement to Authorize a Homeowner to Construct Sanitary Sewer  
Through and Below a SEMSWA Drainage Easement

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

WHEREAS, SEMSWA acquired a Permanent Drainage Easement from The Willow Creek Homeowners Association d/b/a The Willow Creek Homeowners Association No. 1 recorded in the records of the Clerk and Recorder of Arapahoe County on August 19, 2014 at Reception No. D4076289 to construct, reconstruct, install, operate, use, maintain, repair, replace and/or remove drainage improvements in, on, to, through, over, under and across a certain parcel of real property located in Arapahoe County, Colorado including but not limited to Tract D Willow Creek – Filing No. 1, Arapahoe County, Colorado (the “SEMSWA Easement”); and

WHEREAS, the SEMSWA Easement provides to various degrees, that no building, structure, fill of soils or other materials, or other above or below ground obstruction that will interfere with the rights granted to SEMSWA will be placed, erected, installed, or permitted upon the Easement Property without written authorization of SEMSWA; and

WHEREAS, Robert Neil Gamble and Virginia G. Gamble (“Gamble”) own real property described as Lot 4, Block 43, Willow Creek 1<sup>st</sup> Filing, Arapahoe County, Colorado (the “Gamble Property”); and

WHEREAS, Gamble desires to construct, lay, install, maintain, repair, operate and use a sanitary sewer pipeline (the “Pipeline”) from Gamble Property across a portion of the SEMSWA Easement (“Gamble Easement”); and

WHEREAS, SEMSWA has no objection to Gamble’s use of a portion of its SEMSWA Easement as long as the same does not adversely impact SEMSWA’s current and future use of the SEMSWA Easement. Gambles have requested SEMSWA’s written authorization and consent to the Pipeline and to Gamble’s use of a portion of the SEMSWA Easement through a *Consent Agreement*, subject to the terms and conditions contained therein; and

WHEREAS, the *Consent Agreement* is attached hereto and incorporated herein by reference.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board authorizes the Executive Director of SEMSWA to execute the attached *Consent Agreement* and record the same in the records of the Clerk and Recorder of Arapahoe County, Colorado.

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

Date: August 18, 2021

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Chairperson

APPROVED AS TO FORM:  
Attorney for  
Southeast Metro Stormwater Authority

By \_\_\_\_\_  
Edward J. Krisor

## CONSENT AGREEMENT

THIS CONSENT AGREEMENT, is made this \_\_\_\_ day of \_\_\_\_\_, 2021 by and between Southeast Metro Stormwater Authority ("SEMSWA") and Robert Neil Gamble and Virginia G. Gamble ("Gamble").

### Recitals

By virtue of a *Permanent Drainage Easement* from The Willow Creek Homeowners Association d/b/a The Willow Creek Homeowners Association No. 1 recorded in the records of the Clerk and Recorder of Arapahoe County Colorado on August 19, 2014 at Reception No. D4076289, SEMSWA acquired a permanent drainage easement to construct, reconstruct, install, operate, use, maintain, repair, replace and/or remove drainage improvements, in, on, to, through, over, under and across a certain parcel of real property located in Arapahoe County, Colorado including but not limited to Tract D Willow Creek – Filing No. 1, Arapahoe County, Colorado (the "SEMSWA Easement").

The SEMSWA Easement provides to various degrees, that no building, structure, fill of soils or other materials, or other above or below ground obstruction that will interfere with the rights granted to SEMSWA will be placed, erected, installed or permitted upon the Easement Property without written authorization of SEMSWA.

Gamble desires to construct, lay, install, maintain, repair, operate and use a sanitary sewer pipeline (the "Pipeline") from the Gamble real property described as Lot 4, Block 43, Willow Creek 1<sup>st</sup> filing, Arapahoe County, Colorado (the "Gamble Property") through the SEMSWA Easement.

The location of where Gamble desire to install the above-described Pipeline and to make use of the SEMSWA Easement is described on Exhibit A attached hereto and incorporated herein by reference (the "Gamble Easement").

SEMSWA has no objection to Gamble's use of a portion of its SEMSWA Easement as long as the same does not adversely impact SEMSWA's current and future use of the SEMSWA Easement. By this Consent Agreement, SEMSWA hereby provides its written authorization and consent to the Pipeline and to Gamble's use of the Gamble Easement, subject to the terms and conditions contained herein.

## **Agreement**

In consideration of the mutual promises and undertakings herein set forth and other good and valuable consideration, the parties agree as follows:

1. SEMSWA hereby consents and authorizes Gamble to construct, lay, install, maintain, repair, remove, operate and use the Pipeline in, under and across the Gamble Easement. The Pipeline will be installed at a minimum depth of between six and one-half (6½) and sixteen (16) feet below grade. Gamble shall, prior to the start of construction, apply for and obtain a Low-Impact Grading, Erosion and Sediment Control Permit and a (no-fee) Stormwater Public Improvement Permit from SEMSWA for the construction of the Pipeline pursuant to the attached permit requirements.

Prior to Gamble beginning construction of the Pipeline in, under and across the Gamble Easement, Gamble shall submit their plans to SEMSWA for review and acceptance which shall not be unreasonably withheld or delayed. Such plans shall include both the actual construction plans along with a legal description and depiction of the exact location of the sanitary sewer pipeline and the reduction, if possible, in the size of the Gamble Easement. Upon written approval by SEMSWA of both the actual construction plans along with a legal description and depiction of the exact location of the sanitary sewer pipeline this CONSENT AGREEMENT shall be amended, if necessary, and recorded to reflect the exact location of the proposed Pipeline and the reduction, if possible, in the size of the Gamble Easement.

2. SEMSWA further consents and authorizes Gamble to construct, install, maintain, repair, operate, remove and use the Pipeline in the Gamble Easement substantially in accordance with the plans and specifications to be submitted to SEMSWA for review and approval prior to commencement of construction.

3. In the event Gamble desires at any time to modify or change the Plans within the Gamble Easement in any material way, either before or after the initial construction thereof, they will obtain the written approval of SEMSWA for such change or modification before implementing the same, which approval shall not be unreasonably withheld or delayed. Such written approval need not be recorded in order to be effective.

4. After any construction or other operations by Gamble which disturb the ground surface or any facilities of SEMSWA within the Gamble Easement, Gamble will restore the same as nearly as may reasonably be done to the condition they were in immediately prior to construction, except as necessarily modified to accommodate the Pipeline and use permitted hereby, in accordance with the Plans. Gamble and/or its contractor(s) shall, for a period of one year upon completion of work, warrant that the

surface areas disturbed and restored in connection with the Plans shall not materially subside.

5. SEMSWA shall take no action which would damage, remove or interfere in any way with, or impair the lateral or subjacent support for the Pipeline within the Gamble Easement. If SEMSWA should require relocation of the Pipeline to another location for purposes of construction of major drainage way facilities, such new location must allow the Pipeline to maintain its gravity flow nature and provided that the Colorado Department of Public Health and Environment will approve and permit, if necessary, changes to the Pipeline relocation. Such relocation shall be at the sole cost and expense of Gamble or their successors in interest.

6. SEMSWA recently located an unauthorized direct connection to SEMSWA's storm sewer located within SEMSWA Easement. SEMSWA will investigate the source of the unauthorized direct connection when the storm sewer is exposed during the Pipeline construction. If it is determined that the source of the unauthorized direct connection is from the Gamble Property, Gamble agree to pay all reasonable costs to remove and repair the unauthorized direct connection to SEMSWA's storm sewer.

7. The benefits and burdens of this Consent Agreement shall inure to and be binding upon the respective legal representatives, heirs, executors, administrators, successors and assigns of the parties hereto. This Consent Agreement may be recorded.

8. Should any one or more provisions of this Consent Agreement be judicially determined invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this Consent Agreement, the intent being that the various sections and provisions hereof are severable.

9. The individuals executing this Consent Agreement represent and warrant that they are duly and properly authorized to execute this document on behalf of the parties.

10. The above and foregoing constitutes the whole agreement between the parties with respect to the matters herein set forth and no additional or different oral representation, promise or agreement shall be binding on any of the parties hereto with respect to the subject matter of this instrument.

IN WITNESS WHEREOF the parties have executed this instrument as of the day and year first above written.

**SOUTHEAST METRO STORMWATER AUTHORITY:**

By: \_\_\_\_\_  
Paul Danley, Executive Director

SEMSWA Legal Counsel:

By: \_\_\_\_\_  
Edward J. Krisor

\_\_\_\_\_  
Robert Neil Gamble

\_\_\_\_\_  
Virginia G. Gamble

## Exhibit A – Gamble Easement



Location Map for 7664 S Trenton Drive

