

RESOLUTION NO. R-019-153

THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS, COLORADO

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT
BETWEEN THE URBAN DRAINAGE AND FLOOD CONTROL DISTRICT THE
SOUTHEAST METRO STORMWATER AUTHORITY, THE TOWN OF PARKER, AND
THE BOARD OF COUNTY COMMISSIONERS OF THE
COUNTY OF DOUGLAS, COLORADO, REGARDING FUNDING OF MAJOR
DRAINAGEWAY PLANNING FOR CHERRY CREEK UPSTREAM OF CHERRY CREEK
RESERVOIR

WHEREAS, the Board of County Commissioners of the County of Douglas (the "County"), the Southeast Metro Stormwater Authority ("SEMSWA"), the Town of Parker ("Parker"), and the Urban Drainage and Flood Control District ("District"), desire to enter into an intergovernmental agreement regarding the funding of major drainageway planning for Cherry Creek upstream of Cherry Creek Reservoir; and

WHEREAS, the County is willing to enter into such an agreement with the District, SEMSWA, and Parker in accordance with the terms and conditions set forth in the intergovernmental agreement attached hereto; and

WHEREAS, governmental entities are authorized to enter into intergovernmental agreements pursuant to the provisions of Article XIV, Section 18(2)(a) of the Colorado Constitution, and section 29-1-203, C.R.S.; now, therefore,

BE IT RESOLVED, BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, STATE OF COLORADO, that the intergovernmental agreement between the Board of County Commissioners of the County of Douglas, the District, SEMSWA, and Parker, a copy of which is attached hereto and incorporated herein, is hereby approved, and the Chair of the Board is authorized to execute the agreement on behalf of Douglas County.

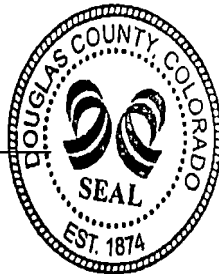
PASSED AND ADOPTED this 17 day of December, 2019, in Castle Rock, Douglas County, Colorado.

THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS, COLORADO

BY: Roger A. Partridge
Roger A. Partridge, Chair

ATTEST:

Emily Wrenn
Emily Wrenn, Clerk to the Board



AGREEMENT REGARDING FUNDING OF
MAJOR DRAINAGEWAY PLANNING FOR
CHERRY CREEK UPSTREAM OF CHERRY CREEK RESERVOIR

Agreement No. 19-09.14
Project No. 107701
Agreement Amount \$130,000

THIS AGREEMENT, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT d/b/a MILE HIGH FLOOD DISTRICT (hereinafter called "DISTRICT"), SOUTHEAST METRO STORMWATER AUTHORITY (hereinafter called "SEMSWA"), TOWN OF PARKER (hereinafter called "PARKER"), and DOUGLAS COUNTY (hereinafter called "DOUGLAS"); (hereinafter SEMSWA, PARKER, and DOUGLAS 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 2019 (Resolution No. 67, Series of 2018) which includes master planning; and

WHEREAS, PARTIES now desire to proceed with development of a drainageway master plan report for Cherry Creek upstream of Cherry Creek Reservoir (hereinafter called "PROJECT"); and

WHEREAS, DISTRICT's Board of Directors has authorized DISTRICT financial participation for PROJECT (Resolution No. 49, Series of 2019); 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, 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 June 2019, (hereinafter called "AREA").

3. SCOPE OF PROJECT

The purpose of PROJECT is to define and document baseline data, identify areas of concern for stream stabilization and corresponding mitigation measures, determine channel forming flows, recommend restoration by stream flow stages, prepare a vegetation management plan, recommend recreation enhancements, identify fluvial hazards and sediment transport issues, and associated risks to stream and watershed health. The plan will also update stream gauge data and incorporate water quality modeling supported by the Cherry Creek Basin Water Quality Authority.

Conceptual-level costs will be developed for project alternatives. A final recommended plan will be developed for Cherry Creek upstream of the Cherry Creek Reservoir. The plan will also include guidance on recommended monitoring to determine project success.

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 \$130,000.

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
	<u>Percentage Share</u>	<u>Contribution</u>
DISTRICT	50.00%	\$65,000
SEMSWA	23.08%	\$30,000
PARKER	15.38%	\$20,000
<u>DOUGLAS</u>	<u>11.54%</u>	<u>\$15,000</u>
TOTAL	100.00%	\$130,000

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 - \$30,000; PARKER - \$20,000; DOUGLAS - \$15,000; DISTRICT - \$65,000) 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

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 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 PARKER shall be the Public Works and Engineering Director, 20120 East Mainstreet, Parker, Colorado 80138.
- C. The contracting officer for DOUGLAS shall be the County Engineer, 100 Third Street, Castle Rock, Colorado 80104.
- D. The contracting officer for DISTRICT shall be the Executive Director, 2480 West 26th Avenue, Suite 156B, Denver, Colorado 80211.
- E. 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 counties where 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

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 contract with a subconsultant or subcontractor that fails to certify to CONTRACTOR that it shall not knowingly employ or contract 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 AUTHORITY

By_____

Name_____

Title_____

Date_____

TOWN OF PARKER

(SEAL)

By _____
Mike Waid

ATTEST:

Title Mayor

Carol Baumgartner, Town Clerk

Date _____

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS

ATTEST:

By: _____
Roger A. Partridge, Chair

Date _____

Emily Wrenn, Clerk to the Board

APPROVED AS TO CONTENT:

APPROVED AS TO LEGAL FORM:

Douglas J. DeBord, County Manager

Lance Ingalls, County Attorney

APPROVED AS TO FISCAL CONTENT:

Andrew Copland, Director of Finance

AGREEMENT REGARDING FUNDING OF
MAJOR DRAINAGEWAY PLANNING FOR
CHERRY CREEK UPSTREAM OF CHERRY CREEK RESERVOIR

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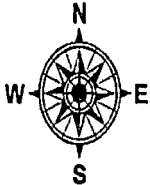


EXHIBIT A
Cherry Creek (U/S of Reservoir) MDP
Approximate Study Limits
June 2019