

AMENDMENT TO
AGREEMENT REGARDING
FINAL DESIGN, RIGHT-OF-WAY ACQUISITION AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
40th STREET OUTFALL, 40TH AVENUE TO SOUTH PLATTE RIVER

Agreement No. 09-06.06A

THIS AGREEMENT, made this _____ day of _____, 2010, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT") and CITY AND COUNTY OF DENVER (hereinafter called "CITY") and collectively known as "PARTIES";

WITNESSETH:

WHEREAS, PARTIES have entered into "Agreement Regarding Final Design, Right-of-Way Acquisition and Construction of Drainage and Flood Control Improvements for 40th Street Outfall, 40th Avenue to South Platte River" (Agreement No. 09-06.06) dated August 4, 2009, and

WHEREAS, PARTIES now desire to proceed with the final design and right-of-way acquisition and to contribute funds toward construction; and

WHEREAS, PARTIES desire to increase the level of funding by \$4,639,000; and

WHEREAS, DISTRICT's Board of Directors has authorized additional DISTRICT financial participation for PROJECT (Resolution No. 9, Series of 2010); and

WHEREAS, the City Council of CITY and the Board of Directors of DISTRICT have authorized, by appropriation or resolution, all of PROJECT costs of the respective PARTIES.

NOW, THEREFORE, in consideration of the mutual promises contained herein, PARTIES hereto agree as follows:

1. Paragraph 4. PROJECT COSTS AND ALLOCATION OF COSTS is deleted and replaced as follows:

4. PROJECT COSTS AND ALLOCATION OF COSTS

- A. DISTRICT acknowledges that (i) CITY does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of CITY. It is understood and agreed that any payment obligation of CITY hereunder, whether direct or contingent, shall extend only to funds duly and lawfully appropriated and encumbered by the Denver City Council for the purpose of this Agreement, and paid into the Treasury of CITY.
- B. PARTIES agree that for the purposes of this Agreement PROJECT costs shall consist of and be limited to the following:
 - 1. Final design services;
 - 2. Delineation, description and acquisition of required rights-of-way/ easements;
 - 3. Construction of improvements;

09-078-A

4. Contingencies mutually agreeable to PARTIES.
- C. It is understood that PROJECT costs as defined above are not to exceed \$5,129,000 without amendment to this Agreement.

PROJECT costs for the various elements of the effort are estimated as follows:

<u>ITEM</u>	<u>AMOUNT</u>
1. Final Design	1,470,916
2. Right-of-way	240,000
3. Construction	3,418,084
4. Contingency	*
Grand Total	\$5,129,000

This breakdown of costs is for estimating purposes only. Costs may vary between the various elements of the effort without amendment to this Agreement provided the total expenditures do not exceed the maximum contribution by all PARTIES plus accrued interest.

* Monies for contingency shall be added by amendment to this Agreement at a later date.

- D. Based on total PROJECT costs, the maximum percent and dollar contribution by each party shall be:

	<u>Percentage Share</u>	<u>Previously Contributed</u>	<u>Additional Contribution</u>	<u>Maximum Contribution</u>
DISTRICT	83.00%	\$245,000	\$4,000,000	\$4,245,000
CITY	17.00%	\$245,000	\$ 639,000	\$ 884,000
TOTAL	100.00%	\$490,000	\$4,639,000	\$5,129,000

2. Paragraph 5. MANAGEMENT OF FINANCES is deleted and replaced as follows:

5. 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 Board approval. Payment of each party's full share (CITY - \$884,000; DISTRICT - \$4,245,000) 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 expended for final design and right-of-way, as well as a periodic notification to CITY 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 15). Within 30 days of request for payment by CITY after the project has been awarded to a contractor for construction, DISTRICT shall remit to CITY 50% of those costs attributed to PROJECT, up to DISTRICT's full share of \$4,245,000. CITY shall provide a periodic accounting of PROJECT funds expended for construction, as well as a periodic notification to DISTRICT of any unpaid obligations.

Within one year of completion of construction 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.

3. All other terms and conditions of Agreement No. 09-06.06 shall remain in full force and effect.

WHEREFORE, PARTIES hereto have caused this instrument to be executed by properly authorized signatories as of the date and year first above written.

URBAN DRAINAGE AND
FLOOD CONTROL DISTRICT

By Paul A. Anderson

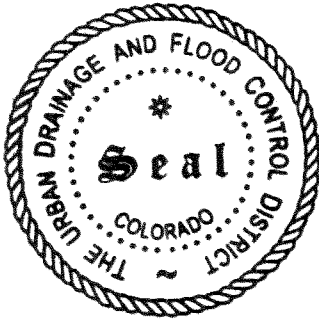
Title Executive Director

Date 10/5/10

(SEAL)

ATTEST:

David Burnett



CITY AND COUNTY OF DENVER

ATTEST:

Clerk and Recorder,
Ex-Officio Clerk of City and County of Denver

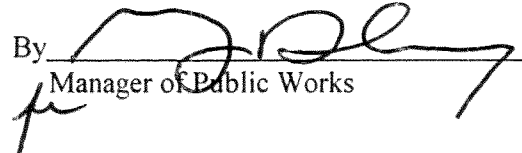
APPROVED AS TO FORM:

Attorney for
City and County of Denver:

By _____
Assistant City Attorney

By _____
Mayor

RECOMMENDED AND APPROVED:

By  _____
Manager of Public Works

REGISTERED AND COUNTERSIGNED:

By _____
Manager of Finance
Contract Control No. CE 90764(1)

By _____
Auditor