

AMENDMENT TO
AGREEMENT REGARDING
FINAL DESIGN, RIGHT-OF-WAY ACQUISITION AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS ALONG
CHERRY CREEK FROM MONACO PARKWAY TO ILIFF BOULEVARD,
CITY AND COUNTY OF DENVER

Agreement No. 11-04.06G
Project No. 100265

THIS AGREEMENT, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT"), CITY AND COUNTY OF DENVER, a municipal corporation duly organized and existing under and by virtue of the Constitution of the State of Colorado (hereinafter called "CITY"), SOUTHEAST METRO STORMWATER AUTHORITY (hereinafter called "SEMSWA"), ARAPAHOE COUNTY (hereinafter called "COUNTY"), and collectively known as "PARTIES";

WITNESSETH:

WHEREAS, DISTRICT and CITY have entered into "Agreement Regarding Final Design, Right-of-Way Acquisition and Construction of Drainage and Flood Control Improvements along Cherry Creek from Monaco Parkway to Iliff Boulevard, City and County of Denver" (Agreement No. 11-04.06) dated December 20, 2011, as amended; and

WHEREAS, SEMSWA and COUNTY were not parties to the Original Agreement No. 11-04.06, and were added as parties by Amendment E; and

WHEREAS, PARTIES now desire to construct improvements; and

WHEREAS, PARTIES desire to increase the level of funding by \$3,600,000; and

WHEREAS, DISTRICT's Board of Directors has authorized additional DISTRICT financial participation for PROJECT (Resolution No. 16, Series of 2018); and

WHEREAS; the City Council of CITY, Board of Directors of SEMSWA, County Commissioners of COUNTY, and the Board of Directors of DISTRICT have authorized, by appropriation or resolution, all of PROJECT costs of the respective PARTIES; and

WHEREAS, COUNTY is a voting member of SEMSWA and PROJECT is located in COUNTY; and

WHEREAS, COUNTY has not delegated its land use and police powers in regard to the regulation and control of floodplains located within COUNTY to SEMSWA; and

WHEREAS, COUNTY therefore is the only governmental entity that can make the Agreement contained in paragraph 10 of this Agreement.

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

1. Paragraph 2. SCOPE OF PROJECT is amended to include the following:
 2. SCOPE OF PROJECT
 - A. Final Design. PROJECT shall include the final design of improvements in accordance with the recommendations defined in PLAN. Specifically, the final design of facilities shall extend from approximately Quebec Street to Iliff Boulevard, as shown on Exhibit A.
 - B. Right-of-Way Delineation and Acquisition. Right-of-way for the improvements as set forth in the final design and an estimate of costs for acquisition shall be determined. Maps, parcel descriptions and parcel plats shall also be prepared.
 - C. Construction. PROJECT shall include construction by DISTRICT of the drainage and flood control improvements as set forth in the final design and vegetation establishment.

2. 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;
 4. Contingencies mutually agreeable to PARTIES.
 - C. It is understood that PROJECT costs as defined above are not to exceed \$7,300,000 without amendment to this Agreement.

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

<u>ITEM</u>	<u>AMENDED</u>	<u>PREVIOUSLY AMENDED</u>
1. Final Design	\$ 300,000	\$ 300,000
2. Right-of-way	-0-	-0-
3. Construction	7,000,000	3,400,000
4. Contingency	-0-	-0-
Grand Total	\$7,300,000	\$3,700,000

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.

- 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	32.19%	\$1,800,000	\$ 550,000	\$2,350,000
CITY	47.26%	\$1,600,000	\$1,850,000	\$3,450,000
SEMSWA	6.85%	\$ 300,000	\$ 200,000	\$ 500,000
COUNTY / OPEN SPACE	13.70%	\$ -0-	\$1,000,000	\$1,000,000
TOTAL	100.00%	\$3,700,000	\$3,600,000	\$7,300,000

3. 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 (COUNTY - \$1,000,000; SEMSWA - \$500,000; CITY - \$3,450,000; DISTRICT - \$2,350,000) 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 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 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.

4. Paragraph 13. CONTRACTING OFFICERS AND NOTICES is deleted and replaced as follows:

13. CONTRACTING OFFICERS AND NOTICES

- A. The contracting officer for CITY shall be the Manager of Public Works, 201 West Colfax Avenue, Department 608, Denver, CO 80202.
- B. The contracting officer for DISTRICT shall be the Executive Director, 2480 West 26th Avenue, Suite 156B, Denver, Colorado 80211.

- C. The contracting officer for SEMSWA shall be the Executive Director, 7437 South Fairplay Street, Centennial, Colorado 80112.
 - D. The contracting officer for COUNTY shall be the Director, Open Space and Intergovernmental Relations, 6924 South Lima Street, Centennial, Colorado 80112.
 - E. The contracting officer for COUNTY shall be the Director, Public Works and Development, 6924 South Lima Street, Centennial, Colorado 80112
 - F. Any notices, demands or other communications required or permitted to be given by any provision of this Agreement shall be given in writing, delivered personally or sent by registered mail, postage prepaid and return receipt requested, addressed to PARTIES at the addresses set forth above or at such other address as either party may hereafter or from time to time designate by written notice to the other party given when personally delivered or mailed, and shall be considered received in the earlier of either the day on which such notice is actually received by the party to whom it is addressed or the third day after such notice is mailed.
 - G. 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 CITY. Said representatives shall have the authority for all approvals, authorizations, notices or concurrences required under this Agreement or any amendments or addenda to this Agreement.
5. All other terms and conditions of Agreement No. 11-04.06 shall remain in full force and effect.

For the Board of County Commissioners
ARAPAHOE COUNTY

By  _____

Title Director, Public Works & Development _____

Authorized by Resolution Number _____

As to the obligations contained in
Paragraphs 10 and 11 only

Date 7/20/18 _____

For the Board of County Commissioners
ARAPAHOE COUNTY

By *[Signature]*
Authorized pursuant to Resolution Number 180098

Title Director, Open Space & Intergovernmental Relations

Date 7-13-18



[Signature]

SOUTHEAST METRO STORMWATER
AUTHORITY

By John A. McCarty

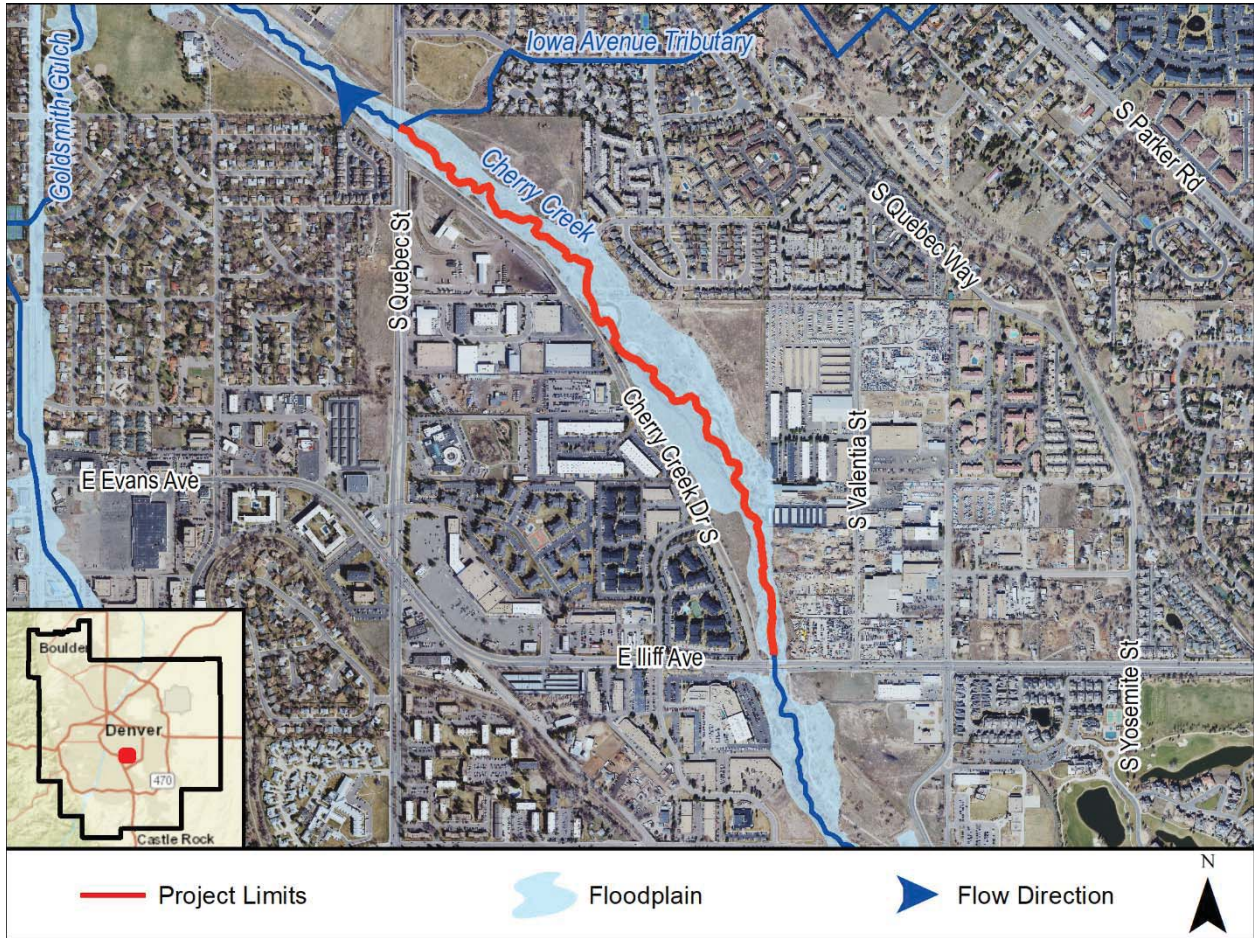
Name JOHN A. MCCARTY

Title EXECUTIVE DIRECTOR

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Agreement No. 11-04.06

Exhibit A



Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Agreement No. 11-04.06G
Project No. 100265

Contract Control Number: PWADM-201103770-07

Contractor Name: Urban Drainage and Flood Control District



DocuSigned by:
Ken MacKenzie
3982FD223529485

By: _____

Ken MacKenzie
Name: _____
(please print)

Executive Director
Title: _____
(please print)

ATTEST: [if required]

NA
By: _____

Name: _____
(please print)

Title: _____
(please print)

