

AMENDMENT TO
AGREEMENT REGARDING
FINAL DESIGN, RIGHT-OF-WAY ACQUISITION AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS ALONG
FIRST CREEK AT EAST 56TH AVENUE,
CITY AND COUNTY OF DENVER

Agreement No. 11-10.02B

THIS AGREEMENT, made by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT") and 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") 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 along First Creek at East 56th Avenue, City and County of Denver" (Agreement No. 11-10.02) dated January 18, 2012, as amended; and

WHEREAS, PARTIES now desire to construct PROJECT; and

WHEREAS, PARTIES desire to increase the level of funding by \$400,000; and

WHEREAS, DISTRICT's Board of Directors has authorized additional DISTRICT financial participation for PROJECT (Resolution No. 35 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;
 4. Contingencies mutually agreeable to PARTIES.

- C. It is understood that PROJECT costs as defined above are not to exceed \$6,400,000 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>ORIGINAL</u>
1. Final Design	\$ 200,000	\$200,000
2. Right-of-way	-0-	-0-
3. Construction	6,000,000	5,600,000
4. Contingency	200,000	200,000
Grand Total	\$6,400,000	\$6,000,000

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	50.00%	\$3,000,000	\$200,000	\$3,200,000
CITY	50.00%	\$3,000,000	\$200,000	\$3,200,000
TOTAL	100.00%	\$6,000,000	\$400,000	\$6,400,000

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 - \$3,200,000; DISTRICT - \$3,200,000) 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.

3. Paragraph 8. MANAGEMENT OF CONSTRUCTION is amended to include the following:
 - B. Construction Management and Payment
 11. CITY has entered into an Intergovernmental Agreement with the Regional Transportation District ("RTD") whereby RTD has agreed to contribute \$1.3 million toward construction of PROJECT funded by RTD's federal funding grant through the Federal Transit Administration ("RTD Agreement"); and, pursuant to the RTD Agreement, CITY must comply, and must require its contractors to comply, with federal requirements in procuring and implementing construction of PROJECT. DISTRICT shall provide to CITY copies of all executed contracts and subcontracts for construction of PROJECT not later than 20 days from execution thereof. If RTD or FTA should issue findings following an audit of the RTD Agreement or any such contracts for compliance with federal requirements, DISTRICT acknowledges that CITY must use best efforts to amend any such contracts in order to respond to the audit findings."
4. Paragraph 8. MANAGEMENT OF CONSTRUCTION is further amended to include the following:
 - D. Federal Compliance. DISTRICT acknowledges that CITY's share is funded, in part, by RTD's federal funding grant through the Federal Transit Administration ("FTA") and agrees to procure and implement construction of PROJECT in accordance with Exhibit C, Federal Requirements, which includes FTA Circular 4220.1F. DISTRICT acknowledges that RTD will determine the applicable Disadvantaged Business Enterprise Program goal for construction of PROJECT, if any. DISTRICT acknowledges that prior to soliciting proposals for construction of PROJECT, RTD shall have the right and opportunity to review the construction bid package documents for conformance with the FEDERAL REQUIREMENTS. DISTRICT shall comply with the applicable federal terms and conditions in Exhibit C and ensure Exhibit C is incorporated into and appended to each contract or subcontractor for construction of PROJECT. DISTRICT shall ensure that RTD is an obligee on all public works bonds obtained by DISTRICT's contractors for construction of PROJECT. DISTRICT shall forward to CITY executed copies of such bonds and all contracts and subcontractors for design, construction, materials, or otherwise that are entered into with respect to construction of PROJECT.

5. All other terms and conditions of Agreement No. 11-10.02 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.

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 _____



Contract Control Number: PWADM-201103771-02

Contractor Name: Urban Drainage and Flood Control
Agreement No. 11-10-02B

By: Paul A. Andrus

Name: Paul A. Andrus
(please print)

Title: Executive Director
(please print)

ATTEST: [if required]

By: David Bennett

Name: DAVID BENNETT
(please print)

Title: MANAGER
(please print)

