

AMENDMENT TO
AGREEMENT REGARDING
FINAL DESIGN, RIGHT-OF-WAY ACQUISITION AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
SANDERSON GULCH LIPAN STREET TO SOUTH PLATTE RIVER
CITY AND COUNTY OF DENVER

Agreement No. 15-07.06B
Project No. 105540

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 for Sanderson Gulch Lipan Street to South Platte River" (Agreement No. 15-07.06), as amended, dated October 13, 2015; and

WHEREAS, PARTIES now desire to construct improvements; and

WHEREAS, PARTIES desire to increase the level of funding by \$8,400,000; and

WHEREAS, DISTRICT's Board of Directors has authorized additional DISTRICT financial participation for PROJECT (Resolution No. 19, Series of 2017); 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;
 4. Contingencies mutually agreeable to PARTIES.
- C. It is understood that PROJECT costs as defined above are not to exceed \$10,000,000 without amendment to this Agreement.

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

| | <u>AS AMENDED</u> | PREVIOUSLY <u>ORIGINAL</u> |
|-----------------|-------------------|-------------------------------|
| <u>ITEM</u> | | |
| 1. Final Design | \$ 600,000 | \$600,000 |
| 2. Right-of-way | -0- | -0- |
| 3. Construction | 8,900,000 | 1,000,000 |
| 4. Contingency | 500,000 | -0- |
| Grand Total | \$10,000,000 | \$1,600,000 |

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 | 18.00% | \$ 800,000 | \$1,000,000 | \$ 1,800,000 |
| CITY | 72.00% | \$ 800,000 | \$7,400,000 * | \$ 8,200,000 |
| TOTAL | 100.00% | \$1,600,000 | \$8,400,000 | \$10,000,000 |

*CITY will be administering the construction of PROJECT. As such, CITY shall retain their matching fund of \$8,400,000. Once payment has been requested, DISTRICT shall remit to CITY 50% of these costs attributed to PROJECT, up to DISTRICT's full share of \$1,800,000.

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 - \$800,000; DISTRICT - \$1,800,000) 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. All other terms and conditions of Agreement No. 15-07.06 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.