

AMENDMENT TO COOPERATIVE AGREEMENT

THIS AMENDMENT TO COOPERATIVE AGREEMENT ("Amendment") is made and entered into this ____ day of _____ 2011, between the City and County of Denver, acting by and through its Board of Water Commissioners ("Board"), a municipal corporation of the State of Colorado, and the City and County of Denver, acting by and through its Department of Public Works ("City"), a municipal corporation of the State of Colorado.

RECITALS

1. The Board and the City entered a Cooperative Agreement dated August 4, 2009, for the Board to modify its Conduit Nos. 12 and 18 crossing the South Platte River near 11th Avenue (the "Project") to accommodate the City's South Platte River Zuni/Sun Valley Reach project to rechannel the South Platte River between 8th Avenue and Colfax Avenue.
2. In the original Cooperative Agreement, the parties agreed to a maximum payment obligation of One Million Six Hundred Eighty-Six Thousand Three Hundred Fifty-Five Dollars (\$1,686,355.00) by the City for the Project, based on the original cost estimate prepared by the Board.
3. During construction of the modified Conduit No. 12, the Board's contractor was directed by the Colorado Department of Public Health and Environment to remediate environmental contamination that had not been anticipated, thereby increasing the Board's costs and extending the schedule for modification of Conduit No. 12.
4. After the Board's contractor finished its work on Conduit No. 12, the Board terminated the rest of the agreement with the contractor to work on Conduit No. 18.
5. The City has performed the work on Conduit No. 18 and is prepared to fund the cost of the design and construction of the Conduit No. 18 work, to the extent provided herein. The Board has conducted inspection of the Conduit No. 18 work.
6. The original cost estimate prepared by the Board is not sufficient to cover the Board's final costs for the modifications of Conduit Nos. 12 and 18.
7. The parties desire to amend the Cooperative Agreement to change their respective obligations for the Project and to add funding.
8. In accordance with the Colorado Constitution and the Charter of the City and County of Denver, the City and the Board are authorized to enter into agreements of this nature.

NOW, THEREFORE, the Board and the City agree to the following:

1. **THE PROJECT.** To distinguish the work on Conduit No. 12 from the work on Conduit No. 18, **Paragraphs A and B of Section 2 of the Cooperative Agreement are amended to read as follows:**

"A. Descriptions of the Work.

1. The work on Conduit No. 12 generally consists of the design, construction, and inspection of approximately 250 feet of the 48-inch steel

09-500-A

conduit (“Conduit No. 12 Project”), as generally depicted in **Exhibit A**, which is attached and incorporated by reference and fully replaces the original two-page Exhibit A that depicted the entire Project.

2. The work on Conduit No. 18 generally consists of the design, construction, and inspection of approximately 215 feet of the 54-inch steel conduit (“Conduit No. 18 Project”), as generally depicted in **Exhibit C**, attached and incorporated by reference, which replaces the description of the Conduit No. 18 work in the original two-page Exhibit A that depicted the entire Project.

B. Amended Cost Itemization.

Exhibit D, attached and incorporated by reference, is an itemization of the Board’s final costs for the Conduit Nos. 12 and 18 Projects. The City has reviewed and accepted Exhibit D as the basis for the Maximum Contract Amount, which supersedes the amount calculated on Exhibit B.”

2. PROJECT CONSTRUCTION. To distinguish the Board’s and the City’s respective responsibilities for the Conduit Nos. 12 and 18 Projects, **Section 3 of the Cooperative Agreement is amended to read as follows:**

“3. Project Construction.

A. The Board shall be solely responsible for construction of the Conduit No. 12 Project, in accordance with the terms of the Cooperative Agreement, as modified in the Amendment to Cooperative Agreement, through use of its own forces or qualified contractors. The City shall have no responsibility for construction of the Conduit No. 12 Project.

B. Except as provided in Section 3.C.(2) below, the City shall be solely responsible for construction of the Conduit No. 18 Project, through use of its own forces or qualified contractors. The Board shall have no responsibility for construction of the Conduit No. 18 Project, except that the Board shall provide design, construction staking, survey support, testing, and inspection services. The Board may attend construction meetings, and, upon reasonable notice to the City, may observe the progress of the Conduit No. 18 Project and participate in a final punch list walk-through and inspection prior to the acceptance of the Conduit No. 18 Project by the City and the Board.

C. Project status as of the date of the Amendment to Cooperative Agreement is as follows:

(1) The parties agree that the Board has fulfilled its responsibility for construction of the Conduit No. 12 Project.

(2) The Board has provided certain design and inspection services pertaining to the Conduit No. 18 Project. The City has completed construction of the Conduit No. 18 Project, which the Board has inspected and finally accepted, prior to the date of the Amendment to Cooperative Agreement.”

3. PROJECT FUNDING AND COMPENSATION; PAYMENT FOR ADDITIONAL COSTS. To add City funding to pay for the Board’s final costs incurred and services provided on the Conduit No. 12 Project and Conduit No. 18 Project, **Paragraphs A and C of Section 4 of the Cooperative Agreement are amended to read as follows:**

"A. **Maximum Contract Amount.** Notwithstanding any other provision of the Cooperative Agreement, the City's maximum payment obligation will not exceed **Two million four hundred fourteen thousand one hundred thirty two dollars and no cents (\$2,414,132.00)** (the "Maximum Contract Amount"). The City is not obligated to execute an agreement or any amendments for any further services, including any service performed by the Board beyond that specifically described in the Cooperative Agreement. Any services performed beyond those set forth herein are performed at the Board's risk and without authorization under the Cooperative Agreement."

"C. **Reimbursements.**

(1) The City agrees to reimburse the Board for the actual costs the Board incurred on the Conduit No. 12 Project and certain agreed costs for the Conduit No. 18 Project, which are itemized in **Exhibit D**, in the total amount of \$2,414,132.00.

(2) The Board has provided to the City, and the City has paid, one invoice for partial payment in the amount of \$843,177.50 (Invoice Number 287207 dated 3/24/2011) for the Board's costs. The Board shall provide a final invoice to the City for the remaining balance of \$1,570,954.50 due to the Board, which the City agrees to pay within ninety (90) days of receipt of the Board's final invoice.

(3) The City shall have the right to refuse to pay all or a portion of an invoice that is inconsistent with this Agreement. The City may delay payment until it can verify the accuracy of the invoice, obtain releases or waivers with respect to work covered in the invoice, or resolve a dispute with the Board regarding an invoice."

4. EXECUTION OF AMENDMENT. This Amendment is expressly subject to and shall not be or become effective or binding on the City and the Board until fully executed by all signatories of the City and the Board.

5. EFFECTIVE DATE AND TERMINATION. This Amendment shall become effective as of the date set out on the first page hereof, upon execution by both parties.

6. COOPERATIVE AGREEMENT. Except as amended in this Amendment, the Cooperative Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed.

ATTEST

By: [Signature]
Secretary

APPROVED:

[Signature]
Director of Engineering

APPROVED AS TO FORM:

[Signature]
Legal Division

CITY AND COUNTY OF DENVER,
acting by and through its
BOARD OF WATER COMMISSIONERS

By: [Signature]
President



ATTEST:

DEBRA JOHNSON, Clerk and
Recorder, Ex-Officio Clerk of the
City and County of Denver

APPROVED AS TO FORM:
DOUGLAS J. FRIEDNASH, Attorney
For the City and County of Denver

By: _____
Assistant City Attorney

CITY AND COUNTY OF DENVER

By: _____
MICHAEL B. HANCOCK, Mayor

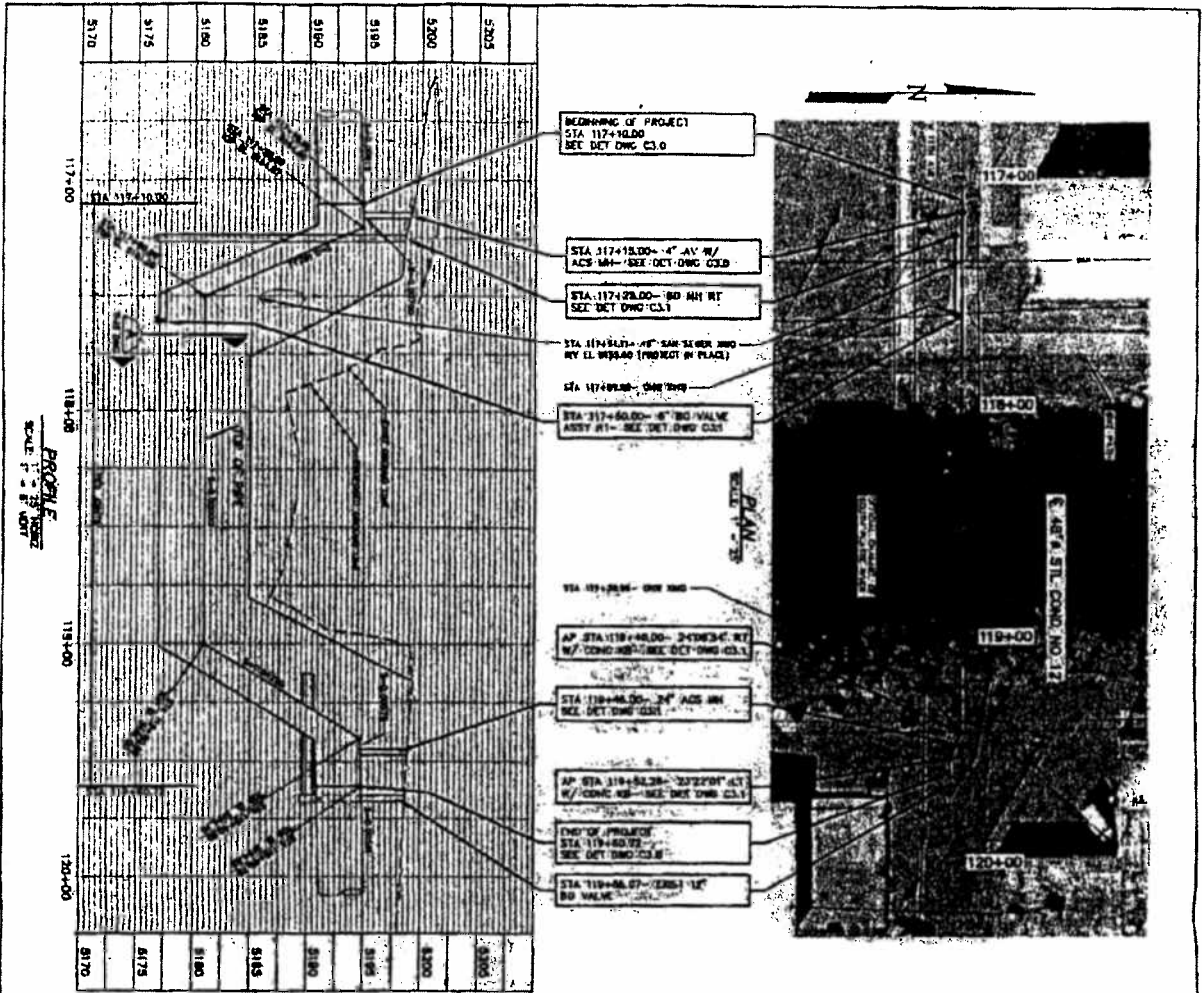
RECOMMENDED AND APPROVED:

By: [Signature]
Manager of Public Works

REGISTERED AND COUNTERSIGNED:

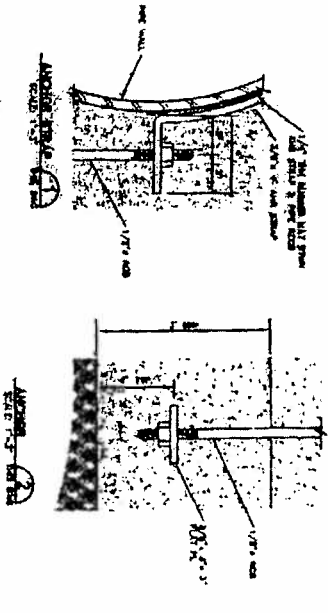
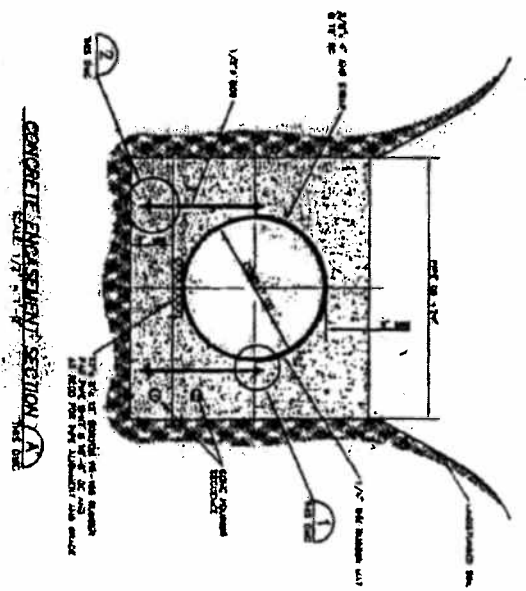
By: _____
Manager of Finance
Contract Control No. CE91226-1

By: _____
DENNIS J. GALLAGHER, Auditor of
the City and County of Denver



ST NO.	DATE	BY	CHKD.	REVISIONS

DATE	
BY	
CHKD.	



1. CONCRETE ENGAGEMENT - TO EXCEED THAT SHOWN IN SECTION A-A.
2. REINFORCEMENT - TO EXCEED THAT SHOWN IN SECTION A-A.
3. FINISHES - TO EXCEED THAT SHOWN IN SECTION A-A.
4. ALL DIMENSIONS - UNLESS OTHERWISE SPECIFIED.

EXHIBIT A

PRELIMINARY

NOT FOR CONSTRUCTION

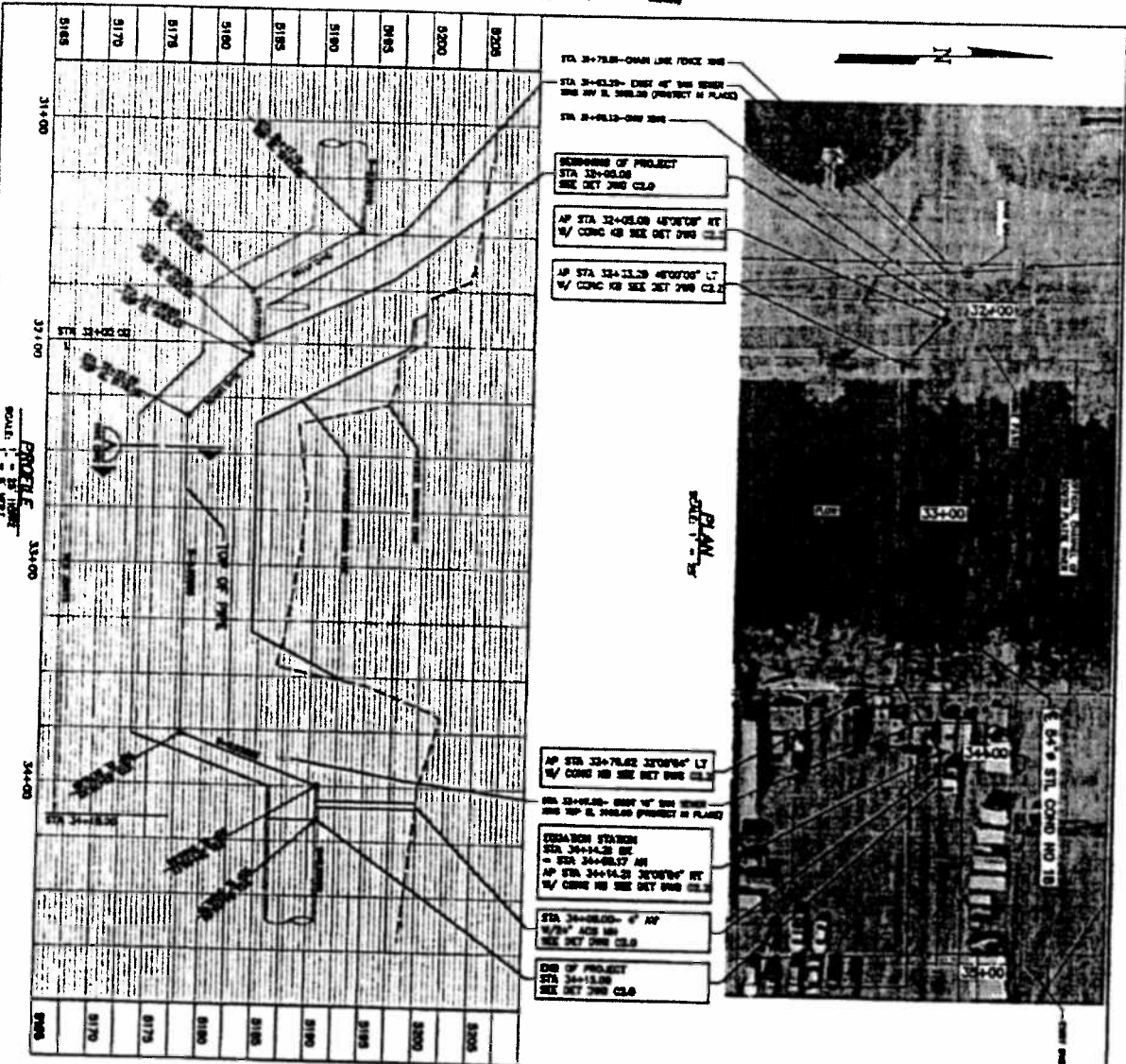
CONTRACT NO. 12

DATE: 12/15/12

BY: [Signature]

CHKD.: [Signature]

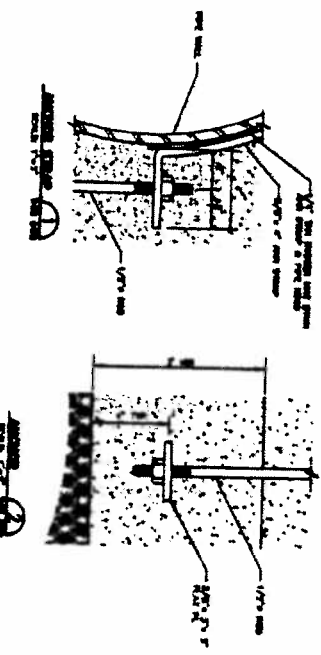
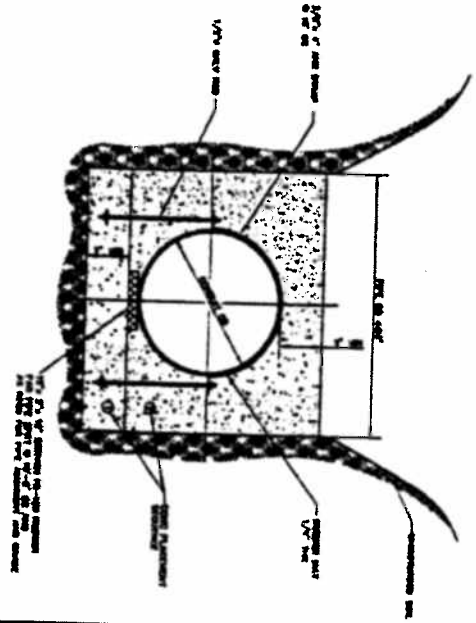
EXHIBIT C



PROJECT NO. C11	
PI NO. 13787	
DATE	
REVISIONS	
NO. CONSTRUCTION	
FINAL FOR CONSTRUCTION	

- NOTES:**
1. CONCRETE CONSTRUCTION TO BE DONE WITH STA 32+00.00 TO STA 34+14.25.
 2. FOR CONCRETE PLACEMENT, PREPARE FORMS AND REINFORCEMENT TO WITHSTAND LOADS FROM TRUCKS AND TRAILERS TO BE PLACED ON THE PAVEMENT.
 3. REINFORCEMENT SHALL BE PLACED AS SHOWN ON DETAIL 200 CLO.
 4. NEW STREETS PER THE CONTRACT NO. 10 TO BE CONSTRUCTED - APPROXIMATE CORNER AND LINE.

CONCRETE EMBASEMENT SECTION (A)



**City and County of Denver / South Platte River Improvements Sun Valley Reach
Conduit No 12 and 18 Costs**

I Denver Water's Actual Costs

Contract Payments		
1	Contract Payments	\$ 1,389,416.00
2	Change Orders 1-13	\$ 734,147.00
3	Cond No. 18 Pipe Purchase	\$ <u>120,599.00</u>
Total Contract Payments		\$ <u>2,244,162.00</u>

total contract payments w/ retainage - change orders
see change order summary

II Denver Water Support

Agreement		
1	100% of Design	\$ 70,400.00
2	50% of Survey	\$ 10,000.00
3	100% of Inspection (due to change orders)	\$ 64,800.00
4	2 months prorated Insp (Cond No 12)	\$ 21,600.00
5	Cond 18 Design Mod	\$ 3,170.00
Agr DW Support		\$ <u>169,970.00</u>

**Total Reimbursement (CCD Payment)
Paid
Balance Due**

**\$ 2,414,132.00
\$ (843,177.50)
\$ 1,570,954.50**

Contract Payments + DW Support
Invoice 287207