

AGREEMENT REGARDING FUNDING OF A CONCEPTUAL PLAN TO REPURPOSE  
A PORTION OF THE HIGH LINE CANAL FOR STORMWATER COLLECTION, TREATMENT  
AND CONVEYENCE INTO KETRING LAKE

Agreement No. 16-02.09  
Project No. 106025

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT") and CITY OF LITTLETON (hereinafter called "LITTLETON"); (hereinafter LITTLETON shall be known as "PROJECT SPONSOR" and DISTRICT and PROJECT SPONSOR shall be collectively known as "PARTIES");

WITNESSETH THAT:

WHEREAS, DISTRICT in a policy statement previously adopted (Resolution No. 14, Series of 1970), expressed an intent to assist public bodies which have heretofore enacted floodplain zoning measures; and

WHEREAS, DISTRICT has previously established a Work Program for 2016 (Resolution No. 56, Series of 2015) which includes master planning and water quality research; and

WHEREAS, PARTIES now desire to proceed with development of a conceptual plan to repurpose a segment of the High Line Canal from approximately County Line Road to Caley Avenue for stormwater collection, treatment, and conveyance into Ketring Lake (hereinafter called "PROJECT"); and

WHEREAS, DISTRICT's Board of Directors has authorized DISTRICT financial participation for PROJECT (Resolution No. 61, Series of 2015); and

WHEREAS, PARTIES desire to acquire mapping needed to conduct the engineering studies for PROJECT; and

WHEREAS, PARTIES desire to engage an engineer to render certain technical and professional advice and to compile information, evaluate, study, and recommend design solutions to such drainage problems for PROJECT which are in the best interest of PARTIES.

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

1. SCOPE OF AGREEMENT

This Agreement defines the responsibilities and financial commitments of PARTIES with respect to PROJECT.

2. PROJECT AREA

DISTRICT shall engage an engineer and obtain mapping as needed to perform or supply necessary services in connection with and respecting the planning of PROJECT of the area and watershed shown on the attached Exhibit A dated January 2016, (hereinafter called "AREA").

3. SCOPE OF PROJECT

The purpose of PROJECT is to develop a conceptual plan to repurpose the High Line Canal once Denver Water has decommissioned it for irrigation water delivery, including hydrologic

information and the locations, alignments, and sizing of inflow points, outflow channels and/or pipes, flow control structures, emergency spillways, and other facilities and appurtenances needed to provide efficient stormwater management within AREA. The proposed work shall include, but not be limited to, mapping; compilation of existing data; necessary field work; and development and consistent evaluation of all reasonable alternatives so that the most feasible plan can be determined and justified for AREA. Consideration shall be given to costs, existing and proposed land use, existing and proposed drainage systems, known drainage or flooding problems, known or anticipated erosion problems, stormwater quality, right-of-way needs, existing wetlands and riparian zones, open space and wildlife habitat benefits, legal requirements, and particularly to water rights issues associated with the goals of the PROJECT. Schematic alternative plans shall be developed such that comparison with other alternatives can be made.

Drainage system planning shall be done in three phases by the engineer engaged by DISTRICT, culminating in a conceptual plan report. During the first phase, the selected engineer shall perform all data gathering and modeling needed to prepare the baseline hydrology section of the report containing an introduction, study area description and hydrologic analysis description. During the second phase, the engineer shall perform all studies and data gathering needed to prepare the alternatives analysis section of the report containing a hydraulic analysis discussion, schematics of alternatives developed and their costs along with a discussion of the pros and cons of each alternative and a recommended plan. A single alternative will be selected by PARTIES after the review and evaluation of the alternatives analysis report. During the third phase, the engineer shall be directed to prepare a conceptual design for the selected alternative and prepare the conceptual design section of the conceptual plan report.

4. PUBLIC NECESSITY

PARTIES agree that the work performed pursuant to this Agreement is necessary for the health, safety, comfort, convenience, and welfare of all the people of the State, and is of particular benefit to the inhabitants of PARTIES and to their property therein.

5. PROJECT COSTS

PARTIES agree that for the purposes of this Agreement PROJECT costs shall consist of, and be limited to, mapping, conceptual planning, and related services and contingencies mutually agreeable to PARTIES. Project costs are estimated not to exceed \$70,000.

6. FINANCIAL COMMITMENTS OF PARTIES

PARTIES shall each contribute the following percentages and maximum amounts for PROJECT costs as defined in Paragraphs 5:

	Conceptual Plan Percentage Share	Maximum Contribution
DISTRICT	28.571%	\$20,000
<u>LITTLETON</u>	<u>71.429%</u>	<u>\$50,000</u>
TOTAL	100.00%	\$70,000

7. MANAGEMENT OF FINANCES

Payment by DISTRICT of \$20,000 and by LITTLETON of \$50,000 shall be made to DISTRICT subsequent to execution of this Agreement and within thirty (30) calendar 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 PROJECT SPONSOR 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 and will not require an amendment to this Agreement. In the event that it becomes necessary and advisable to change the scope of work to be performed, the need for such changes shall first be discussed with PARTIES, and their general concurrence received before issuance of any amendments or addenda. No changes shall be approved that increase the costs beyond the funds available in the PROJECT fund unless and until the additional funds needed are committed by PARTIES by an amendment to this Agreement.

Within one year of completion of PROJECT if there are monies including interest earned remaining which are not committed, obligated, or dispersed, each party shall receive a share of such monies, which shares shall be computed as were the original shares.

8. PROJECT MAPPING

No new mapping is anticipated under this Agreement for PROJECT. Upon execution of this Agreement, PROJECT SPONSOR shall provide copies of the most recent mapping within their jurisdictional area in digital format to DISTRICT to the extent such mapping is available without additional cost.

9. CONCEPTUAL PLANNING

Upon execution of this Agreement, PARTIES shall select an engineer mutually agreeable to PARTIES. DISTRICT, with the approval of PROJECT SPONSOR, shall contract with the selected engineer, shall administer the contract, and shall supervise and coordinate the planning for the development of alternatives and of conceptual design.

10. PUBLISHED REPORTS AND PROJECT DATA

DISTRICT will provide to PROJECT SPONSOR access to the draft and final electronic report files.

Upon completion of PROJECT, electronic files of all mapping, drawings, and hydrologic and hydraulic calculations developed by the engineer contracted for PROJECT shall be provided to PROJECT SPONSOR upon request.

11. TERM OF THE AGREEMENT

The term of this Agreement shall commence upon final execution by all PARTIES and shall terminate two years after the final conceptual plan report is delivered to DISTRICT and the final accounting of funds on deposit at DISTRICT is provided to all PARTIES pursuant to Paragraph 7 herein.

12. LIABILITY

Each party hereto shall be responsible for any suits, demands, costs or actions at law resulting from its own acts or omissions and may insure against such possibilities as appropriate.

13. CONTRACTING OFFICERS

- A. The contracting officer for PROJECT SPONSOR shall be the Public Works and Utilities Director, 2255 W, Berry Ave., Littleton, CO 80120.
- B. The contracting officer for DISTRICT shall be the Executive Director, 2480 West 26<sup>th</sup> Avenue, Suite 156B, Denver, Colorado 80211.
- C. 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 PROJECT SPONSOR. Said representatives shall have the authority for all approvals, authorizations, notices, or concurrences required under this Agreement. However, in regard to any amendments or addenda to this Agreement, said representative shall be responsible to promptly obtain the approval of the proper authority.

14. RESPONSIBILITIES OF PARTIES

DISTRICT shall be responsible for coordinating with PROJECT SPONSOR the information developed by the various consultants hired by DISTRICT and for obtaining all concurrences from PROJECT SPONSOR needed to complete PROJECT in a timely manner. PROJECT SPONSOR agrees to review all draft reports and to provide comments within 21 calendar days after the draft reports have been provided by DISTRICT to PROJECT SPONSOR. PROJECT SPONSOR also agrees to evaluate the alternatives presented in the alternatives analysis sections of the report, to select an alternative, and to notify DISTRICT of their decision(s) within 30 calendar days after the alternatives analysis report is provided to PROJECT SPONSOR by DISTRICT.

15. AMENDMENTS

This Agreement contains all of the terms agreed upon by and among PARTIES. Any amendments to this Agreement shall be in writing and executed by PARTIES hereto to be valid and binding.

16. SEVERABILITY

If any clause or provision herein contained shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such invalid or unenforceable clause or provision shall not affect the validity of the Agreement as a whole and all other clauses or provisions shall be given full force and effect.

17. APPLICABLE LAWS

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Jurisdiction for any and all legal actions regarding this Agreement shall be in the State of Colorado and venue for the same shall lie in the County where the Project is located.

18. ASSIGNABILITY

No party to this Agreement shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the nonassigning party or parties to this Agreement.

19. BINDING EFFECT

The provisions of this Agreement shall bind and shall inure to the benefit of PARTIES hereto and to their respective successors and permitted assigns.

20. ENFORCEABILITY

PARTIES hereto agree and acknowledge that this Agreement may be enforced in law or in equity, by decree of specific performance or damages, or such other legal or equitable relief as may be available subject to the provisions of the laws of the State of Colorado.

21. TERMINATION OF AGREEMENT

This Agreement may be terminated upon thirty (30) days' written notice by any party to this Agreement, but only if there are no contingent, outstanding contracts. If there are contingent, outstanding contracts, this Agreement may only be terminated upon the cancellation of all contingent, outstanding contracts. All costs associated with the cancellation of the contingent contracts shall be shared between PARTIES in the same ratio(s) as were their contributions.

22. PUBLIC RELATIONS

It shall be at PROJECT SPONSOR's sole discretion to initiate and to carry out any public relations program to inform the residents in PROJECT area as to the purpose of PROJECT and what impact it may have on them. Technical information shall be presented to the public by the selected engineer. In any event DISTRICT shall have no responsibility for a public relations program, but shall assist PROJECT SPONSOR as needed and appropriate.

23. GOVERNMENTAL IMMUNITIES

The PARTIES hereto intend that nothing herein shall be deemed or construed as a waiver by any PARTY of any rights, limitations, or protections afforded to them under the Colorado Governmental Immunity Act (§ 24-10-101, *et seq.*, C.R.S.) as now or hereafter amended or otherwise available at law or equity.

24. NO DISCRIMINATION IN EMPLOYMENT

In connection with the performance of work under this Agreement, PARTIES agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified on the basis of race, color, ancestry, creed, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability and further agrees to insert the foregoing provision in all subcontracts hereunder.

25. APPROPRIATIONS

Notwithstanding any other term, condition, or provision herein, each and every obligation of PROJECT SPONSOR and/or DISTRICT stated in this Agreement is subject to the requirement of a prior appropriation of funds therefore by the appropriate governing body of PROJECT SPONSOR and/or DISTRICT.

26. NO THIRD PARTY BENEFICIARIES

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to PARTIES, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of PARTIES that any person or party other than PROJECT SPONSOR or DISTRICT receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

27. ILLEGAL ALIENS

PARTIES agree that any public contract for services executed as a result of this intergovernmental agreement shall prohibit the employment of illegal aliens in compliance with §8-17.5-101 *et seq* C.R.S. The following language shall be included in any contract for public services: "The Consultant or Contractor shall not and by signing this Agreement certifies that it does not knowingly employ or contract with an illegal alien to perform work under this Agreement. Consultant or Contractor shall not enter into a subcontract with a subcontractor that fails to certify to the Consultant or Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services. Consultant or Contractor affirms that they have verified or attempted to verify through participation in the Employment Eligibility Verification Program (E-Verify) previously known as the Basic Pilot Program (created in Public Law 208, 104<sup>th</sup> Congress, As Amended, and expanded in Public Law 156, 108<sup>th</sup> Congress, As Amended, that is administered by the United States Department of Homeland Security that Consultant or Contractor does not employ illegal aliens.

Consultant or Contractor shall not use the E-Verify procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.

In the event that the Consultant or Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Consultant or Contractor shall be required to:

- A. Notify the subcontractor and PARTIES within three days that the Consultant or Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- B. Terminate the subcontract with the subcontractor if within three days of receiving the notice required if the Subcontractor does not stop employing or contracting with the illegal alien; except that the Consultant or Contractor shall not terminate the contract with the Subcontractor if during such three days the Subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Consultant or Contractor is required under this Agreement to comply with any reasonable request by the Colorado Department of Labor and Employment (CDL) made in the course of an investigation the CDL is undertaking pursuant to §8-17.5-102(5) C.R.S.

DISTRICT may terminate this agreement for a breach of contract if Consultant or Contractor does not fully and completely comply with these conditions. If this Agreement is so terminated, the Consultant or Contractor shall be liable for actual and consequential damages to PARTIES.

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

URBAN DRAINAGE AND  
FLOOD CONTROL DISTRICT

(SEAL)

Signature \_\_\_\_\_

Printed Name Paul A. Hindman

ATTEST:

Title Executive Director

\_\_\_\_\_

CITY OF LITTLETON

(SEAL)

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

ATTEST:

Title \_\_\_\_\_

\_\_\_\_\_

APPROVED:

\_\_\_\_\_

AGREEMENT REGARDING FUNDING OF A CONCEPTUAL PLAN TO REPURPOSE  
A PORTION OF THE HIGH LINE CANAL FOR STORMWATER COLLECTION, TREATMENT  
AND CONVEYENCE INTO KETRING LAKE

Agreement No. 16-02.09

Project No. 106025

EXHIBIT A (JANUARY 2016):

