

AGREEMENT REGARDING  
MAINTENANCE OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS  
FOR HIGHLINE CANAL @ DISTRICT-WIDE

Agreement No. 24-06.08

Project No. 108495

THIS AGREEMENT, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT D/B/A MILE HIGH FLOOD 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 "DENVER"), CITY OF LITTLETON, (hereinafter called "Littleton"), and CITY OF GREENWOOD VILLAGE (hereinafter called "GREENWOOD VILLAGE"), and collectively known as "PARTIES" ("PARTIES" or "PARTY" shall refer to the collective partnering jurisdiction or single jurisdiction exclusive of the MILE HIGH FLOOD DISTRICT in contexts where the DISTRICT is also referenced independently);

WITNESSETH:

WHEREAS, DISTRICT, in a policy statement previously adopted, (Resolution No. 14, Series of 1970 and Resolution No. 11, Series of 1973) expressed an intent to assist public bodies which have heretofore enacted floodplain regulation measures; and

WHEREAS, PARTIES participated in a joint planning study titled "Highline Canal Stormwater & Operations Master Plan" by RESPEC Consulting and Services, Inc., dated October 2018 (hereinafter called "PLAN"); and

WEHREAS, each PARTY has entered into a separate Intergovernmental Agreement with Denver Water providing for access to and use of that portion of the Highline Canal covered by the Plan which is located within such Party's jurisdiction for the purposes described herein; and

WHEREAS, PARTIES now desire to proceed with the maintenance of drainage and flood control improvements for the Highline Canal @ District Wide (hereinafter called "PROJECT"); and

WHEREAS, DISTRICT's Board of Directors reviewed and authorized expenditures for the 2024 Work Program (Resolution No. 89, Series of 2023); and

WHEREAS, the City Councils of DENVER, LITTLETON, and GREENWOOD VILLAGE 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:

**Part 1**

1.01 SCOPE OF AGREEMENT

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

1.02 SCOPE OF PROJECT

A. Maintenance. PROJECT shall include the maintenance of improvements in accordance with the scope-of-work as agreed-upon by all PARTIES, as shown on Exhibit B. Specifically, the maintenance of facilities shall extend from approximately S. Windemere St. in Littleton to I-25 in the City of Denver, in three distinct and exclusive segments, as shown on Exhibit A.

1.03 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.

1.04 PROJECT COSTS AND ALLOCATION OF COSTS

A. PARTIES agree that for the purposes of this Agreement PROJECT costs shall consist of and be limited to the following:

1. Routine Channel Maintenance
2. On-Call Channel Maintenance
3. On-Call Tree Care
4. Noxious Weed Treatment

B. It is understood that PROJECT costs as defined above are not to exceed \$137,600 without amendment to this Agreement.

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

<u>ITEM</u>	<u>AMOUNT</u>
1. Routine Channel Maintenance	\$ 30,000
2. On-Call Channel Maintenance	\$ 82,600
3. On-Call Tree Care	\$ 0
4. Noxious Weed Treatment	\$ 25,000
Grand Total	\$ 137,600

This breakdown of costs is for estimating purposes only. Costs may vary between the various PROJECT elements without amendment to this Agreement provided the total expenditures do not exceed the maximum contribution by all PARTIES plus accrued interest, if applicable.

- C. Based on total PROJECT costs, the maximum percent and dollar contribution by each party shall be:

	<u>Percentage Share</u>	<u>Maximum Contribution</u>
DISTRICT	0%	\$0
DENVER	58%	\$80,000
GREENWOOD VILLAGE	31%	\$42,600
LITTLETON	11%	\$15,000
TOTAL	100%	\$137,600

#### 1.05 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 PARTY's 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 DISTRICT approval.

Payment of each party's full share (DENVER - \$80,000; GREENWOOD VILLAGE - \$42,600; LITTLETON - \$15,000; DISTRICT - \$0) 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 accounting of PROJECT funds as well as a notification to PARTY of any unpaid obligations upon request. 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 2.06).

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; or, at PARTY'S request, PARTY share of remaining monies shall be transferred to another special fund held by DISTRICT.

#### 1.06 MANAGEMENT OF CONSTRUCTION

A. Costs. Construction costs shall consist of those costs as incurred by the contractor(s) including detour costs, licenses and permits, utility relocations, and construction related engineering services as defined in Paragraph 1.04 of this Agreement.

B. Construction Management and Payment

1. DISTRICT, with the concurrence of PARTY, shall administer and coordinate the construction-related work as provided herein.
2. DISTRICT, with concurrence of PARTY, shall select and award construction contract(s).

3. DISTRICT shall require the contractor to provide adequate liability insurance that includes PARTY. The contractor shall be required to indemnify, defend, and hold harmless PARTY. Copies of the insurance coverage shall be provided to PARTY upon request.
  4. DISTRICT, with assistance of PARTY, shall coordinate field surveying; staking; inspection; testing; acquisition of right-of-way; and engineering as required to construct PROJECT. DISTRICT, with assistance of PARTY, shall assure that construction is performed in accordance with the construction contract documents including approved plans and specifications and shall accurately record the quantities and costs relative thereto. Copies of all inspection reports shall be furnished to PARTY on a weekly basis upon request. DISTRICT shall retain an engineer to perform all or a part of these duties.
  5. DISTRICT, with concurrence of PARTY, shall contract with and provide the services of the design engineer for basic engineering construction services to include addendum preparation; survey control points; explanatory sketches; revisions of contract plans; shop drawing review; as-built plans; weekly inspection of work; and final inspection.
  6. PARTIES shall have access to the site during construction at all reasonable times to observe the progress of work and conformance to construction contract documents including plans and specifications.
  7. DISTRICT shall review and approve contractor billings. DISTRICT shall remit payment to contractor based on billings.
  8. DISTRICT, with concurrence of PARTY, shall prepare and issue all written change or work orders to the contract documents.
  9. PARTIES shall jointly conduct a final inspection and accept or reject the completed PROJECT in accordance with the contract documents
  10. DISTRICT shall provide PARTY a set of reproducible "as-built" plans.
- C. Construction Change Orders. In the event that it becomes necessary and advisable to change the scope or detail of the work to be performed under the contract(s), such changes shall be rejected or approved in writing by the contracting officers. No change orders shall be approved that increase the costs beyond the funds available in the PROJECT fund, including interest earned on those funds, unless and until the additional funds needed to pay for the added costs are committed by all PARTIES.

#### 1.07 RESPONSIBILITIES OF PARTIES

DISTRICT shall be responsible for coordinating with PARTY the information developed by the various consultants hired by DISTRICT and for obtaining all concurrences from PARTY needed to complete PROJECT in a timely manner. PARTY agrees to review all concept plans, preliminary design plans, and final plans and specifications; and to provide comments within 21 calendar days after the drafts have been provided by DISTRICT to PARTY.

1.08 PUBLIC RELATIONS

It shall be at PARTY'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, if requested by PARTY. In any event DISTRICT shall have no responsibility for a public relations program but shall assist PARTY as needed and appropriate.

1.09 EXECUTION IN COUNTERPARTS – ELECTRONIC SIGNATURES

Electronic signatures shall be permitted to bind the PARTIES to this Agreement, and all subsequent documents requiring the signatures of the PARTIES to this Agreement. Documents requiring notarization may also be notarized by electronic signatures. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, CRS §§ 24-71.3-101 to 121. However, the PARTIES agree that only electronic signatures created by electronic signature software including but not limited to DocuSign shall be permitted.

**Part 2**

2.01 OWNERSHIP OF PROPERTY AND LIMITATION OF USE

PARTIES acknowledge that, if PARTY owns the property on which PROJECT is constructed either in fee or non-revocable easement, PARTY shall be responsible for same including but not limited to fully complying with the remaining provisions of this Paragraph 2.01. It is specifically understood that the right-of-way is being used for drainage and flood control purposes. The properties upon which PROJECT is constructed shall not be used for any purpose that shall diminish or preclude its use for drainage and flood control purposes. PARTY may not dispose of or change the use of the properties to diminish or preclude its use for drainage and flood control purposes without approval of DISTRICT, which shall not be unreasonably withheld. If, in the future, PARTY disposes of any portion of or all of the properties acquired upon which PROJECT is constructed pursuant to this Agreement; changes the use to diminish or preclude its use for drainage and flood control purposes of any portion or all of the properties upon which PROJECT is constructed pursuant to this Agreement; or modifies any of the improvements located on any portion of the properties upon which PROJECT is constructed to diminish or preclude its use for drainage and flood control purposes pursuant to this Agreement; and PARTY has not obtained the written approval of DISTRICT prior to such action, PARTY shall take any and all action necessary within their legal authority to reverse said unauthorized activity and return the properties and improvements thereon, acquired and constructed pursuant to this Agreement, to the ownership and condition they were in immediately prior to the unauthorized activity at no expense to DISTRICT. However, PARTY shall not be responsible for the actions of third parties that would violate the provisions of this Paragraph who may have legal rights in the property as long as PARTY has taken reasonable action to stop those actions. In the event PARTY breaches the terms and provisions of this Paragraph 2.01 and does not voluntarily cure as set forth above, DISTRICT shall have the right to pursue a claim against PARTY for specific performance of this portion of the Agreement.

2.02 MAINTENANCE

PARTIES agree that PARTY shall own and be responsible for maintenance of the completed and accepted PROJECT. PARTIES further agree that DISTRICT, at PARTY's request, shall assist PARTY with the maintenance of all facilities constructed or modified by virtue of this Agreement to the extent possible depending on availability of DISTRICT funds. Such maintenance assistance shall be limited to drainage and flood control features of PROJECT. Maintenance assistance may include activities such as keeping flow areas free and clear of debris and silt, keeping culverts free of debris and sediment, repairing drainage and flood control structures such as drop structures and energy dissipaters, and clean-up measures after periods of heavy runoff. The specific nature of the maintenance assistance shall be set forth in a memorandum of understanding from DISTRICT to PARTY, upon acceptance of DISTRICT's annual Maintenance Work Program.

DISTRICT shall have right-of-access to right-of-way and storm drainage improvements at all times for observation of flood control facility conditions and for maintenance when funds are available.

2.03 FLOODPLAIN REGULATION

PARTY agrees to regulate and control the floodplain of Highline Canal within their jurisdiction in the manner prescribed by the National Flood Insurance Program and prescribed regulations thereto as a minimum.

PARTIES understand and agree, however, that PARTY cannot obligate itself by contract to exercise its police powers. If PARTY fails to regulate the floodplain of Highline Canal within their jurisdiction in the manner prescribed by the National Flood Insurance Program and prescribed regulations thereto as a minimum, DISTRICT may exercise its power to do so and PARTY shall cooperate fully.

2.04 TERM OF AGREEMENT

The term of this Agreement shall commence upon execution and shall terminate three (3) years after the final payment is made to the construction contractor and the final accounting of funds on deposit at DISTRICT is provided to all PARTIES pursuant to Paragraph 1.05 herein, except for Paragraph 2.02. FLOODPLAIN REGULATION, Paragraph 2.01. OWNERSHIP OF PROPERTY AND LIMITATION OF USE, and Paragraph 2.02. MAINTENANCE.

2.05 LIABILITY

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

2.06 CONTRACTING OFFICERS

A. The contracting officer for CITY AND COUNTY OF DENVER shall be the Executive Director of the Department of Transportation and Infrastructure, 201 W. Colfax Avenue, Denver, Colorado 80202.

- B. The contracting officer for CITY OF GREENWOOD VILLAGE shall be the City Manager, 6060 S. Quebec Street, Greenwood Village, Colorado 80111.
- C. The contracting officer for CITY OF LITTLETON shall be City Manager, 2255 W. Berry Avenue, Littleton, Colorado 80210.
- D. The contracting officer for DISTRICT shall be the Executive Director, 12575 W. Bayaud Avenue, Lakewood, Colorado 80228.
- E. 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 PARTY. 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.

2.07 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.

2.08 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.

2.09 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 PROJECT is located.

2.10 ASSIGNABILITY

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

2.11 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.

2.12 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.

2.13 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.

2.14 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 because of race, color, ancestry, creed, religion, national origin, gender, age, military status, sexual orientation, gender identity, marital status, or physical or mental disability and further agree to insert the foregoing provision in all subcontracts hereunder.

2.15 APPROPRIATIONS

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

2.16 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 PARTIES receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

2.17 GOVERNMENTAL IMMUNITIES

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.

2.18 INTENT OF AGREEMENT

Except as otherwise stated herein, this Agreement is intended to describe the rights and responsibilities of and between PARTIES and is not intended to and shall not be deemed to confer rights upon any person or entities not named as PARTIES, nor to limit in any way the powers and responsibilities of PARTY, DISTRICT or any other entity not a party hereto.

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



URBAN DRAINAGE AND FLOOD CONTROL  
DISTRICT  
D/B/A  
MILE HIGH FLOOD DISTRICT

By \_\_\_\_\_

Name Laura A. Kroeger

Title Executive Director

Date \_\_\_\_\_

\_\_\_\_\_  
Checked By

CITY AND COUNTY OF DENVER  
SEE ATTACHED SIGNATURE PAGE

CITY COUNCIL OF THE CITY OF GREENWOOD VILLAGE:

\_\_\_\_\_  
George E. Lantz  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Susan M. Ortiz, MMC  
City Clerk

\_\_\_\_\_  
Tonya Haas Davidson  
City Attorney

CITY COUNCIL OF THE CITY OF LITTLETON:

By: \_\_\_\_\_

Name: Kyle Schalchter

Title: Mayor

Date: \_\_\_\_\_

ATTEST:

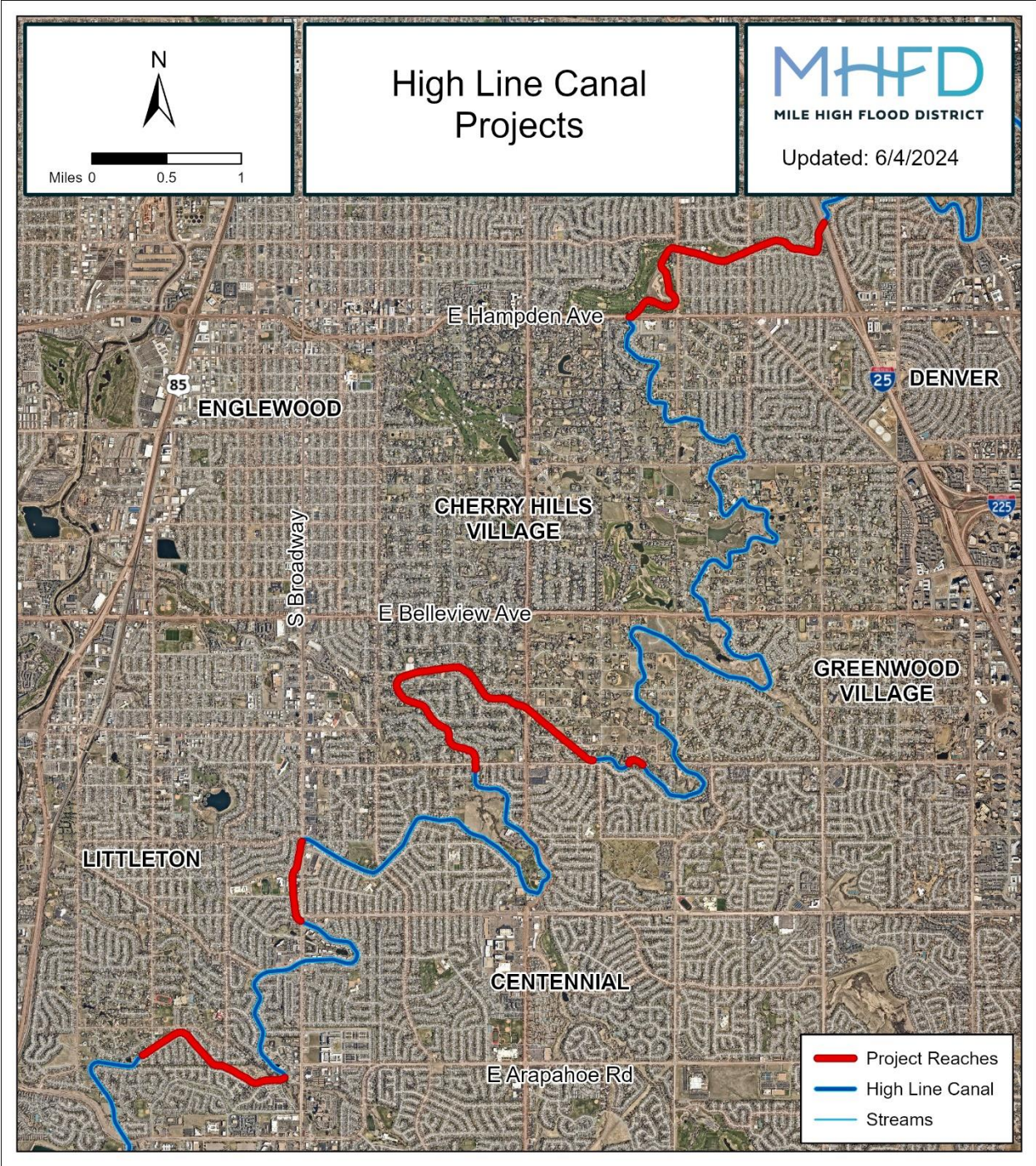
\_\_\_\_\_  
Colleen Norton, City Clerk

\_\_\_\_\_  
Reid Betzing, City Attorney

AGREEMENT REGARDING  
MAINTENANCE OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS  
FOR HIGHLINE CANAL @ DISTRICT-WIDE

Agreement No. 24-06.08  
Project No. 108495

Exhibit A



## **High Line Canal Stormwater Maintenance Scope**

A joint project of: City and County of Denver, City of Greenwood Village, City of Littleton, Mile High Flood District and the High Line Canal Conservancy

### **Routine Channel Maintenance**

The core of this channel maintenance contract is to clear trash, brush, and debris that collects in the channel to ensure passage of stormwater. A routine pass will include:

- Removing and disposing of channel brush and debris including logs (6" diameter or less), branches, large accumulation of leaves and other minor obstructions to the channel. Logs/branches larger than 6" and major obstructions will be mapped and documented with photos sent to the partners via email for a decision regarding removal on an on-call basis (see On-Call Responsibilities).
- Removing and disposing of trash in the channel and at identified wastegates, outfalls, and water quality berms (only in the Denver section).
- Removing and disposing of minor amounts of sediment (two or less cubic yards) and reporting back to the partners on locations where major amounts of sediment are collecting.
- Conducting routine observation of the channel and reporting back on maintenance needs for stormwater passage, bank stability, and human health and safety during routine passes.

The frequency of routine passes will be decided by the partners.

Services performed for routine maintenance will be a lump-sum contract with tracking of time each jurisdiction for each routine pass. The proposal for services shall have a fee breakout to provide proposed cost for each jurisdiction.

### **On-Call Channel Maintenance Responsibilities**

The contractor will be available for on-call services as requested by the local governments. These services could include, but are not limited to, addressing large accumulations of debris that are outside the scope for cleanup during a routine pass, downed tree cleanup, and more frequent sweeps with reduced scope.

Services performed for on-call responsibilities will be charged at time and materials as agreed upon with each entity where the work is to be performed.

### **On-Call Tree Care Responsibilities**

The contractor will be available on-call to address tree care as directed by the partners. Responsibilities include:

- Emergency pruning or removal of trees that are deemed urgent by the partners, typically because they pose a risk to people or property or restrict access to the corridor.
- Removal of downed trees, logs larger than 6", and other major obstructions as directed by the partners.

Services performed for on-call responsibilities will be a time and materials contract. Contractor must have a large-tree license to address all forestry needs along the corridor.

### **Noxious Weed Mitigation – Weed Wranglers**

Two passes for noxious weed mitigation will occur annually, one in the spring (April/May) and one in the fall (Sept/Oct) (all sections). Each pass will include:

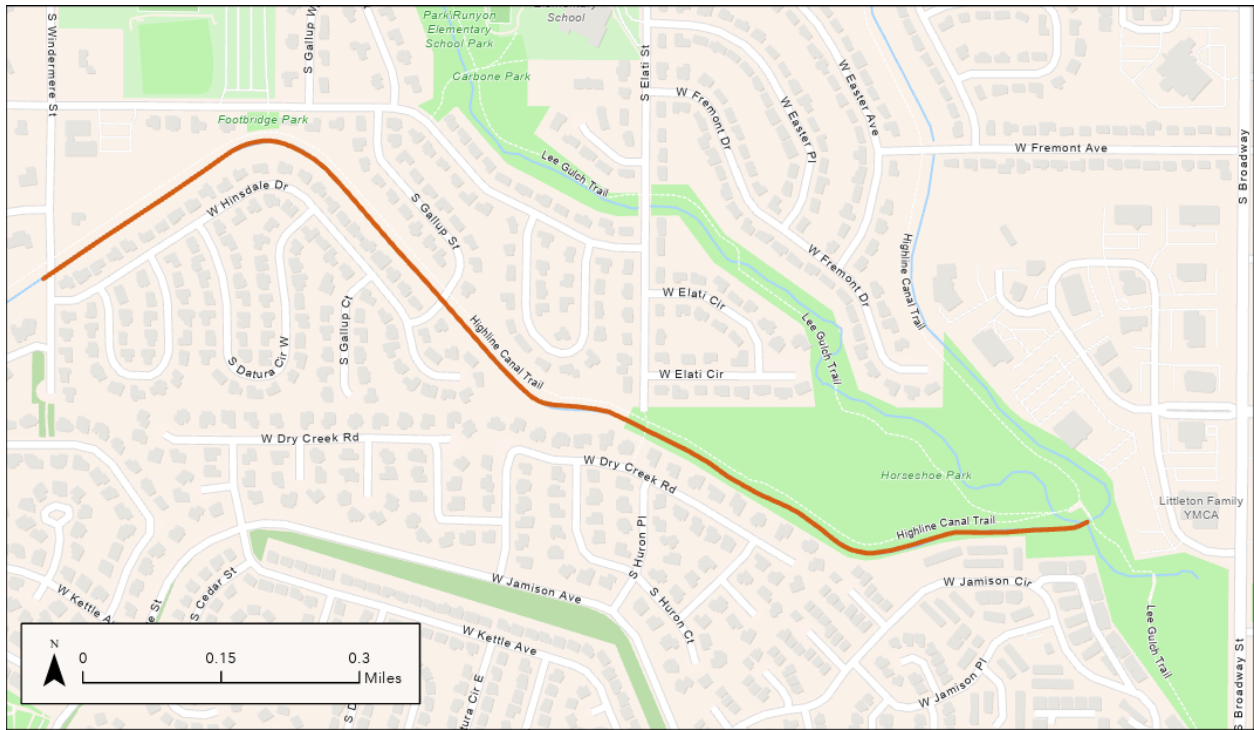
- Applying chemical treatment to noxious weeds across entire width of property, including both banks of the Canal and trail shoulders.

- Mitigating noxious weeds in accordance with Colorado Noxious Weed Act, 8 CCR 1206-2 and Administration and Enforcement of the Pesticide Act, 8 CCR 1203-1.
  - Priority species include those on the Colorado Department of Agriculture’s A List and B List: Canada thistle, Scotch thistle, musk thistle, houndstongue, burdock, teasels, knapweeds, toadflaxes and sparges. Additional weeds could be added with direction from the partners and input from the contractor.
  - Contractor will provide a list, prior to each pass, of weeds that will be targeted for treatment.
- Notifying partners via email in advance of application, obtaining approval, and reporting date of application and chemicals applied.
- Reporting all Colorado List A noxious weed species to partners by email, including location information and photos. Currently no List A species are known to occur on the corridor.
- Applying mosquito briquettes or dunks during the spring pass and/or as directed by the partners. Notice of work will be given to the local jurisdiction at least 48 hours prior to application of mosquito briquettes.

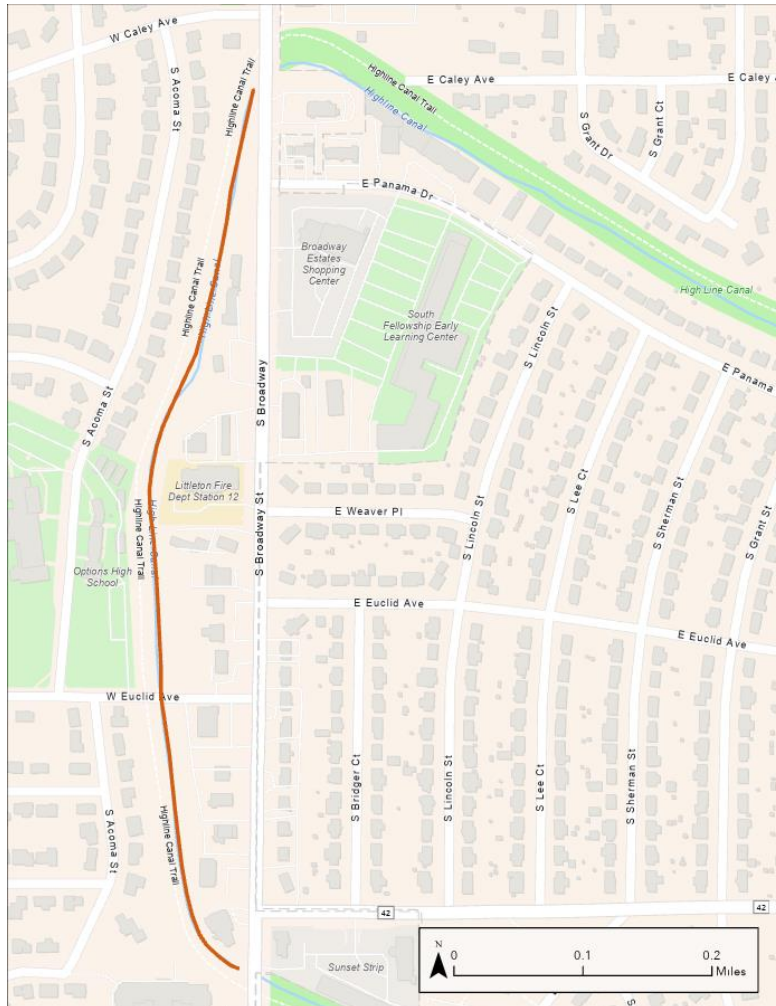
Services performed for noxious weed mitigation and mosquito briquettes will be a lump-sum contract with tracking of time in each jurisdiction. The proposal shall have a fee breakout that provides the cost of each service (weed mitigation and mosquito briquettes) for each jurisdiction. Contracted services will depend on needs and funding of each jurisdiction.

**Contract Considerations**

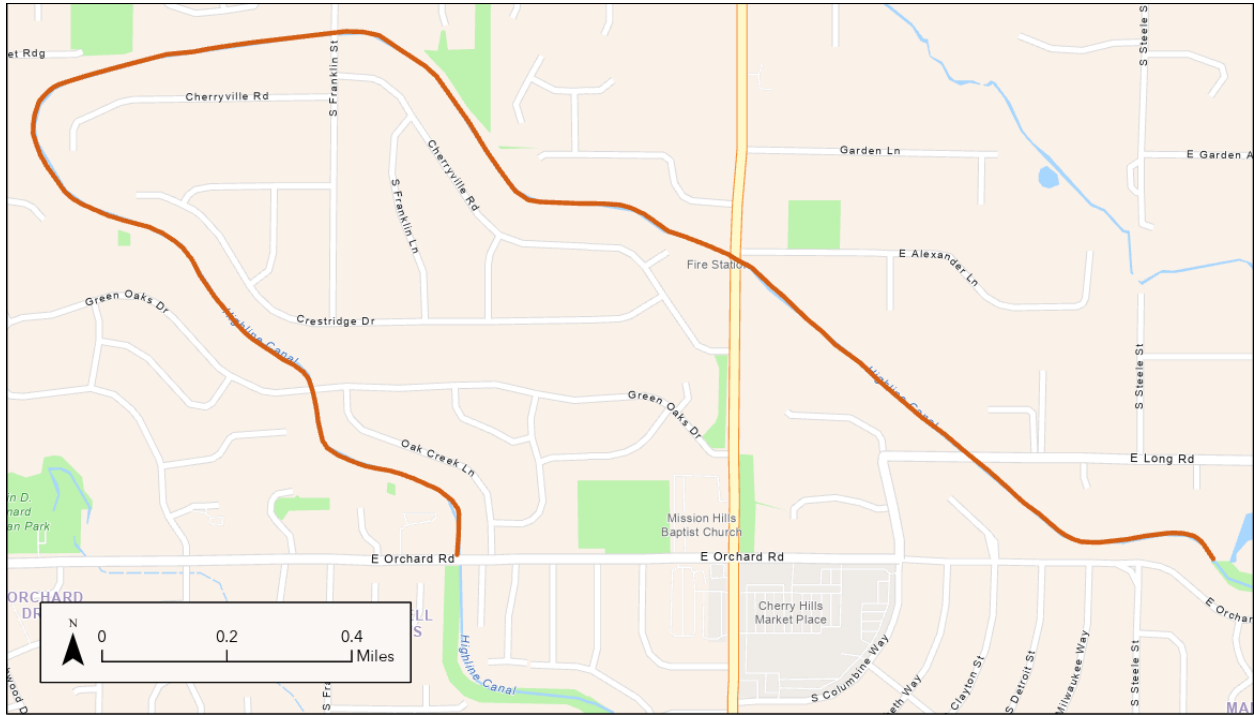
- MHFD will hold the contracts and enter into a multi-party IGA with the jurisdictions. The High Line Canal Conservancy will jointly manage the contracts with MHFD.
- Work performed in the City and County of Denver will require compliance with prevailing wage regulations. The following language must be incorporated into the contract per City and County of Denver:
  - The [Contractor] shall comply, to the extent applicable to its specific performance obligations under this Agreement, with the prevailing wage requirements of D.R.M.C. Sections 20-76, *et seq.* As such, the [Contractor] agrees to cooperate fully with the City Auditor in implementing, administering and enforcing all applicable requirements of D.R.M.C. Sections 20-76, *et seq.*
- This multi-jurisdictional approach requires each contractor to track their time spent in each jurisdiction. The maps below show the project areas in each jurisdiction.



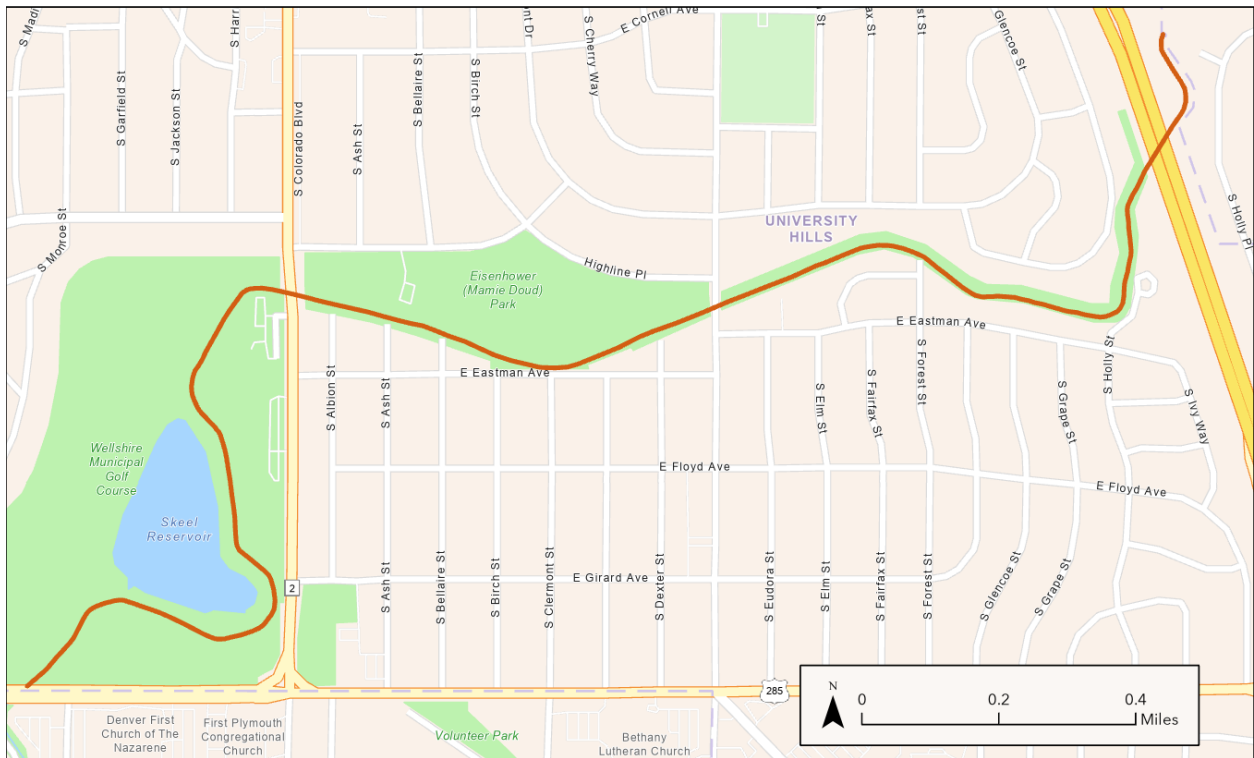
**Map 1.** Littleton Project Area 1: Windermere Street to Lee Gulch Flume (1 mile)



**Map 2.** Potential Littleton Project Area 2: Broadway near Arapahoe Rd to Broadway near Caley Ave (0.5 miles)



**Map 3.** Greenwood Village Project Area: Orchard Road west of University Blvd to the jurisdictional boundary just east of Steele Street (2.5 miles).



**Map 4.** Denver Project Area: Hampden Ave to the jurisdictional boundary just east of I-25 (2 miles).