

CITY OF LITTLETON, COLORADO

RESOLUTION NO. 32

Series of 2014

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF LITTLETON, COLORADO BETWEEN THE CITY,
ARAPAHOE COUNTY AND THE URBAN DRAINAGE AND
FLOOD CONTROL DISTRICT AUTHORIZING AN
AGREEMENT REGARDING DESIGN AND
CONSTRUCTION OF DRAINAGE AND FLOOD CONTROL
IMPROVEMENTS FOR SOUTH PLATTE RIVER AT
REYNOLDS LANDING, CITY OF LITTLETON**

WHEREAS, the council may, by resolution, enter into contracts with other governmental bodies to furnish or receive governmental services, to make or pay charges for such services and to enter into cooperative or joint activities with other governmental bodies;

WHEREAS, the City of Littleton wishes to enhance and improve the stream transition from natural floodplain in the South Platte Park to the river channel adjacent to Reynolds Landing;

WHEREAS, the City of Littleton desires to enter into an Agreement Regarding Design and Construction of Drainage and Flood Control Improvements for South Platte River at Reynolds Landing, contributing funds for enhancement of the stream and wildlife habitat on the South Platte River within South Platte Park; and

WHEREAS, the city's share of the costs of the project, as set forth in the Agreement Regarding Design and Construction of Drainage and Flood Control Improvements for the South Platte River at Reynolds Landing, shall be a contribution of 28.57% of the actual project costs, plus indirect costs;


**NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF LITTLETON,
COLORADO, THAT:**

The Agreement Regarding Design and Construction of Drainage and Flood Control Improvements for South Platte River at Reynolds Landing, City of Littleton (Agreement No. 14-01.24) is hereby approved.

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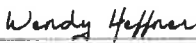
INTRODUCED, READ AND ADOPTED at a regularly scheduled meeting of the city council of the City of Littleton on the 6th day of May, 2014, at 6:30 p.m. at the Littleton Center, 2255 West Berry Avenue, Littleton, Colorado.

DocuSigned by:


Phil Cernanec
B432418D3EEB403
President of City Council


ATTEST:

DocuSigned by:


Wendy Heffner
32A8267419
City Clerk

APPROVED AS TO FORM:

DocuSigned by:


Kristin Schledorn
1EA4384FE
Deputy City Attorney

AGREEMENT REGARDING
DESIGN AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
SOUTH PLATTE RIVER AT REYNOLDS LANDING,
CITY OF LITTLETON

Agreement No. 14-01.24

THIS AGREEMENT, made this 6th day of May, 2014, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT"), CITY OF LITTLETON (hereinafter called "CITY", and ARAPAHOE COUNTY (hereinafter called "COUNTY") and collectively known as "PARTIES";

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 "South Platte River – Chatfield Dam to Baseline Road Major Drainageway Plan" by Wright Water Engineers, dated November, 1985 (hereinafter called "PLAN"); and

WHEREAS, PARTIES now desire to proceed with design and construction of drainage and flood control improvements for South Platte River at Reynolds Landing in the City of Littleton (hereinafter called "PROJECT"); and

WHEREAS, DISTRICT's Board of Directors reviewed and authorized expenditures for the 2014 South Platte River Work Program (Resolution No. 56, Series of 2013); and

WHEREAS, the City Council of CITY, the County Commissioners of COUNTY 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. SCOPE OF AGREEMENT

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

2. SCOPE OF PROJECT

- A. Conceptual Design. PROJECT shall include the conceptual design of improvements in accordance with the recommendations defined in PLAN. Specifically, the conceptual design of facilities shall extend from the confluence of South Platte River with Lee Gulch upstream to South Platte Park's northern boundary, as shown on Exhibit A.
- B. Final Design. PROJECT shall include the final design of improvements in accordance with the recommendations defined in PLAN. Specifically, the final design of facilities shall

extend from the confluence of South Platte River with Lee Gulch upstream to South Platte Park's northern boundary, as shown on Exhibit A.

- C. Construction. PROJECT shall include construction by DISTRICT of the drainage and flood control improvements as set forth in the conceptual design including vegetation establishment.

3. 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.

4. 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. Conceptual design services;
2. Final design services;
3. Construction of improvements;
4. Contingencies mutually agreeable to PARTIES.

- B. It is understood that PROJECT costs as defined above are not to exceed \$70,000 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. Conceptual Design	\$50,000
2. Final Design *	-0-
3. Construction *	-0-
4. Contingency	20,000
Grand Total	\$70,000

* It is anticipated that funds for construction shall be added to this Agreement at a future date.

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.

- 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 (SPR funding)	42.86%	\$30,000
CITY	28.57%	20,000
COUNTY	28.57%	20,000
TOTAL	100.00%	\$70,000

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 - \$20,000; COUNTY - \$20,000; DISTRICT - \$30,000) 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 COUNTY 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.

6. FINAL DESIGN

The contracting officers for PARTIES, as defined under Paragraph 13 of this Agreement, shall select an engineer mutually agreeable to both PARTIES. DISTRICT shall contract with selected engineer and shall supervise and coordinate the final design including right-of-way delineation subject to approval of the contracting officer for COUNTY. Payment for final design shall be made by DISTRICT as the work progresses from the PROJECT fund established as set forth above.

Final design services shall consist of, but not be limited to, the following:

- A. Preparation of a work plan schedule identifying the timing of major elements in the design;
- B. Preparation of detailed construction plans and specifications;
- C. Preparation of an estimate of probable construction costs of the work covered by the plans and specifications;
- D. Preparation of an appropriate construction schedule.

DISTRICT shall provide any written work product by the engineer to CITY and COUNTY.

7. OWNERSHIP OF PROPERTY AND LIMITATION OF USE

CITY and COUNTY shall own the property either in fee or non-revocable easement and shall be responsible for same. 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. CITY and COUNTY may not dispose of or change the use of the properties without approval of DISTRICT. If, in the future, CITY and COUNTY disposes of any portion of or all of the properties acquired upon which PROJECT is constructed pursuant to this Agreement; changes the use 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 pursuant to this Agreement; and CITY and COUNTY has not obtained the written approval of DISTRICT prior to such action, COUNTY shall take any and all action necessary 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 COUNTY's sole expense. In the event CITY and/or COUNTY breaches the terms and provisions of this Paragraph 7 and does not voluntarily cure as set forth above, DISTRICT shall have the right to pursue a claim against COUNTY for specific performance of this portion of the Agreement.

8. MANAGEMENT OF CONSTRUCTION

A. Costs. Construction costs shall consist of those costs as incurred by the lowest acceptable bidder(s) including detour costs, licenses and permits, utility relocations, and construction related engineering services as defined in Paragraph 4 of this Agreement.

B. Construction Management and Payment

1. DISTRICT, with the assistance of CITY and COUNTY, shall administer and coordinate the construction-related work as provided herein.
2. DISTRICT, with assistance and approval of CITY and COUNTY, shall select and award construction contract(s).
3. DISTRICT shall require the contractor to provide adequate liability insurance that includes CITY and COUNTY. The contractor shall be required to indemnify CITY and COUNTY. Copies of the insurance coverage shall be provided to CITY and COUNTY.
4. DISTRICT, with assistance of CITY and COUNTY, shall coordinate field surveying; staking; inspection; testing; acquisition of right-of-way; and engineering as required to construct PROJECT. DISTRICT, with assistance of CITY and COUNTY, 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 CITY and COUNTY on a weekly basis. DISTRICT shall retain an engineer to perform all or a part of these duties.

5. DISTRICT, with approval of CITY and COUNTY, 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 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 and send them to for approval. DISTRICT shall remit payment to contractor based on billings approved by PARTIES.
 8. DISTRICT, with assistance and written concurrence by CITY, 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 CITY and COUNTY 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.

9. MAINTENANCE

PARTIES agree that CITY shall own and be responsible for maintenance of the completed and accepted PROJECT. PARTIES further agree that DISTRICT, at CITY's request, shall assist CITY 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 CITY, 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.

10. FLOODPLAIN REGULATION

CITY agrees to regulate and control the floodplain of South Platte River within CITY in the manner prescribed by the National Flood Insurance Program and prescribed regulations thereto as a minimum.

PARTIES understand and agree, however, that CITY cannot obligate itself by contract to exercise its police powers. If CITY fails to regulate the floodplain of South Platte River within CITY 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 CITY shall cooperate fully.

11. TERM OF AGREEMENT

The term of this Agreement shall commence upon final execution by all PARTIES 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 5 herein, except for Paragraph 10. FLOODPLAIN REGULATION, Paragraph 7. OWNERSHIP OF PROPERTY AND LIMITATION OF USE, and Paragraph 9. MAINTENANCE, which shall run in perpetuity.

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 CITY shall be the Public Works Director, 2255 West Berry Avenue, Littleton, Colorado 80120
- B. The contracting officer for COUNTY shall be the Open Spaces and Intergovernmental Relations Director, 6924 South Lima Street, Centennial, Colorado 80112.
- C. The contracting officer for DISTRICT shall be the Executive Director, 2480 West 26th Avenue, Suite 156B, Denver, Colorado 80211.
- D. 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 COUNTY. 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 CITY and COUNTY the information developed by the various consultants hired by DISTRICT and for obtaining all concurrences from CITY and COUNTY needed to complete PROJECT in a timely manner. CITY and COUNTY

agree 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 COUNTY.

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 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 CITY and COUNTY '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 COUNTY as needed and appropriate.

23. 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, marital status, or physical or mental disability and further agree to insert the foregoing provision in all subcontracts hereunder.

24. APPROPRIATIONS

Notwithstanding any other term, condition, or provision herein, each and every obligation of CITY and COUNTY 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 CITY and COUNTY and/or DISTRICT.

25. 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 any one of PARTIES receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

26. 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 C.R.S. et seq. 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 through participation in the Colorado Employment Verification program established pursuant to 8-17.5-102 (5)(c) C.R.S. or the Electronic Employment Verification Program administered jointly by the United States Department of Homeland Security and the Social Security Administration that Consultant or Contractor does not employ illegal aliens. Consultant or Contractor is prohibited from using these 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 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 its legal authority.

Violation of this section of this Agreement shall constitute a breach of this Agreement and may result in termination by PARTIES. Consultant or Contractor shall be liable to PARTIES for actual and consequential damages to PARTIES resulting from such breach pursuant to §8-17.5-101(3) C.R.S. PARTIES shall also report any such breach to the Office of the Secretary of State.

Consultant or Contractor acknowledges that the CDL may investigate whether Consultant or Contractor is complying with the provision of the Agreement. This may include on-site inspections and the review of documentation that proves the citizenship of any person performing work under this Agreement and any other reasonable steps necessary to determine compliance with the provisions of this section."

27. 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 (Section 24-10-1-1, C.R.S., et seq.) as now or hereafter amended or otherwise available at law or equity.

28. INTENT OF AGREEMENT

Except as otherwise stated herein, this Agreement is intended to describe the rights and responsibilities of and between the 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 the COUNTY, the DISTRICT or any other entity not a party hereto.

29. EXECUTION IN COUNTERPARTS

This Agreement shall be executed by PARTIES in counterparts and only upon execution of the responsible counterparts by everyone listed herein shall this Agreement be treated as executed by PARTIES.

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

(SEAL)

ATTEST:

DocuSigned by:
Laura Kroeger
C59E600C4239472...

By DocuSigned by:
Paul Hindman
C72714014F78468...
Title Executive Director
Date 6/2/2014

(SEAL)

ATTEST:

DocuSigned by:
Wendy Heffner
7FEE432A8267419...

APPROVED AS TO FORM:

DocuSigned by:
[Signature]
City Attorney
43F034EA4384FE...

[Handwritten initials]

CITY OF LITTLETON

DocuSigned by:
By *[Signature]*
B432418D3EEB403...
Title President of City Council
Date 5/15/2014

For the Board of County Commissioners
ARAPAHOE COUNTY

DocuSigned by:
By [Signature]
Authorization pursuant to Resolution 130152

Title Director, Open Spaces and Intergovernmental Relations

Date 6/12/2014

AGREEMENT REGARDING
DESIGN AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
SOUTH PLATTE RIVER AT REYNOLDS LANDING,
CITY OF LITTLETON

Agreement No. 14-01.24

Exhibit A

