

RESOLUTION NO. R-022- 075

**THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS, COLORADO**

**RESOLUTION APPROVING AN AMENDMENT TO AN INTERGOVERNMENTAL
AGREEMENT BETWEEN THE MILE HIGH FLOOD DISTRICT (MHFD –
FORMERLY URBAN DRAINAGE FLOOD CONTROL DISTRICT (UDFCD)), OF THE
CHERRY CREEK BASIN WATER QUALITY AUTHORITY, AND THE BOARD OF
COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, COLORADO,
REGARDING DESIGN AND CONSTRUCTION OF DRAINAGE AND FLOOD
CONTROL IMPROVEMENTS FOR CHERRY CREEK UPSTREAM OF SCOTT
ROAD, DOUGLAS COUNTY. DOUGLAS COUNTY PROJECT NUMBER FC 2020-014.**

WHEREAS, the Board of County Commissioners of the County of Douglas (the “County”), the Cherry Creek Basin Water Quality Authority (“CCBWQA”), and the Urban Drainage and Flood Control District (“District”), desire to enter into an amendment to that certain intergovernmental agreement, dated October 21, 2020, regarding the design and construction of flood control improvements for Cherry Creek upstream of Scott Road; and

WHEREAS, the County is willing to enter into such an agreement with the District and CCBWQA in accordance with the terms and conditions set forth in the intergovernmental agreement attached hereto; and

WHEREAS, governmental entities are authorized to enter into intergovernmental agreements pursuant to the provisions of Article XIV, Section 18(2)(a) of the Colorado Constitution, and section 29-1-203, C.R.S.; now, therefore,

BE IT RESOLVED, BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, STATE OF COLORADO, that the intergovernmental agreement between the Board of County Commissioners of the County of Douglas, the CCBWQA, and the District, a copy of which is attached hereto and incorporated herein, is hereby approved, and the Chair of the Board is authorized to execute the agreement on behalf of Douglas County this 26th day of July, 2022.

**THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS, COLORADO**

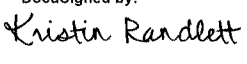
BY:


DocuSigned by:

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ABE LAYDON, Chair

ATTEST:

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KRISTIN RANDLETT, Clerk to the Board

**THIRD AMENDMENT TO
AGREEMENT REGARDING
DESIGN AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
CHERRY CREEK UPSTREAM OF SCOTT ROAD
DOUGLAS COUNTY**

Agreement No. 20-01.12C
Project No. 107751

THIS THIRD AMENDMENT TO AGREEMENT (hereinafter called "THIRD AMENDMENT"), by and among URBAN DRAINAGE AND FLOOD CONTROL DISTRICT D/B/A MILE HIGH FLOOD DISTRICT (hereinafter called "DISTRICT"), CHERRY CREEK BASIN WATER QUALITY AUTHORITY (hereinafter called "CCBWQA"), and DOUGLAS COUNTY (hereinafter called "COUNTY") and collectively sometimes referred to as the "PARTIES", and singularly as a "PARTY";

WITNESSETH:

WHEREAS, the PARTIES entered into an "Agreement Regarding Design and Construction of Drainage and Flood Control Improvements for Cherry Creek Upstream of Scott Road, Douglas County" (Agreement No. 20-01.12) dated October 21, 2020 as amended by a First Amendment (Agreement No. 20-01.12A) dated August 16, 2021 and a Second Amendment (Agreement No. 20-01.12B) dated October 29, 2021 (hereinafter collectively referred to as the "AGREEMENT"); and

WHEREAS, the PARTIES reaffirm their intent to construct drainage and flood control improvements that have water quality benefits for Cherry Creek upstream of Scott Road (hereinafter called "PROJECT"); and

WHEREAS, PARTIES desire to increase the level of funding by \$1,700,000; and

WHEREAS, the Board of Directors of CCBWQA, 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, the PARTIES hereto agree as follows:

1. Paragraph 4. PROJECT COSTS AND ALLOCATION OF COSTS Subparagraphs B, C, and D are hereby deleted from the AGREEMENT in their entirety and replaced as follows:
 4. PROJECT COSTS AND ALLOCATION OF COSTS
 - B. It is understood that PROJECT costs as defined above are not to exceed \$4,165,000 without amendment to this AGREEMENT.

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

<u>ITEM</u>	<u>AS AMENDED</u>	<u>PREVIOUSLY AMENDED</u>
1. Final Design	\$ 650,000	\$ 250,000
2. Construction *	\$ 3,515,000	\$ 2,215,000
3. Contingency	\$ -0-	\$ -0-
Grand Total	\$ 4,165,000	\$ 2,465,000

*It is anticipated that additional 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>Previously Contributed</u>	<u>Additional Contribution</u>	<u>Maximum Contribution</u>
DISTRICT	34.21%	\$ 500,000	\$925,000	\$ 1,425,000
CCBWQA	21.6%	\$ 625,000	\$275,000	\$ 900,000
COUNTY	44.19%	\$1,340,000	\$500,000	\$1,840,000
TOTAL	100.00%	\$2,465,000	1,700,000	\$4,165,000

D. It is understood and agreed that notwithstanding any other provision contained herein to the contrary, any additional contribution of a PARTY hereunder, whether direct or contingent, shall under no circumstances exceed the PARTY'S Maximum Contribution indicated above without the prior express written consent of the PARTY.

2. Paragraph 5. MANAGEMENT OF FINANCES is deleted in its entirety from the AGREEMENT 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 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 (CCBWQA - \$900,000; COUNTY - \$1,840,000; DISTRICT - \$1,425,000) shall be made to DISTRICT subsequent to execution of this AGREEMENT and within thirty (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 CCBWQA and 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).

It is understood and agreed that a portion of each PARTY'S above referenced share has previously been paid to DISTRICT as set forth in Paragraph 4. C. in the column labeled "Previously Contributed".

Within one (1) 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 CCBWQA and COUNTY request, CCBWQA's and COUNTY's share of remaining monies shall be transferred to another special fund held by DISTRICT.

- 3. All other terms and conditions of this AGREEMENT shall remain in full force and effect.

WHEREFORE, PARTIES hereto have caused this **THIRD AMENDMENT** to be executed by properly authorized signatories as of the date and year written below.

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

By _____

Name: Laura A. Kroeger

Title: Executive Director

Date _____

Checked By

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS

By: _____
Chair

Date _____

ATTEST:

Kristin Randlett, Deputy Clerk to the Board

APPROVED AS TO CONTENT:

Douglas J. DeBord, County Manager

APPROVED AS TO LEGAL FORM:

Chris Pratt, Assistant County Attorney

APPROVED AS TO FISCAL CONTENT:

Andrew Copland, Director of Finance

CHERRY CREEK BASIN
WATER QUALITY AUTHORITY

CCBWQA Checked by

By _____

Name Joshua Rivero

Title CCBWQA Chairman

Date _____

Attest: John McCarty, CCBWQA Secretary