

RESOLUTION NO. R-022- 109

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

**A RESOLUTION APPROVING AN AMENDMENT TO AN INTERGOVERNMENTAL
AGREEMENT BETWEEN THE URBAN DRAINAGE AND FLOOD CONTROL DISTRICT,
THE CHERRY CREEK BASIN WATER QUALITY AUTHORITY, THE CITY OF LONE
TREE, AND THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF
DOUGLAS, COLORADO, REGARDING THE FINAL DESIGN, RIGHT-OF-WAY
ACQUISITION AND CONSTRUCTION OF DRAINAGE AND FLOOD CONTROL
IMPROVEMENTS FOR HAPPY CANYON CREEK NEAR INTERSTATE 25, DOUGLAS
COUNTY**

WHEREAS, the Board of County Commissioners of the County of Douglas (the “County”), the Cherry Creek Basin Water Quality Authority (“CCBWQA”), the City of Lone Tree (“City”), and the Urban Drainage and Flood Control District (“District”), desire to enter into an amendment to that certain intergovernmental agreement, dated August 19, 2013, regarding the final design, right-of-way acquisition and construction of drainage and flood control improvements for Happy Canyon Creek near Interstate 25; and

WHEREAS, the County is willing to enter into such an agreement with the District, the CCBWQA, and the City in accordance with the terms and conditions set forth in the Amendment to 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 amendment to 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.

PASSED AND ADOPTED this 25th day of October, 2022, in Castle Rock, Douglas County, Colorado.

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

BY: 
2332EAB8EBA9542D

ATTEST:


4D0E70F9198B42D

Kristin Randlett, Clerk to the Board

DocuSigned by:



AMENDMENT TO
AGREEMENT REGARDING
FINAL DESIGN, RIGHT-OF-WAY ACQUISITION AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
HAPPY CANYON CREEK NEAR INTERSTATE 25
DOUGLAS COUNTY

Agreement No. 13-06.01H
Project No. 100464

THIS AMENDMENT TO AGREEMENT (hereinafter called "AMENDMENT"), by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT D/B/A MILE HIGH FLOOD DISTRICT (hereinafter called "DISTRICT"), DOUGLAS COUNTY (hereinafter called "COUNTY"), CHERRY CREEK BASIN WATER QUALITY AUTHORITY (hereinafter called "CCBWQA"), and CITY OF LONE TREE (hereinafter called "CITY"), collectively known as "PARTIES";

WITNESSETH:

WHEREAS, DISTRICT and COUNTY have entered into "Agreement Regarding Final Design, Right-of-Way Acquisition and Construction of Drainage and Flood Control Improvements for Happy Canyon Creek near Interstate 25 Douglas County" (Agreement No. 13-06.01) dated August 19, 2013, as amended; and

WHEREAS, DISTRICT and COUNTY have agreed to add CCBWQA as a funding partner; and

WHEREAS, CCBWQA was not a Party to the Original Agreement 13-06.01, and was added as a Party by Amendment F; and

WHEREAS, DISTRICT, COUNTY, and CCBWQA have agreed to add CITY as a funding partner; and

WHEREAS, CITY was not a Party to the Original Agreement 13-06.01, and was added as a Party by Amendment G; and

WHEREAS, PARTIES now desire to construct drainage, flood control and water quality improvements for Happy Canyon Creek near I-25; and

WHEREAS, PARTIES desire to increase the level of funding by \$200,000 ; and

WHEREAS, PROJECT includes capital improvement and maintenance repair elements; and

WHEREAS, DISTRICT has heretofore adopted a Special Revenue Fund Budget for calendar year 2022 subsequent to public hearing (Resolution No. 76, Series of 2021) which includes funds for PROJECT; and

WHEREAS, DISTRICT's Board of Directors reviewed and authorized expenditures for the 2022 Work Program (Resolution No. 78, Series of 2021); and

WHEREAS, DISTRICT has adopted at a public hearing a Five-Year Capital Improvement Program (Resolution No. 79, Series of 2021) for drainage and flood control facilities in which PROJECT was included in the 2022 calendar year; and

WHEREAS, the Board of Commissioners of COUNTY, the Board of Directors of DISTRICT, the Board of Directors of CCBWQA, and City Council of CITY have each authorized, by appropriate resolution their respective costs, as hereinafter setforth, for the PROJECT.

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

1. Paragraph 4. PROJECT COSTS AND ALLOCATION OF COSTS is deleted and replaced as follows:

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. Final design services;
2. Delineation, description and acquisition of required rights-of-way/ easements;
3. Construction of improvements;
4. Contingencies mutually agreeable to PARTIES.

- B. It is understood that PROJECT costs as defined above are not to exceed \$5,441,427 without amendment to this Agreement.

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

		PREVIOUSLY
<u>ITEM</u>	<u>AS AMENDED</u>	<u>AMENDED</u>
1. Final Design	\$550,000	\$550,000
2. Right-of-way	\$100,000	\$100,000
3. Construction*	\$4,618,427*	\$4,518,427
4. Contingency	\$173,000	\$73,000
Grand Total	\$5,441,427*	\$5,241,427

* It is anticipated that additional funding for construction will be brought in through future amendments.

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. At the request of COUNTY, the following COUNTY and DISTRICT funds may be transferred to PROJECT from a separate special fund held by DISTRICT:

Transfer from: T&A #5616

Account No. 50-05-76111-005616

Amount: \$345,598 (\$172,799 County, \$172,799 District)

- D. At the request of COUNTY, the following COUNTY funds may be transferred to PROJECT from a separate special fund held by DISTRICT:

Transfer from: T&A # 4501

Account No. 50-05-75111-004501
Amount: \$400,000

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

CAPITAL IMPROVEMENT FUNDING					
	<u>Percentage Share</u>	<u>Previously Contributed</u>	<u>Additional Contribution</u>	<u>Special Funds Transfer</u>	<u>Maximum Contribution</u>
DISTRICT	36.92%	\$1,790,000	\$0	\$172,799	\$1,962,799
COUNTY	50.85%	\$1,930,829	\$200,000	\$572,799 **	\$2,703,628 *
CCBWQA	9.41%	\$500,000	\$0	-0-	\$500,000
CITY	2.82%	\$150,000	\$0	-0-	\$150,000
TOTAL	100.00%	\$4,370,829	\$200,000	\$745,598	\$5,316,427

*COUNTY is designing and constructing the reach of Happy Canyon which goes under I-25 as a part of Phase1. As such, \$980,829 will be held by COUNTY.

** The reported Special Funds Transfer includes the project #4501 additional contribution.

MAINTENANCE FUNDING				
	<u>Percentage Share</u>	<u>Previously Contributed</u>	<u>Additional Contribution</u>	<u>Maximum Contribution</u>
DISTRICT	100%	\$0	\$125,000	\$125,000
TOTAL	100%	\$0	\$125,000	\$125,000

TOTAL FUNDING			
	<u>Capital</u>	<u>Maintenance</u>	<u>Total Maximum Contribution</u>
DISTRICT	\$1,962,799	\$125,000	\$2,087,799
COUNTY	\$2,703,628 *	\$0	\$2,703,628
CCBWQA	\$500,000	\$0	\$500,000
CITY	\$150,000	\$0	\$150,000
TOTAL	\$5,316,427	\$125,000	\$5,441,427

- F. It is understood and agreed that notwithstanding any other provision contained herein to the contrary, any additional contribution obligation of a Party hereunder, whether direct or contingent, shall under no circumstances exceed the Maximum Contribution

indicated above without prior express written consent of CCBWQA, COUNTY, or CITY.

2. Paragraph 5. MANAGEMENT OF FINANCES is deleted 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 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 (COUNTY - \$2,703,628 with the remaining share portion of \$980,829 held by the County pursuant to paragraph 4 above; DISTRICT - \$2,087,799; CCBWQA - \$500,000; CITY - \$150,000) 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, CCBWQA, and CITY 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; or at COUNTY or CCBWQA request, COUNTY or CCBWQA share of remaining monies shall be transferred to another special fund held by DISTRICT.

3. All other terms and conditions of Agreement No. 13-06.01 shall remain in full force and effect. 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 Kroeger

Title Executive Director

Date _____

Checked by

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS

ATTEST:

By: _____
Chair

Date _____

Kristin Randlett, Deputy Clerk to the Board

APPROVED AS TO CONTENT:

APPROVED AS TO LEGAL FORM:

Douglas J. DeBord, County Manager

Chris Pratt, Senior 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

APPROVED AS FORM:

Timothy J. Flynn, General Counsel for CCBWQA

CITY OF LONE TREE

By_____

Name_____

Title_____

Date_____

Attest: Rick Parsons, City Clerk