

AGREEMENT REGARDING FUNDING OF
MAJOR DRAINAGEWAY PLANNING
AND FLOOD HAZARD AREA DELINEATION FOR
WILLOW CREEK TRIBUTARIES UPSTREAM OF ENGLEWOOD DAM

Agreement No. 24-07.20
Project No. 107021
Agreement Amount \$10,100

THIS AGREEMENT, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT D/B/A MILE HIGH FLOOD DISTRICT (hereinafter called "DISTRICT"), and DOUGLAS COUNTY (hereinafter called "COUNTY"); (hereinafter "COUNTY" 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 2024 (Resolution No. 89, Series of 2023) which includes master planning; and

WHEREAS, PARTIES now desire to proceed with development of a drainageway master plan and a flood hazard area delineation (FHAD) report for Willow Creek Tributaries Upstream of Englewood Dam (hereinafter called "PROJECT"); and

WHEREAS, DISTRICT's Board of Directors has authorized DISTRICT financial participation for PROJECT (Resolution No. 07, Series of 2018); and

WHEREAS, the governing board (officials) of PROJECT SPONSOR(S) has budgeted, by appropriation or resolution, all of its share of PROJECT costs; 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:

Part 1

1.01. SCOPE OF AGREEMENT

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

1.02. 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 2018, (hereinafter called "AREA").

1.03. SCOPE OF PROJECT

The purpose of PROJECT is to develop a drainageway master plan and FHAD, including hydrologic information and the locations, alignments, and sizing of storm sewers, channels, detention/retention basins, and other facilities and appurtenances needed to provide efficient stormwater drainage 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 drainage and flood control

master 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, and legal requirements. Schematic alternative plans shall be developed such that comparison with other alternatives can be made.

1.04 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.

1.05 PROJECT COSTS

PARTIES agree that for the purposes of this Agreement PROJECT costs shall consist of, and be limited to, mapping, master planning, FHAD, and related services and contingencies mutually agreeable to PARTIES. Project costs are not to exceed \$10,100 without amendment to this Agreement.

1.06 FINANCIAL COMMITMENTS OF PARTIES

PARTIES shall each contribute the following percentages and maximum amounts for PROJECT costs as defined in Section 1.05:

	Master Plan Percentage <u>Share</u>	Previous Master Plan <u>Funding*</u>	Master Plan <u>Contribution</u>	Previous FHAD <u>Funding*</u>	FHAD <u>Contribution</u>	Maximum <u>Contribution</u>
COUNTY	4.8%	-0-	\$10,100	-0-	-0-	\$10,100
DISTRICT	47.6%	\$100,000	-0-	\$60,000	-0-	\$160,000
Other Funding*	47.6%	\$100,000	-0-	-0-	-0-	\$100,000
TOTAL	100%	\$200,000	\$10,100	\$60,000	-0-	\$270,100

*Note: For previous and other funding, see Agreement 18-08.07

Each PARTY'S payment obligation, whether direct or contingent, extends only to funds budgeted by appropriation or resolution annually by each PARTY'S governing body (officials), paid into the treasury of that PARTY, and encumbered for the purpose of this AGREEMENT. Each PARTY does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. This Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of each PARTY.

1.07 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 PROJECT SPONSOR'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 DISTRICT approval. Payment by District of \$160,000 has already been made with Agreement 18-08.07.

Payment of each party's full share (PROJECT SPONSOR - \$10,100; DISTRICT - \$160,000) 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 an accounting of PROJECT funds as well as notification to PROJECT SPONSOR(S) 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 (Section 2.03).

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 PROJECT SPONSOR's request, PROJECT SPONSOR's share of remaining monies shall be transferred to another special fund held by DISTRICT.

1.08 PROJECT MAPPING

DISTRICT shall provide a Digital Elevation Model (DEM) and elevation contour mapping of AREA with a contour interval of one-foot. Upon execution of this Agreement DISTRICT shall engage a land surveyor judged by DISTRICT to be responsible and qualified to perform the work to supplement the DEM data at hydraulic structures.

1.09 MASTER PLANNING AND FHAD

Upon execution of this Agreement, PARTIES shall select an engineer mutually agreeable to PARTIES. DISTRICT 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 subject to approval of PROJECT SPONSOR(S).

1.10 PUBLISHED REPORTS AND PROJECT DATA

DISTRICT will provide to PROJECT SPONSOR(S) access to all 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(S) upon request. This Paragraph shall survive termination of this Agreement.

1.11. RESPONSIBILITIES OF PARTIES

DISTRICT shall be responsible for coordinating with PROJECT SPONSOR(S) the information developed by the various consultants hired by DISTRICT and for obtaining all concurrences from PROJECT SPONSOR(S) needed to complete PROJECT in a timely manner. PROJECT SPONSOR(S) 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(S). PROJECT SPONSOR(S) also agree(s) 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(S) by DISTRICT.

1.12 PUBLIC RELATIONS

It shall be at the sole discretion of the PROJECT SPONSOR(S) 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 PROJECT SPONSOR(S). In any event DISTRICT shall have no responsibility for a public relations program, but shall assist PROJECT SPONSOR(S) as needed and appropriate.

1.13 EXECUTION IN COUNTERPARTS – ELECTRONIC SIGNATURES

Electronic signatures shall be permitted to bind 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 signature. All use of electronic signatures shall be governed by the Colorado Uniform Electronic Transactions Act, §§ 24-71.3-101-121, C.R.S. However, the PARTIES agree that only electronic signatures created by electronic software including but not limited to DocuSign shall be permitted.

Part 2

2.01 TERM OF THE AGREEMENT

The term of this Agreement shall commence upon the execution by all PARTIES and shall terminate two years after the final master planning report is delivered to DISTRICT and the final accounting of funds on deposit at DISTRICT is provided to all PARTIES pursuant to Section 1.07 herein.

2.02 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.

2.03 CONTRACTING OFFICERS

- A. The contracting officer for PROJECT SPONSOR shall be the County Engineer, 100 Third Street, Castle Rock, Colorado 80104.
- B. The contracting officer for DISTRICT shall be the Executive Director, 12575 W. Bayaud Ave. Lakewood, Colorado 80228.
- 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(S). 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.

2.04 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.

2.05 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.

2.06 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.

2.07 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.

2.08 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.

2.09 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.

2.10 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.

2.11. 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, gender identity, marital status, or physical or mental disability and further agrees to insert the foregoing provision in all contracts stemming from this Agreement.

2.12. 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 or resolution of funds therefore by the appropriate governing body (officials) of the respective PARTIES.

2.13. 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(S) or DISTRICT receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

2.14 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.

2.15 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 PROJECT SPONSOR(S), 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 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**

APPROVED AS TO CONTENT:

Abe Laydon, CHAIR

Date

**DOUGLAS J. DEBORD
COUNTY MANAGER**

Date

ATTEST

Deputy Clerk

Date

DEPARTMENT OF PUBLIC WORKS ENGINEERING:

**JANET HERMAN, P. E.
Director of Public Works**

Date

APPROVED AS TO FISCAL CONTENT: APPROVED AS TO LEGAL FORM:

**ANDREW COPLAND
Director of Finance**

Date

**Chris Pratt
Senior Assistant County Attorney**

Date

AGREEMENT REGARDING FUNDING OF
MAJOR DRAINAGEWAY PLANNING
AND FLOOD HAZARD AREA DELINEATION FOR
WILLOW CREEK TRIBUTARIES UPSTREAM OF ENGLEWOOD DAM

EXHIBIT A

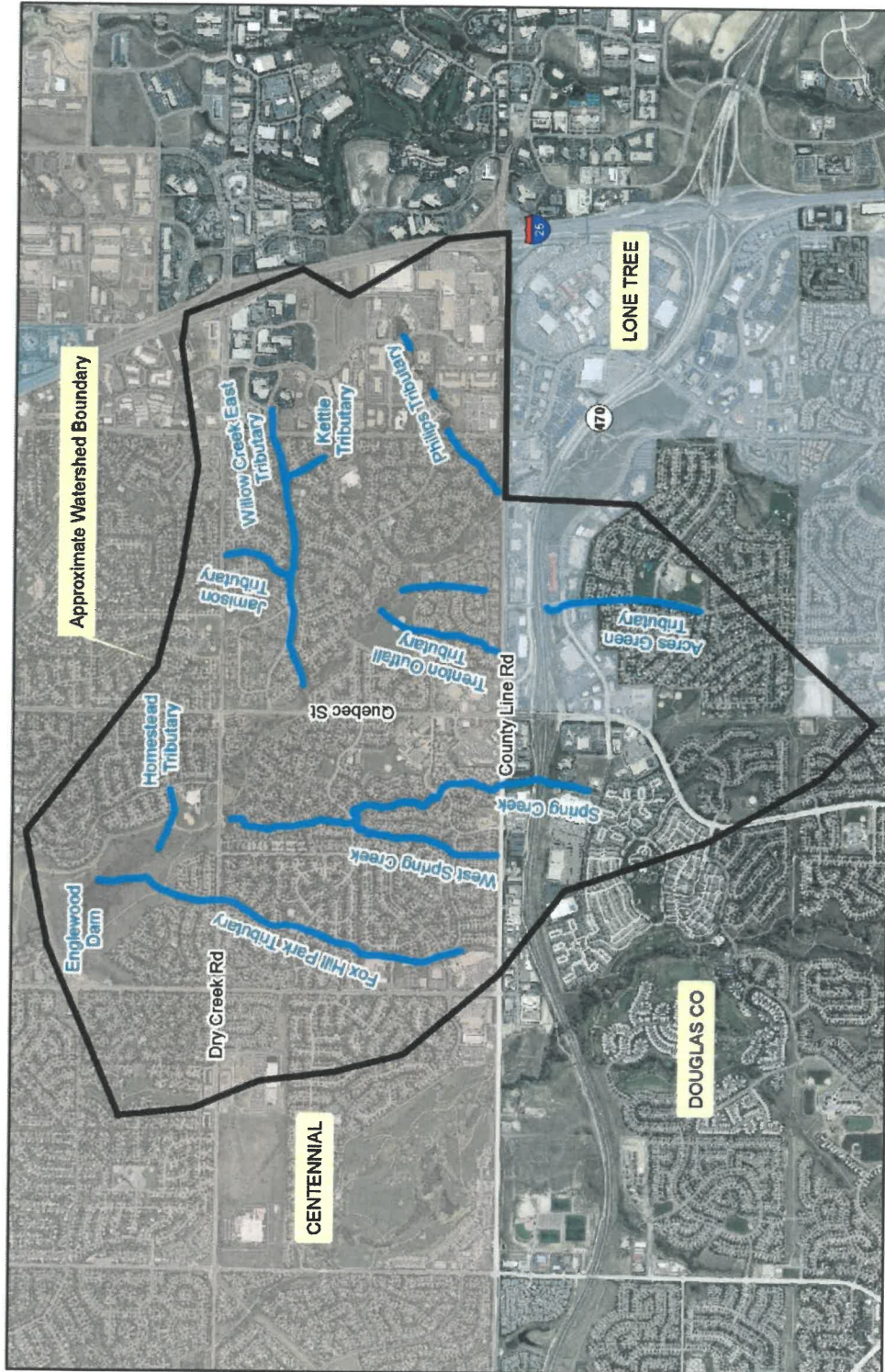


EXHIBIT A
Willow Creek Tributaries MDP & FHAD
Approximate Study Limits
January 2018