

SUPERIOR METROPOLITAN DISTRICT NO. 1
RESOLUTION NO. SMD1-3
SERIES 2021

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SUPERIOR METROPOLITAN DISTRICT NO. 1 APPROVING AN AGREEMENT REGARDING FINAL DESIGN, RIGHT-OF-WAY ACQUISITION AND CONSTRUCTION OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR COAL CREEK FROM SECOND AVENUE TO MCCASLIN BOULEVARD

WHEREAS, the Superior Metropolitan District No. 1 is partnering with Mile High Flood District (MHFD) for the final design, right-of-way acquisition and construction of drainage and flood control improvements for Coal Creek from Second Avenue to McCaslin Boulevard.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF SUPERIOR METROPOLITAN DISTRICT NO. 1 as follows:

Section 1. The Agreement between Superior Metropolitan District No. 1 and Mile High Flood District, regarding improvements for Coal Creek from Second Avenue to McCaslin Boulevard, is hereby approved in substantially the same form as attached hereto, subject to final approval by the District's General Counsel.

ADOPTED this 25th day of January, 2021.



Clint Folsom, President



Phyllis L. Hardin, Secretary

AGREEMENT REGARDING
FINAL DESIGN, RIGHT-OF-WAY ACQUISITION, AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
COAL CREEK FROM 2ND AVENUE TO MCCASLIN BOULEVARD
TOWN OF SUPERIOR

Agreement No. 21-01.16
Project No. 108400

THIS AGREEMENT, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT D/B/A MILE HIGH FLOOD DISTRICT (hereinafter called "DISTRICT") and SUPERIOR METRO DISTRICT NO. 1 (hereinafter called "SMD1") 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 "Coal Creek and Rock Creek Major Drainageway Plan by RESPEC Consulting & Services, dated October 2014 (hereinafter called "PLAN"); and

WHEREAS, PARTIES now desire to proceed with the design, right-of-way acquisition, and construction of drainage and flood control improvements for Coal Creek from 2nd Avenue to McCaslin Boulevard, Town of Superior (hereinafter called "PROJECT"); and

WHEREAS, DISTRICT has adopted at a public hearing a Five-Year Capital Improvement Program (Resolution No. 67, Series of 2020) for drainage and flood control facilities in which PROJECT was included in the 2021 calendar year; and

WHEREAS, DISTRICT has heretofore adopted a Special Revenue Fund Budget for calendar year 2021 subsequent to public hearing (Resolution No. 64, Series of 2020) which includes funds for PROJECT; and

WHEREAS, DISTRICT's Board of Directors has authorized DISTRICT financial participation for PROJECT (Resolution No. 06, Series of 2021); and

WHEREAS, the Board of Trustees of SMD1 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 THIS AGREEMENT

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

2. SCOPE OF PROJECT

A. 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 approximately 2nd Avenue to McCaslin Boulevard, as shown on Exhibit A.

- B. Right-of-Way Delineation and Acquisition. Right-of-way for the improvements as set forth in the final design and an estimate of costs for acquisition shall be determined. Maps, parcel descriptions, and parcel plats shall also be prepared.
- C. Construction. PROJECT shall include construction by DISTRICT of the drainage and flood control improvements as set forth in the final design and 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. 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 \$800,000 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. Final Design	\$ 100,000
2. Right-of-way	\$ -0-
3. Construction	\$ 700,000
4. Contingency	\$ -0-
Grand Total	\$ 800,000

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, 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	50.00%	\$400,000
SMD1	50.00%	\$400,000
TOTAL	100.00%	\$800,000

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 DISTRICT approval.

Payment of each party's full share (SMD1 - \$400,000; DISTRICT - \$400,000) 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 SMD1 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 SMD1 request, SMD1 share of remaining monies shall be transferred to another special fund held by DISTRICT.

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 SMD1. Payment for final design services 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. Delineation of required right-of-way/easements;
- C. Preparation of detailed construction plans and specifications;
- D. Preparation of an estimate of probable construction costs of the work covered by the plans and specifications;
- E. Preparation of an appropriate construction schedule.

DISTRICT shall provide any written work product by the engineer to SMD1.

7. RIGHT-OF-WAY

SMD1, with DISTRICT assistance, shall be responsible for acquiring, subject to approval of DISTRICT, such land or interests in land needed to implement construction of the drainage and flood control improvements as defined herein. The cost to be shared by PARTIES for right-of-way acquisition may include relocation costs of existing occupants. Appraisal costs and costs associated with condemnation (including outside legal costs) will also be considered a PROJECT

cost. Right-of-way acquisition by negotiation and / or the exercise of eminent domain shall be in full compliance with the laws of the State of Colorado. In addition, the right-of-way acquired shall be in the name of SMD1 and the conveyancing document shall be promptly recorded in the records of the Clerk and Recorder of SMD1. DISTRICT shall serve as the paying agency.

- A. Coordination of Right-of-Way Acquisition. Cost sharing by PARTIES will be based on supporting documentation such as formal appraisals, reasonable relocation cost settlements, legal description of the property, and other information deemed appropriate to the acquisition. Furthermore, cost sharing will be only for the properties, or portions thereof, approved by PARTIES to be needed for the drainage and flood control portions of PROJECT. Request for such approval shall include appraisals of property, legal description of the property, and other information deemed appropriate to the acquisition by PARTIES to this Agreement. SMD1 shall purchase the right-of-way only after receiving prior approval of DISTRICT, and such purchases shall be made with PROJECT funds.
- B. Payment for Right-of-Way Acquisition. Following purchase or receipt of executed memorandum of agreement between SMD1 and property owner for the needed right-of-way that commits the property owner to sell property to SMD1 at a price certain and on a date certain, SMD1 shall so advise DISTRICT and request payment as provided above. DISTRICT shall make payment within 30 days of receipt of request accompanied by the information set forth above.
- C. Ownership of Property and Limitation of Use. PARTIES acknowledge that SMD1 owns the property on which PROJECT is constructed 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. SMD1 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, SMD1 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 SMD1 has not obtained the written approval of DISTRICT prior to such action, SMD1 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, SMD1 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 SMD1 has taken reasonable action to stop those actions. In the event SMD1 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 SMD1 for specific performance of this portion of the Agreement.

DISTRICT may, subsequent to the recording by SMD1 of any document transferring title or another interest to property acquired pursuant to this Agreement to SMD1, record a memorandum of this Agreement (Exhibit B), specifically a verbatim transcript of Paragraph 7.C. Ownership of Property and Limitation of Use except for this sub-paragraph which shall not be contained in the memorandum. The memorandum shall reference by legal description the property being acquired by SMD1 and shall be recorded in the records of the Clerk and Recorder of Boulder County immediately following the recording of the document transferring title or another interest to SMD1. SMD1 authorizes the recording of that memorandum and acknowledges that the same is meant to encumber the property with its restrictions.

8. MANAGEMENT OF CONSTRUCTION

- A. Costs. Construction costs shall consist of those costs as incurred by the most qualified contractor(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 concurrence of SMD1, shall administer and coordinate the construction-related work as provided herein.
 - 2. DISTRICT, with concurrence of SMD1, shall select and award construction contract(s).
 - 3. DISTRICT shall require the contractor to provide adequate liability insurance that includes SMD1. The contractor shall be required to indemnify SMD1. Copies of the insurance coverage shall be provided to SMD1 upon request.
 - 4. DISTRICT, with assistance of SMD1, shall coordinate field surveying; staking; inspection; testing; acquisition of right-of-way; and engineering as required to construct PROJECT. DISTRICT, with assistance of SMD1, 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 SMD1 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 SMD1, 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. DISTRICT shall remit payment to contractor based on billings.
8. DISTRICT, with concurrence of SMD1, 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 SMD1 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 SMD1 shall own and be responsible for maintenance of the completed and accepted PROJECT. PARTIES further agree that DISTRICT, at SMD1's request, shall assist SMD1 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 SMD1, 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

SMD1 agrees to regulate and control the floodplain of Coal Creek within SMD1 in the manner prescribed by the National Flood Insurance Program and prescribed regulations thereto as a minimum.

PARTIES understand and agree, however, that SMD1 cannot obligate itself by contract to exercise its police powers. If SMD1 fails to regulate the floodplain of Coal Creek within SMD1 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 SMD1 shall cooperate fully.

11. TERM OF AGREEMENT

The term of this Agreement shall commence upon the earlier of the date of 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.C. 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 SMD1 shall be the District Manager, 124 East Coal Creek Drive, Superior, Colorado 80027.
- B. The contracting officer for DISTRICT shall be the Executive Director, 2480 West 26th Avenue, Suite 156B, Denver, Colorado 80211.
- 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 SMD1. 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 SMD1 the information developed by the various consultants hired by DISTRICT and for obtaining all concurrences from SMD1 needed to complete PROJECT in a timely manner. SMD1 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 SMD1.

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 SMD1 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 SMD1'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 SMD1 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, gender identity, 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 SMD1 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 SMD1 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:

- A. At the time of execution of this Agreement, CONTRACTOR does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.
- B. CONTRACTOR shall participate in the E-Verify Program, as defined in § 8 17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.
- C. CONTRACTOR shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
- D. CONTRACTOR shall not enter into a contractor with a subconsultant or subcontractor that fails to certify to CONTRACTOR that it shall not knowingly employ or contact with an illegal alien to perform work under this Agreement.
- E. CONTRACTOR shall confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in the E-Verify Program.
- F. CONTRACTOR is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligation under this Agreement, and that otherwise requires CONTRACTOR to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.
- G. If CONTRACTOR obtains actual knowledge that a subconsultant or subcontractor performing work under this Agreement knowingly employs or contract with an illegal alien, it will notify such subconsultant or subcontractor and PARTIES within three (3) days. CONTRACTOR shall also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three (3) day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.

- H. CONTRACTOR shall comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S.
- I. CONTRACTOR shall, within twenty days after hiring an employee who is newly hired for employment to perform work under this Agreement, affirms that it has examined the legal work status of such employees, retained file copies of the documents required by 8 U.S.C. Section 1324a, and not altered or falsified the identification documents for such employees. CONTRACTOR shall provide a written, notarized copy of the affirmation to PARTIES.

27. 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.

28. 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 the SMD1, the DISTRICT or any other entity not a party hereto.

29. EXECUTION IN COUNTERPARTS – ELECTRONIC SIGNATURES

This Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement, may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. PARTIES approve the use of electronic signatures for execution of this Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement. Only the following two forms of electronic signatures shall be permitted to bind PARTIES to this Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement.

- A. Electronic or facsimile delivery of a fully executed copy of a signature page; or
- B. The image of the signature of an authorized signer inserted onto PDF format documents.

Documents requiring notarization may also be notarized by electronic signature, as provided above. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, CRS §§ 24-71.3-101 to -121.

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

DS
UK

Checked By

DocuSigned by:

Ken MacKenzie

By _____
3982F8223529485...

Name Ken A. MacKenzie

Title Executive Director

Date 27 January 2021

SUPERIOR METRO DISTRICT NO. 1

DocuSigned by:

Matthew G. Magley

By _____
39C2F88287D4423...

Name Matthew G. Magley

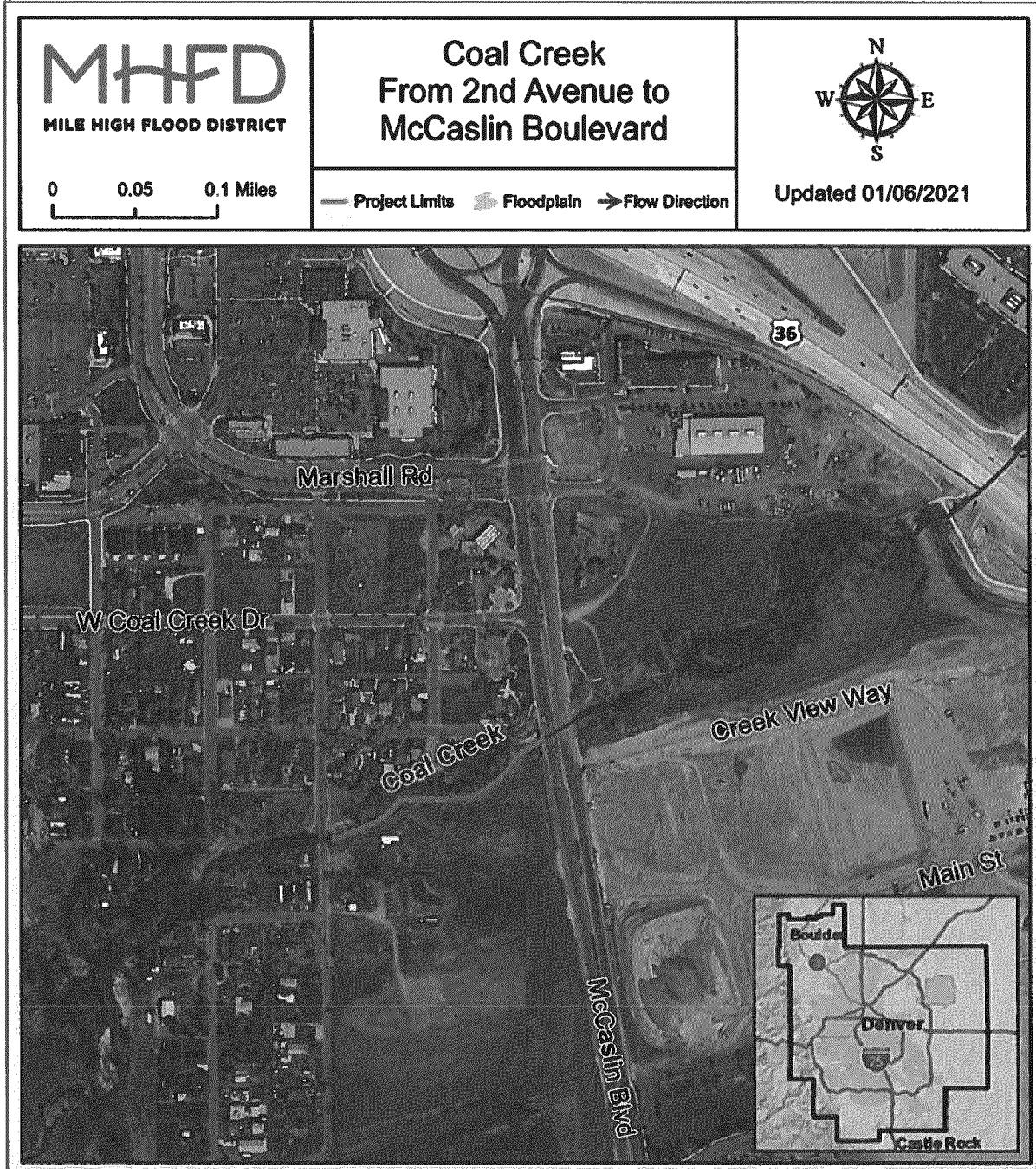
Title District Manager

Date 26 January 2021

AGREEMENT REGARDING
FINAL DESIGN, RIGHT-OF-WAY ACQUISITION, AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
COAL CREEK FROM 2ND AVENUE TO MCCASLIN BOULEVARD
TOWN OF SUPERIOR

Agreement No. 21-01.16
Project No. 108400

Exhibit A



SAMPLE

**AGREEMENT REGARDING
FINAL DESIGN, RIGHT-OF-WAY ACQUISITION, AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
COAL CREEK FROM 2ND AVENUE TO MCCASLIN BOULEVARD
TOWN OF SUPERIOR**

Agreement No. 21-01.16
Project No. 108400

Exhibit B

MEMORANDUM

This MEMORANDUM is entered into this _____ day of _____, 20__ by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT DOING BUSINESS AS MILE HIGH FLOOD DISTRICT, a quasi-governmental entity, whose address is 2480 West 26th Avenue, Suite 156-B, Denver, Colorado 80211 (hereinafter called "DISTRICT") and _____, a governmental entity, whose address is _____ (hereinafter called "SMD1") and collectively known as "PARTIES";

WHEREAS, PARTIES entered into "Agreement Regarding Final Design, Right-of-Way Acquisition and Construction of Drainage and Flood Control Improvements for _____," Agreement No. _____ on or about _____, 20__, (hereinafter called "AGREEMENT"); and

WHEREAS, AGREEMENT is unrecorded, however PARTIES have agreed in AGREEMENT to record this MEMORANDUM in the records of the Clerk and Recorder of _____, State of Colorado, in order to put all who inquire on notice of AGREEMENT and in particular Paragraph 7.C of AGREEMENT; and

WHEREAS, in AGREEMENT, PARTIES agreed to participate equally (up to a maximum of \$ _____ each) in the cost of the construction of drainage and flood control improvements for _____ within SMD1 boundaries which include _____ (hereinafter called "PROJECT"); and

WHEREAS, construction of PROJECT may require the acquisition by SMD1 of real property; and
WHEREAS, AGREEMENT further provides that SMD1 will own all real property required to construct the improvements and that SMD1 ownership of that real property shall be subject to the terms and conditions of AGREEMENT and in particular Paragraph 7.C of AGREEMENT; and

WHEREAS, Paragraph 7.C of AGREEMENT provides in appropriate part as follows:

"7.C. Ownership of Property and Limitation of Use. PARTIES acknowledge that SMD1 owns the property on which PROJECT is constructed 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. SMD1 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, SMD1 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 SMD1 has not obtained the written approval of DISTRICT prior to such action, SMD1 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 SMD1's sole expense. However, SMD1 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 SMD1 has taken reasonable action to stop those actions. In the event SMD1 breaches the terms and provisions of this Paragraph 7.C and does not voluntarily cure as set forth above, DISTRICT shall have the right to pursue a claim against SMD1 for specific performance of this portion of the Agreement; and

WHEREAS, SMD1 has just acquired the real property described in Exhibit Z attached hereto and incorporated herein by reference, as if set forth verbatim herein, pursuant to the terms and conditions of AGREEMENT for the construction of PROJECT; and

WHEREAS, PARTIES intend that the terms and provisions of AGREEMENT, including but not limited to Paragraph 7.C of AGREEMENT set forth verbatim above, shall apply to and control the real property described in Exhibit Z.

IT HAS BEEN AGREED previously in AGREEMENT by and between PARTIES that the terms and provisions of AGREEMENT, including but not limited to Paragraph 7.C of AGREEMENT set forth verbatim above shall apply to and control the real property described in Exhibit Z, now owned by SMD1 and that this MEMORANDUM be placed of record for the purposes of encumbering the real property described in Exhibit Z with the limitations and restrictions set forth in this MEMORANDUM.

This MEMORANDUM is not a complete summary of AGREEMENT. Provisions in this MEMORANDUM shall not be used in interpreting AGREEMENT's provision. In the event of conflict between this MEMORANDUM and the unrecorded AGREEMENT, the unrecorded AGREEMENT shall control.

MILE HIGH FLOOD DISTRICT

(SEAL)

By _____

ATTEST:

Title Executive Director

Date _____

STATE OF COLORADO)

) ss.

SMD1 OF _____)

Subscribed and sworn to before me this _____ day of _____, 20__, by

_____.

WITNESS my hand and official seal.

(SEAL)

Notary Public

My Commission Expires _____.