

TOWN OF SUPERIOR
RESOLUTION NO. R-43
SERIES 2023

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR APPROVING THE INTERGOVERNMENTAL AGREEMENT FOR FINANCIAL PARTICIPATION IN THE PURCHASE COST FOR LOTS 5 & 6 ARSENAULT PROPERTY

BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR, COLORADO, as follows:

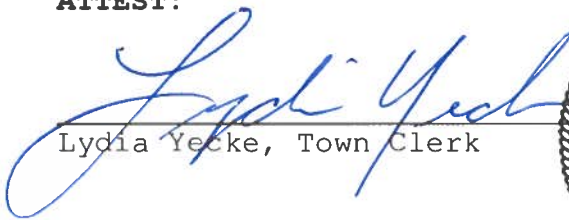
Section 1. The Intergovernmental Agreement for Financial Participation in the Purchase Cost for Lots 5 & 6 Arsenault Property is hereby approved in substantially the same form as attached hereto, subject to final approval by the Town Attorney.

ADOPTED this 14th day of August, 2023.



Mark Lacis, Mayor

ATTEST:



Lydia Yecke, Town Clerk



AGREEMENT REGARDING
ACQUISITION OF LOTS 5&6, ERIN'S COMMUNITY
IN THE TOWN OF SUPERIOR, BOULDER COUNTY

Agreement No. 23-0818

THIS AGREEMENT, made this 17th day of August, 2023, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT D/B/A MILE HIGH FLOOD DISTRICT (hereinafter called "DISTRICT") and TOWN OF SUPERIOR (hereinafter called "TOWN") 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, TOWN has enacted floodplain regulations; and

WHEREAS, PARTIES have cooperated in the preparation of a flood hazard area delineation entitled "Coal Creek and Rock Creek Flood Hazard Area Delineation" by RESPEC Consulting and Services dated November 2014 (hereinafter called "PLAN"),

WHEREAS, portions of Lots 5 & 6, in Erin's Community are in the floodplain and therefore eligible for acquisition (hereinafter called "PROJECT"); and

WHEREAS, the estimated total cost for acquisition of PROJECT is \$750,000; and

WHEREAS, TOWN has requested DISTRICT funding assistance for PROJECT; and

WHEREAS, DISTRICT has adopted a Preservation Fund Budget for floodplain preservation for calendar year 2023 subsequent to public hearing (Resolution No. 90, Series of 2022) from which \$534,000 has been allocated for the acquisition of PROJECT; and

WHEREAS, DISTRICT Board of Directors has authorized DISTRICT financial participation for PROJECT (Resolution No. 67 Series of 2023); and

WHEREAS, the Board of Trustees of TOWN 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. 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 DISTRICT and the property therein.

3. 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. Acquisition costs; and
2. Contingencies mutually agreeable to PARTIES.

B. It is understood that PROJECT costs as defined above are estimated not to exceed \$750,000.

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

<u>ITEM</u>	<u>AMOUNT</u>
1. Acquisition	\$750,000
 Grand Total	 \$750,000

This breakdown of costs is for estimating purposes only.

C. DISTRICT shall contribute \$534,000 toward PROJECT costs and TOWN shall contribute the remainder of PROJECT costs. Based on total PROJECT costs, the maximum cost to each party shall be:

	<u>Participation</u>
DISTRICT share	\$534,000
TOWN share	\$216,000
TOTAL	\$750,000

4. 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 of Directors of DISTRICT approval.

Within 30 days of presentation by TOWN of a billing attributed to PROJECT, DISTRICT shall remit to TOWN 100% of that portion of the billing to TOWN, up to a maximum amount of \$534,000 plus interest accumulated on DISTRICT's share of funds.

5. FEE TITLE

TOWN, with DISTRICT assistance, shall be responsible for acquiring, subject to approval of DISTRICT, fee title to such property needed to implement PROJECT as defined herein. Appraisal costs will also be considered a PROJECT cost. Fee title 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 fee title acquired shall be in the name of the TOWN and the conveyancing document shall be promptly recorded in the records of the Clerk and Recorder of Boulder County.

A. Coordination of Fee Title Acquisition. Cost sharing by PARTIES will be based on supporting documentation such as formal appraisals, legal description of the property, and other information deemed appropriate to the acquisition. Furthermore, cost sharing by DISTRICT will be only for the property and the costs of acquisition including eminent domain approved by PARTIES to be needed for drainage and flood control improvements.

TOWN shall purchase the fee title or proceed with eminent domain only after receiving prior approval of DISTRICT and such purchases shall be made with PROJECT funds.

- B. Payment for Fee Title Acquisition. Following purchase or receipt of executed receipt and option contract between TOWN and property owner for the needed fee title that commits the property owner to sell property to TOWN at a price certain and on a date certain, TOWN shall so advise DISTRICT and request payment as provided above. DISTRICT will make payment within 30 days of receipt of request accompanied by the information set forth above.
- C. Ownership of Property and Limitation of Use. TOWN shall own the property in fee and shall be responsible for same. It is specifically understood that the property is being used for drainage and flood control purposes. The property shall not be used for any purpose that will diminish or preclude its use for drainage and flood control purposes. TOWN may not dispose of or change the use of the property without approval of DISTRICT. If, in the future, TOWN disposes of any portion of or all of the property acquired pursuant to this Agreement or changes the use of any portion or all of the property acquired pursuant to this Agreement, and TOWN has not obtained the written approval of DISTRICT prior to such action, TOWN shall take any and all action necessary to reverse said unauthorized activity and return the property acquired pursuant to this Agreement, to the ownership and condition they were in immediately prior to the unauthorized activity at TOWN's sole expense. In the event TOWN breaches the terms and provisions of this Paragraph 5.C and does not voluntarily cure as set forth above, DISTRICT shall have the right to pursue a claim against TOWN for specific performance of this portion of the Agreement. A memorandum executed by the TOWN and DISTRICT shall be recorded simultaneously with the deed to the TOWN summarizing this Paragraph 5.C.

6. FLOODPLAIN REGULATION

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

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

7. TERM OF AGREEMENT

The term of this Agreement shall commence upon final execution by all PARTIES and shall terminate two years after the final payment is made to the property owner pursuant to Paragraph 4 herein, except for Paragraph 6. FLOODPLAIN REGULATION and Paragraph 5.C. Ownership of Property and Limitation of Use.

8. 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.

9. CONTRACTING OFFICERS

- A. The contracting officer for TOWN shall be Town Manager, Matt Magley, 124 E Coal Creek Drive, Superior, CO 80027.
- B. The contracting officer for DISTRICT shall be the Executive Director, 12575 West Bayaud Avenue, 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. 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.

11. 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.

11. 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.

12. 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 Boulder County, where PROJECT is located.

13. 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.

14. 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.

15. 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.

16. 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 outstanding contracts. If there are outstanding contracts, this Agreement may only be terminated upon the cancellation of all outstanding contracts. All costs associated with the cancellation of the contracts shall be shared between PARTIES in the same ratio(s) as were their contributions.

18. PUBLIC RELATIONS

It shall be at TOWN'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 the proposed acquisition and what impact it may have on them. In any event DISTRICT shall have no responsibility for a public relations program, but shall assist TOWN as needed and appropriate.

19. 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.

20. APPROPRIATIONS

Notwithstanding any other term, condition, or provision herein, each and every obligation of TOWN and/or DISTRICT stated in this Agreement and consistent with Article X, § 20 of the Colorado Constitution, is subject to the requirement of an annual appropriation of funds therefore by the appropriate governing body of TOWN and/or DISTRICT.

21. 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.

24. 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.

25. 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 TOWN, the DISTRICT or any other entity not a party hereto.

26. 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 three 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.
- C. DocuSign or similar software program.

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.

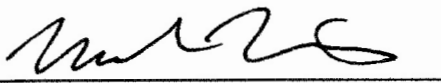
WHEREFORE, PARTIES hereto have caused this instrument to be executed by properly authorized signatories as of the date and year first above written.

URBAN DRAINAGE AND
FLOOD CONTROL DISTRICT

By 

Laura Kroeger
Executive Director

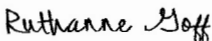
TOWN

By 

Mark Lacis
Mayor

APPROVED AS TO FORM:

DocuSigned By:



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TOWN Attorney

