

AGREEMENT REGARDING
DESIGN AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
SABLE BOULEVARD OUTFALL CHANNEL AT 144TH AVENUE

Agreement No. 25-10.36
Project No. 110396

THIS AGREEMENT, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT D/B/A MILE HIGH FLOOD DISTRICT (hereinafter called "DISTRICT") and CITY OF BRIGHTON (hereinafter called "PROJECT SPONSOR") 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 "Brighton Watershed Tributary to the South Platte River Outfall Systems Planning Preliminary Design Report" by December 2006; and "City of Brighton Stormwater Master Plan", dated March 2017 (hereinafter called "PLANS"); and

WHEREAS, PARTIES now desire to proceed with the design and construction of drainage and flood control improvements for Sable Boulevard Outfall Channel at 144th Avenue (hereinafter called "PROJECT"); and

WHEREAS, DISTRICT has adopted at a public hearing a Five-Year Capital Improvement Program (Resolution No. 81, Series of 2024) for drainage and flood control facilities in which PROJECT was included in the 2025 calendar year; and

WHEREAS, DISTRICT has heretofore adopted a Special Revenue Fund Budget for calendar year 2025 subsequent to public hearing (Resolution No. 79, Series of 2024) which includes funds for PROJECT; and

WHEREAS, DISTRICT's Board of Directors has authorized DISTRICT financial participation for PROJECT (Resolution No. 79, Series of 2025); and

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

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 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 Sable Boulevard and the Fulton Ditch to the South Outfall confluence as shown on Exhibit A, attached hereto and incorporated by this reference.
- B. Construction. PROJECT shall include construction by DISTRICT of the drainage and flood control improvements as set forth in the final design including vegetation establishment.

1.03 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.

1.04 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. Construction of improvements;
 - 3. Contingencies mutually agreeable to PARTIES.
- B. It is understood that PROJECT costs as defined above are not to exceed \$450,000 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	\$ -0-
2. Construction*	\$ 450,000
3. Contingency	\$ -0-
Grand Total	\$ 450,000

* 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 PROJECT elements 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%	\$225,000
PROJECT SPONSOR	50%	\$225,000
TOTAL	100%	\$450,000

1.05 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 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 (PROJECT SPONSOR - \$225,000; DISTRICT - \$225,000) 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 accounting of PROJECT funds as well as a notification to PROJECT SPONSOR 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 (Paragraph 2.06).

Following completion of PROJECT if there are monies including interest earned remaining, which are not committed, obligated, or disbursed, each party shall be refunded proportional to the PARTY'S contribution; or, at PROJECT SPONSOR request, monies shall be transferred to another special fund held by DISTRICT.

1.06 FINAL DESIGN

The contracting officers for PARTIES, as defined under Paragraph 2.06 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 PROJECT SPONSOR. Payment for final design 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. Preparation of detailed construction plans and specifications;
- C. Preparation of an estimate of probable construction costs of the work covered by the plans and specifications; and
- D. Preparation of an appropriate construction schedule.

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

1.07 MANAGEMENT OF CONSTRUCTION

- A. Costs. Construction costs shall consist of those costs as incurred by the contractor(s) including detour costs, licenses and permits, utility relocations, and construction related engineering services as defined in Paragraph 1.04 of this Agreement.
- B. Construction Management and Payment
 - 1. DISTRICT, with the concurrence of PROJECT SPONSOR, shall administer and coordinate the construction-related work as provided herein.
 - 2. DISTRICT, with concurrence of PROJECT SPONSOR, shall select and award construction contract(s).
 - 3. DISTRICT shall require the contractor to provide adequate liability insurance that includes PROJECT SPONSOR. The contractor shall be required to indemnify, defend, and hold harmless PROJECT SPONSOR. Copies of the insurance coverage shall be provided to PROJECT SPONSOR upon request.
 - 4. DISTRICT, with assistance of PROJECT SPONSOR, shall coordinate field surveying; staking; inspection; testing; acquisition of right-of-way; and engineering as required to construct PROJECT. DISTRICT, with assistance of PROJECT SPONSOR, 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 PROJECT SPONSOR 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 PROJECT SPONSOR, 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 reasonable 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 PROJECT SPONSOR, 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 PROJECT SPONSOR 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.

1.08 RESPONSIBILITIES OF PARTIES

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

1.09 PUBLIC RELATIONS

It shall be at PROJECT SPONSOR'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, if requested by PROJECT SPONSOR. In any event DISTRICT shall have no responsibility for a public relations program but shall assist PROJECT SPONSOR as needed and appropriate.

1.10 EXECUTION IN COUNTERPARTS – ELECTRONIC SIGNATURES

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

Part 2

2.01 OWNERSHIP OF PROPERTY AND LIMITATION OF USE

PARTIES acknowledge that, if PROJECT SPONSOR owns the property on which PROJECT is constructed either in fee or non-revocable easement, PROJECT SPONSOR shall be responsible for same including but not limited to fully complying with the remaining provisions of this Paragraph 2.01. 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. PROJECT SPONSOR 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, PROJECT SPONSOR 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 PROJECT SPONSOR has not obtained the written approval of DISTRICT prior to such action, PROJECT SPONSOR 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, PROJECT SPONSOR 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 PROJECT SPONSOR has taken reasonable action to stop those actions. In the event PROJECT SPONSOR breaches the terms and provisions of this Paragraph 2.01 and does not voluntarily cure as set forth above, DISTRICT shall have the right to pursue a claim against PROJECT SPONSOR for specific performance of this portion of the Agreement.

2.02 MAINTENANCE

PARTIES agree that PROJECT SPONSOR shall own and be responsible for maintenance of the completed and accepted PROJECT. PARTIES further agree that DISTRICT, at PROJECT SPONSOR's request, shall assist PROJECT SPONSOR 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 PROJECT SPONSOR, 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.

2.03 FLOODPLAIN REGULATION

PROJECT SPONSOR agrees to regulate and control the floodplain of Sable Avenue Outfall Channel within their jurisdiction in the manner prescribed by the National Flood Insurance Program and prescribed regulations thereto as a minimum.

PARTIES understand and agree, however, that PROJECT SPONSOR cannot obligate itself by contract to exercise its police powers. If PROJECT SPONSOR fails to regulate the floodplain of Sable Avenue Outfall Channel within their jurisdiction 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 PROJECT SPONSOR shall cooperate fully.

2.04 TERM OF AGREEMENT

The term of this Agreement shall commence upon execution 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 1.05 herein, except for Paragraph 2.01. OWNERSHIP OF PROPERTY AND LIMITATION OF USE, Paragraph 2.02.

MAINTENANCE, and Paragraph 2.03. FLOODPLAIN REGULATION,

2.05 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.

2.06 CONTRACTING OFFICERS

- A. The contracting officer for PROJECT SPONSOR shall be the City Manager or Designee, 500 South 4th Avenue, Brighton, Colorado 80601.
- B. The contracting officer for DISTRICT shall be the Executive Director, 12575 W. 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, and shall be responsible for providing all available PROJECT-related file information to the engineer upon request by DISTRICT or PROJECT SPONSOR. Said representatives shall have the authority for all approvals, authorizations, notices or concurrences required under this Agreement. In the case of amendments to this Agreement, contracting officers shall determine which PARTIES are impacted by the amendment and ensure that such PARTIES provide their approval in writing. Unaffected PARTIES shall only be required to acknowledge the amendment in writing, and their acknowledgement shall be sufficient to meet the requirements of this Agreement.

2.07 AMENDMENTS

This Agreement contains all of the terms agreed upon by and among PARTIES. Any amendments to this Agreement shall be in writing. Amendments affecting only specific PARTIES, whether through changes in scope or additional funding contributions, shall require the written approval of the impacted PARTIES. All other PARTIES unaffected by the amendment shall acknowledge the amendment in writing, and their acknowledgement shall be sufficient to meet the requirements of this Agreement.

2.08 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.

2.09 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 PROJECT is located.

2.10 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.

2.11 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.

2.12 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.

2.13 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.

2.14 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.

2.15 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 of funds therefore by the appropriate governing body of the respective PARTIES.

2.16 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 PARTIES receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

2.17 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.

2.18 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, 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

Checked By

(SEAL)

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Yasmina Gibbons, Deputy City Attorney

PROJECT SPONSOR

By _____

Name Michael Martinez

Title City Manager

Date _____

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Exhibit A

