

AGREEMENT REGARDING FUNDING OF A  
FLOOD HAZARD AREA DELINEATION STUDY FOR THE  
SOUTH PLATTE RIVER FROM CHATFIELD DAM TO BASELINE ROAD

Agreement No. 15-09.15

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT"), and ADAMS COUNTY (hereinafter DISTRICT and ADAMS COUNTY 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 2015 (Resolution No. 51, Series of 2014) which includes flood hazard area delineation (FHAD) studies; and

WHEREAS, DISTRICT has previously completed a conditional letter of map revision (CLOMR) application based on a change in hydrologic analysis methods; and

WHEREAS, PARTIES now desire to proceed with development of a FHAD report for the South Platte River from Chatfield Dam to Baseline Road based on the CLOMR flow rates (hereinafter called "PROJECT"); and

WHEREAS, DISTRICT's Board of Directors has authorized DISTRICT financial participation for PROJECT (Resolution No. 67, Series of 2014); and

WHEREAS, PARTIES desire to acquire mapping needed to conduct the engineering studies for PROJECT; and

WHEREAS, DISTRICT has engaged 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:

1. SCOPE OF AGREEMENT

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

2. PROJECT AREA

DISTRICT has engaged an engineer and will 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 September 2015, (hereinafter called "AREA").

3. SCOPE OF PROJECT

The purpose of PROJECT is to develop a FHAD. The proposed work shall include, but not be limited to, mapping; compilation of existing data; necessary field work.

4. 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.

5. PROJECT COSTS

PARTIES agree that for the purposes of this Agreement PROJECT costs shall consist of, and be limited to, mapping, FHAD and related services and contingencies mutually agreeable to PARTIES. Project costs are estimated not to exceed \$240,000 with \$113,000 secured under this AGREEMENT and the remaining funds secured by DISTRICT and others under separate agreements in 2015 and 2016.

6. FINANCIAL COMMITMENTS OF PARTIES

PARTIES shall each contribute the following percentages and maximum amounts for PROJECT costs as defined in Paragraphs 5:

	<u>Percentage Share</u>	<u>Contribution</u>
DISTRICT	84.07%	\$95,000
ADAMS COUNTY	15.93%	\$18,000
TOTAL	100.00%	\$113,000

7. MANAGEMENT OF FINANCES

Payment by DISTRICT of \$95,000 has already been made and payment by ADAMS COUNTY of \$18,000 shall be made to DISTRICT subsequent to execution of this Agreement and within thirty (30) calendar days of request for payment by DISTRICT. The payments by PARTIES shall be held by DISTRICT in a special interest bearing 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 ADAMS COUNTY 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 and will not require an amendment to this Agreement.

In the event that it becomes necessary and advisable to change the scope of work to be performed, the need for such changes shall first be discussed with PARTIES, and their general concurrence received before issuance of any amendments or addenda. No changes shall be approved that increase the costs beyond the funds available in the PROJECT fund unless and until the additional funds needed are committed by PARTIES by an amendment to this Agreement.

Within one year of completion of PROJECT if there are monies including interest earned remaining which are not committed, obligated, or dispersed, each party shall receive a share of

such monies, which shares shall be computed according to the percentages as were applied to the original shares.

8. PROJECT MAPPING

No new mapping is anticipated under this Agreement for PROJECT. Upon execution of this Agreement, ADAMS COUNTY shall provide copies of the most recent mapping within their jurisdictional area in digital format to DISTRICT to the extent such mapping is available without additional cost.

9. DFHAD

DISTRICT has selected an engineer for this effort, and preliminary work products are in progress. DISTRICT, with the approval of ADAMS COUNTY, shall further 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, with input from ADAMS COUNTY.

10. PUBLISHED REPORTS AND PROJECT DATA

DISTRICT will provide to ADAMS COUNTY access to the draft and final electronic FHAD report files and 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 ADAMS COUNTY requesting such data.

11. TERM OF THE AGREEMENT

The term of this Agreement shall commence upon final 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 Paragraph 7 herein.

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 ADAMS COUNTY shall be the Engineering Manager, 4430 S. Adams County Parkway, Suite 2000B, Brighton, Colorado 80601.
- B. The contracting officer for DISTRICT shall be the Executive Director, 2480 West 26<sup>th</sup> 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 ADAMS COUNTY. 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 ADAMS COUNTY the information developed by the various consultants hired by DISTRICT and for obtaining all concurrences from ADAMS COUNTY needed to complete PROJECT in a timely manner. ADAMS COUNTY agrees to review all draft reports and to provide comments within 21 calendar days after the draft reports have been provided by DISTRICT to ADAMS COUNTY. ADAMS COUNTY also agrees 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 ADAMS COUNTY by DISTRICT.

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 here 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 County where the 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 ADAMS COUNTY'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 ADAMS COUNTY as needed and appropriate.

23. 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.

24. 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, marital status, or physical or mental disability and further agrees to insert the foregoing provision in all subcontracts hereunder.

25. APPROPRIATIONS

Notwithstanding any other term, condition, or provision herein, each and every obligation of ADAMS COUNTY 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 ADAMS COUNTY and/or DISTRICT.

26. 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 ADAMS COUNTY or DISTRICT receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

27. 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 *et seq* C.R.S. The following language shall be included in any contract for public services: "The Consultant or Contractor shall not and by signing this Agreement certifies that it does not knowingly employ or contract with an illegal alien to perform work under this Agreement. Consultant or Contractor shall not enter into a subcontract with a subcontractor that fails to certify

to the Consultant or Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services. Consultant or Contractor affirms that they have verified or attempted to verify through participation in the Employment Eligibility Verification Program (E-Verify) previously known as the Basic Pilot Program (created in Public Law 208, 104<sup>th</sup> Congress, As Amended, and expanded in Public Law 156, 108<sup>th</sup> Congress, As Amended, that is administered by the United States Department of Homeland Security that Consultant or Contractor does not employ illegal aliens.

Consultant or Contractor shall not use the E-Verify procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.

In the event that the Consultant or Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Consultant or Contractor shall be required to:

- A. Notify the subcontractor and PARTIES within three days that the Consultant or Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- B. Terminate the subcontract with the subcontractor if within three days of receiving the notice required if the Subcontractor does not stop employing or contracting with the illegal alien; except that the Consultant or Contractor shall not terminate the contract with the Subcontractor if during such three days the Subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Consultant or Contractor is required under this Agreement to comply with any reasonable request by the Colorado Department of Labor and Employment (CDLE) made in the course of an investigation the CDLE is undertaking pursuant to to §8-17.5-102(5) C.R.S.

DISTRICT may terminate this agreement for a breach of contract if Consultant or Contractor does not fully and completely comply with these conditions. If this Agreement is so terminated, the Consultant or Contractor shall be liable for actual and consequential damages to PARTIES.

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

URBAN DRAINAGE AND  
FLOOD CONTROL DISTRICT

(SEAL)

ATTEST:

\_\_\_\_\_

By \_\_\_\_\_

Title Executive Director

Date \_\_\_\_\_

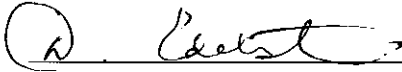
ADAMS COUNTY

(SEAL)

ATTEST:

\_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

By\_\_\_\_\_

Title\_\_\_\_\_

Date\_\_\_\_\_

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EXHIBIT A  
APPROXIMATE STUDY LIMITS  
SEPTEMBER 2015

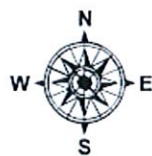
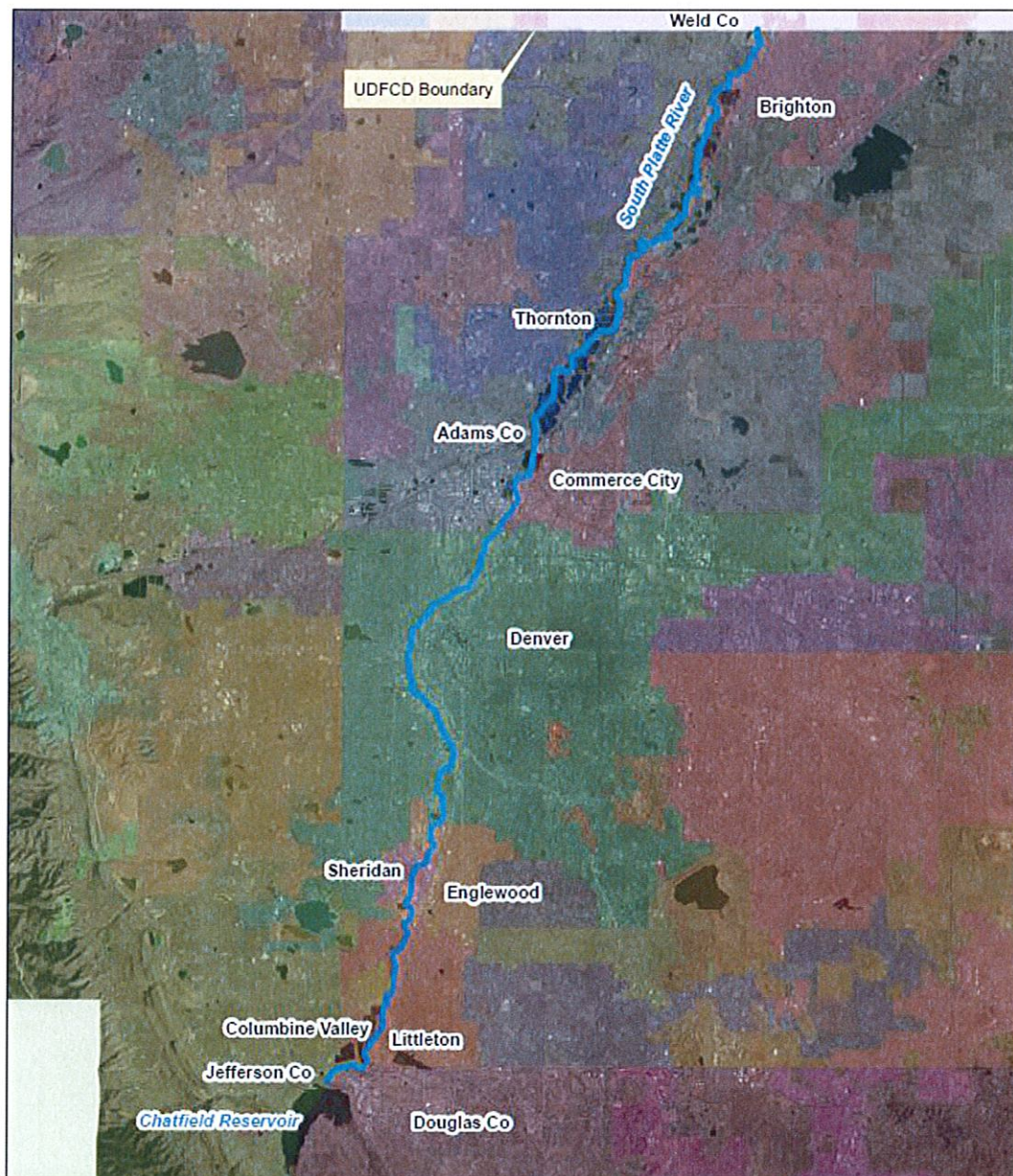


EXHIBIT A  
South Platte River FHAD  
Approximate Study Limits  
September 2015