

AMENDMENT TO
AGREEMENT REGARDING
FINAL DESIGN, RIGHT-OF-WAY ACQUISITION, AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
CLEAR CREEK AT BNSF CROSSING BETWEEN PECOS AND FEDERAL BOULEVARD
ADAMS COUNTY

Agreement No. 18-04.06C
Project No. 106259

THIS AGREEMENT, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT D/B/A MILE HIGH FLOOD DISTRICT (hereinafter called "DISTRICT") and ADAMS COUNTY (hereinafter called "COUNTY") and collectively known as "PARTIES";

WITNESSETH:

WHEREAS, PARTIES have entered into "Agreement Regarding Final Design, Right-of-Way Acquisition and Construction of Drainage and Flood Control Improvements for Clear Creek at BNSF Crossing between Pecos and Federal Boulevard, Adams County" (Agreement No. 18-04.06) dated July 19, 2018; and

WHEREAS, PARTIES now desire to proceed with construction of improvements to Clear Creek at BNSF Crossing between Pecos and Federal Boulevard; and

WHEREAS, PARTIES desire to increase the level of funding by \$1,250,000; and

WHEREAS, DISTRICT's Board of Directors has authorized additional DISTRICT financial participation for PROJECT (Resolution No. 72, Series of 2021); and

WHEREAS, the County Commissioners of COUNTY 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. Paragraph 4. PROJECT COSTS AND ALLOCATION OF COSTS is deleted and replaced as follows:
 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 \$8,325,000 without amendment to this Agreement.

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

| <u>ITEM</u> | <u>AS AMENDED</u> | <u>PREVIOUSLY AMENDED</u> |
|-----------------|-------------------|-------------------------------|
| 1. Final Design | \$ 1,150,000 | \$ 1,150,000 |
| 2. Right-of-way | \$ 250,000 | \$ 250,000 |
| 3. Construction | \$ 5,875,000 | \$ 4,625,000 |
| 4. Contingency | \$ 1,050,000 | \$ 1,050,000 |
| Grand Total | \$ 8,325,000 | \$ 7,075,000 |

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.

- C. Based on total PROJECT costs, the maximum percent and dollar contribution by each party shall be:

| | <u>Percentage Share</u> | <u>Previously Contributed</u> | <u>Additional Contribution</u> | <u>Maximum Contribution</u> |
|----------|-----------------------------|-----------------------------------|------------------------------------|---------------------------------|
| DISTRICT | 16.52% | \$ 125,000 | \$1,250,000 | \$1,375,000 |
| COUNTY | 83.48% | \$6,950,000 | \$ -0- | \$6,950,000 |
| TOTAL | 100.00% | \$7,075,000 | \$1,250,000 | \$8,325,000 |

2. Paragraph 5. MANAGEMENT OF FINANCES is deleted and replaced as follows:

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 Board approval.

Payment of each party's full share (COUNTY - \$6,950,000; DISTRICT - \$1,250,000) 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 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 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 COUNTY

request, COUNTY share of remaining monies shall be transferred to another special fund held by DISTRICT.

3. All other terms and conditions of Agreement No. Adams County shall remain in full force and effect.

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



Checked By

By  _____

Name Ken A. MacKenzie

Title Executive Director

Date _____

ADAMS COUNTY

By _____

Name _____

Title _____

Date _____