

RESOLUTION NO. 1739

A RESOLUTION OF THE GOLDEN CITY COUNCIL
AUTHORIZING APPROVAL OF AN AGREEMENT WITH
URBAN DRAINAGE AND FLOOD CONTROL DISTRICT FOR
DESIGN AND CONSTRUCTION OF MAINTENANCE
IMPROVEMENTS TO THE EAST FORK KENNYS RUN EAST
OF JOHNSON ROAD

WHEREAS, the City of Golden is concerned about water quality; and

WHEREAS, the erosion that occurs during flooding on the east fork of Kennys Run is detrimental to water quality; and

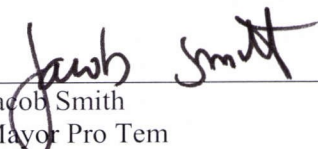
WHEREAS, an agreement between the City of Golden and Urban Drainage and Flood Control District will effect improvements in that drainage that will reduce erosion during severe flood events; and

WHEREAS, Urban Drainage and Flood Control District is bearing the majority of the financial commitment of these improvements.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLDEN,
COLORADO:

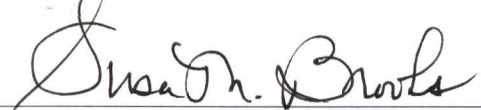
The agreement with Urban Drainage and Flood Control District for design and construction of maintenance improvements to East Fork Kennys Run West of Johnson Road, in substantially the form attached hereto, is approved.

Adopted the 7th day of December, 2006.



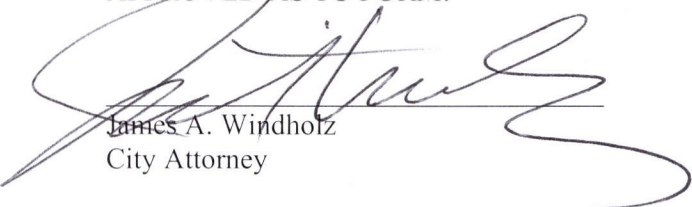
Jacob Smith
Mayor Pro Tem

ATTEST:



Susan M. Brooks, MMC
City Clerk

APPROVED AS TO FORM:



James A. Windholz
City Attorney

Resolution No. 1739
Page 2

I, Susan M. Brooks, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing is a true copy of a certain Resolution adopted by the City Council of the City of Golden, Colorado at a rescheduled regular meeting thereof held on the 7th day of December, A.D., 2006.

(SEAL)

ATTEST:

A handwritten signature in cursive script, appearing to read "Susan M. Brooks", written over a horizontal line.

Susan M. Brooks, City Clerk of the City of
Golden, Colorado

AGREEMENT REGARDING
DESIGN AND CONSTRUCTION OF
MAINTENANCE IMPROVEMENTS TO
EAST FORK KENNYS RUN WEST OF JOHNSON ROAD

Agreement No. 06-07.01

THIS AGREEMENT, made this _____ day of _____, 2006, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT") and CITY OF GOLDEN (hereinafter called "CITY") and collectively known as "PARTIES;"

WITNESSETH:

WHEREAS, the Colorado General Assembly in 1979 and 1983 amended 32-11-217(1)(C), Colorado Revised Statutes 1973 to authorize DISTRICT to levy up to four-tenth (.4) mill for the maintenance and preservation of floodways and floodplains within DISTRICT; and

WHEREAS, 32-11-203, Colorado Revised Statutes 1973, as amended in 1979 and 1983, further authorizes DISTRICT's Board of Directors to institute a systematic and uniform program of preventive maintenance for such floodways and floodplains within DISTRICT; and

WHEREAS, DISTRICT's Board of Directors, pursuant to such authorization, adopted a budget for 2006 (Resolution No. 67, Series of 2005) which includes funds for preventive maintenance of drainage and flood control facilities within DISTRICT; and

WHEREAS, DISTRICT's Board of Directors reviewed and authorized expenditures for the 2006 Maintenance Work Program (Resolution No. 83, Series of 2005); and

WHEREAS, DISTRICT's Board of Directors authorized the Executive Director to contract for those services necessary to implement the 2006 Maintenance Work Program (Resolution No. 83, Series of 2005); and

WHEREAS, DISTRICT's Board of Directors adopted a policy that sets forth DISTRICT policy regarding the maintenance of drainage and flood control facilities within DISTRICT (Resolution No. 41, Series of 1978); and

WHEREAS, CITY requested DISTRICT maintenance funds and DISTRICT included in the 2006 Maintenance Work Program a work item to participate in the design and construction of maintenance improvements; and

WHEREAS, PARTIES desire to proceed with design and construction of maintenance improvements to East Fork Kennys Run channel and detention pond spillway improvements (hereinafter called "PROJECT").

NOW, THEREFORE, in consideration of the mutual promises contained herein, PARTIES agree as follows:

1. SCOPE OF AGREEMENT

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

2. SCOPE OF PROJECT

PROJECT will consist of repairs to detention pond spillways and construction of channel improvements to stabilize the channel.

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 DISTRICT and the property therein.

4. PROJECT COSTS

A. Definition of PROJECT Costs. PARTIES agree that for the purposes of this Agreement PROJECT costs for Paragraph 2. SCOPE OF PROJECT shall consist of, and be limited to, engineering services; construction services; and construction related services for the drainage and flood control portions of PROJECT.

B. Estimated PROJECT Costs. The estimated costs associated with PROJECT as defined above are as follows:

<u>ITEM</u>	<u>AMOUNT</u>
1. Engineering Services	\$ 75,000
2. Construction	425,000
Total	\$500,000

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. It is anticipated that additional funds from the 2007 Work Program will be contributed by DISTRICT for construction.

5. ALLOCATION OF COSTS AND FINANCIAL COMMITMENTS OF PARTIES

PARTIES shall each contribute the following percentages and maximum amounts for elements of PROJECT as defined in Paragraphs 2 and 4 of this Agreement:

	<u>Percentage Share</u>	<u>Maximum Contribution</u>
DISTRICT	86%	\$75,000
CITY	14%	\$ 25,000
TOTAL	100%	\$100,000

Payment of each party's full share (CITY - \$25,000; DISTRICT - \$75,000) 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 CITY 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.

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 as were the original shares.

6. MANAGEMENT OF DESIGN

- A. DISTRICT shall contract for and be responsible for the management, administration, and coordination of the engineering services for design. This will include final design, utility coordination, surveying, bid preparation, addendum preparation, bid opening, and recommendation of award.
- B. DISTRICT's contracting officer or representative shall be the only individual authorized to direct or redirect, by amendment(s) agreed to by PARTIES, the agreement for design of PROJECT.
- C. CITY shall have the authority to meet with and guide the engineer in design matters related strictly to drainage and flood control. Any direction given to the engineer by CITY regarding those matters must first have the concurrence of PARTIES.
- D. The contract documents must be reviewed and approved by all PARTIES before construction can begin. Any changes to the approved contract documents require the concurrence of PARTIES.
- E. The engineer shall be required to submit to PARTIES a design report including all hydrologic data, hydraulic calculations, design criteria, structural data and calculations, and other pertinent and appropriate design information, calculations, and criteria used and/or developed during the course of the design after all PARTIES review and approve final plans and specifications.
- F. PARTIES shall each receive at least one set of vellum reproducible plans and one set of construction specifications. An electronic copy of the plans and specifications shall also be provided.
- G. DISTRICT shall be responsible for acquisition of all local, state and federal permits as needed.
- H. In the event that it becomes necessary and advisable to change the scope or detail of the work to be performed under this Agreement, such changes shall be rejected or approved in writing by the contracting officers. No design amendments 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 by amendment to this Agreement.

7. MANAGEMENT OF CONSTRUCTION

- A. Costs. Construction costs shall consist of those costs as incurred by the lowest acceptable bidder(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 shall administer and coordinate the construction-related work as provided herein.
 2. DISTRICT shall advertise for construction bids, conduct a bid opening, prepare construction contract documents, and award construction contract(s).
 3. DISTRICT shall require the contractor to provide adequate liability insurance that includes CITY. The contractor shall be required to indemnify CITY. Copies of the insurance coverage shall be provided to CITY.
 4. DISTRICT shall coordinate field surveying; staking; weekly inspection of work; testing; engineering; preparation of survey control points and explanatory sketches; revisions of contract plans; shop drawing review; preparation of reproducible record drawings; and final inspection as required to construct PROJECT. DISTRICT 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 CITY as requested.
 5. 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.
 6. DISTRICT shall review and approve contractor billings and prepare partial and final payments. DISTRICT shall remit payment to contractor based on approved billings.
 7. DISTRICT shall prepare and issue all written change or work orders to the contract documents.
 8. PARTIES shall jointly conduct a final inspection and accept or reject the completed PROJECT in accordance with the contract documents.
 9. DISTRICT shall provide CITY a set of reproducible record drawings if requested.
- 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 by amendment to this Agreement.

8. OWNERSHIP AND MAINTENANCE

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

9. TERM OF AGREEMENT

The term of the Agreement shall commence upon final execution by all PARTIES and shall terminate one year 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.

10. 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.

11. CONTRACTING OFFICERS AND NOTICES

- A. The contracting officer for CITY shall be Mayor, City of Golden, 911 10th Street, Golden, CO 80401.
- B. The contracting officer for DISTRICT shall be the Executive Director, 2480 West 26th Avenue, Suite 156B, Denver, CO 80211.
- C. Any notices, demands or other communications required or permitted to be given by any provision of this Agreement shall be given in writing, delivered personally or sent by registered mail, postage prepaid and return receipt requested, addressed to PARTIES at the addresses set forth above or at such other address as either party may hereafter or from time to time designate by written notice to the other party given when personally delivered or mailed, and shall be considered received in the earlier of either the day on which such notice is actually received by the party to whom it is addressed or the third day after such notice is mailed.
- D. 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 CITY. Said representatives will have the authority for all approvals, authorizations, notices or concurrences required under this Agreement or any amendments or addenda to this Agreement.

12. AMENDMENTS

This Agreement contains all of the terms agreed upon by and among PARTIES. Any amendments or modifications to this Agreement shall be in writing and executed by PARTIES hereto to be valid and binding.

13. 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.

14. APPLICABLE LAWS

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any and all legal actions regarding the transaction covered herein shall lie in District Court in and for the County of Denver, State of Colorado.

15. 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.

16. 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.

17. 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.

18. TERMINATION OF AGREEMENT

This Agreement may be terminated upon thirty (30) day's written notice by any of PARTIES, but only if there are no contingent, outstanding contracts. If there are contingent, outstanding contracts, this Agreement may only be terminated upon mutual agreement of all PARTIES and only 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 and subject to the maximum amount of each party's contribution as set forth herein.

19. PUBLIC RELATIONS

It shall be at CITY'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 facilities and what impact

it may have on them. Technical and final design recommendations 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 CITY as needed and appropriate.

20. 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.

21. APPROPRIATIONS

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

22. 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.

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 _____

CITY OF GOLDEN

(SEAL)

ATTEST:

By _____

Title _____

Date _____