

AGREEMENT REGARDING FUNDING OF
MAJOR DRAINAGEWAY PLANNING AND
FLOOD HAZARD AREA DELINEATION FOR
SLOAN'S LAKE DRAINAGEWAY AND TRIBUTARIES

Agreement No. 15-11.10

THIS AGREEMENT, made this _____ day of _____, 2016 by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT") and CITY OF EDGEWATER (hereinafter called "EDGEWATER"); (hereinafter EDGEWATER shall be known as "PROJECT SPONSOR" and DISTRICT and PROJECT SPONSOR 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 2016 (Resolution No. 56, Series of 2015) which includes master planning; and

WHEREAS, PARTIES now desire to proceed with development of a drainageway master plan and a flood hazard area delineation (FHAD) report for Sloan's Lake Drainageway and tributaries (hereinafter called "PROJECT"); and

WHEREAS, DISTRICT's Board of Directors has authorized DISTRICT financial participation for PROJECT (Resolution No. 62, Series of 2015); and

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

WHEREAS, PARTIES desire to engage 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 shall engage an engineer and 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 November 2015, (hereinafter called "AREA").

3. SCOPE OF PROJECT

The purpose of PROJECT is to develop a drainageway master plan and FHAD, including hydrologic information and the locations, alignments, and sizing of storm sewers, channels,

detention/retention basins, and other facilities and appurtenances needed to provide efficient stormwater drainage within AREA. The proposed work shall include, but not be limited to, mapping; compilation of existing data; necessary field work; and development and consistent evaluation of all reasonable alternatives so that the most feasible drainage and flood control master plan can be determined and justified for AREA. Consideration shall be given to costs, existing and proposed land use, existing and proposed drainage systems, known drainage or flooding problems, known or anticipated erosion problems, stormwater quality, right-of-way needs, existing wetlands and riparian zones, open space and wildlife habitat benefits, and legal requirements. Schematic alternative plans shall be developed such that comparison with other alternatives can be made. Drainage system planning shall be done in three phases by the engineer engaged by DISTRICT, culminating in a drainage master plan report. During the first phase, the selected engineer shall perform all data gathering and modeling needed to prepare the baseline hydrology section of the master plan report containing an introduction, study area description and hydrologic analysis description. During the second phase, the engineer shall perform all studies and data gathering needed to prepare the alternatives analysis sections of the master plan report containing a hydraulic analysis discussion, schematics of alternatives developed and their costs along with a discussion of the pros and cons of each alternative and a recommended plan. A single alternative will be selected by PARTIES after the review and evaluation of the alternatives analysis report. The FHAD report preparation and submittal will be concurrent with the second phase of the master plan. During the third phase, the engineer shall be directed to prepare a conceptual design for the selected alternative and prepare the conceptual design section of the master plan report.

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, master planning, FHAD and related services and contingencies mutually agreeable to PARTIES. Project costs are estimated not to exceed \$250,000 with \$165,000 secured under this AGREEMENT and the remaining funds secured by DISTRICT and others under separate agreements in 2016.

6. FINANCIAL COMMITMENTS OF PARTIES

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

	Master Plan Percentage Share	Maximum Contribution	FHAD Contribution
DISTRICT	90.91%	\$100,000	\$50,000
<u>EDGEWATER</u>	9.09%	\$15,000	-
TOTAL	100.00%	\$115,000	\$50,000

7. MANAGEMENT OF FINANCES

Payment by EDGEWATER of \$15,000 shall be made to DISTRICT subsequent to execution of this Agreement and within thirty (30) calendar days of request for payment by DISTRICT.

Payment by DISTRICT shall be made in 2016. 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 PROJECT SPONSOR 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 as were the original shares.

8. PROJECT MAPPING

No new mapping is anticipated under this Agreement for PROJECT. Upon execution of this Agreement, PROJECT SPONSOR 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. MASTER PLANNING AND DFHAD

Upon execution of this Agreement, PARTIES shall select an engineer mutually agreeable to PARTIES. DISTRICT, with the approval of PROJECT SPONSOR, shall 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.

10. PUBLISHED REPORTS AND PROJECT DATA

DISTRICT will provide to PROJECT SPONSOR 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 PROJECT SPONSOR upon request.

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 PROJECT SPONSOR shall be the City Manager, 2401 Sheridan Boulevard, Edgewater, Colorado 80214.

B. The contracting officer for DISTRICT shall be the Executive Director, 2480 West 26th 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 PROJECT SPONSOR. 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 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 draft reports and to provide comments within 21 calendar days after the draft reports have been provided by DISTRICT to PROJECT SPONSOR. PROJECT SPONSOR 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 PROJECT SPONSOR 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 hereto 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 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. In any event DISTRICT shall have no responsibility for a public relations program, but shall assist PROJECT SPONSOR as needed and appropriate.

23. GOVERNMENTAL IMMUNITIES

The 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 PROJECT SPONSOR 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 PROJECT SPONSOR 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 PROJECT SPONSOR 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, 104th Congress, As Amended, and expanded in Public Law 156, 108th 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 (CDL) made in the course of an investigation the CDL is undertaking pursuant 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.

28. 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 two 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.
- Documents requiring notarization may also be notarized by electronic signature, as provided above. All use of electronic signatures shall be governed by the Colorado Uniform Electronic Transactions Act, §§ 24-71.3-101-121, C.R.S.

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 EDGEWATER

(SEAL)

ATTEST:

Beth A. Hedberg, City Clerk
APPROVED:

Thad Renaud, City Attorney

By _____

Kris Teegardin

Title Mayor _____

Date _____

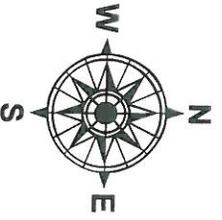
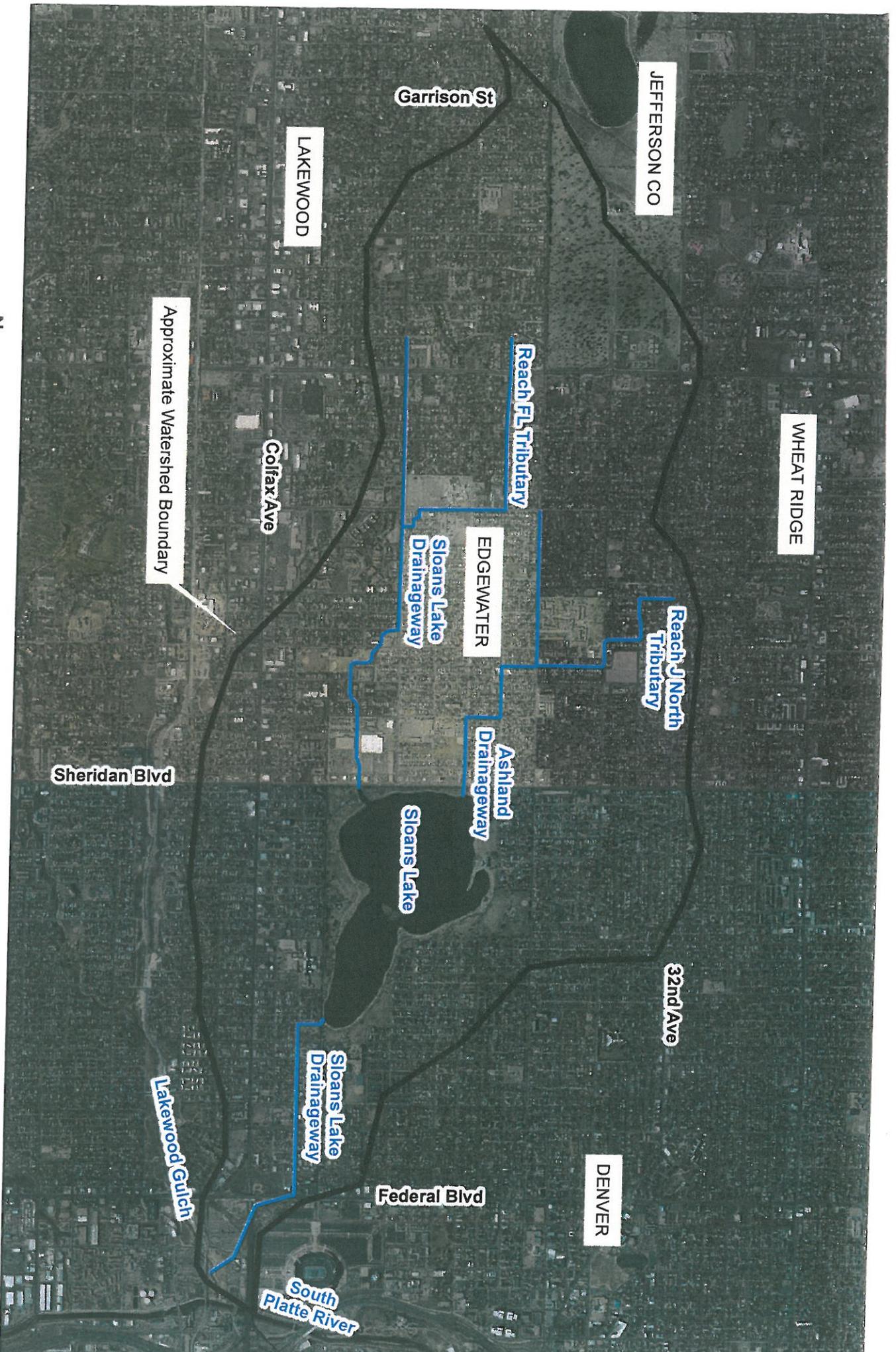


EXHIBIT A
Sloans Lake Basin MDP & FHAD
Approximate Study Limits
November 2015

Yila



URBAN DRAINAGE AND FLOOD CONTROL DISTRICT

Paul A. Hindman, Executive Director
2480 W. 26th Avenue, Suite 156B
Denver, CO 80211-5304

Telephone 303-455-6277
Fax 303-455-7880
www.udfcd.org

August 19, 2014

Mike Ball
City of Edgewater
2401 Sheridan Boulevard
Edgewater, CO 80214

Subject: 2015 through 2018 Major Drainage Systems Master Planning Needs

Dear Mr. Ball:

I have received several comments from communities supporting the draft major drainage systems master planning needs list I emailed to you on May 28, 2014, and a few requests for changes to the list. As a result, the draft you received has been modified and a copy of the final list is enclosed for your records. I appreciate your input in preparing this master planning needs projection for the next four years. A budget request for 2015 will be made in the amounts shown on the accompanying list and I am hopeful that the UDFCD Board of Directors will adopt it.

I will be contacting each community listed as a co-sponsor for projects in 2015 after the Board has taken final action on our budget. Should the Board approve a lesser budget amount for 2015 than the amount listed in this table, I will attempt to sort out the project priorities at that time.

The following is a list of the studies in which the City of Edgewater will be involved along with my estimate at this time of your share of the local cost. Please keep in mind these are preliminary estimates for budgeting purposes; we can negotiate the final amounts when the study is about to begin.

Year	Study Name	Local Cost	Edgewater Share
2016	Sloans Lake MDP & FHAD Update	\$100,000	\$15,000

Again, thank you for being part of this survey. Should you have any additional comments about the accompanying list, please feel free to email me at sthomas@udfcd.org.

Sincerely,

Shea B. Thomas, P.E.
Senior Project Manager
Master Planning Program

SBT/gh
Enclosures



**UDFCD Estimated Master Planning Needs:
2015 through 2019**
August 31, 2015

(Note: District's budget has not been approved by the Board. Final projects and costs shown may change.)

Master Planning Project	Sponsors/Possible Co-sponsors	Local Cost To Prorate	UDFCD Cost
Calendar Year 2015:			
Bear Creek u/s of Sheridan Alternatives	Denver	\$ 30,000	\$ 30,000
First Creek (u/s of I-70) OSP	SEMSWA, Aurora	\$ 100,000	\$ 100,000
Grange Hall Creek & Tribs MDP & FHAD Update	Northglenn, Thornton, Adams Co.	\$ 100,000	\$ 100,000
Harvard Gulch MDP & FHAD Update	Denver, Englewood	\$ 100,000	\$ 100,000
Lee Gulch u/s End Alternatives	SEMSWA	\$ 30,000	\$ 30,000
Plum Creek & Tributaries MDP & FHAD	Douglas Co.	\$ 100,000	\$ 100,000
Third Creek MDP & FHAD	Aurora, Adams Co., Brighton, Commerce City	\$ 100,000	\$ 100,000
Contingencies		\$ 20,000	\$ 20,000
TOTAL		\$ 580,000	\$ 580,000
Calendar Year 2016:			
54th & Pecos OSP Update	Adams Co.	\$75,000	\$75,000
Brighton Outfall OSP Update	Brighton	\$85,000	\$85,000
Goose/Two Mile Canyon Creek Mitigation Plan	Boulder	\$75,000	\$75,000
Skunk, Bluebell, King's Gulch Mitigation Plan	Boulder	\$50,000	\$50,000
Sloans Lake MDP & FHAD Update	Denver, Lakewood, Wheat Ridge, Edgewater, Jefferson Co.	\$100,000	\$100,000
Quincy Drainage, Shop Creek, Meadowhood Creek OSP Update	Aurora	\$75,000	\$75,000
Weaver Creek MDP & FHAD	Jefferson Co., Lakewood	\$100,000	\$100,000
Contingencies		\$ 20,000	\$ 20,000
TOTAL		\$ 580,000	\$ 580,000
Calendar Year 2017:			
Basin 4100 & DFA 0056 OSP Update	Thornton, Adams Co.	\$80,000	\$80,000
Toll Gate Creek, Granby, Sable OSP	Aurora	\$100,000	\$100,000
Flood Mitigation Prioritization Study	Boulder	\$100,000	\$100,000
Goldsmith Gulch MDP & FHAD Update	Denver, Greenwood Village, SEMSWA	\$100,000	\$100,000
SJCD 6100N MDP & FHAD Update	Jefferson Co., Columbine Valley	\$75,000	\$75,000
Second Creek (d/s of DIA) MDP & FHAD	Brighton, Commerce City, Adams Co.	\$100,000	\$100,000
Contingencies		\$ 25,000	\$ 25,000
TOTAL		\$ 580,000	\$ 580,000
Calendar Year 2018:			
Brantner Gulch & Tributaries MDP & FHAD Update	Thornton, Northglenn, Adams Co.	\$100,000	\$100,000
DFA 0054 MDP & FHAD Update	Thornton, Adams Co.	\$80,000	\$80,000
Irondale Gulch (u/s of RMA) OSP Update	Aurora, Denver	\$80,000	\$80,000
Sand Creek (d/s of Colfax) MDP & FHAD	Denver, Aurora, Commerce City	\$100,000	\$100,000
West Toll Gate Creek OSP	Aurora, SEMSWA	\$100,000	\$100,000
Willow Creek Tribs MDP	SEMSWA	\$100,000	\$100,000
Contingencies		\$ 20,000	\$ 20,000
TOTAL		\$ 580,000	\$ 580,000
Calendar Year 2019:			
Cherry Creek (u/s of Reservoir) MDP Update	SEMSWA, Parker, Douglas Co.	\$50,000	\$50,000
Cherry Creek Tributaries MDP	SEMSWA, Foxfield, Aurora	\$75,000	\$75,000
Lakewood Gulch MDP & FHAD	Denver	\$100,000	\$100,000
Murphy Creek & Tributaries MDP	Aurora, SEMSWA	\$75,000	\$75,000
Saddle Rock Ranches OSP	Aurora	\$75,000	\$75,000
Utah Junction OSP	Adams Co.	\$75,000	\$75,000
Placeholder		\$100,000	\$100,000
Contingencies		\$ 30,000	\$ 30,000
TOTAL		\$ 580,000	\$ 580,000