

AMENDMENT TO
AGREEMENT REGARDING
FINAL DESIGN, RIGHT-OF-WAY ACQUISITION AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
COAL CREEK FROM COUNTY LINE ROAD TO KENOSHA ROAD
TOWN OF ERIE

Agreement No. 15-02.10B
Project No. 101684

THIS AGREEMENT, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT D/B/A MILE HIGH FLOOD DISTRICT (hereinafter called "DISTRICT") and TOWN OF ERIE (hereinafter called "TOWN") 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 Coal Creek from County Line Road to Kenosha Road, Town of Erie" (Agreement No. 15-02.10) dated August 25, 2015, as amended; and

WHEREAS, PARTIES now desire to begin the design and construction of improvements for Coal Creek from Cheesman Street to Kenosha Road; and

WHEREAS, PARTIES desire to increase the level of funding by \$5,986,098.67 and

WHEREAS, DISTRICT's Board of Directors has authorized additional DISTRICT financial participation for PROJECT (Resolution No. 21, Series of 2020 and Resolution No. 73, Series of 2020); and

WHEREAS, the Board of Trustees of TOWN 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 \$7,361,098.67 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 | \$ 875,000.00 | \$ 375,000 |
| 2. Right-of-way | -0- | -0- |
| 3. Construction | \$6,486,098.67 | \$1,000,000- |
| 4. Contingency | -0- | -0- |
| Grand Total | \$7,361,098.67 | \$1,375,000 |

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. At the request of TOWN, the following funds may be transferred to PROJECT from a separate special fund held by DISTRICT:

Transfer from: Prince Lake No. 2 (Project No. 100286)

Account No. 2603 Agreement No. 04-05.06 Amount: \$2,086,098.67

- D. 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 Special Fund Transfer | 25.66% | \$ 550,000 | \$ 300,000.00 \$1,038,494.53 | \$1,888,494.53 |
| TOWN Special Fund Transfer | 74.34% | \$ 825,000 | \$3,600,000.00 \$1,047,604.14 | \$5,472,604.14 |
| TOTAL | 100.00% | \$1,375,000 | \$5,986,098.67 | \$7,361,098.67 |

It is understood that TOWN shall fully fund all Design, Right of Way Acquisition, and Construction for all portions of PROJECT beyond DISTRICT boundary, as shown on Exhibit A. \$2,200,000 of TOWN'S Additional Contribution will be used for PROJECT costs beyond DISTRICT's boundary bringing TOWN's total out of DISTRICT contribution to \$2,475,000.

3. 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 (TOWN - \$5,472,604.14; DISTRICT - \$1,888,494.53) 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 TOWN 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 TOWN request, TOWN share of remaining monies shall be transferred to another special fund held by DISTRICT.

4. All other terms and conditions of Agreement No. 15-02.10 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 first above written.

URBAN DRAINAGE AND
FLOOD CONTROL DISTRICT D/B/A
MILE HIGH FLOOD DISTRICT

By_____

Name Ken A. MacKenzie

Title Executive Director

Date_____

TOWN OF ERIE

By_____

Name_____

Title_____

Date_____

Checked By

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Exhibit A

