

THIRD AMENDMENT TO  
AGREEMENT REGARDING  
DESIGN AND CONSTRUCTION  
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR  
CHERRY CREEK UPSTREAM OF SCOTT ROAD  
DOUGLAS COUNTY

Agreement No. 20-01.12C  
Project No. 107751

THIS AMENDMENT TO AGREEMENT (hereinafter called "AMENDMENT"), by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT D/B/A MILE HIGH FLOOD DISTRICT (hereinafter called "DISTRICT"), CHERRY CREEK BASIN WATER QUALITY AUTHORITY (hereinafter called "CCBWQA"), and DOUGLAS COUNTY (hereinafter called "COUNTY") and collectively known as "PARTIES";

**WITNESSETH:**

**WHEREAS**, PARTIES have entered into "Agreement Regarding Design and Construction of Drainage and Flood Control Improvements for Cherry Creek Upstream of Scott Road, Douglas County" (Agreement No. 20-01.12) dated October 21, 2020 (hereinafter called "AGREEMENT"); and

**WHEREAS**, PARTIES now desire to construct drainage and flood control improvements for Cherry Creek upstream of Scott Road (hereinafter called "PROJECT"); and

**WHEREAS**, PARTIES desire to increase the level of funding by \$1,700,000; and

**WHEREAS**, the Board of Directors of CCBWQA, 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 Subparagraphs B, C, and D are deleted and replaced as follows:

4. PROJECT COSTS AND ALLOCATION OF COSTS

B. It is understood that PROJECT costs as defined above are not to exceed \$4,165,000 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	\$ 650,000	\$ 250,000
2.	Construction *	\$ 3,515,000	\$ 2,215,000
3.	Contingency	\$ -0-	\$ -0-
	Grand Total	\$ 4,165,000	\$ 2,465,000

\*It is anticipated that funds for construction shall be added to this Agreement at a future date.

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	34.21%	\$ 500,000	\$925,000	\$ 1,425,000
CCBWQA	21.6%	\$ 625,000	\$275,000	\$ 900,000
COUNTY	44.19%	\$1,340,000	\$500,000	\$1,840,000
TOTAL	100.00%	\$2,465,000	1,700,000	\$4,165,000

D. It is understood and agreed that notwithstanding any other provision contained herein to the contrary, any additional contribution obligation of PARTIES hereunder, whether direct or contingent, shall under no circumstances exceed the Maximum Contribution indicated above without prior express written consent of CCBWQA or COUNTY.

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 (CCBWQA - \$900,000; COUNTY - \$1,840,000; DISTRICT - \$1,425,000) 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 CCBWQA and 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 CCBWQA and COUNTY request, CCBWQA and COUNTY share of remaining monies shall be transferred to another special fund held by DISTRICT.

3. All other terms and conditions of this AGREEMENT shall remain in full force and effect.

**WHEREFORE**, PARTIES hereto have caused this AMENDMENT 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

By \_\_\_\_\_

Name Ken A. MacKenzie

Title Executive Director

Date \_\_\_\_\_

\_\_\_\_\_  
Checked By



BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF DOUGLAS

By: \_\_\_\_\_  
Chair

Date \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Kristin Randlett, Deputy Clerk to the Board

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Douglas J. DeBord, County Manager

APPROVED AS TO FISCAL CONTENT:

\_\_\_\_\_  
Andrew Copland, Director of Finance

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Chris Pratt, Assistant County Attorney

CHERRY CREEK BASIN

WATER QUALITY AUTHORITY

By \_\_\_\_\_

Name \_\_\_\_\_

Title Co-Manager \_\_\_\_\_

Date \_\_\_\_\_



June 1, 2022

Jacob James, PE, CCBWQA Technical Advisory Committee (TAC) Chairman  
Cherry Creek Basin Water Quality Authority  
PO Box 3166  
Centennial, CO 80161

Dear Jacob:

**RE: Arapahoe County Water and Wastewater Authority Comments on Vermillion Creek Site Application**

This letter is written on behalf of the Arapahoe County Water and Wastewater Authority (ACWWA) to provide comments to the Cherry Creek Basin Water Quality Authority (Basin Authority) Technical Advisory Committee (TAC) regarding the site application of the Vermillion Creek Metropolitan District (VC) being considered at the June 2, 2022, TAC meeting.

ACWWA verbally provided the following comments at the May 5, 2022, TAC meeting regarding this site application:

1. ACWWA has not seen the subject application.
2. VC did not notify ACWWA that it was planning to construct its own WWTF.
3. VC requested water and sewer service from ACWWA on September 20, 2021.
4. ACWWA provided a "Will Serve" letter on March 11, 2022.
5. ACWWA has an alluvial well in the Cherry Creek alluvium which is permitted for potable use downstream and within 1000' of the proposed VC discharge point.
6. ACWWA has a second alluvial well in the Cherry Creek alluvium which is permitted for potable use downstream and within 3000' of the proposed VC discharge point.
7. ACWWA's master plans have included plans to provide sewer service to VC for over 15 years, if not more.
8. ACWWA's Cherry Creek Interceptor parallels and is adjacent to and along the entire western boundary of the VC property.
9. The CCBWQA's Water Quality Master Plan (1989) shows the VC property in the area to be served by ACWWA.
10. The CCBWQA is to review site plans for consistency with the CCBWQA's watershed plan.
11. ACWWA has not yet been provided information from whether discharge of ACWWA's water from a VC WWTF will be in compliance with ACWWA's water court decrees if ACWWA provides water service to VC.
12. ACWWA is unsure if the location of the VC WWTF would be in compliance with CWCB's and the City of Centennials floodplain regulations.
13. ACWWA's sewer tap fee is \$8200.

ACWWA is in receipt of the May 27, 2022, Memorandum from Ricardo (Rick) Goncalves, PE to yourself providing his review and recommendation regarding the subject site application. Attached to Mr. Goncalves's Memorandum is Addendum A to the VC site application

720 SOUTH COLORADO BLVD.  
SUITE 410 S  
DENVER, CO 80246  
303.757.3655



prepared by Dewberry Engineers, Inc. ACWWA has reviewed Mr. Goncalves's Memorandum and the Dewberry Addendum and would like to provide the following comments:

1. ACWWA strongly rejects that ACWWA ever provided an estimate of the cost for VC to join ACWWA of \$75 million.
2. The Dewberry Addendum A includes in its estimated cost of consolidation with ACWWA a water resource fee cost of \$4,794,960. ACWWA met with representatives of VC several times over the past year and had requested information on VC water rights such that ACWWA could provide VC an opinion as to whether there would be a water resource fee charge if VC water rights were insufficient to meet ACWWA's water dedication requirements as provided in ACWWA's Rules and Regulations. VC provided such information to ACWWA on May 12, 2022. ACWWA staff verbally responded to VC stating that the VC water rights likely meet ACWWA's dedication requirements and that a water resource fee is likely not required. ACWWA staff will be providing the ACWWA Board their opinion that these water rights meet ACWWA's requirements such that a final response to VC can be provided. If these fees are removed from the consolidation analysis, the difference in consolidation costs is reduced to about \$2.5 Million.
3. The Dewberry Addendum A contains a mistake in that the estimated ACWWA Annual User Fees of \$1,396,778 was misreported as \$1,936,000 in the net present value comparison. Correction of this mistake reduces the difference in consolidation costs to about \$1.9 Million.
4. The Colorado Water Quality Control Division's (Division) Regulation 22 Implementation Policy considers consolidation to not be feasible if the difference in consolidation costs is greater than 30%. In this case, the difference in consolidation costs are only about 3%.
5. With ACWWA's sewer tap fee at \$8200/TE, the total tap fee to connect 445 TE's to ACWWA's wastewater system is \$3,649,000 vs. the VC WWTF estimated cost of \$11, 579,000.
6. The estimated net present value annual user fees for ACWWA are about \$1,397 million vs. \$1.488 million for VC.
7. Although it is a small point, it is unclear why the construction cost to connect VC to ACWWA's wastewater interceptor is \$200,000 with ACWWA's interceptor being within 50 feet of VC's property line.
8. The Service Plan for VC states that wastewater will be provided by either ACWWA or Aurora.
9. The Metrovision 2020 Clean Water plan includes the following statement regarding the Cherry Creek Watershed: "The point source management strategy identified 8 wastewater treatment facilities to provide wastewater service to the Cherry Creek Watershed. There are six waste treatment facilities located in the watershed and 2 wastewater treatment facilities located outside the watershed that return treated wastewater for irrigation within the watershed." ACWWA's facility was one of the eight identified WWTF's. There is no discussion about a VC WWTF.

ACWWA respectfully requests that the TAC recommend denial of the VC site application given the above facts and ACWWA's willingness to provide wastewater treatment services at a cost significantly less than the VC wastewater treatment estimates. Please give me a call if you have any questions.

Sincerely,

Alan J. Leak, PE  
Principal and ACWWA Contract Authority Engineer