

MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE CITY OF COLORADO SPRINGS
FOR THE UNDERTAKING OF FEDERAL ACTIVITIES
RELATING TO THE
MONUMENT AND FOUNTAIN CREEKS SECTION 203 STUDY

This MEMORANDUM OF AGREEMENT (hereinafter the “Agreement”) is entered into this ____ day of _____, _____, by and between the Department of the Army (hereinafter the “Government”), represented by the District Commander for Albuquerque District (hereinafter the “District Commander”), and the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation, by and through its the Stormwater Enterprise (hereinafter the “Non-Federal Sponsor”), represented by the Stormwater Enterprise Division Manager. The Government and Non-Federal Sponsor may be referred to as “Party” or collectively as “Parties.” (hereinafter the “Non-Federal Interest”).

WITNESSETH, THAT:

WHEREAS, the Ecosystem and Flood Risk Management of Monument Creek and Fountain Creek in Colorado Springs Study was authorized by Section 1201(a)(18) of the Water Resources Development Act (WRDA) of 2024;

WHEREAS, Section 203 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2231), authorizes the Non-Federal Interest to undertake a federally authorized feasibility study of a proposed water resources development project or upon written approval by the Assistant Secretary of the Army (Civil Works) (hereinafter the “ASA(CW)”), to undertake a feasibility study on modifications to a water resources development project constructed by the Government (hereinafter “Section 203 Study”) and to submit the completed non-Federal report of that study (hereinafter the “Section 203 Report”) to the ASA(CW) for review and assessment;

WHEREAS, the Government is authorized pursuant to Section 203(e)(1) of the Water Resources Development Act of 1986 (33 U.S.C. 2231(e)(1)) to accept and expend funds provided by the Non-Federal Interest to undertake Federal Activities, which may include inspections, technical and policy compliance reviews, certifications, and other Federal inherently governmental functions, such as completion of Federal environmental compliance requirements, related to the Section 203 Study for use by the Non-Federal Interest in completing the Section 203 Report; and

WHEREAS, the Non-Federal Interest made a written offer to the ASA(CW) to provide funds for the Government to undertake the Federal Activities for the Section 203

Study, and on _____, the ASA(CW) determined that Non-Federal Interest funds can be accepted by the Government for such purpose.

NOW, THEREFORE, the Government and the Non-Federal Interest agree as follows:

1. The Government shall undertake the Federal Activities in accordance with a scope of work (SOW) developed by the Government and Non-Federal Interest, and any modifications thereto. The SOW shall provide a detailed description of the Federal Activities, including a detailed estimate of cost for each activity and schedules, and identification of travel by Government personnel that may be necessary for the activities covered under this Agreement, with such travel to be undertaken in accordance with 41 C.F.R. Chapters 300-304, and estimated separately. The Government and Non-Federal Interest shall regularly review and update, as necessary, the SOW.

2. The Non-Federal Interest shall provide to the Government funds to pay all costs associated with the Federal Activities, including the costs of supervision and administration, in accordance with the provisions of this paragraph:

a. Within 15 calendar days after the effective date of this Agreement, the Non-Federal Interest shall provide to the Government twenty thousand dollars (**\$20,000**) to develop the SOW.

b. Within 30 calendar days after the SOW has been agreed upon by the Government and the Non-Federal Interest and prior to initiating any activities identified in the SOW, the Non-Federal Interest shall provide to the Government the amount specified in the SOW to carry out the Federal Activities for the Section 203 Study. If at any time the Government determines that additional funds are needed, the Government shall notify the Non-Federal Interest in writing of the amount, and, no later than 30 calendar days from receipt of such notice, the Non-Federal Interest shall provide to the Government the full amount of the additional funds.

c. The Non-Federal Interest shall provide the funds to the Government by delivering a check payable to "FAO, USAED, Albuquerque District (L4)" to the District Commander or providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government.

3. The Government shall provide the Non-Federal Interest with monthly financial reports of costs incurred for the Federal Activities to date and the estimated remaining costs for completing the Federal Activities.

4. Following provision of the Federal Activities and resolution of all relevant claims and appeals, the Government shall conduct a final accounting of the costs of the Federal Activities and furnish the Non-Federal Interest with written results of such final accounting. Should the final accounting determine that additional funds are required from the Non-Federal Interest, the Non-Federal Interest, within 60 calendar days of written notice from the Government,

shall provide the Government with the full amount of such additional funds. Should the final accounting determine that the Non-Federal Interest has provided funds in excess of the costs of the Federal Activities, the Government shall refund the excess amount, subject to the availability of funds.. Such final accounting does not limit the Non-Federal Interest's responsibility to pay all costs of the Federal Activities, including contract claims or any other liability that may become known after the final accounting.

5. No credit or repayment shall be provided for any funds provided by the Non-Federal Interest and obligated by the Government for the Federal Activities.

6. The acceptance of funds for the Federal Activities will not impact impartial decision making at any level of the Government with respect to the Section 203 Report, either substantively or procedurally.

7. Non-Federal Interest shall submit the completed Section 203 Report to the ASA(CW) for review and assessment. After the ASA(CW) submits its assessment of the Section 203 Report to the Congress, no further Federal Activities, including completion of environmental compliance requirements, using funds provided by the Non-Federal Interest under this Agreement will be undertaken.

8. The parties agree to use their best efforts to resolve any dispute in an informal fashion through consultation and communication. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

9. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Interest each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

10. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by registered or certified mail, with return receipt, as shown below. A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this paragraph.

If to the Non-Federal Interest:

City of Colorado Springs
Stormwater Enterprise Manager
30 South Nevada
Colorado Springs, CO 80903

If to the Government:

Albuquerque District
US Army Corps of Engineers
4101 Jefferson Plaza NE
Albuquerque, NM 87109

11. To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

12. Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.

13. This Agreement may be modified or amended only by written, mutual agreement of the parties. Either party may unilaterally terminate further performance under this Agreement by providing at least 15 calendar days written notice to the other party. In the event of termination, the Non-Federal Interest remains responsible for any and all costs incurred by the Government under this Agreement and for any and all costs of closing out or transferring any ongoing contracts.

IN WITNESS WHEREOF, the parties have executed this Agreement, which shall become effective upon the date it is signed by the District Commander.

THE DEPARTMENT OF THE ARMY

THE CITY OF COLORADO SPRINGS

BY: _____
Matthew T. Miller, P.E., PMP
Lieutenant Colonel, U.S. Army
District Commander

BY: _____
Erin Powers
Stormwater Enterprise Manager
City of Colorado Springs
Stormwater Enterprise

DATE: _____

DATE: _____

CERTIFICATE OF AUTHORITY

I, _____, do hereby certify that I am the principal legal officer of the City of Colorado Springs, that the City of Colorado Springs is a legally constituted public body with full authority and legal capability to perform the terms of the Memorandum of Agreement between the Department of the Army and the City of Colorado Springs, and that the person who executed the Memorandum of Agreement on behalf of the City of Colorado Springs acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this ____ day of _____ 20____.

City Attorney

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Blessing A Mobolade

Mayor

City of Colorado Springs

DATE: _____