

AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
CITY AND COUNTY OF DENVER
FOR
DESIGN AND CONSTRUCTION
OF
THE SOUTH PLATTE RIVER AND TRIBUTARIES, ADAMS AND DENVER COUNTIES,
COLORADO PROJECT
FOR
FLOOD RISK MANAGEMENT, ECOSYSTEM RESTORATION, AND RECREATION

THIS AGREEMENT is entered into this 8th day of May, 2023, by and between the Department of the Army (hereinafter the “Government”), represented by the Assistant Secretary of the Army (Civil Works), and the City and County of Denver, a Colorado municipal corporation (hereinafter the “Non-Federal Sponsor”), represented by its Mayor.

WITNESSETH, THAT:

WHEREAS, construction of the South Platte River and Tributaries, Adams and Denver Counties, Colorado Project for flood risk management, ecosystem restoration, and recreation (hereinafter the “Project”, as defined in Article I.A. of this Agreement) was authorized by Section 401(4) of the Water Resources Development Act (WRDA) of 2020;

WHEREAS, the Non-Federal Sponsor intends to construct the Project under the authority set forth in Section 204 of WRDA 1986, as amended (33 U.S.C. 2232) (hereinafter “Section 204”), with eligible reimbursement of the Federal share of the Project, or separable element thereof, provided by the Government in accordance with the terms set forth in this Agreement and Section 204;

WHEREAS, the Assistant Secretary of the Army (Civil Works) on April 21st, 2023 approved the Implementation Plan for the Non-Federal Sponsor to design and construct the Project pursuant to Section 204, a copy of which is attached hereto as Exhibit A and incorporated herein (“Exhibit A”);

WHEREAS, Section 103 of WRDA 1986, as amended (33 U.S.C. 2213), specifies the cost-sharing requirements applicable to the Project, which are set forth in Article II.A.1. of this Agreement;

WHEREAS, for the ecosystem restoration features, the Non-Federal Sponsor has waived reimbursement for the value of real property interests and relocations that exceeds 35 percent of project costs for such features;

WHEREAS, placement area improvements, as defined in Article I.I. of this Agreement, are limited to that required for the flood risk management features and provided by the Non-Federal Sponsor in accordance with 33 U.S.C. 2213;

WHEREAS, the Non-Federal Sponsor and the Government agree to execute their obligations under this Agreement in good faith and in accordance with all applicable laws and regulations;

WHEREAS, as of the effective date of this Agreement, the total amount of Federal funds currently available for the Federal share of project costs is \$349,600,000, as provided in Division J, Title III, of the Bipartisan Infrastructure Law, Public Law 117-58, under the Construction heading, and \$400,000 in the Investigations account for pre-construction engineering and design, as provided in the Fiscal Year 2022 Work Plan; and

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms and conditions set forth in this Agreement and acknowledge that Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b), provides that this Agreement shall be enforceable in the appropriate district court of the United States.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

A. The term “Project” means the project for flood risk management, ecosystem restoration, and recreation located in Adams and Denver Counties, Colorado, as generally described in the Adams and Denver Counties Final Integrated Feasibility Report and Environmental Impact Statement, dated April 2019, and approved by the Chief of Engineers in his report dated July 29, 2019 (hereinafter the “Decision Document”), which includes the following three separable elements:

1. The South Platte River separable element includes the restoration of aquatic, wetland, and riparian habitats along approximately 6.5 miles of the South Platte River. The plan would restore critical habitat connectivity throughout the heart of the Denver, Colorado metropolitan area with ancillary recreation features incorporated throughout the plan. This plan also provides incidental flood risk management benefits to the area by reducing the likelihood of impacts within the existing regulatory floodplain and removing approximately 100 structures from the regulatory floodplain.

2. The Weir Gulch separable element includes widening or enlarging an approximately 2.75-mile long system of open channel and culverts along the Weir Gulch waterway and removing approximately 360 structures from the one percent Annual Exceedance Probability (AEP) defined 100-year floodplain, which will reduce the population at risk within the Weir Gulch community by over 60 percent. This plan also includes ancillary recreation features.

3. The Harvard Gulch separable element is a nonstructural flood risk management plan that would provide added protection for up to approximately 176 structures throughout the community, reducing the existing flood risk for over 30 percent of the structures within the one present AEP defined 100-yr floodplain.

B. The term “discrete segment” means a physical portion of a separable element of the Project that the Non-Federal Sponsor can operate and maintain, independently and without creating a hazard, in advance of final completion of the separable element as determined by the District Commander for the Omaha District (hereinafter the “District Commander”) in accordance with Section 204(d) and Article II.A.3. For the South Platte River separable element, the discrete segments may include, but are not limited to, restoring approximately 160 acres of riparian and wetland habitat, restoring approximately 100 acres of aquatic habitat, reconnecting approximately 190 acres of existing habitat and surrounding green space, and ancillary recreation components including features such as trails, interpretive signage, and viewing platforms. For the Weir Gulch separable element, the discrete segments may include, but are not limited to, implementing a system of widened open channel segments and enlarged culverts, removing approximately 360 structures from the 1 percent annual chance exceedance floodplain, and ancillary recreation components including features such as trails, crossings, signage, gateways, pocket parks, community gardens, and site amenities. For the Harvard Gulch separable element, the discrete segments may include, but are not limited to, basement fillings of up to approximately 11 residential structures, elevations of up to approximately 88 residential structures, and dry flood proofing of up to approximately 77 commercial structures.

C. The term “timeframe for completion” means the scheduled completion date for each separable element as agreed to by the Government and Non-Federal Sponsor as listed below. Completion of a separable element is assumed to occur when the Non-Federal Sponsor provides written notification to the Government of such completion in accordance with Article II.B.

1. The timeframe for completion of construction of the South Platte River separable element is June 2053, and completion of cost-shared monitoring and adaptive management shall not exceed June 2063.

2. The timeframe for completion of the Weir Gulch separable element is June 2053.

3. The timeframe for completion of the Harvard Gulch separable element is June 2043.

D. The term “pre-Agreement design work” means the design work that the Non-Federal Sponsor initiated prior to the effective date of this Agreement that the Government determines was accomplished in a satisfactory manner, is integral to and necessary for design of the Project, was designed in accordance with applicable permits and approvals, and was accomplished in accordance with Government design standards.

E. The term “HTRW” means hazardous, toxic, and radioactive wastes, which includes any material listed as a “hazardous substance” (42 U.S.C. 9601(14)) regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter “CERCLA”) (42 U.S.C. 9601-9675) and any other regulated material in accordance with applicable laws and regulations.

F. The term “project costs” means all costs incurred by the Government and the Non-Federal Sponsor in accordance with the terms of this Agreement that are directly related to design and construction of the Project and cost shared. The term includes the Government’s costs for review and approval of design work, appraisals, and invoices; developing Project performance metrics; environmental review and oversight; permit evaluations; agreement development and negotiation; construction monitoring and oversight; inspections; certifications; preparing periodic financial reports; conducting final accountings; and other costs incurred by the Government pursuant to the provisions of this Agreement. The term includes the Non-Federal Sponsor’s eligible costs for pre-Agreement design work, post Agreement design and construction work, including HTRW investigations pursuant to Article IV.A., permit work, and supervision and administration; and providing real property interests, relocations, and placement area improvements in accordance with Article V.B.1-3. The costs of historic preservation activities except for data recovery for historic properties, if any, are also included in this term. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement; HTRW cleanup and response; dispute resolution; participation by the Government and the Non-Federal Sponsor in the Executive Oversight Committee as contemplated in Exhibit A to discuss significant issues and actions; audits; betterments; or the Non-Federal Sponsor’s cost to negotiate this Agreement. The term also does not include any costs for technical assistance provided by the Government pursuant to Article II.L. or any of the Non-Federal Sponsor’s construction costs for the Project under contract prior to execution of this Agreement.

G. The term “real property interests” means lands, easements, and rights-of-way, including those required for relocations and borrow and dredged material placement areas. Acquisition of real property interests may require the performance of relocations.

H. The term “relocation” means the provision of a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad (excluding existing railroad bridges and approaches thereto for the flood risk management features), or public facility when such action is required by applicable legal principles of just compensation. Providing a functionally equivalent facility may include the alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

I. The term “placement area improvements” means the improvements required on real property interests to enable the ancillary placement of material that has been dredged or excavated during construction, operation, and maintenance of the Project, including, but not limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and dewatering pumps and pipes.

J. The term “cost shared monitoring” means those activities, including the collection and analysis of data, for a period not to exceed 10 years after completion of the South Platte River

separable element, that the Government and the Non-Federal Sponsor jointly identified as necessary to determine if predicted outputs of the ecosystem restoration features are being achieved and to determine if adaptive management is necessary, as generally described in the Decision Document. The term does not include monitoring after the Government determines that ecological success has been achieved or monitoring beyond the 10-year period, with such monitoring being the responsibility of the Non-Federal Sponsor, at no cost to the Government.

K. The term “cost shared adaptive management” means physical modifications to the ecosystem restoration features, in response to the cost shared monitoring results, to ensure the functionality and benefits of the ecosystem restoration features are garnered, as explicitly described in the performance standards section of the adaptive management plan or other sections in the Decision Document. The term does not include operational changes, which are the Non-Federal Sponsor’s responsibility, at no cost to the Government, as part of operation and maintenance of the ecosystem restoration features.

L. The term “Maximum Cost Limit” means the statutory limitation, as applicable, on the total cost of the Project, as determined by the Government in accordance with Section 902 of WRDA 1986, as amended (33 U.S.C. 2280), and Government regulations issued thereto.

M. The term “betterment” means a difference in the design or construction of an element of the Project that results from applying standards that the Government determines exceed those that the Government would otherwise apply to design or construction of that element.

ARTICLE II - OBLIGATIONS OF THE PARTIES

A. The Non-Federal Sponsor shall design and construct the Project in accordance with all requirements of applicable Federal laws and implementing regulations, including but not limited to, if applicable, Section 601 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto, and the following:

1. For the South Platte River separable element, the Non-Federal Sponsor is responsible for 35 percent of project costs allocated by the Government to ecosystem restoration and 50 percent of project costs allocated by the Government to recreation. For the Weir Gulch separable element, the Non-Federal Sponsor is responsible for a minimum of 35 percent, up to a maximum of 50 percent, of project costs allocated by the Government to structural flood risk management and 50 percent of project costs allocated by the Government to recreation. For the Harvard Gulch separable element, the Non-Federal Sponsor is responsible for 35 percent of project costs allocated by the Government to nonstructural flood risk management. The Government will reimburse the Non-Federal Sponsor for the Government’s share of the eligible project costs it incurs pursuant to Articles II.D., V., and VI.C.

2. In accordance with Article III, the Non-Federal Sponsor shall provide the real property interests, relocations, and placement area improvements required for construction and

operation, maintenance, repair, rehabilitation, and replacement of the Project. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for the purpose of performing inspections pursuant to Article II.B. and any other activities covered by this Agreement.

3. Prior to initiating construction under this Agreement, the Non-Federal Sponsor must provide the design work plans for such construction, which shall include identification of any discrete segments, designs and specifications, and arrangements for carrying out that work under a contract, for review and approval by the District Commander to determine that the design work plans are technically feasible, environmentally acceptable, and in compliance with applicable laws and regulations, including Section 204. Any proposed changes to the approved design work must also be reviewed and approved by the District Commander in advance of construction of the changed plans. Upon completion of the design, the Non-Federal Sponsor shall furnish the Government with copies of the completed design.

4. The Non-Federal Sponsor shall comply with the same legal and technical requirements that would apply if the Project was carried out by the Government, including all mitigation required to offset environmental impacts of the Project as determined by the Government. The Non-Federal Sponsor shall obtain any permits or approvals required for the Project under Federal or state law, except that the Non-Federal Sponsor shall not be required to obtain any Federal permits or approvals that would not be required if the Government carried out the Project or separable element unless significant new circumstances or information relevant to environmental concerns or compliance have arisen since development of the project recommendation.

5. The Non-Federal Sponsor shall procure all contract(s) for the design and construction of the Project in accordance with the Non-Federal Sponsor's Charter and pursuant to its internal ordinances, policies, rules, regulations, and procedures. The Non-Federal Sponsor shall be the contracting party with the selected vendor counterparties under all such contracts and the Non-Federal Sponsor shall be responsible for administering all such contracts, directing the actions of the vendors thereunder, and otherwise managing all aspects of such contracts and the delivery of the Project thereunder.

B. The Government shall perform periodic inspections to verify the progress of construction and that work is being performed in a satisfactory manner. Upon completion of construction of each discrete segment identified in the design work plans and each separable element, the Non-Federal Sponsor shall provide written notification to the Government of such completion. For each separable element, the Non-Federal Sponsor shall provide as-built drawings for the completed work. Completed work is subject to onsite inspections and a determination by the Government that the work was accomplished in a satisfactory manner and in accordance with Government design and construction standards.

C. At the written request of the Non-Federal Sponsor, the Government shall provide to the Non-Federal Sponsor all relevant non-proprietary data and documentation under the control of the Government with respect to the Project, except for information that the Government may

withhold under applicable law. The District Commander shall provide this non-proprietary data and documentation not later than 30 calendar days after the Non-Federal Sponsor requests the data and documentation.

D. Reimbursement of eligible project costs incurred by the Non-Federal Sponsor for pre-Agreement design work, post-Agreement design and construction work, and associated permit work after completion of a discrete segment or separable element will be provided in accordance with this paragraph.

1. Upon completion of construction for each discrete segment for which construction was initiated after the effective date of this Agreement, the Non-Federal Sponsor shall submit an invoice to the Government that documents the costs that it incurred for such design and construction work and associated permit work, with such costs allocated by project purpose. In addition, for any pre-Agreement design work that the Government determines to be eligible for reimbursement, the costs for that design work shall be included in the initial invoice for that discrete segment.

2. The Government shall review each invoice provided by the Non-Federal Sponsor and, based on the procedures, requirements, and conditions provided in Article V, shall determine the costs, or portion thereof, allocated by project purpose that are eligible for reimbursement and inclusion in project costs. The Government shall provide a written explanation within 30 days of receipt to the Non-Federal Sponsor for any costs it determines are not eligible for reimbursement and inclusion in project costs. Within 60 calendar days of receipt of each invoice for a completed discrete segment, the Government, subject to the availability of Federal funds, shall reimburse the Non-Federal Sponsor for the Federal share of the eligible costs it incurred for pre-Agreement design work, design and construction work, and permit work for that discrete segment using the calculated reimbursement percentages in the Estimated Cost Share Breakdown document, attached hereto as Exhibit B and incorporated herein (“Exhibit B”), which accounts for estimated Government project costs and estimated costs for real property interests, relocations, and placement area improvements to be applied to project costs for each separable element by project purpose. The Government, in consultation with the Non-Federal Sponsor, may adjust any of the calculated reimbursement percentages included in Exhibit B if the Government determines that deviations between projected and actual project costs indicate a modification is warranted.

3. If the Government determines at any time that continued reimbursements for discrete segments of a separable element could result in reimbursements to the Non-Federal Sponsor in excess of those allowed under Article II.A for that separable element, the Government, in its sole discretion, may suspend further reimbursements on the remaining discrete segments for that separable element, pending completion of the final accounting pursuant to Article VI.C.

4. If the Non-Federal Sponsor fails to complete a separable element within its timeframe for completion as provided in Article I.C., the Non-Federal Sponsor shall remit to the Government any reimbursements it previously received under Article II.D. for the discrete segments within that separable element by delivering a check payable to “FAO, USAED, Omaha

(G6)” to the District Commander, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government.

5. As a part of the final accounting for each separable element pursuant to Article VI.C., the Government will ensure that the Non-Federal Sponsor has met its cost-sharing requirements by project purpose consistent with 33 U.S.C. 2213.

E. The Government, as it determines necessary, to ensure compliance with the National Historic Preservation Act (NHPA) of 1966, as amended (54 U.S.C. 300101-307108), shall undertake actions or direct the Non-Federal Sponsor to undertake actions associated with historic preservation, including, the identification and treatment of historic properties as those properties are defined in NHPA. All costs incurred by the Government and Non-Federal Sponsor for such work (including the mitigation of adverse effects other than data recovery) shall be included in project costs and shared in accordance with the provisions of this Agreement. If historic properties are discovered during construction and the effect(s) of construction are determined to be adverse, strategies shall be developed to avoid, minimize, or mitigate these adverse effects. In accordance with 54 U.S.C. 312507, up to 1 percent of the total amount authorized to be appropriated for the Project may be applied toward data recovery of historic properties and such costs shall be borne entirely by the Government. In the event that costs associated with data recovery of historic properties exceed 1 percent of the total amount authorized to be appropriated for the Project, in accordance with 54 U.S.C. 312508, the Government will seek a waiver from the 1 percent limitation under 54 U.S.C. 312507 and upon receiving the waiver, will proceed with data recovery at full Federal expense. Nothing in this Agreement shall limit or otherwise prevent the Non-Federal Sponsor from voluntarily contributing costs associated with data recovery that exceed 1 percent.

F. For each separable element, the Non-Federal Sponsor shall prepare an Operation, Maintenance, Repair, Rehabilitation and Replacement Manual (hereinafter the “OMRR&R Manual”) for approval by the Government. The Non-Federal Sponsor, at no cost to the Government, shall operate, maintain, repair, rehabilitate, and replace the Project in a manner compatible with the authorized purposes of the Project in accordance with applicable Federal laws and the OMRR&R Manual. For the South Platte River separable element, the Non-Federal Sponsor shall provide an updated OMRR&R Manual for approval by the Government, with updated as-built drawings, as necessary, based on the cost shared monitoring and adaptive management. If the Government determines that the Non-Federal Sponsor is failing to perform its responsibilities under this Agreement and the Non-Federal Sponsor does not correct such failures within a reasonable time after notification by the Government, the Government may undertake any operation, maintenance, repair, rehabilitation, or replacement of the Project. No operation, maintenance, repair, rehabilitation, or replacement by the Government shall relieve the Non-Federal Sponsor of its responsibilities under this Agreement, or preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

G. The Non-Federal Sponsor shall not use Federal program funds to meet any of its obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the Project. Federal program funds are those

funds provided by a Federal agency, plus any non-Federal contribution required as a matching share for such work.

H. In addition to the ongoing, regular discussions between the parties regarding Project delivery, the Government and the Non-Federal Sponsor have established a Executive Oversight Committee as described in Exhibit A to discuss significant issues or actions. The Government's costs for participation on the Executive Oversight Committee shall not be included in project costs that are cost shared but shall be included in calculating the Maximum Cost Limit. The Non-Federal Sponsor's costs for participation on the Executive Oversight Committee shall not be included in project costs that are cost shared and shall be paid solely by the Non-Federal Sponsor without reimbursement by the Government.

I. The Non-Federal Sponsor shall not use the ecosystem restoration features, or real property interests required for construction, operation, and maintenance of such features, as a wetlands bank or mitigation credit for any other project.

J. The Non-Federal Sponsor shall keep the recreation features, access roads, parking areas, and other associated public use facilities included within the Project, open and available to all on equal terms.

K. If the Non-Federal Sponsor elects to include betterments in the Project design or construction, the Non-Federal Sponsor shall notify the Government in writing and describe the betterments it intends to implement for Project design and construction. The Non-Federal Sponsor shall be solely responsible for all betterments costs, including costs associated with obtaining permits for such work, without reimbursement by the Government.

L. The Non-Federal Sponsor may request in writing that the Government perform technical assistance on the Non-Federal Sponsor's behalf. If the Government agrees to such request, the Government shall advise the Non-Federal Sponsor that such a request will not be deemed a project cost and the Non-Federal Sponsor, in accordance with Article VI.D., must provide funds sufficient to cover the costs of such work in advance of the Government performing the work and such costs shall not be reimbursed.

ARTICLE III - REAL PROPERTY INTERESTS, RELOCATIONS, AND PLACEMENT AREA IMPROVEMENTS

A. The Non-Federal Sponsor shall notify the Government of the real property interests required for construction, operation, and maintenance of the Project, and the Non-Federal Sponsor shall provide the Government with general written descriptions, including maps as appropriate, of such real property interests based on approved designs pursuant to Article II.A.3. The Government shall review the written descriptions, including estates, and maps provided by the Non-Federal Sponsor to ensure the real property interests are sufficient and provide to the Non-Federal Sponsor a written notice of any deficiency. If the Government determines that the real property interests are insufficient, the Non-Federal Sponsor shall take corrective actions that the Government determines necessary to alleviate the deficiency for construction, operation, and

maintenance of the Project as described in the written notice. The Non-Federal Sponsor shall, in accordance with Article IV.A., investigate to ensure that HTRW does not exist in, on, or under the real property interests to be acquired. The Non-Federal Sponsor shall notify the Government in writing when such interests have been acquired and ensure that such real property interests are retained in public ownership.

B. The Non-Federal Sponsor shall notify the Government of the relocations and placement area improvements required for construction, operation, and maintenance of the Project, and the Non-Federal Sponsor shall provide the Government with general written descriptions, including maps and plans and specifications, and attorney opinions of compensability as appropriate, for such relocations and placement area improvements based on approved designs pursuant to Article II.A.3. The Government shall review the written descriptions, including maps and plans and specifications, provided by the Non-Federal Sponsor to ensure the relocations and placement area improvements are sufficient and provide to the Non-Federal Sponsor a written notice of any deficiency. If the Government determines that the relocations and placement area improvements are insufficient, the Non-Federal Sponsor shall perform the relocations and construct the placement area improvements that the Government determines are necessary for construction, operation, and maintenance of the Project as described in the written notice. The Non-Federal Sponsor shall notify the Government in writing when such work has been accomplished.

C. In acquiring the real property interests for the Project, the Non-Federal Sponsor assures the Government that it will comply with the following:

(1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under 42 U.S.C. 4622, 4623 and 4624;

(2) relocation assistance programs offering the services described in 42 U.S.C. 4625 shall be provided to such displaced persons;

(3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with 42 U.S.C. 4625(c)(3);

(4) in acquiring real property, the Non-Federal Sponsor will be guided, to the greatest extent practicable under State law, by the land acquisition policies in 42 U.S.C. 4651 and the provisions of 42 U.S.C. 4652; and

(5) property owners will be paid or reimbursed for necessary expenses as specified in 42 U.S.C. 4653 and 4654.

ARTICLE IV - HTRW

A. The Non-Federal Sponsor shall be responsible for undertaking any investigations to identify the existence and extent of any HTRW regulated under applicable law, that may exist in, on, or under real property interests required for construction, operation, and maintenance of the Project.

B. In the event the Non-Federal Sponsor discovers that HTRW exists in, on, or under any of the real property interests needed for construction, operation, and maintenance of the Project, the Non-Federal Sponsor shall provide written notice to the Government within 15 calendar days of such discovery, in addition to providing any other notice required by applicable law. If HTRW is discovered prior to acquisition, the Non-Federal Sponsor shall not proceed with the acquisition of such real property interests until the parties agree that the Non-Federal Sponsor should proceed. If HTRW is discovered after acquisition of the real property interests, no further Project activities within the contaminated area shall proceed until the parties agree on an appropriate course of action.

1. If the Non-Federal Sponsor initiates or continues construction, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the performance and costs of HTRW cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. The Non-Federal Sponsor shall pay such costs without reimbursement by the Government.

2. In the event the Non-Federal Sponsor fails to discharge its responsibilities under this Article, the Government may suspend or terminate future performance under this Agreement, including reimbursements pursuant to Article II.D.

C. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the owner and operator of the Project for purposes of CERCLA liability or other applicable law.

D. Any decision made pursuant to this Article shall not relieve any third party from any HTRW liability that may arise under applicable law.

ARTICLE V - DETERMINATION OF ELIGIBLE NON-FEDERAL SPONSOR COSTS

A. The Government and the Non-Federal Sponsor agree that the Non-Federal Sponsor's costs that are eligible for inclusion in project costs shall be determined in accordance with the following procedures, requirements, and conditions and subject to audit in accordance with Article X.B. to determine reasonableness, allocability, and allowability of costs.

1. The Non-Federal Sponsor's eligible costs for and value of real property interests, relocations, and placement area improvements will be included in project costs during the final accounting of each separable element for cost-sharing purposes. To the maximum extent practicable, no less frequently than on a semi-annual basis, the Non-Federal Sponsor

should provide the Government with documentation sufficient for the Government to determine the amount of eligible costs for and value of real property interests, relocations, and placement area improvements in accordance with paragraphs B.1., B.2., B.3., and B.6. of this Article.

2. The Non-Federal Sponsor's eligible costs for pre-Agreement design work, post-Agreement design and construction work, and associated permit work will be reimbursed as the discrete segments for such work are completed and invoiced by the Non-Federal Sponsor. Each invoice provided by the Non-Federal Sponsor pursuant to Article II.D. should include documentation sufficient for the Government to determine the amount of reimbursement to be provided in accordance with paragraphs B.4., B.5., and B.6. of this Article and Exhibit B. In order for costs to be eligible costs, the District Commander shall certify that the discrete segment has been constructed in accordance with all applicable permits or approvals and in accordance with all applicable laws and regulations, including Section 204.

3. The amount eligible for reimbursement is further limited by the Federal share of costs within the Maximum Cost Limit, as determined by the Government.

B. The Non-Federal Sponsor's costs eligible for reimbursement will be determined as follow:

1. Real Property Interests.

a. General Procedure. For each real property interest, the Non-Federal Sponsor shall obtain an appraisal of the fair market value of such interest that is prepared by a qualified appraiser who is acceptable to the parties. Subject to valid jurisdictional exceptions, the appraisal shall conform to the Uniform Standards of Professional Appraisal Practice. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government.

(1) Date of Valuation. For any real property interests owned by the Non-Federal Sponsor on the effective date of this Agreement and required for the Project, the date the Non-Federal Sponsor initiates construction of the applicable separable element shall be used to determine the fair market value. The fair market value of real property interests acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

(2) Except for real property interests not eligible to be included in projects costs, the Non-Federal Sponsor shall obtain an appraisal for each real property interest required for the Project and provide the Government a copy of such appraisal in accordance with the schedule in Article V.A.1.

(3) The Government shall include the appraised amount in project costs, after the Government reviews and approves the appraisals for reasonableness and compliance with applicable laws and regulations, during the final accounting of each separable element for cost-sharing purposes. If the Government determines that the amount paid by the Non-Federal Sponsor exceeds the approved appraised amount, the Government, at the Non-

Federal Sponsor's request, shall consider all factors relevant to determining fair market value to be included in project costs and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing a greater amount to be included in project costs. If the Government determines that the amount paid by the Non-Federal Sponsor does not comply with applicable laws and regulations, the Government shall notify the Non-Federal Sponsor of the deficiency, and, within 30 calendar days of receipt of such notice, the Non-Federal Sponsor shall provide the Government with a plan to correct the deficiency.

b. Eminent Domain Procedure. For real property interests acquired by eminent domain proceedings instituted after the effective date of this Agreement, the fair market value to be included in project costs shall be either the amount of the court award for the real property interests taken or the amount of any stipulated settlement, with such value included in project costs during the final accounting of each separable element for cost-sharing purposes.

c. Waiver of Appraisal. Except as required by paragraph B.1.b. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if, in accordance with 49 C.F.R. Section 24.102(c)(2):

(1) the owner is donating the real property interest to the Non-Federal Sponsor and releases the Non-Federal Sponsor in writing from its obligation to appraise the real property interest, and the Non-Federal Sponsor submits to the Government a copy of the owner's written release; or

(2) the Non-Federal Sponsor determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the real property interest proposed for acquisition is estimated at \$25,000 or less, based on a review of available data. When the Non-Federal Sponsor determines that an appraisal is unnecessary, the Non-Federal Sponsor shall prepare the written waiver valuation required by 49 C.F.R. Section 24.102(c)(2) and submit a copy thereof to the Government. When the anticipated value of the real property interest exceeds \$10,000, up to a maximum of \$25,000, the Non-Federal Sponsor must offer the owner the option of having the Non-Federal Sponsor appraise the real property interest.

d. Incidental Costs. The Government shall include in project costs the incidental costs the Non-Federal Sponsor incurred in acquiring any real property interests required pursuant to Article III for the Project within a five-year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, that are documented to the satisfaction of the Government, during the final accounting of each separable element for cost-sharing purposes. Such incidental costs shall include closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.C., and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest pursuant to Article III.

2. Relocations. The Government shall include in project costs the value of any relocations required for an applicable separable element during the final accounting of each separable element for cost-sharing purposes.

a. For a relocation other than a highway, eligible costs shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

b. For a relocation of a highway, which is any highway, roadway, or street, including any bridge thereof, that is owned by a public entity, eligible costs shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of Colorado would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

c. Relocation costs include actual costs of performing the relocation; engineering and design costs; and supervision and administration costs documented to the satisfaction of the Government. Relocation costs do not include any costs associated with betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available.

3. Placement Area Improvements. The Government shall include in project costs the value of placement area improvements required for an applicable separable element during the final accounting of each separable element for cost-sharing purposes. The value of the placement area improvements shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred to provide such placement area improvements. Such costs include actual costs of constructing the improvements; engineering and design costs; and supervision and administration costs, but shall not include any costs associated with betterments, as determined by the Government.

4. Post-Agreement Design and Construction Work and pre-Agreement Design Work. The Government shall include in project costs the costs of design and construction work performed by the Non-Federal Sponsor after the effective date of this Agreement and the costs of pre-Agreement design work that are eligible for reimbursement. Such costs may include engineering and design, including HTRW investigations pursuant to Article IV.A.; construction; and supervision and administration, but shall not include any costs associated with betterments, as determined by the Government. Eligible costs will be reimbursed to the Non-Federal Sponsor pursuant to Article II.D.

a. The Non-Federal Sponsor shall provide documentation, satisfactory to the Government, for the Government to determine the amount of eligible costs. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees. Where the Non-Federal Sponsor's cost for completed pre-Agreement design work is expressed as fixed costs plus a percentage of project costs, the Non-Federal Sponsor shall calculate such costs based on actual costs.

b. The following costs are not eligible for inclusion in project costs: interest charges, or any adjustment to reflect changes in price levels after completion of the design or construction work; costs that exceed the Government's estimate of the cost for such post-Agreement design and construction work or pre-Agreement design work if such work had been accomplished by the Government; the costs of physical construction work under a contract awarded with notice to proceed prior to the effective date of this Agreement; and the costs of post-Agreement design and construction work or pre-Agreement design work obtained at no cost to the Non-Federal Sponsor.

5. Permit Work. The Government shall include in project costs the costs of permit work, which includes the Non-Federal Sponsor's costs for obtaining all required Federal and state permits, licenses, and approvals necessary for design, construction, and operation and maintenance of the Project, or separable elements thereof, after the effective date of this Agreement, that are eligible for reimbursement. Such costs will be reimbursed to the Non-Federal Sponsor pursuant to Article II.D. as discrete segments are completed. Eligible costs shall be equivalent to the direct costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurs in obtaining all permits and licenses necessary for design, construction, and operation and maintenance of the Project. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees involved in obtaining such permits. Failure to comply with these permits and licenses may result in the Government denying, in whole or part, inclusion of the Non-Federal Sponsor's costs for effected design and construction work in project costs for cost-sharing purposes.

6. Compliance with Federal Labor Laws. In undertaking construction and relocations, the Non-Federal Sponsor shall comply with applicable Federal labor laws covering non-Federal construction and relocations, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act). The Non-Federal Sponsor's failure to comply with these laws may result in the Government denying, in whole or part, inclusion of the Non-Federal Sponsor's costs for relocations and construction of the Project in project costs.

C. Notwithstanding any other provision of this Agreement, real property interests and relocations shall not exceed 35 percent of project costs allocated to ecosystem restoration. In addition, real property interests that were previously provided as an item of local cooperation for another Federal project shall not be included in project costs.

ARTICLE VI - ACCOUNTING

A. As of the effective date of this Agreement, total project costs are projected to be \$602,015,000, with the Government's share of such costs projected to be \$376,180,000 and the Non-Federal Sponsor's share of such costs projected to be \$225,835,000. Costs for technical assistance provided by the Government pursuant to Article II.L. are projected to be \$0. All costs shown in paragraph A. of this Article are estimates only that are subject to adjustment and are

not to be construed as the total financial responsibilities of the Government and Non-Federal Sponsor.

1. For the South Platte River separable element, the project costs are projected to be \$450,905,000, which includes costs allocated to ecosystem restoration, which, excluding adaptive management and monitoring, are projected to be \$396,500,000, with the Government's share projected to be \$257,725,000 and the Non-Federal Sponsor's share projected to be \$138,775,000; costs allocated to adaptive management and monitoring projected to be \$28,671,000, with the Government's share projected to be \$18,636,000 and the Non-Federal Sponsor's share projected to be \$10,035,000; and costs allocated to recreation projected to be \$25,734,000, with the Government's share projected to be \$12,867,000 and the Non-Federal Sponsor's share projected to be \$12,867,000.

a. For ecosystem restoration, excluding adaptive management and monitoring, the costs incurred by the Government are projected to be \$8,124,000. The costs incurred by the Non-Federal Sponsor are projected to be \$388,376,000, which includes eligible post-Agreement design and construction work and permit work projected to be \$303,731,000, eligible pre-Agreement design work projected to be \$371,000, eligible real property interest and relocation costs projected to be \$84,274,000, with reimbursements pursuant to Article II.D. for eligible costs incurred by the Non-Federal Sponsor projected to be \$249,601,000.

b. For adaptive management and monitoring in support of ecosystem restoration, the costs incurred by the Government are projected to be \$287,000. The costs incurred by the Non-Federal Sponsor are projected to be \$28,384,000, which includes eligible post-Agreement design and construction work and permit work projected to be \$28,384,000, eligible pre-Agreement design work projected to be \$0, eligible real property interest and relocation costs projected to be \$0, with reimbursements pursuant to Article II.D. for eligible costs incurred by the Non-Federal Sponsor projected to be \$18,349,000.

c. For recreation, the costs incurred by the Government are projected to be \$129,000. The costs incurred by the Non-Federal Sponsor are projected to be \$25,605,000, which includes eligible post-Agreement design and construction work and permit work projected to be \$25,605,000, eligible pre-Agreement design work projected to be \$0, eligible real property interest and relocation costs projected to be \$0, with reimbursements pursuant to Article II.D. for eligible costs incurred by the Non-Federal Sponsor projected to be \$12,738,000.

2. For the Weir Gulch separable element, the project costs are projected to be \$125,142,000, which includes costs allocated to structural flood risk management projected to be \$112,922,000, with the Government's share projected to be \$63,963,000 and the Non-Federal Sponsor's share projected to be \$48,959,000; and costs allocated to recreation projected to be \$12,220,000, with the Government's share projected to be \$6,110,000 and the Non-Federal Sponsor's share projected to be \$6,110,000.

a. For structural flood risk management, the costs incurred by the Government are projected to be \$3,952,000. The costs incurred by the Non-Federal Sponsor are projected to be \$108,970,000, which includes eligible post-Agreement design and construction

work and permit work projected to be \$65,657,000, eligible pre-Agreement design work projected to be \$0, eligible real property interest, relocation, and placement area improvement costs projected to be \$43,313,000, with reimbursements pursuant to Article II.D. for eligible costs incurred by the Non-Federal Sponsor projected to be \$60,011,000.

b. For recreation, the costs incurred by the Government are projected to be \$61,000. The costs incurred by the Non-Federal Sponsor are projected to be \$12,159,000, which includes eligible post-Agreement design and construction work and permit work projected to be \$12,159,000, eligible pre-Agreement design work projected to be \$0, eligible real property interest and relocation costs projected to be \$0, with reimbursements pursuant to Article II.D. for eligible costs incurred by the Non-Federal Sponsor projected to be \$6,049,000.

3. For the Harvard Gulch separable element, the project costs are allocated to nonstructural flood risk management and are projected to be \$25,968,000, with the Government's share projected to be \$16,879,000 and the Non-Federal Sponsor's share projected to be \$9,089,000. The costs incurred by the Government are projected to be \$390,000. The costs incurred by the Non-Federal Sponsor are projected to be \$25,578,000, which includes eligible post-Agreement design and construction work and permit work projected to be \$24,058,000, eligible pre-Agreement design work projected to be \$0, eligible real property interest, relocation, and placement area improvement costs projected to be \$1,520,000, with reimbursements pursuant to Article II.D. for eligible costs incurred by the Non-Federal Sponsor projected to be \$16,489,000.

B. The Government shall provide the Non-Federal Sponsor with quarterly financial reports setting forth the estimated project costs and the Government's and Non-Federal Sponsor's estimated shares of such costs; costs incurred by the Government to date; costs incurred by the Non-Federal Sponsor to date; the total amount of reimbursements made to the Non-Federal Sponsor to date; estimated project costs for real property interests, relocations, and placement area improvements, and the balance of the Federal funds available for the Project.

C. Upon completion of construction of each separable element, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the written results of such final accounting. In addition, the Government shall conduct another final accounting after completion of cost shared monitoring and adaptive management for the ecosystem restoration features. During each final accounting, or at such earlier time at the Non-Federal Sponsor's request, the Government shall consider the project costs that the Government incurred and all of the project costs the Non-Federal Sponsor incurred that are eligible for reimbursement, to ensure that the Non-Federal Sponsor met its cost-sharing requirements by project purpose, as follows: For structural flood risk management, a minimum of 35 percent, up to a maximum of 50 percent, of project costs, depending on the eligible value of the real property interests, relocations, and placement area improvements, plus a minimum amount equal to 5 percent of project costs allocated to structural flood risk management and any additional amount necessary to ensure the Non-Federal Sponsor's cost share is not less than 35 percent of project costs allocated to structural flood risk management; for ecosystem restoration 35 percent of project costs; and for recreation 50 percent of project costs. The Government will determine the total reimbursable amount for each separable element by project purpose by totaling the Non-Federal Sponsor's

contributions towards project costs and subtracting from it the required non-Federal cost share. If the Government determines that funds in excess of the total reimbursable amount have been reimbursed to the Non-Federal Sponsor, the Non-Federal Sponsor, within 60 calendar days of receipt of written notice from the Government, shall provide the Government with the full amount of such excess funds by delivering a check payable to “FAO, USAED, Omaha (G6)”, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. Should the final accounting determine that the reimbursements provided to the Non-Federal Sponsor are less than the total reimbursable amount, then subject to the availability of Federal funds, the Government shall reimburse the Non-Federal Sponsor for the amount equal to such difference.

D. If the Government agrees to provide technical assistance on the Non-Federal Sponsor’s behalf, the Government shall provide written notice to the Non-Federal Sponsor of the amount of funds required to cover such costs. No later than 60 calendar days of receipt of such written notice, the Non-Federal Sponsor shall make the full amount of such required funds available to the Government through either payment method specified in Article VI.C.. If at any time the Government determines that additional funds are required to cover such costs, the Non-Federal Sponsor shall provide those funds within 30 calendar days from receipt of written notice from the Government. If the Government determines that funds provided by the Non-Federal Sponsor exceed the amount that was required for the Government to complete such work, the Government shall refund any remaining unobligated amount.

ARTICLE VII - TERMINATION OR SUSPENSION

If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Government may suspend or terminate this Agreement. If the Government determines that the Federal funds available for the Project will be exhausted prior to completion of the Project, the Government shall notify the Non-Federal Sponsor and the Non-Federal Sponsor may continue with design and construction of the Project with future reimbursements subject to the availability of Federal funds. If the Non-Federal Sponsor is unable to, or does not, fulfill its obligations under this Agreement, the Government may exercise any legal rights it has to protect the Government’s interest.

ARTICLE VIII – HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from design, construction, operation, maintenance, repair, rehabilitation, and replacement of the Project, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE IX - DISPUTE RESOLUTION

The Government and the Non-Federal Sponsor shall follow procedures described in Exhibit A to resolve any issues or disputes in carrying out the terms and conditions of this Agreement. As a condition precedent to a party bringing any suit for breach of this Agreement that cannot be satisfactorily resolved under such procedures, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. 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.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDITS

A. The parties shall develop procedures for the maintenance by the Non-Federal Sponsor of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsor shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits shall not be included in project costs, but shall be included in calculation of the Maximum Cost Limit.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsor to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the Non-Federal Sponsor's request, provide to the Non-Federal Sponsor or independent auditors any such information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The Non-Federal Sponsor shall pay the costs of non-Federal audits without reimbursement by the Government.

ARTICLE XI - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

ARTICLE XII - NOTICES

A. 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 follows:

If to the Non-Federal Sponsor:

Mayor
City and County of Denver
1437 Bannock St., Ste 353
Denver, CO 80202

If to the Government:

District Commander
U.S. Army Corps of Engineers, Omaha District
1616 Capitol Avenue
Omaha, NE 68102-4901

B. 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 Article.

ARTICLE XIII - CONFIDENTIALITY

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.

ARTICLE XIV - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

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.

ARTICLE XV - OBLIGATIONS OF FUTURE APPROPRIATIONS

A. Nothing herein, including Non-Federal Sponsor obligations arising under Article VIII, shall constitute, nor be deemed to constitute, an obligation of future appropriation by the Non-Federal Sponsor, where creating such an obligation would be inconsistent with Article XI, Section 1 of the Colorado Constitution, Section 29-1-110 of the Colorado Revised Statutes, or Article VII, Part 2, Section 7.2.2 of the Denver City Charter.


B. The Non-Federal Sponsor intends to fulfill its obligations under this Agreement. The Non-Federal Sponsor shall use all reasonable and lawful means to secure funding. The Non-Federal Sponsor reasonably believes that funds in amounts sufficient to fulfill these obligations lawfully can and will be made available for this purpose. In the event funds are not appropriated

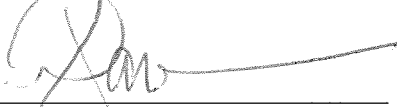
in amounts sufficient to fulfill the obligations under this Agreement, the Non-Federal Sponsor shall seek other sources of funds legally available for this purpose.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Assistant Secretary of the Army (Civil Works).

DEPARTMENT OF THE ARMY

CITY AND COUNTY OF DENVER

BY: 
MICHAEL L. CONNOR
Assistant Secretary of the
Army (Civil Works)

BY: 
MICHAEL B. HANCOCK
Mayor
City and County of Denver

DATE: May 8, 2023

DATE: 5/8/2023

EXHIBIT A

The South Platte River and Tributaries, Adams and Denver Counties, Colorado Project Implementation Plan (“IP”)

Background:

- The South Platte River and Tributaries, Adams and Denver Counties, Colorado project (the “Project”) is a multi-purpose flood risk management, ecosystem restoration, and recreation project that includes three separable elements: South Platte River, Weir Gulch, and Harvard Gulch. Section 401(4) of the Water Resources Development Act (WRDA) of 2020 authorized the Project’s construction. The total project costs based on FY 2023 price levels are estimated to be \$602,015,000, with the Federal share estimated to be \$376,180,000 and the non-Federal share estimated to be \$225,835,000.
- The Project will provide approximately 87.4 average annual habitat units generated by restoring or connecting approximately 450 acres of riparian, wetland, and aquatic habitats and will also provide flood risk management benefits, which will reduce the existing flood risk for over approximately 500 homes, structures, and businesses across the Project area. The Project will also provide trails, access points, and park-based recreation features.
- The Project has received Federal funding in the amount of \$349,600,000 in Construction funds from the Bipartisan Infrastructure Law (“BIL”), and \$400,000 in Investigation funds for preconstruction engineering and design (“PED”) from the FY2022 Consolidated Appropriations Act.
- The City and County of Denver (the “Non-Federal Sponsor” or “NFS”) has extensive experience working on large capital projects along the South Platte River and its Tributaries, and it has executed nearly \$1 billion in drainage improvements throughout the past decade. The NFS also has successfully partnered with the United States Army Corps of Engineers (the “Corps”) in several Continuing Authorities Program projects along several reaches of the South Platte River.
- The Project has been identified for the Civil Works Public-Private Partnership Pilot Program, utilizing the authority in Section 204 of WRDA 1986, as amended (“Section 204”). The plan is for the NFS to carry out the Project in its entirety and be reimbursed by the Corps for the Federal share of the Project costs.

Project Components: The Project contains three separable elements.

- **Weir Gulch** – This separable element includes widening or enlarging an approximately 2.75-mile long system of open channel and culverts along the Weir Gulch waterway and removing approximately 360 structures from the one percent Annual Exceedance Probability (AEP) defined 100-year floodplain, which will reduce the population at risk within the Weir Gulch community by over 60 percent. This plan also includes ancillary recreation features.

- **South Platte River** – This separable element includes the restoration of aquatic, wetland, and riparian habitats along approximately 6.5 miles of the South Platte River. The plan would restore critical habitat connectivity throughout the heart of the Denver, Colorado metropolitan area with ancillary recreation features incorporated throughout the plan. This plan also provides incidental flood risk management benefits to the area by reducing the likelihood of impacts within the existing regulatory floodplain and removing approximately 100 structures from the regulatory floodplain.
- **Harvard Gulch** – This separable element is a nonstructural flood risk management plan that would provide added protection for up to approximately 176 structures throughout the community, reducing the existing flood risk for over 30 percent of the structures within the one present AEP defined 100-yr floodplain.

General Implementation Strategy – Weir Gulch and South Platte River

- Weir Gulch has been divided into four reaches (WG-1, WG-2, WG-3, and WG-6). The reaches were developed in the Project’s feasibility study to allow for a linear implementation plan. Each reach combines a combination of culverts, stream daylighting, and other measures to improve channel capacity.
- South Platte River has been divided into six reaches (SP-1 through SP-6). The reaches were developed in the Project’s feasibility study to allow for a linear implementation. Each reach combines a combination of aquatic ecosystem restoration components, including wetland creation, removal of obstacles, invasive species management, and other components.

Section 204 allows for reimbursement upon completion of a separable element or identified discrete segments, defined as a physical portion of a separable element of a project that the NFS can operate and maintain, independently and without creating a hazard, in advance of final completion of the separable element. Therefore, the plan will be implemented through a reach-by-reach approach, using a combination of design-build or other contracting methods selected by the NFS for delivery of the Project. This allows for construction of the first reaches, while design is underway for the remaining reaches, reducing construction time and cost. Further, reimbursing the NFS for completed discrete segments will allow a predictable funding stream as the NFS completes components of the separable element.

- Prior to initiating construction of the separable element or discrete segment thereof, the NFS will provide the design work plans for such construction, which shall include identification of any discrete segment(s), and proposed real property interests for acquisition, designs and specifications, and arrangements for carrying out that work under a contract, for review and approval by the Corps Omaha District Commander to determine that the design work plans are technically feasible, environmentally acceptable and in compliance with applicable laws and regulations, including Section 204. Any proposed changes to the approved design work must also be reviewed and approved by the Omaha District Commander in advance of construction of the changed plans. Upon approval by the Omaha District Commander, only discrete segments directly affected by the proposed changes shall be subject to being placed on design or construction hold pending the design change approval by the Government. The Government shall strive to complete reviews in a timely manner, recognizing that time is

of the essence in executing the Project. Reviews requested by the Non-Federal Sponsor shall be conducted and responded to by the Government within 3 weeks; an additional week may be requested and granted by the Non-Federal Sponsor. Any failure to respond within the foregoing timeframes shall be escalated on an expedited basis to the EOC (described below) for prompt action and resolution, with an expectation that the matter will be addressed within five (5) business days after request for action by the Government or the NFS.

- The NFS will submit invoices and supporting documentation to the Omaha District Commander, requesting reimbursement for the Federal share of each completed discrete segment, as identified and approved in the design work plans. The Omaha District Commander will review the requests to determine whether the costs incurred are reasonable, allowable, and allocable to the Project and that the discrete segment was completed in compliance with all applicable laws and regulations. Upon favorable review, the Omaha District Commander will certify that the discrete segment was constructed in accordance with all applicable permits and approvals and Section 204.
- The reaches are shown in the attached map as Attachment A-1 for Weir Gulch and Attachment A-2 for South Platte River.

General Implementation Strategy – Harvard Gulch

- Harvard Gulch is a voluntary non-structural flood risk management component, which could include up to approximately 170 structures. As this is a non-structural approach, this segment has not been divided into reaches.
- This component will be implemented separately from the South Platte and Wier Gulch and will use a variety of NFS construction and real estate tools to implement.
- Implementation may be grouped by structures or components to allow for more efficient delivery. However, this will be developed in partnership with the landowners and subject to landowner participation.
- Submission, review, and approval of design work plans and reimbursement requests for the Harvard Gulch separable element will follow the same process as Weir Gulch and the South Platte River separable elements.
- The structures are shown in the attached map as Attachment A-3.

DETAILED PROPOSED IMPLEMENTATION PLAN AND APPROVALS

****Cross-references to Section 204 compliance provided in bold and brackets**

Memos documenting determinations shall include concurrence from the Omaha District Commander, and shall be provided for all delegated determinations, approvals, and reviews.

PRE-CONSTRUCTION

1. The Assistant Secretary of the Army (Civil Works) (ASA(CW)) approves overall implementation plan, along with any conditions the Secretary deems appropriate pursuant to Subsection (b)(1)(B), and provides necessary delegations consistent with

- plan for Omaha District Commander to make the necessary approvals, determinations, and certification provided in Subsection 204(d) and identified below. **[Subsection (b)(1)]**
2. ASA(CW) notifies the Congressional Committees. **[Subsection (e)]**
 3. ASA(CW) and NFS execute an agreement memorializing the terms and conditions of project implementation under Section 204 (the "Agreement"). **[Subsections (b)(3)(B), (d)(1)(A)(iii), and (d)(5)(C)]**
 4. The Government and the NFS will develop and maintain a Project Management Plan (hereinafter, the "PMP") that will specify the scope and schedule for all elements of the Project. The PMP will describe how the Government and the NFS intend to fulfill their responsibilities under the PPA and this IP, including the development of procedures and timelines for obtaining consents and approvals contemplated in the PPA. The parties will work to agree on an initial version of the PMP by December 31, 2023. In addition to the PMP, the Government and the NFS will document the administrative record with Memos of Determination ("MDs") and/or Memos for the Record ("MFRs") that address, clarify, and resolve issues and questions regarding various aspects of the Project and Project Work. As of the date of this IP, the parties have agreed to and implemented MDs relating to (i) the identification and designation of "discrete segments" for the Project, (ii) the process and timelines associated with the real estate interests to be acquired or otherwise impacted by the Project, and (iii) any necessary project modifications that are covered by the Chief's discretionary authority for post-authorization changes.
 5. The Corps and NFS jointly develop performance criteria that incorporate the authorized Project outputs. The NFS, consistent with the timeframes set forth in the PMP, will provide the Government with draft goals and anticipated performance requirements for the design, construction, operation, and maintenance of the Project Work (the "Technical Requirements").
 6. The Corps Omaha District and NFS prepare a detailed Real Estate Acquisition Plan laying out the process and timeframes for determining real estate interests needed for the project, coordination of the NFS's acquisitions during construction, and appropriate valuation of the real estate acquisition in accordance with the terms and conditions in the Agreement.
 7. NFS develops strategy for procurement, identifies Project delivery method(s), procurement documents and contracting documents that include the performance criteria, as applicable.
 8. NFS awards preconstruction contract, as applicable.
 9. Prior to award of each NFS contract the Corps and NFS confirm precise discrete segments within separable elements as part of contract process to outline timing and components of reimbursement payments. Omaha District Commander to determine that the discrete segments are technically feasible and environmentally acceptable. **[Subsection (d)(5)(A)(ii) if so delegated]**
 10. Contractor progresses design development to a mutually agreeable completion milestone for final pricing. Design development and pricing may be completed on portions of the project on a phased basis.
 11. NFS submits design work plans for review and approval to the Omaha District Commander to determine that the design work plans are technically feasible, environmentally acceptable, and in compliance with applicable laws and regulations, including Section 204. **[Subsection (d)(1)(A) if so delegated to approve plans for construction and that the project/separable element is feasible pursuant to those plans].** A memo including Omaha District Commander concurrence shall be developed to document approval.

12. Depending upon procurement approach and delivery method(s) selected, the NFS will finalize the selection process, terms, and costs for design and construction services and, if applicable, have the ability to exercise off-ramp provisions and procure construction services via another contract mechanism.
13. The Corps reviews to confirm that the proposed contract costs are reasonable to head off any major issues for future reimbursement requests.

DURING CONTRACT EXECUTION

1. It is anticipated that the NFS will procure and enter into contractual arrangements (collectively, the "Project Agreements") with consultants and contractors selected by the NFS (collectively, the "Contractors") for the delivery of all work associated with the Project (the "Project Work"), which could include any combination of the following elements: procurement, owner's representation, design, construction, financing, operation, maintenance, or other work or services associated with the Project. The Government intends that payments made to the Contractors pursuant to the Project Agreements will be deemed reasonable for the purposes of the PPA. The Government will not perform quality assurance monitoring on the physical construction activities, but may monitor the Project Work for compliance with applicable laws, regulations, and policies.
2. NFS authorizes construction and oversees its contractor(s) to ensure work is being carried out in accordance with the terms of the Agreement.
3. Omaha District Commander monitors construction to ensure compliance with Section 204 and the terms of the Agreement. **[Subsection (d)(4)(A) if so delegated]**
4. As part of the solicitation process for the Project Agreements, bidders for a role in delivering Project Work ("Proposers") will be allowed to submit proposals for one or more innovative technical concepts ("ITC"). It is the intention of the parties that the Technical Requirements will be developed so as to encourage innovation, cost savings, and value to the NFS by the Proposers through the submission of ITCs. Proposed ITCs may be accepted by the NFS, in its sole discretion, provided that such ITCs are consistent with (i) the Chief's Report; (ii) the NEPA Compliance Documents; and (iii) Applicable Laws. Upon written request from the NFS, the Government will provide the NFS with an opinion of whether any modifications to NEPA Compliance Documentation are needed, and will provide non-binding estimates of the extent of such modifications or additions that would be required and the timeframe and projected Government costs for such review and assistance. Other than the Government's involvement with the Technical Requirements, changes to the NEPA Compliance Documentation, and the required approvals by the Government covered in the PPA and this IP, all aspects of the design, construction, and implementation of the Project Work, including the contents of solicitations, award of contracts, or commencement of design, execution of contract modifications, resolution of contract claims, and performance of all Project Work will be exclusively within the control of the NFS.
5. The Corps and NFS coordinate on real estate acquisition and valuation pursuant to the Real Estate Acquisition Plan developed during pre-construction.

INVOICING AND REIMBURSEMENT

1. NFS submits invoices with supporting documentation and requests reimbursement of the Federal share of a completed discrete segment.
2. The Omaha District Commander will review the NFS's request and documentation and complete the following:
 - a. Determine all NFS costs submitted are reasonable, allocable, and allowable for the Project; **[Required under the Terms and Conditions of the Agreement and Corps laws and policies for cost sharing accounting]**
 - b. Determine the applicable discrete segment has been completed consistent with the authorization of the Project, or separable element thereof, and the approved design work plans; **[Subsection (d)(5)(B) if so delegated]**
 - c. Determine the discrete segment was carried out in compliance with all Federal laws and regulations applicable to the construction of a water resources development project, including Section 204 and the terms and conditions of the Agreement; and **[Subsections (d)(1)(B) and (d)(5)(A)(i) if so delegated]**
 - d. Certify that the discrete segment has been constructed in accordance with all applicable permits or approvals and Section 204. **[Subsection (d)(3)(B) if so delegated]**
3. A memo including Omaha District Commander concurrence shall be developed to document approval and certification.
4. Omaha District Commander authorizes reimbursement to the NFS. **[Subsection (d) if so delegated]**
 - a. Reimbursements for a discrete segment will occur in the manner described in the Estimated Cost Share Breakdown, Exhibit B to the Agreement.
 - b. The Omaha District will retain 5% of the reimbursement amount for each discrete segment reimbursement request to avoid overpaying the Federal share of a separable element. **[Terms and conditions in the Agreement to protect against overpaying the NFS before the separable element is completed]**

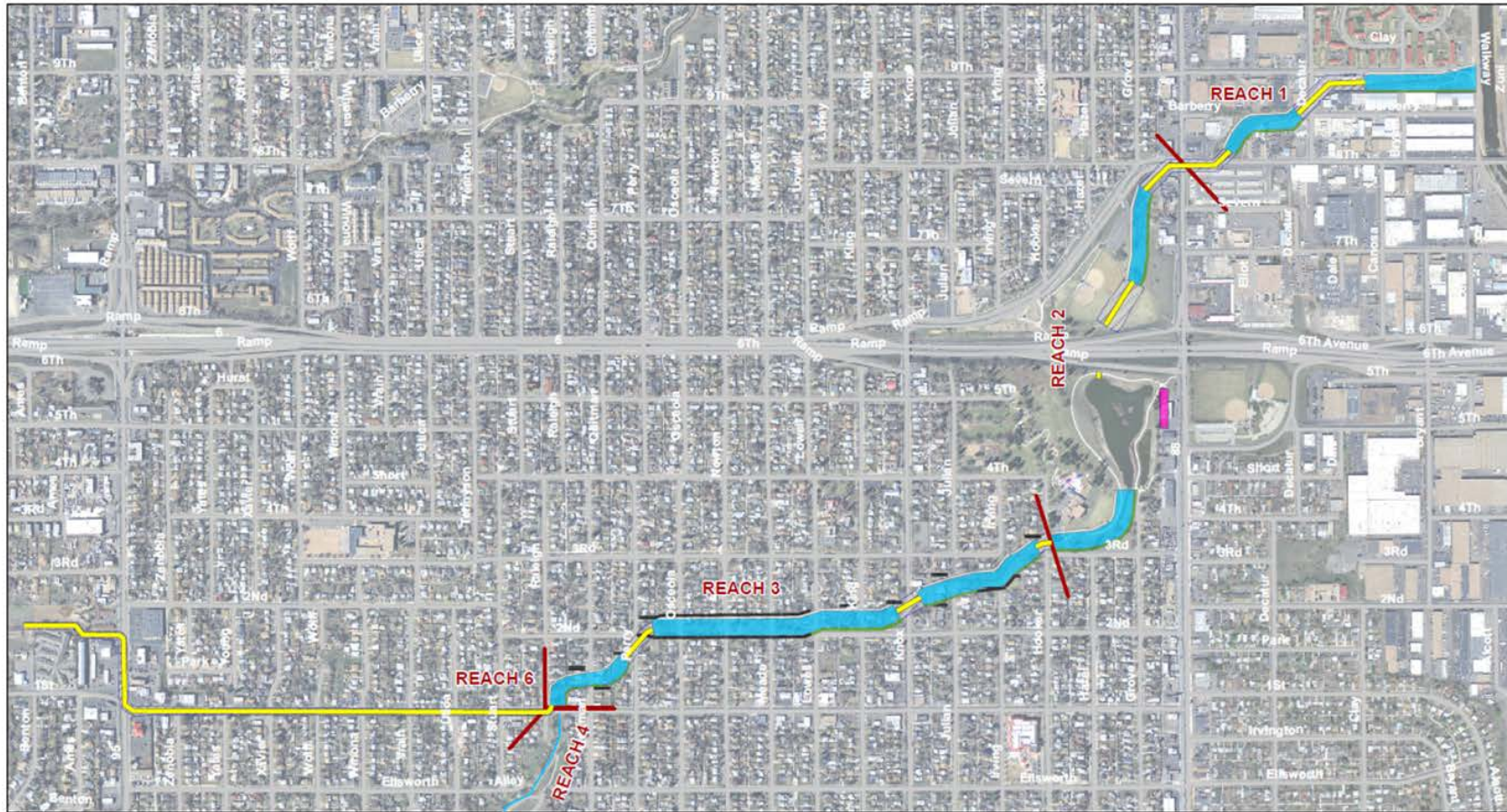
FINAL ACCOUNTING AND CLOSEOUT OF EACH SEPARABLE ELEMENT

1. Upon completion of a separable element, the Omaha District Commander will conduct a final accounting of the separable element to confirm proper cost share allocations for the separable element have been met and the need for either further reimbursement to the NFS, subject to available funds, or return of any funds previously provided to the NFS for completion of a discrete segment, making the same determinations and certification provided above for each completed separable element. Final accounting of all real estate will occur at the completion of each separable element. **[Terms and conditions in the Agreement to meet statutory cost share requirements of each separable element]**. A memo including Omaha District Commander concurrence shall be developed to document approval.
2. If the NFS fails to complete construction of an entire separable element within a specified timeframe, the NFS shall return all Federal funds previously provided for completion of discrete segments within that separable element. **[Terms and conditions in the Agreement to satisfy Subsection 204(d)(5)(C)]**

GOVERNANCE









1. To establish controls and oversight and resolve issues through Project implementation, the Project will be governed through a joint governance structure already established between the Corps and the NFS: the South Platte River Executive Oversight Committee (EOC). The EOC is chaired by an Executive Sponsor (ES) and includes participation by the Omaha District Commander as a voting member of the EOC. The EOC will have oversight of key decisions and approvals, as defined in the Project Management Plan, and any funding changes throughout implementation. Supporting the EOC is the Advisory Committee (AC) and the Project Leadership Team (PLT). The AC formally known as the South Platte River and Tributary Advisory Committee serves as the main technical team and includes representatives from all levels of the Corps vertical team. The PLT is comprised of Corps and NFS senior staff that is responsible for day-to-day Project coordination and delivery. The PLT is supported by numerous technical workgroups, such as Contracting, Real Estate, Communications, and other groups as needed. This structure is intended to provide for mutual good faith consultation and coordination to address change management, Project implementation and delivery, technical requirements, and similar matters; however, the Omaha District Commander is the decision maker for the Government on the delegated reviews, approvals, and certifications. Should there be an issue that cannot be resolved under this governance structure, the NFS or the Government may elevate the matter to the Northwest Division Commander.

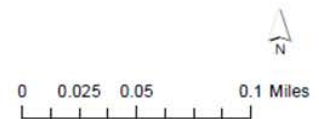
ATTACHMENT A-1



**U.S. Army Corps of Engineers
Omaha District
Denver County General Investigation Study
Weir Gulch**

Flood Control Alternative - Plan View

- | | | |
|-----------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
|  Culverts |  Channel |  Road |
|  Reach Breaks |  Culvert Construction |  Trail |
|  Spillway Raise |  ROW | |



Weir Gulch Optimized Plan

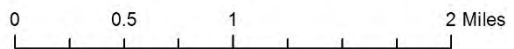
ATTACHMENT A-2



Data Source: 2015 NAIP Aerial Photo
Denver and Adams County, CO

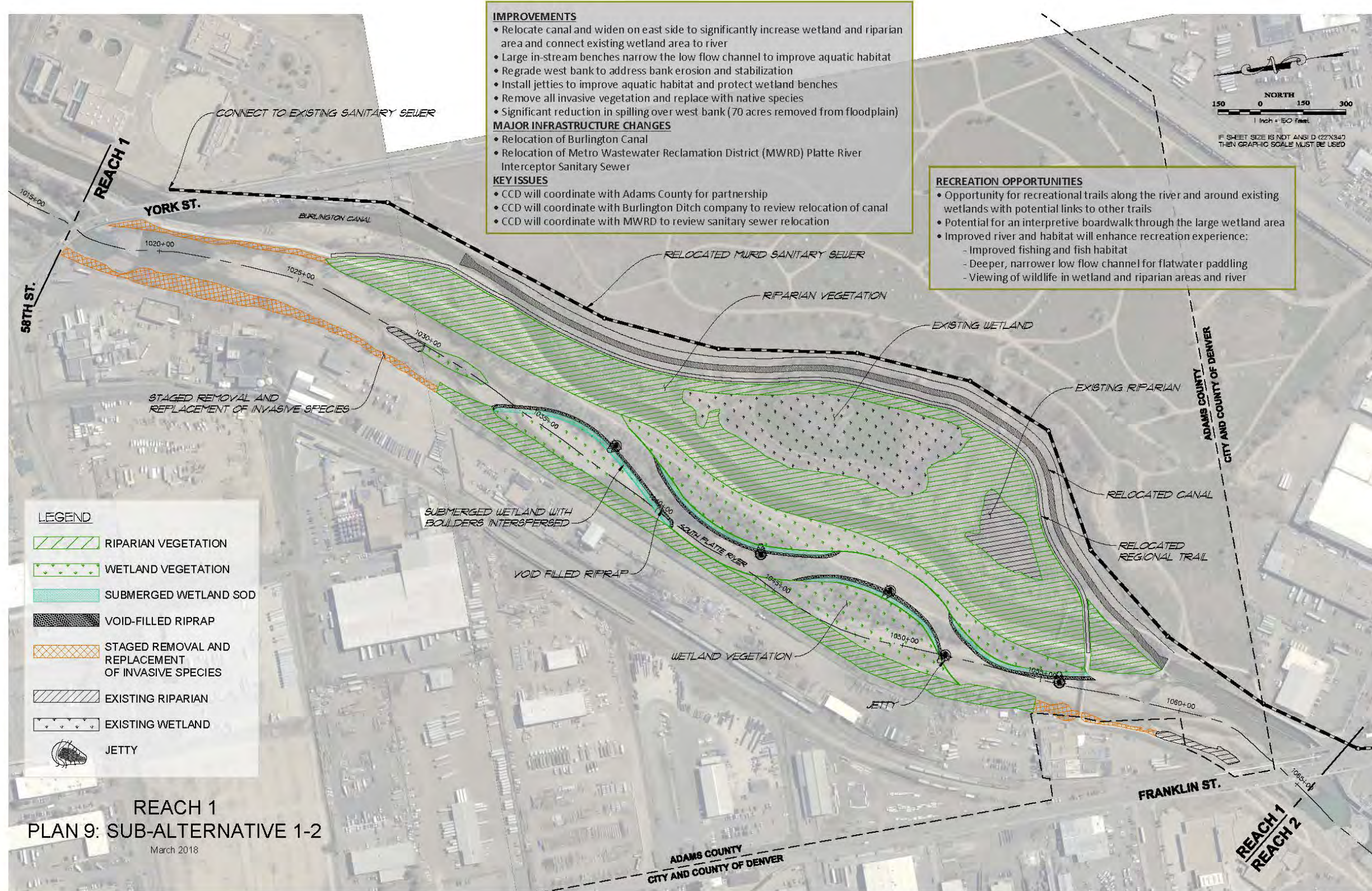


South Platte River,
Project Area Reaches
Adams and Denver Counties General Investigation Study



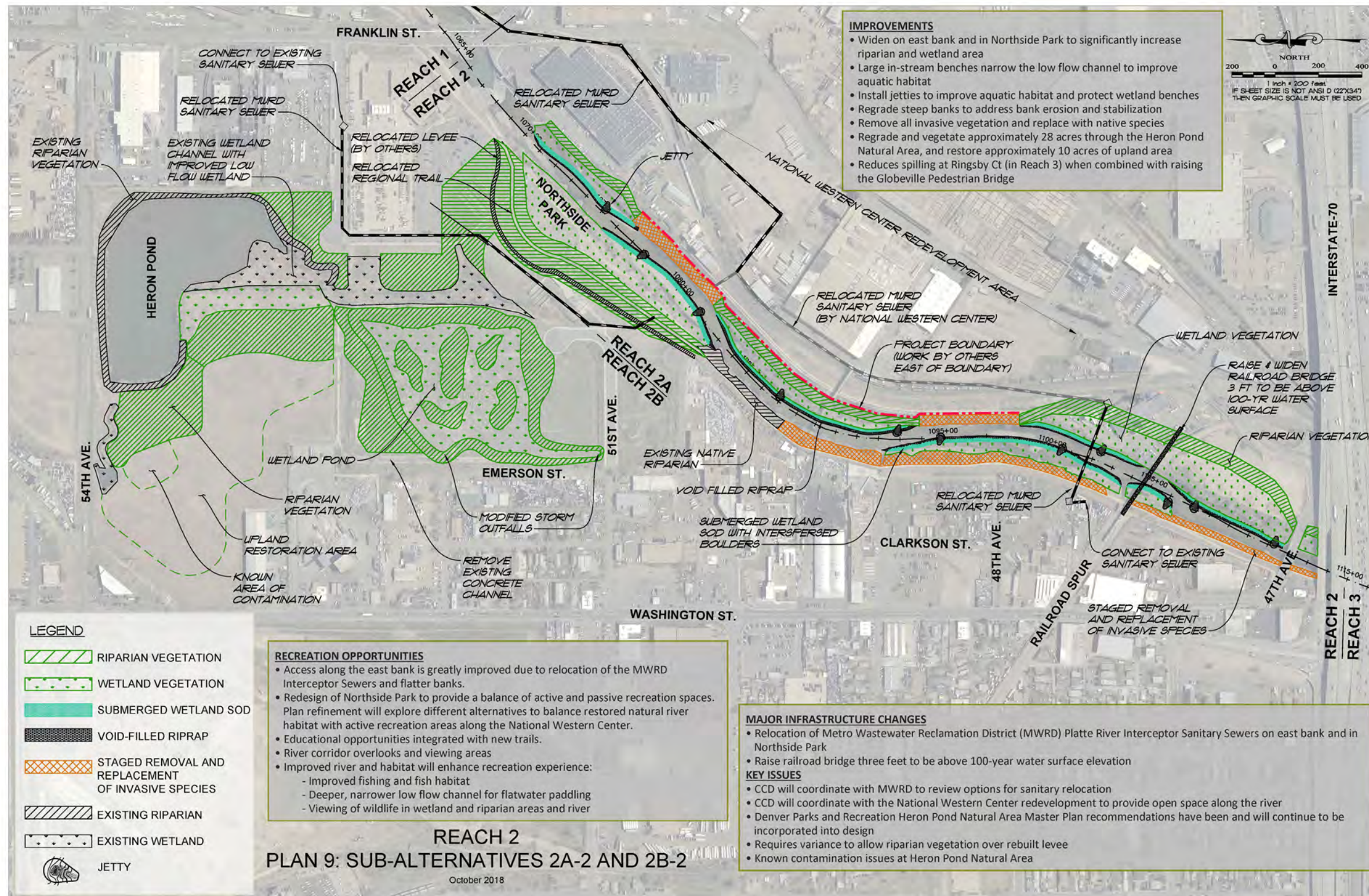
South Platte River Project Area Reaches

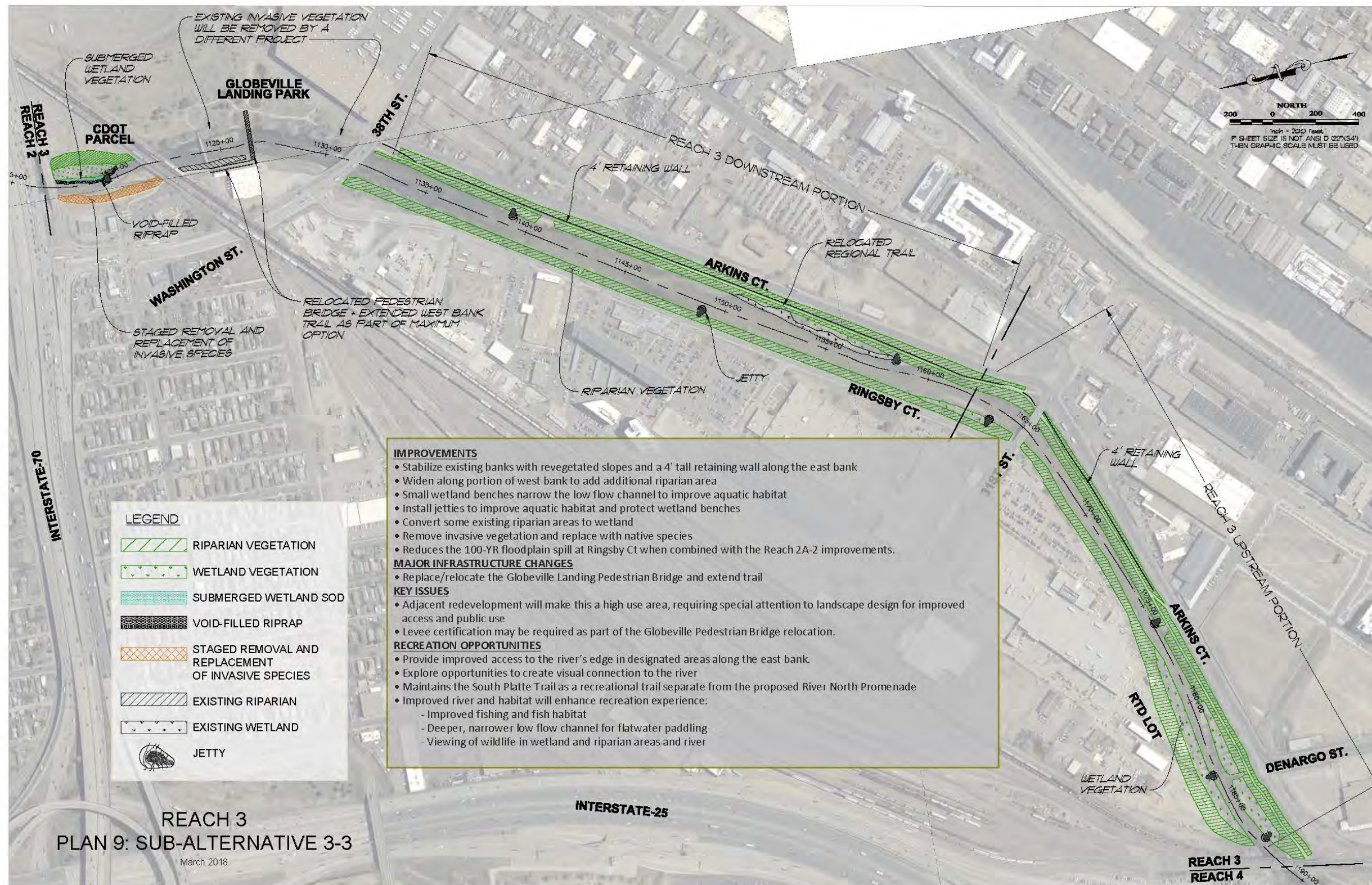
ATTACHMENT A-2, cont.



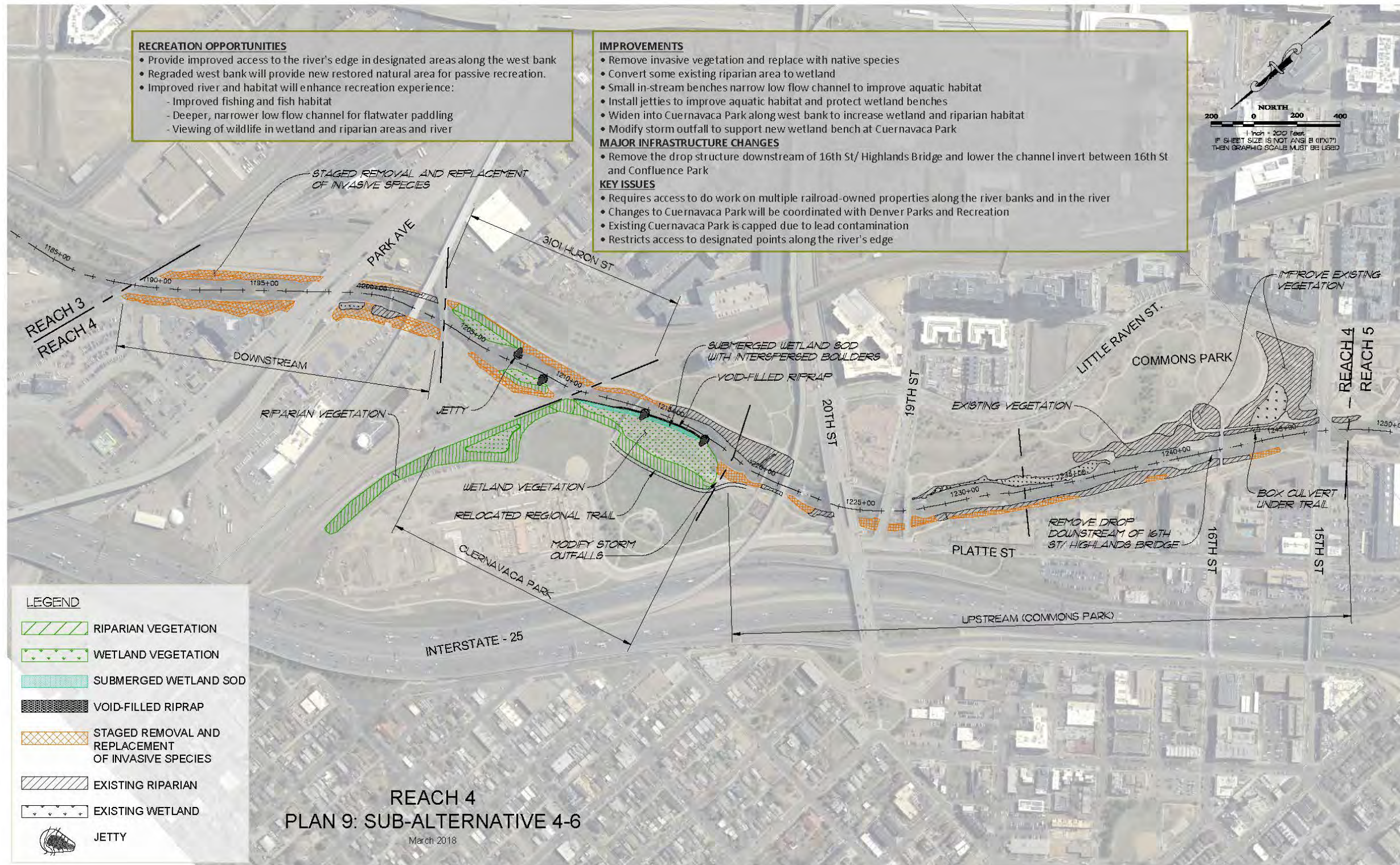
South Platte River Plan 9 Reach 1

ATTACHMENT A-2, cont.

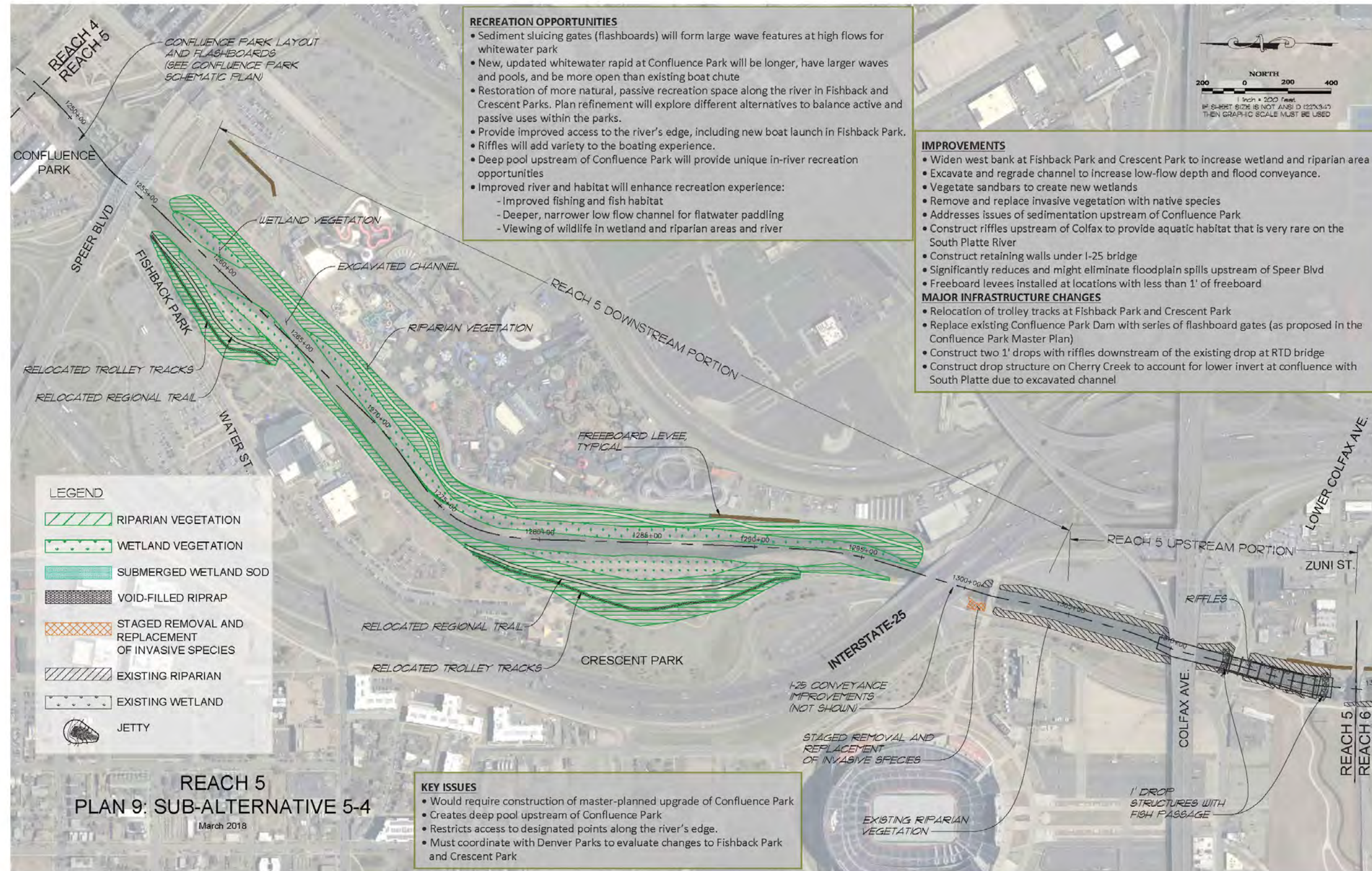




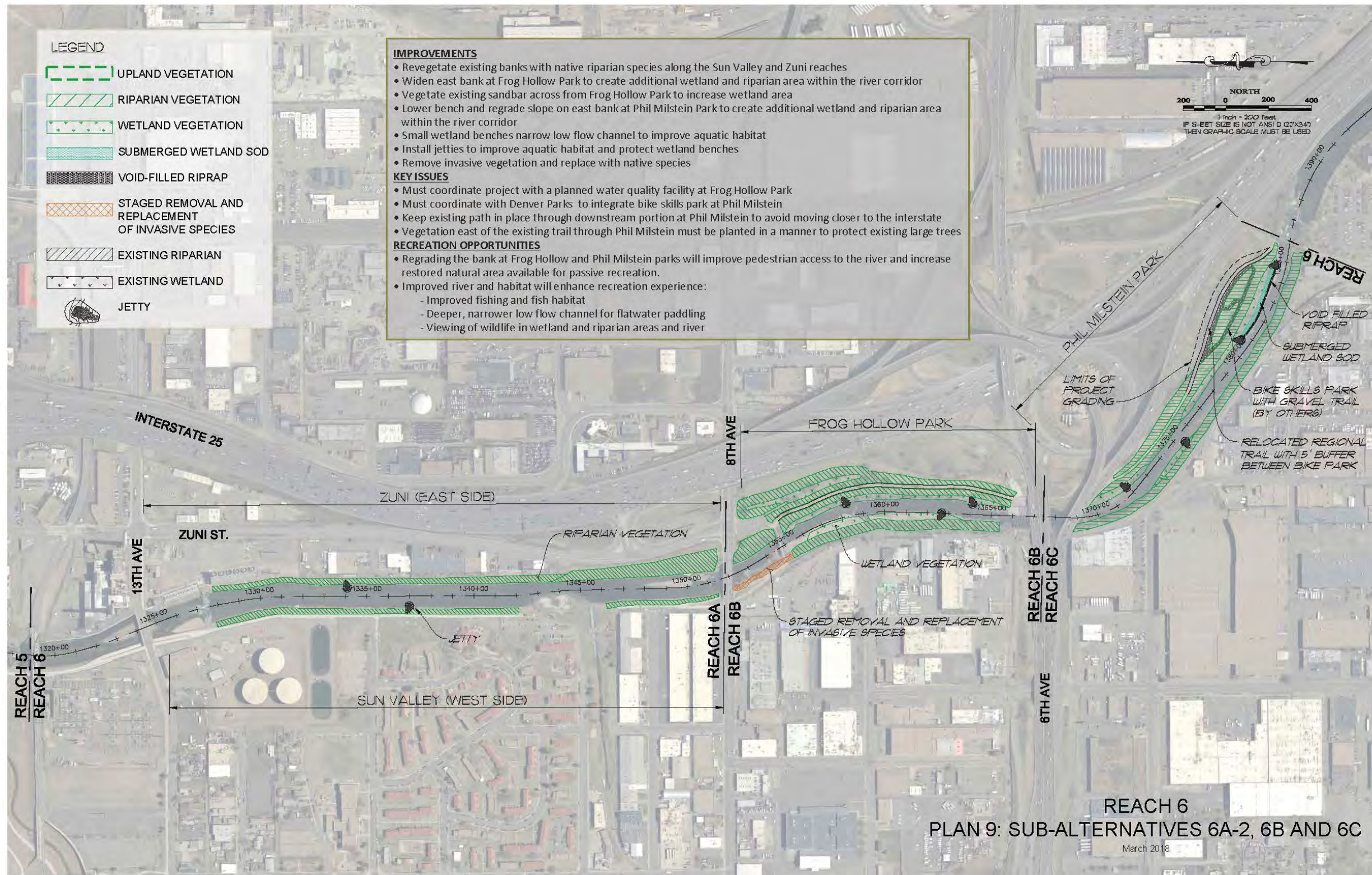
ATTACHMENT A-2, cont.



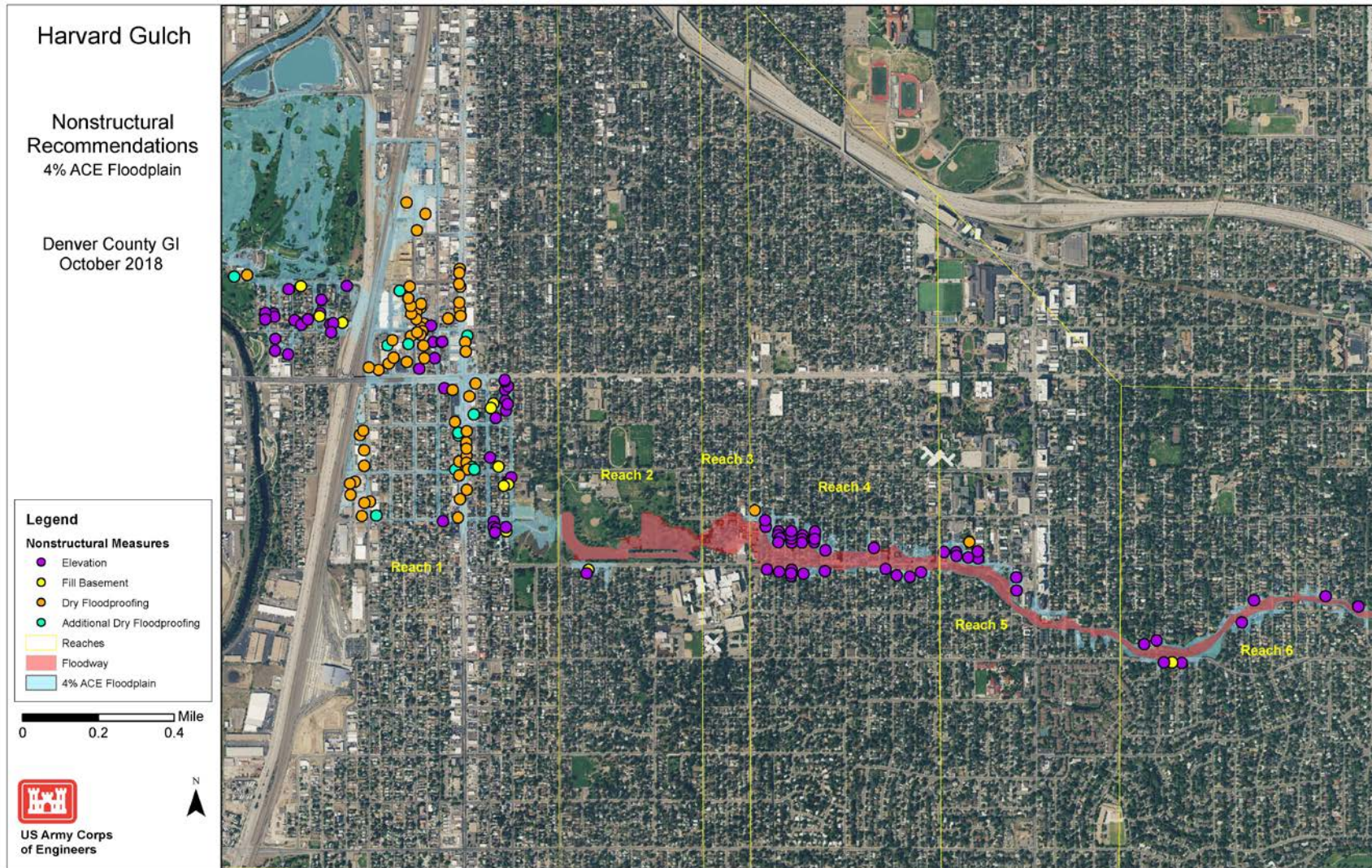
South Platte River Plan 9 Reach 4



ATTACHMENT A-2, cont.



ATTACHMENT A-3



Harvard Gulch Recommended Plan – 4% ACE Floodplain-Based Hybrid Plan

EXHIBIT B

South Platte River and Tributaries, Adams and Denver Counties, Colorado Project Estimated Cost Share Breakdown

1. Purpose. The purpose of the Estimated Cost Share Breakdown is to provide the rationale and methodology for the reimbursement procedures for discrete segments that are included in the Agreement.

2. Background. Section 401(4) of the Water Resources Development Act (WRDA) of 2020 authorized the South Platte River and Tributaries, Adams and Denver Counties, Colorado Project. The project includes three separable elements: South Platte River, which includes ecosystem restoration and recreation features; Weir Gulch, which includes structural flood risk management and recreation features; and Harvard Gulch, which includes nonstructural flood risk management features. Each separable element will consist of several discrete segments, with each discrete segment defined as a physical portion of a separable element that the non-Federal sponsor can operate and maintain independently and without creating a hazard in advance of final completion of the separable element as determined by the District Commander for the Omaha District (hereinafter the "District Commander") in accordance with Section 204(d). The project will be cost shared in accordance with Section 103 of WRDA 1986, as amended (33 U.S.C. 2213). The City and County of Denver, the non-Federal sponsor, has indicated its intent to construct the project pursuant to Section 204 of WRDA 1986, as amended (33 U.S.C. 2232) (hereinafter "Section 204") with eligible reimbursements for the Federal share of the project provided by the Government in accordance with Sections 103 and 204(d) of WRDA 1986, as amended.

3. Reimbursement percentages for completion of discrete segments.

a. For a typical reimbursement agreement, the amount to be reimbursed to the non-Federal sponsor for each invoice is calculated by taking all project costs (design and construction work; associated permit work; and real property interests, relocations, and placement area improvements (LERRDs)) invoiced by the non-Federal sponsor that the Government determines to be reasonable, allowable and allocable multiplied by the Federal cost-share expressed as a percentage, less the costs incurred by the Government during that same invoice period multiplied by the non-Federal cost-share expressed as a percentage. However, since the Agreement for this project includes reimbursement for discrete segments with LERRDs value and costs not accounted in project costs until completion of a separable element, the following revised approach will be used for calculating the reimbursable amount for each discrete segment during construction of the project to include estimated LERRDs value and costs while the non-Federal sponsor carries out the project:

(1) Based on projected project costs for each separable element by project purpose, the reimbursement percentages to be used for reimbursing the non-Federal sponsor as each discrete segment of that separable element is completed was calculated by dividing the estimated Federal costs by estimated costs the non-Federal sponsor is projected to incur for its design and construction work, pre-Agreement design work, permit work, and the value and costs for LERRDs. In addition, a 5 percent retainage will also be withheld to compensate for the costs incurred by the Government for oversight, review, etc. and other contingencies to avoid excess reimbursement before completion of a separable element. The projected project costs for each separable element and calculation of the reimbursement percentage by project purpose within each separable element are provided in the subsequent tables. The rounded percentages shown in **bold** in the attached tables will be used to reimburse the non-Federal sponsor as discrete segments within a separable element are completed, invoiced, and approved by the Government. The Government, in consultation with the non-Federal sponsor, may adjust any of the calculated reimbursement percentages included in this Estimated Cost

Share Breakdown, if the Government determines that deviations between projected and actual project costs indicate a modification is warranted.

(2) Upon receiving an invoice for a completed discrete segment, the Government will review the non-Federal sponsor's costs included therein for reasonableness and compliance with applicable laws and regulations and allocate the costs eligible for reimbursement by project purpose. The Government will determine the reimbursable amount(s) for each invoice by multiplying the applicable reimbursement percentage by the non-Federal sponsor's eligible costs, less the 5 percent retainage.

b. If the Government determines that continued reimbursements, based on projected remaining costs for a separable element, could result in excess reimbursements to the non-Federal sponsor, the Government, in its sole discretion, may suspend further reimbursements on the remaining discrete segments for that separable element, pending completion of the final accounting.

c. As a part of the final accounting required by Article VI.C. of the Agreement for each separable element, the Government will ensure that the non-Federal sponsor has met its required non-Federal share by project purpose consistent with 33 U.S.C. 2213 by calculating the total reimbursable amount by project purpose for each separable element. The total reimbursable amount is determined by totaling the non-Federal sponsor's contributions based on its actual project costs and subtracting from it the required non-Federal cost share as determined by the Government.

Table 1 - South Platte River Separable Element

Ecosystem Restoration (ER), excluding AM&M (Projected Costs)

Total Costs	\$396,500,000
Federal Share	\$257,725,000
Government costs incurred	\$ 8,124,000
Non-Federal Share	\$138,775,000
LERRD	\$ 84,274,000
Reimbursable pre-Agreement design work	\$ 371,000
Design and construction work and permit work	\$303,731,000
Total Non-Fed Contributions	\$388,376,000
Calculated reimbursement % for ER discrete segments:	
$\$257,616,000 / (\$303,731,000 + \$371,000) =$	84.7% (use 85%) <u>1/</u>
5% Retainage <u>3/</u> : $(\$303,731,000 + \$371,000) * 0.85 * 0.05 =$	\$ 12,924,000
Amount reimbursed to the sponsor during construction <u>3/</u> :	
$(\$303,731,000 + \$371,000) * 0.85 - \$12,924,000 =$	\$245,562,000
Total Reimbursable Amount <u>2/</u> :	
$\$388,376,000 - \$138,775,000 =$	\$249,601,000
Amount owed to the sponsor after final accounting <u>3/</u> :	
$\$249,601,000 - \$245,562,000 =$	\$ 4,039,000

Adaptive Management and Monitoring (AM&M) for ER (Projected Costs)

Total Costs	\$28,671,000
Federal Share	\$18,636,000
Government costs incurred	\$ 287,000
Non-Federal Share	\$10,035,000
LERRD	\$ 0
Reimbursable pre-Agreement design work	\$ 0
Design and construction work and permit work	\$28,384,000
Total Non-Fed Contributions	\$28,384,000
Calculated reimbursement % for AM&M for ER discrete segments:	
$\$18,636,000 / \$28,384,000 =$	65.7% (use 65%) <u>1/</u>
5% Retainage <u>3/</u> : $\$28,384,000 * 0.65 * 0.05 =$	\$ 922,000
Amount reimbursed to the sponsor during construction <u>3/</u> :	
$(\$28,384,000 * 0.65) - \$922,000 =$	\$17,527,000
Total Reimbursable Amount <u>2/</u> :	
$\$28,384,000 - \$10,035,000 =$	\$18,349,000
Amount owed to the sponsor after final accounting <u>3/</u> :	
$\$18,349,000 - \$17,527,000 =$	\$ 822,000

Table 1 - South Platte River Separable Element (continued)

Recreation (REC) (Projected Costs)	
Total Costs	\$25,734,000
Federal Share	\$12,867,000
Government costs incurred	\$ 129,000
Non-Federal Share	\$12,867,000
LERRD	\$ 0
Reimbursable pre-Agreement design work	\$ 0
Design and construction work and permit work	\$25,605,000
Total Non-Fed Contributions	\$25,605,000
Calculated reimbursement % for REC discrete segments:	
\$12,867,000/\$25,605,000 =	50.3% (use 50%) <u>1/</u>
5% Retainage <u>3/</u> : \$25,605,000 *0.50 *0.05 =	\$ 640,000
Amount reimbursed to the sponsor during construction <u>3/</u> :	
(\$25,605,000 *0.50) - \$640,000 =	\$12,162,000
Total Reimbursable Amount <u>2/</u> :	
\$25,605,000-\$12,867,000 =	\$12,738,000
Amount owed to the sponsor after final accounting <u>3/</u> :	
\$12,738,000-\$12,162,000 =	\$ 576,000

1/ An additional 5 percent retainage will also be withheld to compensate for the costs that will be incurred by the Government for oversight, review, etc. and other contingencies.

2/ Example calculation using current projected project costs to demonstrate how the total reimbursable amount would be calculated during final accounting.

3/ Example calculations using current projected project costs to demonstrate how the 5% retainage, the amount reimbursed during construction, and the amount owed to the sponsor after final accounting would be calculated.

Table 2 - Weir Gulch Separable Element

Structural Flood Risk Management (SFRM) (Projected Costs)

Total Costs	\$112,922,000
Federal Share	\$ 63,963,000
Government costs incurred	\$ 3,952,000
Non-Federal Share	\$ 48,959,000
LERRD	\$ 43,313,000
Reimbursable pre-Agreement design work	\$ 0
Design and construction work and permit work	\$ 65,657,000
Total Non-Fed Contributions	\$108,970,000
Calculated reimbursement % for SFRM discrete segments:	
\$63,963,000/\$65,657,000 =	97.4% (use 95%) <u>1/</u>
5% Retainage <u>3/</u> : \$65,657,000 *0.95 *0.05 =	\$ 3,119,000
Amount reimbursed to the sponsor during construction <u>3/</u> :	
(\$65,657,000 *0.95) - \$3,119,000 =	\$ 59,256,000
Total Reimbursable Amount <u>2/</u> :	
\$108,970,000-\$48,959,000 =	\$ 60,011,000
Amount owed to the sponsor after final accounting <u>3/</u> :	
\$60,011,000-\$59,256,000 =	\$ 755,000

Recreation (REC) (Projected Costs)

Total Costs	\$12,220,000
Federal Share	\$ 6,110,000
Government costs incurred	\$ 61,000
Non-Federal Share	\$ 6,110,000
LERRD	\$ 0
Reimbursable pre-Agreement design work	\$ 0
Design and construction work and permit work	\$12,159,000
Total Non-Fed Contributions	\$12,159,000
Calculated reimbursement % for REC discrete segments:	
(\$6,110,000/\$12,159,000 =	50.3% (use 50%) <u>1/</u>
5% Retainage <u>3/</u> : \$12,159,000 *0.50 *0.05 =	\$ 304,000
Amount reimbursed to the sponsor during construction <u>3/</u> :	
(\$12,159,000 *0.50) - \$304,000 =	\$ 5,776,000
Total Reimbursable Amount <u>2/</u> :	
\$12,159,000-\$6,110,000 =	\$ 6,049,000
Amount owed to the sponsor after final accounting <u>3/</u> :	
\$6,049,000-\$5,776,000 =	\$ 273,000

1/ An additional 5 percent retainage will also be withheld to compensate for the costs that will be incurred by the Government for oversight, review, etc. and other contingencies.

2/ Example calculation using current projected project costs to demonstrate how the total reimbursable amount would be calculated during final accounting.

3/ Example calculations using current projected project costs to demonstrate how the 5% retainage, the amount reimbursed during construction, and the amount owed to the sponsor after final accounting would be calculated.

Table 3 - Harvard Gulch Separable Element

Nonstructural Flood Risk Management (NSFRM) (Projected Costs)

Total Costs	\$25,968,000
Federal Share	\$16,879,000
Government costs incurred	\$ 390,000
Non-Federal Share	\$ 9,089,000
LERRD	\$ 1,520,000
Reimbursable pre-Agreement design work	\$ 0
Design and construction work and permit work	\$24,058,000
Total Non-Fed Contributions	\$25,578,000
Calculated reimbursement % for SFRM discrete segments:	
(\$16,879,000/\$24,058,000 =	70.2% (use 70%) <u>1/</u>
5% Retainage <u>3/</u> : \$24,058,000 *0.70 *0.05 =	\$ 842,000
Amount reimbursed to the sponsor during construction <u>3/</u> :	
(\$24,058,000 *0.70) - \$842,000 =	\$ 15,998,000
Total Reimbursable Amount <u>2/</u> :	
\$25,578,000-\$9,089,000 =	\$ 16,489,000
Amount owed to the sponsor after final accounting <u>3/</u> :	
\$16,489,000-\$15,998,000 =	\$ 491,000

1/ An additional 5 percent retainage will also be withheld to compensate for the costs that will be incurred by the Government for oversight, review, etc. and other contingencies.

2/ Example calculation using current projected project costs to demonstrate how the total reimbursable amount would be calculated during final accounting.

3/ Example calculations using current projected project costs to demonstrate how the 5% retainage, the amount reimbursed during construction, and the amount owed to the sponsor after final accounting would be calculated.