

SECOND AMENDMENT TO
AGREEMENT REGARDING
FINAL DESIGN
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
SOUTH PLATTE RIVER DOWNSTREAM OF ALAMEDA
CITY AND COUNTY OF DENVER

AGREEMENT No. 21-09.16B
Project No. 108615

THIS SECOND AMENDMENT TO AGREEMENT, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT D/B/A MILE HIGH FLOOD DISTRICT (hereinafter called "DISTRICT") and CITY AND COUNTY OF DENVER, a municipal corporation duly organized and existing under and by virtue of the Constitution of the State of Colorado (hereinafter called "CITY") and collectively known as "PARTIES";

WITNESSETH:

WHEREAS, PARTIES have entered into "Agreement Regarding Final Design of Drainage and Flood Control Improvements for South Platte River Downstream of Alameda" (Agreement No. 21-09.19) dated January 18, 2022, and a First Amendment to Agreement (Agreement No. 21-09.16A) dated February 3, 2023, (hereinafter collectively called "AGREEMENT"); and

WHEREAS, PARTIES now desire to proceed with the construct the drainage and flood control improvements for the South Platte River at Alameda (hereinafter called "PROJECT"); and

WHEREAS, PARTIES desire to increase the level of funding by \$4,150,000; and

WHEREAS, DISTRICT's Board of Directors reviewed and authorized expenditures for the 2023 Work Program (Resolution No. 92, Series of 2022); and

WHEREAS, DISTRICT has adopted at a public hearing a Five-Year Capital Improvement Program (Resolution No. 93, Series of 2022) for drainage and flood control facilities in which PROJECT was included in the 2023 calendar year; and

WHEREAS, DISTRICT has heretofore adopted a Special Revenue Fund Budget for calendar year 2023 subsequent to public hearing (Resolution No. 91, Series of 2022) which includes funds for PROJECT; and

WHEREAS, the City Council of CITY and the Board of Directors of DISTRICT have authorized, by appropriation or resolution, all of PROJECT costs of the respective PARTIES.

NOW, THEREFORE, in consideration of the mutual promises contained herein, PARTIES hereto agree as follows:

1. Paragraph 4. PROJECT COSTS AND ALLOCATION OF COSTS is deleted and replaced as follows:
 4. PROJECT COSTS AND ALLOCATION OF COSTS
 - A. DISTRICT acknowledges that (i) CITY does not by this AGREEMENT irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this AGREEMENT is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of CITY. It is understood and agreed that any payment obligation

of CITY hereunder, whether direct or contingent, shall extend only to funds duly and lawfully appropriated and encumbered by the Denver City Council for the purpose of this AGREEMENT, and paid into the Treasury of CITY.

- B. PARTIES agree that for the purposes of this AGREEMENT, PROJECT costs shall consist of and be limited to the following:
 - 1. Final design services;
 - 2. Construction of improvements;
 - 3. Contingencies mutually agreeable to PARTIES.
- C. It is understood that PROJECT costs as defined above are not to exceed \$5,270,000 without an amendment to this AGREEMENT.

PROJECT costs for the various elements of the effort are estimated as follows:

<u>ITEM</u>	<u>AS AMENDED</u>	<u>ORIGINAL</u>
1. Final Design	\$ 520,000	\$ 520,000
2. Construction	\$ 4,150,000	\$ 0
3. Contingency	\$ 600,000	\$ 600,000
Grand Total	\$ 5,270,000	\$ 1,120,000

This breakdown of costs is for estimating purposes only. Costs may vary between the various elements of the effort without an amendment to this AGREEMENT, provided the total expenditures do not exceed the maximum contribution by all PARTIES plus accrued interest.

- D. Based on total PROJECT costs, the maximum percent and dollar contribution by each party shall be:

	<u>Percentage Share</u>	<u>Previously Contributed</u>	<u>Additional Contribution</u>	<u>Maximum Contribution</u>
DISTRICT	56.36%	\$ 770,000	\$ 2,200,000**	\$ 2,970,000
CITY	43.64%	\$ 350,000	\$ 1,950,000*	\$ 2,300,000
TOTAL	100.00%	\$ 1,120,000	\$ 4,150,000	\$ 5,270,000

*CITY will be administering a portion of the construction of PROJECT. As such, CITY shall retain their matching fund of \$1,950,000.

**CITY will invoice DISTRICT for \$1,650,000 to be paid from PROJECT to administer a portion of the construction of PROJECT.

- 2. Paragraph 5. MANAGEMENT OF FINANCES is deleted and replaced as follows:

5. MANAGEMENT OF FINANCES

As set forth in DISTRICT policy (Resolution No. 11, Series of 1973, Resolution No. 49, Series of 1977, and Resolution No. 37, Series of 2009), the funding of a local body's one-

half share may come from its own revenue sources or from funds received from state, federal or other sources of funding without limitation and without prior DISTRICT approval.

Payment of each party's full share, except for the portion of the construction costs that CITY shall retain and administer pursuant to paragraph 4.D, (CITY - \$350,000; DISTRICT - \$2,970,000) shall be made to DISTRICT subsequent to execution of this AGREEMENT and within 30 days of request for payment by DISTRICT. The payments by PARTIES shall be held by DISTRICT in a special fund to pay for increments of PROJECT as authorized by PARTIES, and as defined herein. DISTRICT shall provide a periodic accounting of PROJECT funds as well as a periodic notification to CITY of any unpaid obligations, upon request. Any interest earned by the monies contributed by PARTIES shall be accrued to the special fund established by DISTRICT for PROJECT and such interest shall be used only for PROJECT upon approval by the contracting officers (Paragraph 12).

Within one year of completion of PROJECT if there are monies including interest earned remaining which are not committed, obligated, or disbursed, each party shall receive a share of such monies, which shares shall be computed as were the original shares; or, at CITY request, CITY share of remaining monies shall be transferred to another special fund held by DISTRICT.

3. Paragraph 25. WORKER WITHOUT AUTHORIZATION is deleted and replaced as follows:
 25. [RESCINDED].
4. All other terms and conditions of this AGREEMENT shall remain in full force and effect.

WHEREFORE, PARTIES hereto have caused this SECOND AMENDMENT to be executed by properly authorized signatories as of the date and year written below.

[SIGNATURE PAGES FOLLOW.]

Contract Control Number: PARKS-202368267-02 / 202160713-02
Contractor Name: URBAN DRAINAGE AND FLOOD CONTROL DISTRICT

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:
DISTRICT

PARKS-202368267-02 / 202160713-02
URBAN DRAINAGE AND FLOOD CONTROL

DocuSigned by:
By: Laura Kroeger
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Name: Laura Kroeger
(please print)

Title: Executive Director
(please print)

Acknowledged:

By: ^{DS}
DS

Name: David Skuodas
(please print)

Title: Design, Construction, & Maintenance Director
(please print)