

FIFTH AMENDMENT TO
AGREEMENT REGARDING
FINAL DESIGN AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
SOUTH PLATTE RIVER – GLOBEVILLE LEVEE FROM 31ST STREET TO EAST 50TH AVENUE
CITY AND COUNTY OF DENVER

Agreement No. 20-04.23E
Project No. 108126

THIS FIFTH AMENDMENT TO AGREEMENT (hereinafter called “FIFTH AMENDMENT”), 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 and Construction of Drainage and Flood Control Improvements for South Platte River – Globeville Levee from 31st Street to East 50th Avenue, City and County of Denver" (Agreement No. 20-04.23) dated August 12, 2020, as amended; and

WHEREAS, PARTIES now desire to continue funding design and construction of drainage and flood control improvements for the Globeville Levee from 31st Street to East 50th Avenue (hereinafter called “PROJECT”); and

WHEREAS, PARTIES desire to increase the level of funding by \$9,000,000; and

WHEREAS, DISTRICT's Board of Directors has authorized additional DISTRICT financial participation for PROJECT (Resolution No. 34 Series of 2025); 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 \$29,718,816.59 without amendment to this Agreement.

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

<u>ITEM</u>	<u>AS AMENDED</u>	<u>PREVIOUSLY AMENDED</u>
1. Final Design	\$2,000,000.00	\$2,000,000.00
2. Construction	\$26,718,816.59	\$17,718,816.59
3. Contingency	\$1,000,000.00	\$1,000,000.00
Grand Total	\$29,718,816.59	\$20,718,816.59

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

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	37 %			
Sp Fund Transfer		\$500,000	-0-	\$500,000
CIP Funding		\$9,450,000	\$1,000,000	\$10,450,000
CITY	63%	\$10,768,816.59	\$8,000,000	\$18,768,816.59
TOTAL	100.00%	\$20,718,816.59	\$9,000,000	\$29,718,816.59

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

Payment of each party's full share (CITY - \$18,768,816.59; DISTRICT - \$10,950,000) 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 13).

Within one year of completion of PROJECT if there are monies including interest earned remaining which are not committed, obligated, or disbursed, each party shall receive a share of such monies, which shares shall be computed as were the original shares.

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

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Contract Control Number:
Contractor Name:

DOTI-202579135-05 [202054890-05]
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:

Attorney for the City and County of Denver

By: _____

REGISTERED AND COUNTERSIGNED:

By: _____

By: _____

Contract Control Number:

Contractor Name:

DOTI-202579135-05 [202054890-05]
URBAN DRAINAGE AND FLOOD CONTROL
DISTRICT

DS

BL

Checked By

DocuSigned by:



A51B5ED3EB99401

By: _____

Name:

Executive Director

(please print)

Title:

(please print)

ATTEST: [if required]

By: _____

Name:

(please print)

Title:

(please print)