

SIXTH AMENDMENT TO
AGREEMENT REGARDING
FINAL DESIGN, RIGHT-OF-WAY ACQUISITION, AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
WEIR GULCH REACH W1 – SOUTH PLATTE RIVER TO 8TH AVENUE
CITY AND COUNTY OF DENVER

Agreement No. 20-04.24F
Project No. 107473

THIS SIXTH AMENDMENT TO AGREEMENT (hereinafter called "SIXTH AMENDMENT"), is made 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, Right-of-Way Acquisition and Construction of Drainage and Flood Control Improvements for Weir Gulch Reach W1 – South Platte River to 8th Avenue, City and County of Denver" (Agreement No. 20-04.24) dated August 12, 2020, as amended (hereinafter called "AGREEMENT"); and

WHEREAS, PARTIES now desire to construct improvements on Weir Gulch Reach W1 – South Platte River to 8th Avenue (hereinafter called "PROJECT"); and

WHEREAS, PARTIES desire to increase the level of funding by \$13,544,210.87; and

WHEREAS, DISTRICT's Board of Directors has authorized additional DISTRICT financial participation for PROJECT (Resolution No. 36, 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; and

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. Delineation, description and acquisition of required rights-of-way/easements;
 3. Design services during Construction;
 4. Construction of improvements;
 5. Post-Construction maintenance of the improvements;
 6. Contingencies mutually agreeable to PARTIES.
- C. It is understood that PROJECT costs as defined above are not to exceed \$35,944,210.87 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	\$1,800,000	\$ 1,000,000
2. Right-of-way	\$11,500,000	\$ 11,500,000
3. Design Service during Const.	\$400,000	-0-
4. Construction	\$15,400,000	\$ 9,400,000
5. Post-Construction Maintenance	\$1,000,000	-0-
6. Contingency	\$5,844,210.87	\$ 500,000
Grand Total	\$35,944,210.87	\$22,400,000

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 CAPITAL FUNDING	38.12%	\$ 8,700,000	\$ 5,000,000.00	\$ 13,700,000.00
DISTRICT MAINTENANCE FUNDING	2.78%	-0-	\$ 1,000,000.00	\$ 1,000,000.00
CITY*	59.10%	\$13,700,000	\$ 7,544,210.87	\$21,244,210.87
TOTAL	100.00%	\$22,400,000	\$13,544,210.87	\$35,944,210.87

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 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 includes CITY (\$21,244,210.87 – of which \$14,544,210.87 was retained by the City and \$6,700,000 was forwarded to MHFD) and the DISTRICT (\$14,700,000). The DISTRICT will advance all funds currently designated for construction (including contingency) to the CITY. Payment by DISTRICT to the CITY of such funds shall be made within thirty (30) days after the date of this SIXTH AMENDMENT. Thereafter, within thirty (30) days after CITY's receipt of written confirmation from the DISTRICT that the DISTRICT has entered into a contract for construction, the CITY shall pay the funds received from the DISTRICT, together with the CITY's share of funds for the construction costs (including contingency) to the DISTRICT. Upon receipt by the DISTRICT, all payments by PARTIES shall be held by the DISTRICT in a special PROJECT fund to pay for increments of PROJECT costs as authorized by the PARTIES. DISTRICT shall provide a periodic accounting of PROJECT funds as well as a periodic notification to CITY of any unpaid obligations. Any interest earned by the monies contributed by PARTIES shall be accrued to the special fund established by DISTRICT for the PROJECT (the "ACCOUNT") and such interest shall be used only for PROJECT upon approval by the contracting officers. Within one (1) 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, as amended, shall remain in full force and effect.

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

[END OF AGREEMENT – SIGNATURE PAGES FOLLOW]

Contract Control Number:
Contractor Name:

DOTI-202581677-06 [202055100-06]
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

REGISTERED AND COUNTERSIGNED:

By: _____

By: _____

By: _____

Contract Control Number:
Contractor Name:

DOTI-202581677-06 [202055100-06]
URBAN DRAINAGE AND FLOOD CONTROL
DISTRICT

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Checked By

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

Title: Executive Director
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)