

FIFTH AMENDMENT TO
AGREEMENT REGARDING
FINAL DESIGN AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
SOUTH PLATTE RIVER DOWNSTREAM OF FLORIDA AVENUE
CITY AND COUNTY OF DENVER

AGREEMENT NO. 20-01.21E
PROJECT NO. 107881

THIS FIFTH 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, DISTRICT's Board of Directors reviewed and authorized expenditures for the 2025 Work Program which includes funds for PROJECT (Resolution No. 82, Series of 2024); and

WHEREAS, PARTIES have entered into "Agreement Regarding Final Design and Construction of Drainage and Flood Control Improvements for South Platte River Downstream of Florida Avenue City and County of Denver" (Agreement No. 20-01.21) dated April 13, 2020, as amended; and

WHEREAS, PARTIES now desire to construct drainage and flood control improvements for the South Platte River downstream of Florida Avenue; and

WHEREAS, PARTIES desire to increase the level of funding by \$1,700,000.00; 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 \$11,120,570 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	\$ 552,820	\$ 552,820
2. Right-of-way	\$ -0-	\$ -0-
3. Construction	\$ 9,597,750	\$ 8,067,750
4. Contingency	\$ 900,000	\$ 800,000
Grand Total	\$ 11,050,570	\$ 9,420,570

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	37.8%	\$2,800,000	\$1,400,000	\$4,200,000
CITY	62.2%	\$6,620,570	\$230,000*	\$6,850,570
TOTAL	100.00%	\$9,420,570	\$1,630,000	\$11,050,570

* \$70,000 additional will be retained by the CITY to be applied toward Denver Arapahoe Disposal Site (DADS) disposal fees.

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 Board approval.

Payment of each party's full share (CITY - \$6,850,570; DISTRICT - \$4,200,000) 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. 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. Paragraph 8. MANAGEMENT OF CONSTRUCTION is deleted and replaced as follows:

8. MANAGEMENT OF CONSTRUCTION

A. Costs. Construction costs shall consist of those costs as incurred by the most qualified contractor(s) including detour costs, licenses and permits, utility relocations, and construction related engineering services as defined in Paragraph 4 of this Agreement.

B. Construction Management and Payment

1. DISTRICT, with the concurrence of CITY, shall administer and coordinate the construction-related work as provided herein.
2. DISTRICT, with concurrence of CITY, shall select and award construction contract(s).
3. DISTRICT shall require the contractor to provide adequate liability insurance that includes CITY. The contractor shall be required to indemnify CITY. Copies of the insurance coverage shall be provided to CITY upon request.
4. DISTRICT, with assistance of CITY, shall coordinate field surveying; staking; inspection; testing; acquisition of right-of-way; and engineering as required to construct PROJECT. DISTRICT, with assistance of CITY, shall assure that construction is performed in accordance with the construction contract documents including approved plans and specifications and shall accurately record the quantities and costs relative thereto. DISTRICT shall retain an engineer to perform all or a part of these duties.
5. DISTRICT, with concurrence of CITY, shall contract with and provide the services of the design engineer for basic engineering construction services to include addendum preparation; survey control points; explanatory sketches; revisions of contract plans; shop drawing review; as-built plans; and final inspection.
6. PARTIES shall have access to the site during construction at all times to observe the progress of work and conformance to construction contract documents including plans and specifications.
7. DISTRICT shall review and approve contractor billings. DISTRICT shall remit payment to contractor based on billings.
8. DISTRICT, with concurrence of CITY, shall prepare and issue all written change or work orders to the contract documents.

9. PARTIES shall jointly conduct a final inspection and accept or reject the completed PROJECT in accordance with the contract documents.

10. DISTRICT shall provide CITY a set of reproducible "as-built" plans.

C. Construction Change Orders. In the event that it becomes necessary and advisable to change the scope or detail of the work to be performed under the contract(s), such changes shall be rejected or approved in writing by the contracting officers. No change orders shall be approved that increase the costs beyond the funds available in PROJECT fund, including interest earned on those funds, unless and until the additional funds needed to pay for the added costs are committed by all PARTIES.

4. All other terms and conditions of Agreement No. 20-01.21 shall remain in full force and effect.

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

MILE HIGH FLOOD DISTRICT

By _____

Name Laura A. Kroeger

Title Executive Director

Date _____

Checked By

[SIGNATURE PAGES FOLLOW.]

CITY AND COUNTY OF DENVER

By_____

Name_____

Title_____

Date_____

Contract Control Number:
Contractor Name:
DISTRICT

PARKS-202582193-05 / 202053889-05
URBAN DRAINAGE AND FLOOD CONTROL

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: _____

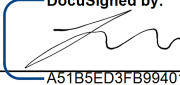
REGISTERED AND COUNTERSIGNED:

By: _____

By: _____

Contract Control Number:
Contractor Name:
DISTRICT

PARKS-202582193-05 / 202053889-05
URBAN DRAINAGE AND FLOOD CONTROL

By:  A51B5ED3FB99401...

Name: Laura Kroeger
(please print)

Title: Executive Director
(please print)

ATTEST: [if required]

By:  BC

Name: Bao Chongtous
(please print)

Title: Development Services Director
(please print)