SECOND 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. 20-04.24B
Project No. 107473

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, 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 (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 $5,000,000; and

WHEREAS, DISTRICT's Board of Directors has authorized additional DISTRICT financial participation for PROJECT (Resolution No. 78, Series of 2021); 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.   Delineation, description and acquisition of required rights-of-way/easements;

3.   Construction of improvements;

4.   Contingencies mutually agreeable to PARTIES.

C.   It is understood that PROJECT costs as defined above are not to exceed $13,400,000 without amendment to this AGREEMENT.

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

ITEM		AS AMENDED	PREVIOUSLY AMENDED
1.	Final Design	$ 1,000,000	$ 1,000,000
2.	Right-of-way	$4,500,000	$ 3,900,000
3.	Construction	$7,400,000	$ 3,500,000
4.	Contingency	$500,000	$ -0-
	Grand Total	$13,400,000	$8,400,000

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:

	Percentage Share	Previously Contributed	Additional Contribution	Maximum Contribution
DISTRICT	50.00%	$4,200,000	$2,500,000	$6,700,000
CITY	50.00%	$4,200,000	$2,500,000	$6,700,000
TOTAL	100.00%	$8,400,000	$5,000,000	$13,400,000

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 (CITY - $6,700,000; DISTRICT - $6,700,000) 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.   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.

URBAN DRAINAGE AND FLOOD
CONTROL DISTRICT d/b/a
MILE HIGH FLOOD DISTRICT

By_____

Name__Laura Kroeger_____

Title__Executive Director_____

Date_____

_____
Checked By

CITY

By_____

Name_____

Title_____

Date_____

Contract Control Number: DOTI-202264277-02 (202055100-2)
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: DOTI-202264277-02 (202055100-2)
Contractor Name: URBAN DRAINAGE AND FLOOD CONTROL
DISTRICT

By: _Laura Kroeger_
DocuSigned by:
BDC9D25F0F65423...

Name: _Laura Kroeger_
(please print)

Title: _Executive Director_
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)