

FIFTH 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. 20.04-24E
Project No. 107473

THIS FIFTH AMENDMENT TO AGREEMENT (hereinafter called "FIFTH 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, together with DISTRICT, collectively known as "PARTIES").

WITNESSETH:

WHEREAS, PARTIES have entered into an "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, the DISTRICT's funds are generated in part from a mil levee imposed upon the citizens of the CITY, collected by the CITY, and remitted to the DISTRICT for use in capital and maintenance projects within the jurisdictional boundaries of the DISTRICT, including the CITY; and

WHEREAS, DISTRICT's Board of Directors has authorized additional DISTRICT financial participation for PROJECT (Resolution No. ---, Series of ----); 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 5 - MANAGEMENT OF FINANCES – is hereby deleted in its entirety and replaced to read as follows:

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. The

DISTRICT will advance all funds currently held for construction to the CITY Payment shall be made by the DISTRICT to the CITY of such funds within thirty (30) days after the date of this FIFTH AMENDMENT. Thereafter, within thirty (30) days after CITY's receipt of written confirmation from the DISTRICT that the DISTRICT has entered into the Construction Contract (as described in Paragraph 8 below), the CITY shall pay all construction funds (together with any interest accrued thereon), to the DISTRICT. Upon receipt by the DISTRICT, all payments by PARTIES shall be held by DISTRICT in a special PROJECT fund to pay for increments of PROJECT costs as authorized by 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 PROJECT and such interest shall be used only for PROJECT upon approval by the contracting officers (Paragraph 13). 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.

2 Paragraph 8 – MANAGEMENT OF CONSTRUCTION - is hereby deleted in its entirety and replaced to read as follows:

A. Construction Contract. A construction contract for the delivery of the PROJECT (the "Construction Contract") shall be procured through an open and competitive process. In addition to other terms and conditions approved by the PARTIES, the Construction Contract shall include the following requirements:

1. The Contractor shall comply with the City's ordinance relating to disadvantaged business enterprises (the "DBE Program") as set forth in Title 28 of the Denver Revised Municipal Ordinances as administered by the Director of the Division of Small Business Opportunity Office for the CITY. The CITY will coordinate and work with the DISTRICT and the Contractor to implement and administer the DBE Program for the Project.

2. The Contractor shall comply with (i) the Davis Bacon Act (40 U.S.C. 3142, et seq.), (ii) the Buy America Act (40 U.S.C. 276c), and (iii) any and all other applicable laws, codes, rules, regulations or other legal requirements.

4. Upon completion of the PROJECT, the Contractor will support in the the DISTRICT and the CITY in the preparation of an operation, maintenance, repair, rehabilitation and replacement manual (the "OMRR&R") for the PROJECT improvements in form and substance acceptable to the DISTRICT and the CITY.

3. The Contractor shall allow for and coordinate regular site visits and inspections by the DISTRICT and the CITY

B. 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 described in Paragraph 4 of this Agreement.

C. Construction Management and Payment.

1. DISTRICT, at direction of and with concurrence of CITY, shall administer and coordinate the construction-related work as provided herein. CITY shall be permitted to attend and participate in all meetings and decision-making activities relating to all material elements of the construction process.

2. DISTRICT, at direction of and with concurrence of CITY, shall select the Contractor and award the Construction Contract.

3. DISTRICT shall require the Contractor to provide adequate liability insurance and indemnification that includes the CITY. Copies of the insurance coverage shall be provided to the CITY.

4. DISTRICT, at direction of and with assistance and concurrence from CITY, shall coordinate field surveying; staking; inspection; testing; acquisition of right-of-way; and engineering as required to construct the PROJECT. DISTRICT, at direction of and with assistance and concurrence from CITY, shall assure that construction is performed in accordance with the Construction Contract and related documents, including approved plans and specifications, and shall accurately record the quantities and costs relative thereto. Copies of all inspection reports shall be furnished to CITY on a weekly basis. DISTRICT shall retain a licensed professional engineer to perform all or part of these duties.

5. DISTRICT, at direction of and with concurrence of CITY, shall contract with and provide the services of the design engineer (or licensed professional land surveyor) for basis engineering construction services to include addendum preparation; survey control points; explanatory sketches; revisions of contract plans; shop drawing review; as-built plans; weekly inspection of work; final inspection; Survey for Certificate of Compliance; and the LOMR.

6. PARTIES shall have access to the site during construction at all times to observe the progress of work and conformance to the Construction Contract and related documents including plans, specifications and technical requirements.

7. DISTRICT, at direction of and with concurrence of CITY, shall review and approve Contractor billings. DISTRICT shall remit payment to the Contractor based

on approved billings.

8. DISTRICT, at direction of and with concurrence of CITY, shall prepare and issue all written change or work orders under the Construction Contract and related documents.

9. PARTIES shall jointly conduct a final inspection AND ACCEPT OR REJECT THE COMPLETED WORK IN ACCORDANCE WITH THE Construction Contract and related documents.

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

D. 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 Construction Contract, such changes shall be rejected or approved in writing by the contracting officers for the DISTRICT and the CITY. No change orders shall be approved that increase the costs beyond the funds available in the 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.

5. Paragraph 26 – ILLEGAL ALIENS - is hereby deleted in its entirety and retitled and replaced to read as follows:

26. EXAMINATION OF RECORDS AND AUDITS

Any authorized agent of the CITY, including the City Auditor or his or her representative, has the right to access and the right to examine, copy and retain copies, at CITY’s election in paper or electronic form, any pertinent books, documents, papers and records related to DISTRICT’s performance pursuant to this Agreement, provision of any goods or services to the CITY, and any other transactions related to this Agreement. DISTRICT shall cooperate with CITY representatives and CITY representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audit pursuant to this paragraph shall require PARTIES to make disclosures in violation of state or federal privacy laws. PARTIES shall at all times comply with D.R.M.C. 20-276.

6. All other terms and conditions of the AGREEMENT 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 written below.

[END OF AGREEMENT – SIGNATURE PAGES FOLLOW]

Contract Control Number: DOTI-2202474080-05 [202055100-05]
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:

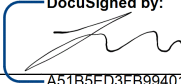
By:

By:

Contract Control Number:
Contractor Name:

DOTI-202474080-05 [202055100-05]
URBAN DRAINAGE AND FLOOD
CONTROL DISTRICT


Checked 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)