

RESOLUTION NO. R-023- 107

**THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS, COLORADO**

**A RESOLUTION APPROVING THE FIFTH AMENDMENT TO AN
INTERGOVERNMENTAL AGREEMENT BETWEEN THE URBAN DRAINAGE AND
FLOOD CONTROL DISTRICT, THE CHERRY CREEK BASIN WATER QUALITY
AUTHORITY, AND**

**THE BOARD OF COUNTY COMMISSIONERS OF THE
COUNTY OF DOUGLAS, COLORADO, REGARDING DESIGN AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR CHERRY CREEK
UPSTREAM OF SCOTT ROAD, DOUGLAS COUNTY, CO**

WHEREAS, the Board of County Commissioners of the County of Douglas (the “County”), the Cherry Creek Basin Water Quality Authority (“CCBWQA”), and the Urban Drainage and Flood Control District (“District”), desire to enter into an amendment to that certain intergovernmental agreement, dated October 21, 2020, regarding the design and construction of flood control improvements for Cherry Creek upstream of Scott Road; and

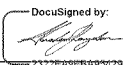
WHEREAS, the County is willing to enter into such an agreement with the District and CCBWQA in accordance with the terms and conditions set forth in the intergovernmental agreement attached hereto; and

WHEREAS, governmental entities are authorized to enter into intergovernmental agreements pursuant to the provisions of Article XIV, Section 18(2)(a) of the Colorado Constitution, and section 29-1-203, C.R.S.; now, therefore,

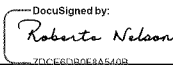
BE IT RESOLVED, BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, STATE OF COLORADO, that the intergovernmental agreement between the Board of County Commissioners of the County of Douglas, the CCBWQA, and the District, a copy of which is attached hereto and incorporated herein, is hereby approved, and the Chair of the Board is authorized to execute the agreement on behalf of Douglas County.

PASSED AND ADOPTED this 24th day of October, 2023, in Castle Rock, Douglas County, Colorado.

**THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS, COLORADO**

BY:  DocuSigned by:
Abe Laydon Douglas County Commissioners DS

ATTEST:

 DocuSigned by:
Roberta Nelson Admin Support Specialist 

FIFTH AMENDMENT TO
AGREEMENT REGARDING
DESIGN AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
CHERRY CREEK UPSTREAM OF SCOTT ROAD
DOUGLAS COUNTY

Agreement No. 20-01.12E
Project No. 107751

THIS FIFTH AMENDMENT TO AGREEMENT (hereinafter called "FIFTH AMENDMENT"), by and among URBAN DRAINAGE AND FLOOD CONTROL DISTRICT D/B/A MILE HIGH FLOOD DISTRICT (hereinafter called "DISTRICT"), CHERRY CREEK BASIN WATER QUALITY AUTHORITY (hereinafter called "CCBWQA"), and DOUGLAS COUNTY (hereinafter called "COUNTY") and collectively sometimes referred to as the "PARTIES", and singularly as a "PARTY";

WITNESSETH:

WHEREAS, the PARTIES entered into an "Agreement Regarding Design and Construction of Drainage and Flood Control Improvements for Cherry Creek Upstream of Scott Road, Douglas County" (Agreement No. 20-01.12) dated October 21, 2020 as amended by a First Amendment (Agreement No. 20-01.12A) dated August 16, 2021 as amended by a Second Amendment (Agreement No. 20-01.12B) dated October 29, 2021 and a Third Amendment (Agreement No. 20-01.12C) dated August 12, 2022 (hereinafter collectively referred to as the "AGREEMENT") and a Fourth Amendment (Agreement No. 20-01.12D) dated November 1, 2022 (hereinafter collectively referred to as the "AGREEMENT"); and

WHEREAS, the PARTIES reaffirm their intent to construct drainage and flood control improvements that have water quality benefits for Cherry Creek upstream of Scott Road (hereinafter called "PROJECT"); and

WHEREAS, PARTIES desire to increase the level of funding by \$1,212,011.83 which includes a transfer of \$3,011.83 in Douglas County funding from Cherry Creek at Hess Road Agreement 10-10.05 as Amended, and an additional contribution of \$1,209,000.00 in new capital funds; and

WHEREAS, DISTRICT's Board of Directors has authorized additional DISTRICT financial participation for PROJECT (Resolution No. 78, Series of 2023); and

WHEREAS, the Board of Directors of CCBWQA, the County Commissioners of COUNTY, and the Board of Directors of DISTRICT have each authorized, by appropriation or resolution, their respective PARTY's share of all of PROJECT costs.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the PARTIES hereto agree as follows:

1. Paragraph 4. PROJECT COSTS AND ALLOCATION OF COSTS Subparagraphs B, C, and D are hereby deleted from the AGREEMENT in their entirety and replaced as follows:

4. PROJECT COSTS AND ALLOCATION OF COSTS

- B. It is understood that PROJECT costs as defined above are not to exceed \$5,477,011.83 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	\$ 1,100,000	\$ 650,000
2.	Construction *	\$ 4,077,011.83	\$ 3,615,000
3.	Contingency	\$ 300,000	\$ -0-
	Grand Total	\$ 5,477,011.83	\$ 4,265,000

*It is anticipated that additional funds for construction shall be added by amendment to this AGREEMENT at a future date.

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.

- C. 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>Special Funds Transfer</u>	<u>Additional Contribution</u>	<u>Maximum Contribution</u>
DISTRICT	35%	\$ 1,425,000		\$500,000	\$ 1,925,000
CCBWQA	24%	\$ 900,000		\$409,000	\$ 1,309,000
COUNTY	41%	\$1,940,000	\$3,011.83	\$300,000	\$2,243,011.83
TOTAL	100.00%	\$4,265,000	\$3,011.83	\$1,209,000	\$5,477,011.83

- D. It is understood and agreed that notwithstanding any other provision contained herein to the contrary, any additional contribution of a PARTY hereunder, whether direct or contingent, shall under no circumstances exceed the PARTY'S Maximum Contribution indicated above without the prior express written consent of the PARTY.

- E. At the request of COUNTY, the following COUNTY funds may be transferred to PROJECT from a separate special fund held by DISTRICT:

Transfer from: T&A #5608
Account No. 50-05-76111-005608
Amount: \$3,011.83

2. Paragraph 5. MANAGEMENT OF FINANCES is deleted in its entirety from the AGREEMENT 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 (CCBWQA - \$1,309,000; COUNTY - \$2,243,011.83; DISTRICT - \$1,925,000) shall, to the extent not already paid, be made to DISTRICT subsequent to execution of this AGREEMENT and within thirty (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 CCBWQA and COUNTY 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).

It is understood and agreed that a portion of each PARTY'S above referenced share has previously been paid to DISTRICT as set forth in Paragraph 4. C. in the column labeled "Previously Contributed".

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; or at CCBWQA and COUNTY request, CCBWQA's and COUNTY's share of remaining monies shall be transferred to another special fund held by DISTRICT.

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

WHEREFORE, the PARTIES hereto have caused this FIFTH 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 A. Kroeger

Title: Executive Director

Date_____

Checked By

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS

By: _____
Chair

Date _____

ATTEST:

Kristin Randlett, Deputy Clerk to the Board

APPROVED AS TO CONTENT:

Douglas J. DeBord, County Manager

APPROVED AS TO LEGAL FORM:

Chris Pratt, Assistant County Attorney

APPROVED AS TO FISCAL CONTENT:

Andrew Copland, Director of Finance

CHERRY CREEK BASIN
WATER QUALITY AUTHORITY

CCBWQA Checked by

By _____

Name Joshua Rivero

Title CCBWQA Chairman

Date _____

Attest:

APPROVED AS TO FORM:

Timothy J. Flynn, General Counsel for CCBWQA