

STATE OF COLORADO AMENDMENT

Amendment #: 3

Project #: STU M245-013 (22285)

SIGNATURE AND COVER PAGE

State Agency Department of Transportation		Amendment Routing Number 21-HA1-XC-03176-M0003
Local Agency CITY OF COMMERCE CITY		Original Agreement Routing Number 21-HA1-XC-03176
Agreement Maximum Amount	\$14,880,000.00	Agreement Performance Beginning Date May 17, 2021
		Initial Agreement expiration date November 18, 2030

THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT

Each person signing this Amendment represents and warrants that he or she is duly authorized to execute this Amendment and to bind the Party authorizing his or her signature.

STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director _____ Keith Stefanik, P.E., Chief Engineer Date: _____	
LOCAL AGENCY CITY OF COMMERCE CITY _____ Jason Rogers, City Manager Date: _____	SECOND LOCAL AGENCY SIGNATURE, IF NEEDED CITY OF COMMERCE CITY Attest: _____ Dylan A. Gibson, City Clerk Date: _____ Approved as to Form: _____ Kwali M. Farbes, Senior Assistant City Attorney Date: _____

In accordance with §24-30-202 C.R.S., this Amendment is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER Robert Jaros, CPA, MBA, JD By: _____ Department of Transportation Amendment Effective Date: _____
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1) PARTIES

This Amendment (the "Amendment") to the Original Agreement shown on the Signature and Cover Page for this Amendment (the "Agreement") is entered into by and between the Local Agency and the State.

2) TERMINOLOGY

Except as specifically modified by this Amendment, all terms used in this Amendment that are defined in the Agreement shall be construed and interpreted in accordance with the Agreement.

3) EFFECTIVE DATE AND ENFORCEABILITY

A. Amendment Effective Date

This Amendment shall not be valid or enforceable until the Amendment Effective Date shown on the Signature and Cover Page for this Amendment. The State shall not be bound by any provision of this Amendment before that Amendment Effective Date, and shall have no obligation to pay the Local Agency for any Work performed or expense incurred under this Amendment either before or after the Amendment term shown in **§3.B** of this Amendment

B. Amendment Term

The Parties' respective performances under this Amendment and the changes to the Agreement contained herein shall commence on the Amendment Effective Date shown on the Signature and Cover Page for this Amendment and shall terminate on the termination of the Agreement.

4) PURPOSE

The parties entered into this agreement for the E. 88th Ave Multimodal Improvements project. Now the parties wish to increase funding from \$8,800,000.00 to \$14,800,000.00.

5) MODIFICATIONS

- a) Increase funding from \$8,800,000.00 to \$14,800,000.00.
- b) Exhibit C-4 shall be replaced by the attached Exhibit C-5. Any reference in the Agreement to any prior Exhibit C shall be a reference to Exhibit C-5.

6) LIMITS OF EFFECT

This Amendment is incorporated by reference into the Agreement, and the Agreement and all prior amendments or other modifications to the Agreement, if any, remain in full force and effect except as specifically modified in this Amendment. Except for the Special Provisions contained in the Agreement, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Agreement or any prior modification to the Agreement, the provisions of this Amendment shall in all respects supersede, govern, and control. The provisions of this Amendment shall only supersede, govern, and control over the Special Provisions contained in the Agreement to the extent that this Amendment specifically modifies those Special Provisions.

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EXHIBIT C-5 - FUNDING PROVISIONS

City of Commerce City - STU M245-013 (22285)

A. Cost of Work Estimate

The Local Agency has estimated the total cost of the Work to be \$14,800,000.00 which is to be funded as follows:

1. FUNDING

a. Federal Funds (80% of STBG Award)	\$8,000,000.00
b. Local Agency Matching Funds (20% of STBG Award)	\$2,000,000.00
c. Federal Funds (80% of TAP Award)	\$1,440,000.00
d. Local Agency Funds (20% of TAP Award)	\$360,000.00
e. State Funds (50% of MMO Award of \$4,800,000.00)	\$2,400,000.00
f. Local Agency Funds (50% of MMO Award is Total TAP Award + Local Agency MMO Award)	\$600,000.00

TOTAL FUNDS ALL SOURCES	\$14,800,000.00
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2. OMB UNIFORM GUIDANCE

a. Federal Award Identification Number (FAIN):	693JJ22030000Z230COM245013
	693JJ22330000Z919COM245013
b. Name of Federal Awarding Agency:	FHWA
c. Local Agency Unique Entity Identifier	KS2GKPTZN997
d. Assistance Listing # Highway Planning and Construction	ALN 20.205
e. Is the Award for R&D?	No
f. Indirect Cost Rate (if applicable)	N/A
g. Amount of Federal Funds Obligated by this Action:	\$0.00
h. Amount of Federal Funds Obligated to Date (including this Action):	\$3,315,000.00

3. ESTIMATED PAYMENT TO LOCAL AGENCY

a. Federal Funds Budgeted	\$9,440,000.00
b. State Funds Budgeted	\$2,400,000.00
c. Less Estimated Federal Share of CDOT-Incurred Costs	\$0.00

TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY	80%	\$11,840,000.00
TOTAL ESTIMATED FUNDING BY LOCAL AGENCY	20%	\$2,960,000.00
TOTAL PROJECT ESTIMATED FUNDING	100%	\$14,800,000.00

4. FOR CDOT ENCUMBRANCE PURPOSES

STBG/TAP Award

a. Total Encumbrance Amount (Federal + Local Agency Funds)	\$11,800,000.00
b. Less ROW Acquisition 3111 and/or ROW Relocation 3109	\$1,500,000.00
Federal 80% of ROW	\$1,200,000.00
Local Agency 20% of ROW	\$300,000.00

MMO Award

a. Total Encumbrance Amount (Only State funds are encumbered)	\$2,400,000.00
b. Less ROW Acquisition 3111 and/or ROW Relocation 3109	\$0.00

NET TO BE ENCUMBERED BY CDOT IS AS FOLLOWS	\$12,700,000.00
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Note: Only \$5,434,946.70 in funds are currently available. Design and Construction funds will become available after execution of an Option letter (Exhibit B) or formal Amendment.

STBG/TAP Award

WBS Element 22285.10.30	Performance Period Start*/End Date 06/10/2021-06/30/2025	Design 3020	\$1,234,947.00
WBS Element 22285.20.10	Performance Period Start*/End Date 09/17/2024-10/31/2027	Const. 3301	\$1,800,000.00

MMO Award

WBS Element 22285.20.10	Performance Period Start*/End Date N/A-N/A	Const. 3301	\$2,400,000.00
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*The Local Agency should not begin work until all three (3) of the following are in place: 1) Phase Performance Period Start Date; 2) the execution of the document encumbering funds for the respective phase; and 3) Local Agency receipt of the official Notice to Proceed. Any work performed before these three (3) milestones are achieved will not be reimbursable.

**The Local Agency should not begin work until both of the following are in place: 1) the execution of the document encumbering funds for the respective phase; and 2) Local Agency receipt of the official Notice to Proceed. Any work performed before these two (2) milestones are achieved will not be reimbursable.

B. Funding Ratios

The funding ratio for the federal & State funds for this Work is 80% federal & State funds to 20% Local Agency funds, and this ratio applies only to the \$14,800,000.00 that is eligible for federal & State funding. All other costs are borne by the Local Agency at 100%. If the total cost of performance of the Work exceeds \$14,800,000.00, and additional federal & State funds are not available, the Local Agency shall pay all such excess costs. If the total cost of performance of the Work is less than \$14,800,000.00, then the amounts of Local Agency and federal & State funds will be decreased in accordance with the funding ratio described in **A1. This applies to the entire scope of Work.**

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be \$10,640,000.00 (federal & State funds of \$11,840,000.00 minus federal share of ROW of \$1,200,000.00). For CDOT accounting purposes, the federal funds of \$8,240,000.00, the State funds of \$2,400,000.00 and the Local Agency funds of \$2,060,000.00 (Local Agency funds of \$2,360,000.00 minus Local Agency share of ROW of \$300,000.00) will be encumbered, but the Local Agency funds of \$600,000.00 will not be encumbered for a total encumbrance of \$12,700,000.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total budget of this project is \$14,800,000.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total cost of the Work is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and any cost is subject to revisions agreed to by the parties prior to bid and award. **This applies to the entire scope of Work.**

D. Single Audit Act Amendment

All state and local government and non-profit organizations receiving \$750,000 or more from all funding sources defined as federal financial assistance for Single Audit Act Amendment purposes shall comply with the audit requirements of 2 CFR part 200, subpart F (Audit Requirements) see also, 49 CFR 18.20 through 18.26. The Single Audit Act Amendment requirements applicable to the Local Agency receiving federal funds are as follows:

i. Expenditure less than \$750,000

If the Local Agency expends less than \$750,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.

ii. Expenditure of \$750,000 or more-Highway Funds Only

If the Local Agency expends \$750,000 or more, in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.

iii. Expenditure of \$750,000 or more-Multiple Funding Sources

If the Local Agency expends \$750,000 or more in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.

iv. Independent CPA

Single Audit shall only be conducted by an independent CPA, not by an auditor on staff. An audit is an allowable direct or indirect cost.