

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF COMMERCE CITY
AND
SOUTH ADAMS COUNTY WATER AND SANITATION DISTRICT
REGARDING MANHOLE WORK RELATED TO THE CITY'S 2012 PAVEMENT
REHABILITATION PLAN**

THIS INTERGOVERNMENTAL AGREEMENT (the "Agreement") is made and entered into effective this ___ day of _____, 2012 by and between the CITY OF COMMERCE CITY, a Colorado home rule municipality whose principal business address is 7887 East 60th Avenue, Commerce City, Colorado 80022 (the "City") and SOUTH ADAMS COUNTY WATER AND SANITATION DISTRICT, a Colorado Special District whose principal business address is 6595 East 70th Avenue, Commerce City, Colorado 80022 (the "District").

WHEREAS, as part of the City's 2012 pavement rehabilitation plan, the City plans to overlay East 72nd Ave from Colorado Blvd. to U.S. Highway 85 (the "Overlay Project");

WHEREAS, various manholes servicing the District facilities within the Overlay Project must be rehabilitated in conjunction with the Overlay; and

WHEREAS, the City has agreed to rehabilitate the manholes in conjunction with the Overlay Project, and the District has agreed to reimburse the City for such work.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the parties hereby agree as follows:

1. The Work. The City shall perform or cause to be performed the manhole work identified, and to the standards set forth, in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Manhole Work"). The City shall secure a two year warranty on the Manhole Work from its contractor.

2. Term. The Term of this Agreement shall be from the date first set forth above until final payment to the City is made in accordance with Section 4 herein.

3. Inspection and Acceptance.

a. The City shall notify the District upon completion of the Manhole Work, and the District shall inspect the Manhole Work within fifteen (15) days of receipt of such notice.

b. If, after inspection, the District finds the Manhole Work to be in compliance with the requirements of Exhibit A, the District shall, not later than fifteen (15) days from the date of inspection, notify the City of such acceptance in writing (the "Notification of Acceptance"). Following Notification of Acceptance, the District shall own the Manhole Work and any warranties with regard to the Manhole Work will be assigned to the District.

c. In the event the District determines that the Manhole Work is not in compliance with the requirements of Exhibit (the "Non-Compliant Work"), the District shall provide to the City a written notice of non-acceptance detailing the manner in which the Manhole Work is not in compliance with the requirements of Exhibit A.

d. Upon receipt of any such non-acceptance, the City shall either cause the Non-Compliant Work to comply with the requirements of Exhibit A (the "Compliance Work") or

initiate dispute resolution procedures as provided herein. If Compliance Work is performed, the City shall notify the District upon completion of the Compliance Work, and the District shall re-inspect the Non-Compliant Work within fifteen (15) days thereof. This process shall continue until the Manhole Work is in compliance with Exhibit A or the City institutes dispute resolution procedures as provided herein.

4. Payment. Within a reasonable time after receipt of the Notification of Acceptance, the City shall provide an itemized invoice for the Work to the District for review, approval and payment for the actual costs of the Manhole Work, not to exceed \$25,000 without the written consent of the District. The District shall pay the invoice within forty-five (45) days after receipt thereof unless the District intends to dispute all or any part of the invoice. In the event the District chooses to dispute the invoice, the District shall provide to the City, not less than twenty (20) days after receipt of the invoice, a written letter of dispute identifying the precise reasons for the dispute, and the parties shall follow the dispute resolution procedures set forth below.

5. Dispute Resolution Procedures.

a. These dispute resolution procedures may be initiated by either party sending written notice of a dispute or as otherwise provided herein.

b. In the event of any dispute as to the Manhole Work, Compliance Work or any invoice under this Agreement, the parties' representatives shall meet within twenty (20) days from the date a dispute is initiated to resolve the matter. If the dispute remains unresolved, the parties may seek resolution by any means available under applicable law.

6. Notices. Written notices required under this Agreement and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

To the City:

Sean Lehocky
Project Engineer
City of Commerce City
8602 Rosemary St.
Commerce the City, CO 80022

To the District:

Jim Pankonin
Distribution and Collection Systems Manager
South Adams County Water and Sanitation District
6595 E. 70th Avenue
Commerce the City, CO 80022

7. General Provisions.

a. No Partnership or Agency. Notwithstanding any language in this Agreement or any representation or warranty to the contrary, neither the City nor the District shall be deemed or constitute a partner, joint venturer or agent of the other. Any actions taken by the parties pursuant to this Agreement shall be deemed actions as an independent contractor of the other.

b. No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the parties. It is the express intention of the parties that any person other than the City and the District shall be deemed to be only an incidental beneficiary under this Agreement.

c. No Waiver. The waiver of any breach of a term, provision or requirement of this Agreement shall not be construed as or deemed a waiver of any subsequent breach of such term, provision or requirement or of any other term, provision or requirement of this Agreement.

d. Governing Law and Venue; Recovery of Costs. This Agreement shall be governed by the laws of the State of Colorado, and venue for state court actions shall be in Adams County, Colorado, and for federal actions shall be in United States District Court for the District of Colorado. In the event legal action is brought to resolve any dispute among the parties related to this Agreement, the prevailing party in such action shall be entitled to recover reasonable court costs and attorney fees from the non-prevailing party.

e. Governmental Immunity. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, et seq.

f. Entire Agreement; Binding Effect. This Agreement contains the entire agreement of the parties relating to the subject matter hereof and, except as provided herein, may not be modified or amended except by written agreement of the parties. This Agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective heirs, personal representatives, successors and assigns.

g. Authority. The parties represent and warrant that they have taken all actions necessary to legally authorize the undersigned signatories to execute this Agreement on behalf of the parties and to bind the parties to its terms.

h. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.

i. Headings. Paragraph headings used in this Agreement are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Agreement.

j. Severability. In the event a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

k. Acknowledgement of Open Records Act – Public Document. The District hereby acknowledges that the City is a public entity subject to the Colorado Open Records Act, C.R.S. § 24-72-201, et seq., and as such, this Agreement may be subject to public disclosure thereunder.

[The remainder of this page is intentionally left blank. Signature page(s) follow(s).]

IN WITNESS WHEREOF, the City and the District have executed this Agreement as of the date first written above.

CITY OF COMMERCE CITY

Sean Ford, Mayor

ATTEST:

Laura J. Bauer, CMC, City Clerk

Approved as to form:

Gregory D. Graham, Assistant City Attorney

Recommended for approval:

Gregg Clements, Director
Department of Public Works

Sean Lehocky, P.E., Project Engineer
Department of Public Works

**SOUTH ADAMS COUNTY WATER AND
SANITATION DISTRICT**

Signature

Printed Name and Title

ATTEST:

Secretary

Exhibit 'A'

2012 Sewer manhole repairs for East 72nd Avenue between Hwy 85 and Colorado Boulevard

Item #	Contract Item	Unit	Quantity	Unit Price	Total Price
MH-1	Manhole Rehabilitation MH #1356	EA	1	\$1,380.50	\$1,380.50
MH-2	Manhole Rehabilitation MH #1355	EA	1	\$1,342.00	\$1,342.00
MH-3	Manhole Rehabilitation MH #1354	EA	1	\$1,342.00	\$1,342.00
MH-4	Manhole Rehabilitation MH #1353	EA	1	\$792.00	\$792.00
MH-5	Manhole Rehabilitation MH #1351	EA	1	\$742.50	\$742.50
MH-6	Manhole Rehabilitation MH #22074	EA	1	\$786.50	\$786.50
MH-7	Manhole Rehabilitation MH #1350	EA	1	\$880.00	\$880.00
MH-8	Manhole Rehabilitation MH #1349	EA	1	\$830.50	\$830.50
MH-9	Manhole Rehabilitation MH #3151	EA	1	\$742.50	\$742.50
MH-10	Manhole Rehabilitation MH #1348	EA	1	\$742.50	\$742.50
Total					\$9,581.00

MH-# Repair description:

MH-1	#1356 - remove all brick approximately 26", steel risers approximately 7", and 8" ring and cover, raise to new asphalt grade with new concrete collars and install new ring and cover
MH-2	#1355 - remove all brick approximately 21", steel risers approximately 6", and 8" ring and cover, raise to new asphalt grade with new concrete collars and install new ring and cover
MH-3	#1354 - remove all brick approximately 22", steel risers approximately 6", and 8" ring and cover, raise to new asphalt grade with new concrete collars and install new ring and cover
MH-4	#1353 - remove all steel risers approximately 6", and 8" ring and cover, raise to new asphalt grade with new concrete collars and install new ring and cover
MH-5	#1351 - remove all steel risers approximately 3", and 8" ring and cover, raise to new asphalt grade with new concrete collars and install new ring and cover
MH-6	#22074 - remove all steel risers approximately 6", and 8" ring and cover, raise to new asphalt grade with new concrete collars and install new ring and cover
MH-7	#1350 - remove all brick approximately 9", steel risers approximately 6", and 8" ring and cover, raise to new asphalt grade with new concrete collars and install new ring and cover
MH-8	#1349 - remove all brick approximately 4", steel risers approximately 6", and 8" ring and cover, raise to new asphalt grade with new concrete collars and install new ring and cover
MH-9	#3151 - this manhole already has concrete collars installed 12", remove 8" ring and cover, raise to new asphalt grade and install new ring and cover
MH-10	#1348 - remove all steel risers approximately 4", and 8" ring and cover, raise to new asphalt grade with new concrete collars and install new ring and cover

Note* Because of the nature of this project, there will need to be some deviation from the districts design standards, the maximum standard for concrete collars will not apply to this project, all other standards apply.

Note* This Manhole Rehabilitation work includes a two year warranty