

INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF COMMERCE CITY  
AND THE METRO WASTEWATER RECLAMATION DISTRICT  
FOR THE SECOND CREEK INTERCEPTOR PROJECT

THIS INTERGOVERNMENTAL AGREEMENT (IGA) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the CITY OF COMMERCE CITY (City), a body politic and home rule municipality organized under and existing by virtue of the laws of the State of Colorado whose address is 7887 E. 60<sup>th</sup> Ave., Commerce City, CO 80022 and the METRO WASTEWATER RECLAMATION DISTRICT (District), a quasi-municipal corporation and political subdivision of the State of Colorado, whose address is 6450 York St., Denver, CO 80229.

WHEREAS, the District is a metropolitan sewage disposal district, organized and existing pursuant to C.R.S. § 32-4-501, *et. seq.*; and

WHEREAS, the District provides wholesale wastewater treatment services to entities in Adams, Arapahoe, Denver, Douglas, Jefferson and Weld counties; and

WHEREAS, the City has been delegated the power to supervise matters of “state interest” by the Colorado General Assembly as set forth in C.R.S. § 24-65.1-101, *et. seq.*, and

WHEREAS, the City has adopted regulations governing areas and activities of State interest, Chapter 22 of the Commerce City Revised Municipal Code (CCRMC), which include site selection and construction of major new sewage treatment systems and major extensions of sewage treatment systems; and

WHEREAS, the District constructed a new wastewater treatment plant, the Northern Treatment Plant (NTP), in southern Weld County along with a sewage interceptor, the South Platte Interceptor (SP Interceptor) in Adams County; and

WHEREAS, the District plans on constructing a new sewage interceptor, the Second Creek Interceptor (SD Interceptor) through parts of the City, including public and private property, that will connect with the SP Interceptor; and

WHEREAS, the SD Interceptor will serve parts of South Adams County Water and Sanitation District (SACWSD), which provides water and wastewater service to the City and to unincorporated areas within the City’s anticipated boundaries (Attachment A); and

WHEREAS, by diverting portions of its flow into the SD Interceptor, SACWSD has additional capacity within its existing sanitary sewer collection and treatment systems to support the needs of future development within the City; and

WHEREAS, construction and maintenance of the SD Interceptor in the City may impact and interfere with the natural landscape, recreational activities, and wildlife habitat within the City’s Second Creek Open Space;

WHEREAS, pursuant to CCRMC Section 22-3(b), in lieu of a permit application and review under the code, the City may elect to negotiate an IGA with any political subdivision of the State; and

Exhibit A

WHEREAS, the parties are also authorized pursuant to Article XIV, Section 18 of the Colorado Constitution and C.R.S. § 29-1-201, *et. seq.*, and the City's Charter, to cooperate or contract with any political subdivision of the State to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units; and

WHEREAS, the District is diligently working in a cooperative manner with neighboring jurisdictions, including SACWSD, Brighton, Adams County, Denver, and Aurora and with private interests along the proposed route for the SD Interceptor to address concerns they may have; and

WHEREAS, the District has requested, and the City has consented to, the utilization of the provisions of Section 22-3(b) of the Commerce City Revised Municipal Code, both parties finding that an IGA is the most efficient and effective manner in which to proceed as a mechanism, with an appropriate Conditional Use Permit issued pursuant to the City's Land Development Code, to ensure the standards of approval under CCRMC Section 22-30 are satisfied to minimize or avoid adverse impacts to the City, its residents, existing and planned development, and businesses, the general public, the environment; to enhance public benefits of the SD Interceptor project; and to obtain and promote the benefits accruing to the City and SACWSD from construction of the SD Interceptor, including the provision of wastewater service to developments in the City, and the efficient and economical use of public resources; and

WHEREAS, the District desires to use portions of road right-of-ways and other property owned by the City in order to construct the SD Interceptor; and

WHEREAS, the District will acquire easements or other necessary property interests from private property owners for the SD Interceptor inside the boundaries of the City; and

WHEREAS, the City is willing to grant, at no cost, to the District, on the terms and conditions herein contained and other terms as may be required by the City, certain easements on City property and/or a non-revocable license to construct, maintain, service and repair the SD Interceptor within the road rights-of-way and other property of the City; and

WHEREAS the District considered alignments for the SD Interceptor as described in the Alternatives Analysis included in the District's Conditional Use Permit Application and resubmittals; and

WHEREAS, after discussions with the City's staff and referral agencies, the SD Interceptor Recommended Alignment, as described in the District's Conditional Use Permit Application and resubmittals is shown in Attachment A. Although the District has indicated that its capital and long-term operation and maintenance costs are higher than other alternatives evaluated, the District is proceeding with the City's preferred alignment for the sewer line, including an alternative alignment at the intersection of E. 104th Avenue and Chambers Road, which minimizes or avoids disruption to City property and City residents and businesses;

NOW THEREFORE, for valuable consideration the receipt of which, and the adequacy and sufficiency of which, are hereby acknowledged by both parties and in

consideration of the recitals, mutual covenants and agreements herein contained, it is hereby agreed as follows:

1. **Project Approval; 1041 Waiver.** This IGA is negotiated and entered pursuant to CCRMC Section 22-3(b) in lieu of a permit application and review under the CCRMC Chapter 22. In addition to the terms and conditions of the IGA, the parties intend that the City's review and approval of the SD Interceptor will be conducted through a Conditional Use Permit application pursuant to the City's Land Development Code. Upon the final approval of a Conditional Use Permit (including any conditions imposed by the City) for the SD Interceptor and the expiration of any period of appeal, the submittal and approval requirements for areas and activities of State interest as identified in CCRMC Chapter 22 shall be deemed waived for the Project as governed by the Conditional Use Permit and this IGA. Nothing in this IGA shall be construed to waive any part of CCRMC Chapter 22 with respect to any future projects or any modifications to the Project. The approval of the Conditional Use Permit (including any conditions imposed by the City) shall not modify or relieve either party of obligations pursuant to this IGA. As used in this IGA, "Project" means the construction of the SD Interceptor in the alignment shown in Attachment B, pursuant to this IGA and the approved Conditional Use Permit.

2. **Project Benefits & Mitigation of Impacts.** To minimize or avoid adverse impacts to the City, its residents and businesses, the public, and the environment, in addition to providing the inherent benefits to the City afforded by the Project as designed and approved pursuant to the Conditional Use Permit, the Project will include the following:

- A. *Alignment.* The District will construct the Project within the alignment shown in Attachment B, including minor modifications to the alignment as permitted under Conditional Use Permit, provided any change to the alignment requiring an amendment to Conditional Use Permit may require an amendment to this Agreement. This alignment was coordinated with the City, other governments, and property owners to avoid or minimize the impact to existing and planned locations of buildings, detention ponds, utilities, and roadways, to the extent feasible, including Brighton School District 27J (Stuart Middle School), Farmers Reservoir Irrigation Company, the DIA Tech Center/Nexus development, the Second Creek Marketplace Development, the City's Bison Ridge Recreation Center, and the Reunion development (Reunion Village 8).
- B. *Trails; Open Space and Trail Easements.* The District will construct approximately 3.5 miles of access roads for maintenance of the SD Interceptor along the alignment consistent with the City's master-planned trail system, as shown in Attachment B. The access roads will be constructed with grey crusher fines materials (of the same color, size, and quality as that supplied by Albert Frei and Sons (as an example)), generally as set forth in Attachment C, and meet City specifications as detailed in the Second Creek Trail construction drawings. For no cost: the City will grant the District easements for the use of City park and open space property (including existing City trails) and permission to encroach on existing City easements, subject to any limitations of those easements and the permission of the property owner, for the construction, operation, and maintenance of the SD Interceptor and its access roads; and the District will allow public use of the District-constructed gravel access roads for

trails. The parties will negotiate the terms of such easements, encroachments, and public use, which terms will include the following at a minimum:

- a. the City will be responsible for routine maintenance according to City specifications and standards of the access roads;
- b. the District will coordinate with Commerce City Parks and Recreation and will construct the dual use gravel access roads to meet minimum City specifications;
- c. with exception of a temporary trail closure in an area in which the District is working required to address an emergency situation involving an unexpected and immediate risk of harm to persons, property, or the environment, the District will keep trails open at all times and, after 14 calendar days advance notice to the City before any closure, provide trail detours or alternative routes (subject to City approval) and maintain safety barriers for the SD Interceptor construction activities and equipment;
- d. in the event of a closure pursuant to subsection (c), above, the District will immediately notify the City of the closure, minimize the closure to the time and location needed to immediately address the emergency situation, and establish a safe and reasonable detour with signage for all users. Such closure must be no longer than necessary to immediately address the risk of harm; and
- e. the District will restore any land disturbance as soon as possible. Revegetation will be in accordance with the stormwater management plan permit approved by the City and will be conducted as soon as possible or within the first available planting season.

C. *Impact on Roadways and Rights of Way; Easements.* During any construction or maintenance work affecting a City roadway, sidewalk, or right-of-way, in addition to any requirements of a right-of-way permit and the Conditional Use Permit the District will:

- a. minimize the disruption to City roadways all vehicular and pedestrian traffic, including at all times providing detours (subject to City approval) that do not involve road or sidewalks closures except for temporary closures of 112th Ave. and 88th Ave, and temporary partial closures of 81st Ave. (ensuring access to all properties and two open lanes on 81st Ave.) approved by the City Engineer, providing at least 7 calendar days advance notice to the City prior to any work that will impact any roadway;
- b. in the event of a temporary road or sidewalk closure in an area in which the District is working required to address an emergency situation involving an unexpected and immediate risk of harm to persons, property or the environment, the District will immediately notify the City of the closure, minimize the closure to the time and area needed to immediately address the emergency situation, and establish a safe and reasonable detour with signage for all motorists and pedestrians. Such closure must be no longer than necessary to immediately address the risk of harm and will not authorize a modification of construction methods in a particular area;

- c. coordinate with all utilities and conduct adequate subsurface utility investigation prior to any construction involving City right-of-way;
- d. repair all surfaces to preconstruction or maintenance conditions.
- e. use the construction methods identified in the Conditional Use Permit at designated crossings.

For no direct monetary cost, the City will grant the District easements for the use of City right-of-way and permission to encroach on existing City easements for the construction, operation, and maintenance of the SD Interceptor. The parties will negotiate the terms of such easements and encroachments, including reasonable stipulated damages that may apply in the event of an unauthorized road closure.

3. **Coordination between the City and the District.** In addition to any requirements of the Conditional Use Permit, the District will coordinate with the City on the design, construction, and maintenance of the Project as follows:

- A. The District will utilize its best efforts to coordinate its overall construction schedule with any infrastructure construction contemplated and scheduled by the City so as to minimize the disruption of City construction efforts.
- B. The District will not commence any construction without first obtaining all necessary approvals, permits, and authorizations from the City.
- C. The District is solely responsible for obtaining all property rights, permits and approvals necessary for the Project, including surface, mineral and water rights. Neither this IGA nor any Conditional Use Permit will authorize any activity by the District on any property owner without permission of the property owner or obligate the City to obtain any property interests.
- D. If property is dedicated to the City for public road right-of-way purposes and that property is encumbered by District easements for the SD Interceptor, the District agrees that after dedication and acceptance by the City, the District's rights under any easement shall be subordinate to the rights of the City with respect to that portion of the easement property dedicated to the City. Notwithstanding the preceding subordination of District land rights, the City will not have the right to require the District relocate the SD Interceptor within these easements and any modifications must first be agreed to by the District in writing and any such modifications to the SD Interceptor will be performed to District standards at no cost to the District, subject to the terms of the easement.

4. **Right of Inspection; Remedies.**

- A. The City shall have the right to inspect and examine the use, occupation or development of or by the Project for the purpose of determining from time to time whether there is a violation of this IGA. Duly authorized representatives of the City, bearing proper credentials and identification, shall be permitted to enter upon all property at reasonable times for the

purpose of inspecting the Project in connection with the enforcement and administration of this IGA.

- B. If the City determines that the District is using or developing property or is conducting an activity subject to this IGA in a way that is not in conformity with the IGA, the City may give written notice thereof to the District specifying the nonconformity, directing the District at its cost to perform specified curative work consistent with this IGA, and specifying the period of time determined by the City to be reasonably necessary for completion of the curative work. If the District fails within the specified time following such notice to cure the nonconformity stated therein, the City may, in addition to and without waiving any other remedy, perform the work and charge the District for its actual costs incurred in connection therewith.
  - C. In addition to and without waiving any other available remedy:
    - a. the City may recover from the District and any of its contractors for civil damages arising from the actual costs of discovering, investigating, curing, mitigating and repairing the consequences of any violation of this IGA; and
    - b. the City may cure, or obtain injunctive relief from, any act or omission that violates this IGA or any action taken by the District or its contractors in furtherance of the Project that otherwise jeopardizes the property or health of any person, including the City.
  - D. The remedies available to the City under this IGA and under state and federal law shall be deemed cumulative, and the use by the City of any single such remedy or combination thereof shall not preclude the City from using any other remedy or combination thereof.
5. This IGA is intended to describe and determine such rights and responsibilities only as between the parties hereto. It is not intended to and shall not be deemed to confer rights or responsibilities to any person or entities not named hereto.
6. The provisions contained herein shall inure to the benefit of the parties hereto. Neither party to this IGA may assign its rights or delegate its duties under this IGA without the prior written consent of the other.
7. **Notices.** Any and all notices, demands or other communications desired or required to be given under any provision of this IGA shall be given in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid or by fax addressed as follows:

To District:  
District Manager  
Metro Wastewater Reclamation District  
6450 York St.  
Denver, CO 80229-7499  
Fax: 303-286-3033

With a copy to:  
General Counsel  
Metro Wastewater Reclamation District  
6450 York St.  
Denver, CO 80229-7499  
Fax: 303-286-3033

Exhibit A

To Commerce City:  
Director, Public Works  
City of Commerce  
7887 E. 60th Avenue  
Commerce City, CO 80022

With a copy to:  
City Attorney  
City of Commerce  
7887 E. 60th Ave.  
Commerce City, CO 80022

or to such other addresses that any party may hereafter from time to time designate by written notice to the other party in accordance with this paragraph, including electronic mail. Notice shall be effective upon receipt.

8. **Amendments.** This IGA may be modified, amended, changed or terminated in whole or in part by an agreement in writing duly authorized and executed by the parties hereto with the same formality, and subject to the same statutory and regulatory requirements, as this IGA or as determined by the City.

9. **Force Majeure.** Notwithstanding anything herein to the contrary, the parties agree not to hold each other responsible for any losses or damages incurred as a result of a party's inability to perform pursuant to this IGA due to the following causes if beyond the party's control and when occurring through no direct or indirect fault of the party: acts of God; natural disasters; actions or failure to act by governmental authorities other than the parties hereto; unavailability of power, fuel, supplies or equipment critical to a party's ability to perform; major equipment or facility breakdown; and changes in the State of Colorado or Federal law, including, without limitation, changes in any permit requirements.

10. **State Law.** This IGA and its application shall be construed in accordance with the laws of the State of Colorado.

11. **Costs and Fees.** In the event of any litigation, arbitration or other dispute resolution process arising out of this IGA, the parties agree that each will pay its own costs and fees. This provision shall not apply to any action relating to the Conditional Use Permit.

12. **Obligations Subject to Appropriations.** No obligations of the parties pursuant to this IGA constitute a general obligation or other indebtedness of either party, or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of either party within the meaning of any constitutional or statutory limitation. Notwithstanding the foregoing, the District's failure to appropriate funds for the performance of any obligation shall permit the City to terminate this IGA and to require the District to obtain a permit for the Project, pursuant to CCRMC Chapter 22, and to obtain injunctive or other equitable relief.

IN WITNESS THEREOF, the Metro Wastewater Reclamation District and the City Council of the City have executed this IGA with its attachments.

METRO WASTEWATER  
RECLAMATION DISTRICT

CITY OF  
COMMERCE CITY

Exhibit A

William J. Conway, District Manager

Benjamin A. Huseman, Mayor

Date \_\_\_\_\_

Date \_\_\_\_\_

Attest:

Robert J. Thomas, Deputy Manager

Dylan A. Gibson, City Clerk

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\_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
District General Counsel

\_\_\_\_\_  
City Attorney

DRAFT