



## Council Communication File Number: Res 2021-18

**Agenda Date:** 3/15/2021

**Version:** 1

**Status:** ATS Review

**In Control:** City Council

**File Type:** Resolution

### RESOLUTION AUTHORIZING GRANT OF PERMANENT EASEMENTS, CONSTRUCTION LEASE, AND EASEMENT HOLDER'S CONSENT TO METRO WASTEWATER RECLAMATION DISTRICT FOR THE CONSTRUCTION AND OPERATION OF THE SECOND CREEK INTERCEPTOR PROJECT

Metro Wastewater Reclamation District is requesting easements from the City for the construction and operation of the Second Creek Interceptor. The Second Creek Interceptor is a 17.5 mile wastewater pipeline, which runs for 6.4 mile in the City along Second Creek (from E. 81st Ave. and Tower Rd to E. 120th and Wheeling Street). The interceptor was approved by the City Council in 2020 through an Intergovernmental Agreement and Conditional Use Permit. The Second Creek Interceptor was recommended by the Regional Master Plan, commissioned by MWRD in collaboration with the municipalities and special districts that MWRD serves, as the most feasible solution for adding the necessary conveyance capability to accommodate growth in the MWRD's northeastern service area.

The resolution authorizes the execution of 4 documents with different purposes that cover the length of the interceptor pipeline at various locations in the City's Second Creek floodplain. Each is subject to the requirements of the IGA and the Conditional Use Permit. Each document limits the City in some fashion in its use of the property subject to the easement or lease.

1. The **Non-Exclusive Pipeline Easement Agreement (Exhibit A)** grants the District a permanent right to use and occupy the property described in Exhibit A to that agreement to install and operate the interceptor pipeline and related facilities. The District is granted the right to use existing trails, roads, and other access points within the easement property. As required by the IGA, the District will construct an access road in this easement that may be used for trail purposes, ensure safety of trails during construction and provide detours and signage for trails, among other things. Unauthorized, emergency road or sidewalk closures will result in liquidated damages as required by the IGA. Staff has negotiated a \$1,000 per day amount until resolved. The City will be responsible for routine maintenance of access roads used as trails.

2. The **Non-Exclusive Access Easement Agreement (Exhibit B)** grants the District a permanent right to enter onto City property at various points in the Second Creek Open Space and elsewhere, outside of the Non-Exclusive Pipeline Easement Agreement, to

reach the interceptor pipeline for construction and maintenance. The District is authorized to use existing roads, trails, and to construct access roads that the City may allow the public to use as a trail. The same limitations on safety, signage, detours, and other matters addressed in the Non-Exclusive Pipeline Easement Agreement.

3. The **Lease for Construction Purposes (Exhibit C)** grants the District a temporary right to use parts of the Second Creek Open Space and other City property during construction. The area covered is broader than that covered by the Non-Exclusive Pipeline Easement Agreement. The lease expires by December 31, 2024. To limit the impacts on adjacent communities, the lease limits the District to no more than two (2) locations of "active construction" at any given time, each no more than seven hundred and fifty feet (750') in linear length, or no more than five hundred feet (500') if within two-hundred and fifty feet (250') of an occupied residence. The District is also limited to having two (2) tunnel locations at any given time. "Active construction" is defined to mean active installation with the use of heavy equipment, from trenching through backfilling. Preparation and remediation activities (like clearing, delivery and laydown of material, dewatering, and restoration) are not subject to this limitation. The lease also includes a designated laydown area immediately north of 88th Avenue where the bulk of materials will be stored.

4. The **Easement Holder's consent (Exhibit D)** authorizes the District to construct and operate the interceptor pipeline on properties owned by third parties but on which the District has determined that the City holds an easement. The NIGID is also asked to execute a similar consent.

The November 2, 2020 City Council agenda include additional information on the project and the IGA and CUP:

- Intergovernmental Agreement (<https://commerce.legistar.com/LegislationDetail.aspx?ID=4679370&GUID=19FBF67F-BDE1-4032-8985-54D5B967223C&Options=&Search=>)
- Conditional Use Permit (<https://commerce.legistar.com/LegislationDetail.aspx?ID=4679344&GUID=DA31992C-690D-4738-9EDE-D7EC8FD92559&Options=&Search=>)

**Staff Responsible:** Robert Sheesley, City Attorney

**Staff Presenting:** Robert Sheesley, City Attorney

**Financial Impact:** There is no immediate financial impact. The IGA/CUP, with these easements, will reduce future City costs to install trails in the Second Creek Open Space. The easement agreements and lease include potential liability for damage to access road/trails use by the City and maintenance costs relating to access roads/trails integrated into the City's trail system.

**Staff Recommendation:** Approval.

**Recommended motion:** I move to approve Resolution 2021-18.