

**ADAMS COUNTY YORK STREET IMPROVEMENTS PROJECT
UTILITY RELOCATION AGREEMENT**

This Agreement, made and entered into this ____ day of _____, 2017, by and between Adams County, and the Metro Wastewater Reclamation District, a metropolitan sewage disposal district organized and existing pursuant to Part 5 of Article 4 of Title 32 of the Revised Statutes of the State of Colorado, hereinafter referred to as the "Metro District"; each hereinafter referred to individually as a "Party" or collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, the Colorado Department of Transportation ("CDOT") is the owner of public right of way comprising State Highway 224 ("Site") on which Adams County intends to construct significant roadway and drainage improvements ("York Street Improvements"); and,

WHEREAS, the Metro District currently owns and operates a sanitary sewer, known as the Barr Trunk Interceptor, through the Site; and,

WHEREAS, the construction of the York Street Improvements would conflict with the Barr Trunk Interceptor; and,

WHEREAS, relocation of the Barr Trunk Interceptor through the Site, as generally shown on Exhibit A attached hereto, hereinafter referred to as the "Relocation," would eliminate the conflict.

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

1. Adams County shall have construction plans and specifications for the Relocation of the Barr Trunk Interceptor prepared as generally shown on Exhibit A.

2. The Metro District shall review, provide comments on and in its sole discretion, approve the construction plans and specifications. Metro District standards shall be used to develop the plans and specifications. The Metro District's review shall not be unreasonably delayed.

3. Adams County shall pay all of the design and construction costs for the Relocation. In addition, Adams County will be responsible for any costs from damage to existing public or private improvements resulting from the Relocation. However, nothing in this Agreement shall be construed as waiving Adams County's protections under the Colorado Governmental Immunity Act.

4. Adams County shall arrange for the construction of the Relocation, in accordance with the plans and specifications approved by the Metro District, by a responsible and responsive contractor. The contractor shall carry insurance as set forth below, and the Metro District will be included as an additional insured, except for workers' compensation, on a primary and non-contributory basis. Proof of insurance shall be provided to the Metro District prior to the commencement of construction.

- a. Commercial General Liability insurance of not less than \$2,000,000 each occurrence and \$2,000,000 aggregate;
- b. Workers' Compensation coverage as required by statute;
- c. Comprehensive Business/Automobile Liability insurance with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per accident;
- d. Builder's Risk insurance covering the work under this Agreement; and
- e. Contractor's Pollution Liability insurance with limits of \$5,000,000 each occurrence and \$5,000,000 aggregate.

5. The Relocation will require wastewater flow management (i.e., by-pass pumping). Adams County shall submit a Wastewater Flow Management Plan ("WFMP") and Discharge Emergency Response Plan ("DERP") that conform with the Metro District's current specifications, Sections 02070 and 02072. Said plans shall be submitted no later than fifteen (15) business days prior to starting construction on the Relocation. Construction on the Relocation shall not begin until the WFMP and DERP have been approved in writing by the Metro District and such construction shall conform to the WFMP as well as all other plans and specifications approved by the Metro District.

A contractor implementing the WFMP and/or the DERP is a contractor to Adams County, not the Metro District. Therefore, Adams County and its contractor will be responsible for compliance with all federal, state and/or local environmental laws and regulations and Adams County and its contractor shall be solely responsible for any noncompliance with those laws or regulations, including notification requirements.

In the event of a spill, overflow or discharge of pollutants, including raw wastewater, which may cause pollution of state waters,¹ Adams County shall immediately notify the following parties:

- a. Colorado Department of Public Health and Environment, Spill Report Line, 1-877-518-5608; and
- b. National Response Center, 1-800-424-8802.

In addition to the reporting requirements of the paragraph above, Adams County shall immediately notify the Metro District's Process Control Center (303-286-3275) in the event of any spill, overflow or discharge of pollutants to the environment pertaining to the Relocation, regardless of whether or not it may cause pollution of state waters.

6. Adams County shall provide throughout the term of the construction of the Relocation, competent and qualified project administration and quality control. The Metro

¹ For purposes of this paragraph 5, the phrases "discharge of pollutants" and "state waters" shall have the same meanings as in the Colorado Water Quality Control Act, C.R.S. § 25-8-101, et seq.

District shall have the right to visit the Site and inspect the Relocation work at any time and to confer with the Adams County Project Manager.

7. The Metro District shall have the right to review and comment on all shop drawings and other contractor submittals pertaining to the Relocation. Adams County shall submit four (4) approved legible copies of such shop drawings and submittals to the Metro District prior to construction of the work described therein. In addition, all shop drawings and other submittals shall be provided to the Metro District as Adobe Portable Document Format (PDF) files.

8. Adams County shall notify the Metro District of any change to the construction plans or specifications during construction which involve the Relocation, and shall obtain Metro District approval, not to be unreasonably withheld or delayed, prior to authorizing such change.

9. Adams County shall be responsible for obtaining and complying with any permits or approvals necessary from any governmental entity with jurisdiction over the Relocation.

10. Adams County and the Metro District shall jointly inspect the Relocation during construction and upon completion of construction, and Adams County shall coordinate and pay for repairs of any defects caused by the Relocation.

11. Adams County shall not discharge wastewater to the Relocation until the Metro District has accepted the Relocation for operation and maintenance. The Metro District shall accept the Relocation for operation and maintenance only after the following have been completed:

- a. Adams County has certified that the entire Relocation has positive slope and the manhole invert elevations are all within 0.04 feet of the design elevations approved by the Metro District.
- b. Final inspection and approval by the Metro District, which will be based on compliance with all Metro District standards and the submitted plans referred to herein, which will not be unreasonably delayed.

12. Ownership of the sanitary sewer line in the Relocation shall be transferred by bill of sale in the form attached hereto as Exhibit B by Adams County upon acceptance of the Relocation by the Metro District.

13. Adams County shall warranty the Relocation for a period of one (1) year from the date of acceptance by the Metro District.

14. Adams County shall be solely responsible for all claims, costs, losses, damages, suits, administrative proceedings, expenses, liabilities, fines, penalties, and sanctions of every kind (including, without limitation, reasonable attorneys' fees, court costs, and costs of investigation) incurred by the Metro District, arising out of or resulting from the County's, or its contractor's, negligent performance under this Agreement (hereinafter, "Metro District Losses"). The Parties agree that the scope of this provision includes, but is not limited to, bodily injury or property damage or other Metro District Losses that may arise under (i) any federal

environmental laws or regulations including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendment and Reauthorization Act and the Federal Water Pollution Control Act; (ii) any state and local laws; (iii) any regulations, permits, orders, decrees, binding agreements, and other binding obligations relating to the administration of such federal, state and local laws; and (iv) any common-law requirements that relate to the environment, natural resources, health or safety.

15. In the event of a default, in addition to any remedies that may be available to the Parties in law or in equity, the Parties shall be entitled to seek specific performance or injunctive relief to enforce the provisions of this Agreement. However, prior to filing legal action, the Party alleging the default shall first provide notice of the default to the other Party and allow a minimum of fourteen (14) days to cure the default.

16. This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado. The Parties consent to venue for any legal action relating to the Agreement being in the District Court in and for the City and County of Denver. In any legal action for damages or to enforce the terms of this Agreement, except as provided in Section 14, above, the parties shall pay their own attorneys' fees and costs.

17. The enforcement of the terms and conditions of this Agreement and all rights of action relating to enforcement shall be strictly reserved to the Parties. No third party beneficiary rights shall be created by this Agreement in favor of any person not a Party to this Agreement, unless the Parties mutually agree otherwise in writing.

18. Neither Party shall be liable for any failure to perform as required by this Agreement, to the extent such failure to perform is caused by any of the following occurrences: strikes, labor disturbances or disputes, failure of any government (other than the Parties to this Agreement) or third party action or approval required for full performance, riots, civil disorders, war, floods, earthquakes, act of God, explosions, or similar occurrences outside the control of such Party.

19. Except as otherwise required in this Agreement, any notice shall be deemed to be validly given at the time that written notice is delivered in person, received by registered mail, postage prepaid, or transmitted by facsimile (with confirmation of receipt) to the following addresses:

To the Metro District:

District Manager
Metro Wastewater Reclamation District
6450 York Street
Denver, CO 80229
303-286-3030

To Adams County:

Director of Transportation
Adams County
4430 South Adams County Parkway
Brighton, CO 80601

20. This Agreement is intended as a complete integration of all understandings between the Parties pertaining to the Relocation. No prior or contemporaneous addition, deletion or other amendment shall have any force or effect, unless embodied herein or in a written amendment or other agreement executed by the Parties. This Agreement and any amendments shall be binding upon the Parties, their successors and assigns.

21. In the event any provision of this Agreement is found to be invalid, void, or otherwise unenforceable by a court of competent jurisdiction or by operation of applicable law, such invalid, void, or unenforceable provision shall not affect the validity of the Agreement as a whole and the remainder of the Agreement shall be given full force and effect.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized respective representatives as of the date and year written above.

METRO WASTEWATER RECLAMATION DISTRICT

By: Catherine R. Corrali
District Manager
January 5, 2017

APPROVED AS TO FORM

By: Mickey Conway
District General Counsel

BOARD OF COUNTY COMMISSIONERS
ADAMS COUNTY, COLORADO

By: _____
Chair to the Board

ATTEST:

APPROVED AS TO FORM

By: _____
Clerk to the Board

By: _____
County Attorney's Office



LEGEND

● ———● PORTION OF METRO'S BARR TRUNK INTERCEPTOR TO BE RELOCATED (VERTICALLY)

○ ———○ METRO'S EXISTING BARR TRUNK INTERCEPTOR

Dwg. _____ MGS
 Ctd. _____ MF
 App. _____ MF



EXHIBIT A BARR TRUNK INTERCEPTOR RELOCATION

DATE: 09-16
 DWG. NO. 1
 SH 1 OF 1

Exhibit B

BILL OF SALE

This instrument is executed and delivered as of the _____ day of _____, 20____, by and between the Metro Wastewater Reclamation District, a metropolitan sewage disposal district organized and existing pursuant to Article 4 of Title 32, C.R.S. ("Metro") (Transferee) and Adams County.

1. Sale of Personalty. For good and valuable consideration, Adams County hereby sells, transfers, sets over and conveys to Metro the following (the "Personal Property"):

(a) Tangible Personalty. All of Adams County's right, title, and interest in and to the Barr Trunk Interceptor Relocation as described in the Adams County York Street Improvements Project Utility Relocation Agreement and being more particularly depicted as follows:

See Exhibit A attached hereto and made a part hereof.

(b) Intangible Personalty. All the right, title and interest of Adams County, if any, in and to assignable licenses and permits relating to the operation of the Barr Trunk Interceptor.

2. Covenants. Adams County covenants with Metro that it is the lawful owner of the Personal Property; that to Adams County's knowledge the Personal Property is free and clear of all encumbrances; that it has full right to sell and transfer the Personal Property. Upon transfer of the Personal Property all rights and obligations relating thereto shall be Transferee's.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the date written above.

METRO WASTEWATER RECLAMATION
DISTRICT

BOARD OF COUNTY COMMISSIONERS
ADAMS COUNTY, COLORADO

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

District General Counsel

County Attorney's Office

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Bill of Sale was acknowledged before me this _____ day of
_____, 20____, by _____ (Name)
as _____ (Title)

Witness my hand and official seal.

My commission expires: _____

Notary Public
Business Address: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Bill of Sale was acknowledged before me this _____ day of
_____, 20____, by _____ (Name)
as _____ (Title)

of the Metro Wastewater Reclamation District.

Witness my hand and official seal.

My commission expires: _____

Notary Public
Business Address: _____
