

CITY OF WHEAT RIDGE, COLORADO
RESOLUTION NO. 08
Series of 2021

**TITLE: A RESOLUTION APPROVING AN AGREEMENT WITH THE
WHEAT RIDGE SANITATION DISTRICT REGARDING THE
WADSWORTH BOULEVARD IMPROVEMENT PROJECT FROM
35TH AVENUE TO INTERSTATE 70**

WHEREAS, the City of Wheat Ridge (the City) has completed plans for the reconstruction of Wadsworth Boulevard between W. 35th Avenue and Interstate 70 (Project); and

WHEREAS, the Wheat Ridge Sanitation District (the District) owns sanitary sewer facilities located within Wadsworth Boulevard right-of-way (District Facilities); and

WHEREAS, a new storm sewer pipeline being installed by the City as part of the Project will conflict with the District Facilities and necessitates their relocation; and

WHEREAS, said relocation involves the removal and/or abandonment of the District Facilities and the installation within Wadsworth Boulevard of new sanitary sewer facilities (Sewer Line Work); and

WHEREAS, the District has prepared plans for the Sewer Line Work, which the City finds acceptable; and

WHEREAS, generally the placement and use of private and public utilities in the public rights-of-way, including the District Facilities, are subject to the reasonable regulations and requirements of the City; and

WHEREAS, with respect to this Project, the work and cost to install, maintain, or relocate utilities in the public right-of-way are the responsibility of the respective utility owners; and

WHEREAS, the City and District agree that it is in their best interest for the City to include the Sewer Line Work as part of the Scope of Work under the City's contract for the Project and for the District to reimburse the City in accordance with the terms of an Agreement between the City and the District, a true and correct copy of which is attached hereto as **Attachment 1**; and

WHEREAS, the Council is authorized to approve intergovernmental agreements by resolution under Section 14.2 of the home rule charter.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Wheat Ridge, Colorado, that:

Section 1. Agreement Approved. The Agreement with the Wheat Ridge Sanitation District regarding the Wadsworth Boulevard Widening from 35th

Avenue to Interstate 70, is hereby approved and the Mayor and City Clerk are authorized and directed to execute the same.

DONE AND RESOLVED this 22nd day of February 2021.



Bud Starker, Mayor

ATTEST:



Steve Kirkpatrick, City Clerk

AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into as of this 22nd day of February, 2021 ("Effective Date"), by and between the **WHEAT RIDGE SANITATION DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (hereinafter referenced as "the District"), and the **CITY OF WHEAT RIDGE, COLORADO**, a Colorado municipal corporation (hereinafter referred to as "the City").

RECITALS

WHEREAS, the City has completed plans and specifications providing for the reconstruction of Wadsworth Boulevard between W. 35th Avenue and Interstate 70 ("Project"); and

WHEREAS, the District owns sanitary sewer facilities located beneath and within Wadsworth Boulevard between W. 38th Avenue and W. 48th Avenue ("District Facilities"); and

WHEREAS, a new storm sewer pipeline being installed by the City as part of the Project will conflict with the District Facilities and necessitates their relocation; and

WHEREAS, said relocation involves the removal and/or abandonment of the District Facilities and the installation within Wadsworth Boulevard of approximately 4,150 linear feet of 12" to 21" sewer main and related manholes and appurtenances extending from approximately 41st Avenue to 48th Avenue, including the transfer of existing service lines ("Sewer Line Work"), all as more particularly described in the approved plans as hereinafter defined; and

WHEREAS, the District engineer has prepared plans and specifications for the Sewer Line Work, which the City finds acceptable ("Approved Plans"); and

WHEREAS, generally the placement and use of private and public utilities in the public rights-of-way, including the District Facilities, are subject to the reasonable regulations and requirements of the City; and

WHEREAS, with respect to this Project, the work and cost to install, maintain, or relocate utilities in the public right of way are the responsibility of the respective utility owners; and

WHEREAS, the Parties agree that it is in the best interest of the District and the City for the City to include the Sewer Line Work as part of the Scope of Work under the City's contract for Phase I of the Project, as hereinafter defined, and for the District to reimburse the City in accordance with the terms of this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the recitals, covenants, and promises herein set forth and other good and valuable consideration herein receipted for, the parties agree as follows:

1.0 Sewer Line Work. The City intends to eventually reconstruct the entirety of Wadsworth Boulevard between W. 35th Avenue and Interstate 70, however, this Agreement pertains only to Phase I of the Project which involves the reconstruction of Wadsworth Boulevard between W. 41st Avenue and Interstate 70. Phase I of the Project includes but is not limited to

removal of the existing pavement, grading, base, concrete curb and gutter, concrete and asphalt surfacing, sidewalk, and streetscape, within the Phase I limits.

The District consents to the City performing or causing to be performed the Sewer Line Work and the City agrees to perform or cause to be performed the Sewer Line Work by including the Sewer Line Work into the Scope of Work for the Phase I contract the City awards. The Sewer Line Work is more particularly described and illustrated on **Exhibit A**, as incorporated herein by this reference.

2.0 Construction. Phase I of the Project, including the Sewer Line Work shall be performed by a qualified contractor ("Construction Contractor") retained by the City through a public bidding process and in accordance all applicable requirements of the State of Colorado and the City.

3.0 Scope of Work. The Construction Contractor shall perform the Sewer Line Work illustrated in **Exhibit A**, in accordance with the Approved Plans, the Scope of Work described in **Exhibit B**, including the quantities itemized therein, as well as the standards set forth in the construction contract between the Construction Contractor and the City. By way of explanation and not limitation, the City, as part of the construction contract shall require the Construction Contractor, at no expense to the District, to remove the dry utilities which conflict with the Sewer Line Work, provide all traffic control necessary for the Sewer Line Work, provide all repaving as a result of the Sewer Line Work, and obtain any easements necessary for District Facilities that are not located within dedicated road right-of-way as a result of the Sewer Line Work. Further, at all times during construction of the Sewer Line Work, the Construction Contractor shall be required to maintain sanitary sewer service during construction of the Sewer Line Work or provide appropriate by-pass pumping. All Sewer Line Work shall meet District and Colorado Department of Public Health and Environment requirements. Prior to any work commencing on the District Facilities, the City will notify the District at least 48 hours prior to the commencement of work so that the City and District can coordinate with the Construction Contractor to notify District customers of any work that may affect their service line.

4.0 Construction Phasing. As referenced in paragraph 1 above, the Project will be constructed by the City in phases. This Agreement pertains only to Phase I of the Project insofar as the District's obligation to reimburse the City is concerned. The Scope of Work for any subsequent phase of the Project will be determined at a later date and will be the subject of either a new agreement or an amendment to this Agreement, if any Sewer Line Work is involved in the subsequent phase.

5.0 Bidding for Phase I. The City agrees to include the Sewer Line Work as a separate itemized District-approved bid schedule in the City's bid package for Phase I of the Project. The City will request that the general contractors bidding on Phase I solicit bids for the Sewer Line Work from the recommended list of pipeline contractors that the District will provide, which list will not exceed three contractors. The City will deliver to the District a copy of the bids that the City receives for Phase I of the Project including the Sewer Line Work and will identify the Construction Contractor whose bid the City intends to accept ("Recommended Contractor"). The District shall have ten (10) business days to review, approve and provide comments to the City regarding the Recommended Contractor's bid for the Sewer Line Work. The District's approval of the Recommended Contractor's bid for the Sewer Line Work shall not be unreasonably withheld, conditioned or delayed; provided, however, the District may withhold its approval if the District: (i) reasonably believes the Recommended Contractor's bid for the Sewer Line Work includes

costs that are attributable to other parts of Phase I of the Project; (ii) has not budgeted and appropriated sufficient funds to pay for the Sewer Line Work based upon the Recommended Contractor's bid plus a 10% contingency; (iii) the Recommended Contractor's bid exceeds the District engineer's estimate for the Sewer Line Work by more than 25%; or (iv) the District believes that the Recommended Contractor is not reasonably qualified in terms of standards of construction or reasonable concerns related to past references contacted to verify the Recommended Contractor's ability to complete the Scope of Work within the bid provided.

5.1 If District Objects to Bid. If the District objects to the Recommended Contractor's bid for any of the reasons set forth above, the City and District will meet with the Recommended Contractor for the purpose of resolving the District's objections within five (5) business days of the City's receipt of the District's objections. If the District's objection relates to the amount of the Recommended Contractor's bid, the City will use its best efforts to get the Recommended Contractor to reduce its bid for the Sewer Line Work. If within three (3) business days after the meeting the District still objects to the Recommended Contractor's bid, the City may nonetheless award a contract for the construction of the Phase I Project, including the Sewer Line Work to the Recommended Contractor, unless the District determines the cost of the Sewer Line Work is unreasonable and so notifies the City, in which case the Sewer Line Work will be removed from the construction contract and not performed with Phase I of the Project.

5.2 No Contract Awarded. If for any reason the bids for Phase I of the Project are not acceptable to the City, or for any other reason the City does not award a contract for the construction of Phase I of the Project, this Agreement shall terminate and be of no further force and effect.

6.0 Construction Documents - Third-Party Beneficiary. To afford the District a remedy, in addition to working through the City, in the event the Sewer Line Work is not satisfactorily performed by the Construction Contractor, the Parties agree that the District shall be an express third-party beneficiary of the construction contract. Specifically, the construction contract shall contain an express provision stating that the District is a third -party beneficiary of the contract as to the Sewer Line Work.

6.1 Review of Contract Documents. The District shall have a right to review and approve the form of construction contract prior to it being executed by the City and the Construction Contractor. Further, the City shall require and the construction contract shall so provide, that the Construction Contractor provide a performance and payment bond for Phase I of the Project and name the District as an additional obligee thereunder as to the full amount of the contract price for the Sewer Line Work.

6.2 Phase I Completion, Review and Acceptance. The construction contract shall provide that upon substantial completion of the Sewer Line Work for Phase I of the Project, as such Sewer Line Work is identified in Exhibit A, the City and the District shall meet with the Construction Contractor to review the completed Sewer Line Work, and upon such review, if any work on the District Facilities is found to be defective or incomplete, the Construction Contractor shall promptly and without cost to the City or the District, complete and replace any defective material and/or cure any missing and defective work.

7.0 District's Contact with the Construction Contractor. The District agrees to provide field inspections, but will not formally supervise, direct or control the Construction Contractor. If the District observes any work or materials relating to the Sewer Line Work that is not being

performed in accordance with, or does not conform with, the contract documents, including the Approved Plans, the District shall notify the City representative, who shall promptly bring the matter to the attention of the Construction Contractor. Notwithstanding the above, the District may meet with the Construction Contractor on site and communicate its concerns to the Construction Contractor provided the City representative or his or her designee is also present at such meetings. The Parties acknowledge, however, that subject to this Agreement, all formal direction, supervision, and control of the Construction Contractor shall remain exclusively with the City.

7.1 Reports. The City shall provide to the District periodic updates and written reports concerning the progress of the Sewer Line Work. Unless otherwise agreed, said reports shall be provided to the District no less frequently than every two weeks.

7.2 Meetings. At any time and in particular following receipt of any periodic report, District shall have the right to request a meeting with the City to review any District concerns or obtain any additional information the City has concerning the Sewer Line Work. If the District has concerns regarding the Construction Contractor's performance of the Sewer Line Work, the City agrees that it will address those concerns with the Construction Contractor as soon as practical, but in no event, later than five (5) days from the date such concerns are raised by the District and delivered to the City in writing. In the event the District's concerns are not addressed to the District's reasonable satisfaction, the District shall have a right to appeal to the City's engineer on the Project who shall render a decision within ten (10) days of the date of the appeal. The decision of the City's engineer shall be final.

7.3 Change Orders. In the event there is a change order to Phase I of the Project regarding the Sewer Line Work component of said Project, District must approve the proposed change order, if as a result of the proposed change order the total amount of reimbursement to be paid by the District as set forth in paragraph 8 below would increase by more than 8%, unless a written amendment to this Agreement is executed by the Parties.

8.0 Payment for Sewer Line Work. The District will reimburse the City for the Sewer Line Work in accordance with the actual unit bid prices received from the Construction Contractor that is awarded a contract for Phase I of the Project. The City shall pay the Construction Contractor the cost to perform the Sewer Line Work in accordance with the terms of the construction contract entered into between the City and the Construction Contractor. The District will be responsible for reimbursing 100% of the costs for the Sewer Line Work in accordance with this paragraph 8.

The District has reviewed and approved the bid submitted by the Recommended Contractor for the Sewer Line Work dated _____, and attached as **Exhibit C**, and incorporated herein by this reference, which includes the table of quantities, unit prices and total for the Sewer Line Work. The estimated cost to the District for the Sewer Line Work, based upon the bid of the Recommended Contractor and the unit prices as set forth therein is \$_____.

City shall submit an invoice or invoices to the District for reimbursement of the costs of the Sewer Line Work as such work progresses. Payment will be made on a monthly basis within 30 to 45 days following the submittal of an acceptable pay request to the District by the City. Retainage of 10% of the total amount of each pay request may be withheld by the District until the City has accepted the Sewer Line Work. The District may verify the accuracy of an invoice

and request additional information from the City or the Construction Contractor as necessary to verify the accuracy of the invoice. The District shall promptly notify the City of any disputes it has concerning an invoice. If the District disputes an invoice, payment by the District to the City shall not in any way prejudice the District's ability to enforce its third-party beneficiary rights directly against the Construction Contractor. Upon final acceptance of the Sewer Line Work, all retainage held by the District, shall be paid to the City.

9.0 Completion of Sewer Line Work. The City will notify the District once the Construction Contractor has notified the City that the Sewer Line Work is complete and ready for acceptance. The District will inspect the Sewer Line Work, which shall include a video of the completed work, with a City representative and an agent of the Construction Contractor at a time designated by the City. Absent the District's written consent, the City agrees that it shall not accept any Sewer Line Work that does not substantially conform to the construction contract and the Approved Plans.

10.0 Ownership of District Facilities. Upon final acceptance of the Sewer Line Work, the City agrees that the Sewer Line Work shall be the sole property of the District and the City shall have no interest in the Sewer Line Work, except that the City agrees to enforce on the District's behalf the rights of the District as expressed in Section 6.2 above. The construction contract shall provide that upon acceptance of the work by the City, the work completed on the District's Facilities shall become the property of the District, free and clear of any and liens or encumbrances.

11.0 Authorized Representatives. The City designates Russ Higgins of the Public Works department as the City's representative under this Agreement. The District designates Mike Bakarich and Bill Willis as the District's representatives under this Agreement. Each party shall be notified of any change by the other in its authorized representatives.

12.0 Term. The terms of this Agreement shall remain in effect from the first date set forth above until each party accepts the work and has paid its required cost share as set forth herein.

13.0 Liability. Each party shall be responsible for its own negligent acts. To the extent permitted by law and subject to all immunities, defenses and other protections afforded to the City and District pursuant to the Colorado Governmental Immunity Act, Section 24-10-101 et seq. C.R.S., each party shall hold harmless and reimburse the other party from any and all claims from third-parties for damages, loss, injuries, liabilities, and expenses for personal injury or property damage, including reasonable attorneys' fees relating to or arising out of the negligence of the indemnifying party under this Agreement, as well as any other claims, causes of action, or demands arising out of or relating to the construction contract and/or Sewer Line Work.

14.0 Notices. Any notices required or permitted hereunder shall be sufficient if personally delivered or if sent by First Class U.S. mail, postage prepaid, addressed as follows:

Board of Directors
Wheat Ridge Sanitation District
7100 W 44th Avenue, #104
Mailing: PO Box 288
Wheat Ridge, CO 80034

Public Works Director
City of Wheat Ridge
7500 W. 29th Avenue
Wheat Ridge, Colorado 80033

15.0 No Waiver of Immunity. Each party, its officers and its employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended, or otherwise available to it, its officers and employees.

16.0 Amendments to Agreement. No changes, alterations or modifications to any of the provisions hereof shall be effective unless contained in a written agreement signed by both Parties.

17.0 Entire Agreement. This Agreement shall constitute the entire agreement between the Parties hereto and shall supersede all prior contracts, proposals, representations, negotiations and letters of intent, whether written or oral, pertaining to the subject matter of this Agreement.

18.0 Situs, Venue and Severability. The laws of the State of Colorado shall govern the interpretation, validity, performance and enforcement of this Agreement. For the resolution of any dispute arising hereunder, jurisdiction and venue shall be proper and exclusive in the Courts of the County of Jefferson, State of Colorado. If any provision of this Agreement shall be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby.

19.0 Paragraph Headings. Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.

20.0 Binding Agreement. This Agreement shall be binding upon and for the benefit of the Parties hereto, their successors and assigns.

21.0 Article X, Section 20/TABOR. The Parties understand and acknowledge that each of them is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, the obligations of each party are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the current fiscal period ending upon the next succeeding December 31. Financial obligations of each party payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of such party and other applicable law. Notwithstanding any other provision of this Agreement concerning termination or term, upon any party's failure to appropriate such funds, this Agreement shall automatically terminate. Each party agrees to provide the others with thirty (30) days' notice of its intent to fail to appropriate funds for purposes of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

WHEAT RIDGE SANITATION DISTRICT, a
quasi-municipal corporation and political
subdivision of the State of Colorado

By: 
Philip H. Burgi, President

Attest:

By: _____
Chester C. Myers, Secretary

CITY OF WHEAT RIDGE, a Colorado municipal
corporation

By: _____
Bud Starker, Mayor

Attest:

By: _____
Stephen Kirkpatrick, City Clerk

EXHIBIT A

(Current Edition of the Approved Construction Plans)

EXHIBIT B

Scope of Work

(Bid Schedule of Sanitary Sewer Work)