

CITY OF WHEAT RIDGE, COLORADO
RESOLUTION NO. 45

Series of 2012

TITLE: A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY AND COUNTY OF DENVER REGARDING DENVER WATER'S ASHLAND RESERVOIR

WHEREAS, Denver Water owns and operates its Ashland Reservoir in the City of Wheat Ridge; and

WHEREAS, Denver Water is in the process of replacing and improving its Ashland Reservoir facilities; and

WHEREAS, the City has ordinances and processes that require Denver Water to undertake certain obligations;

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

Section 1. Agreement Approved.

The Intergovernmental Agreement with the City and County of Denver Regarding Denver Water's Ashland Reservoir is hereby approved and the Mayor and City Clerk are authorized and directed to execute the same.

Section 2. Effective Date September 10, 2012.

This Resolution shall be effective immediately upon adoption.

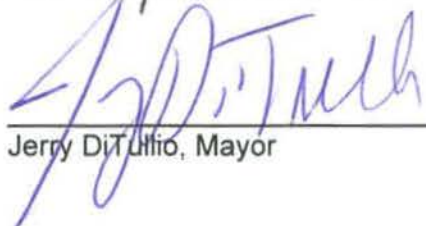
DONE AND RESOLVED this 10th day of September, 2012.

ATTEST:



Janelle Shaver, City Clerk





Jerry DiTullio, Mayor

**INTERGOVERNMENTAL AGREEMENT
REGARDING DENVER WATER'S ASHLAND RESERVOIR**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement"), dated this _____ day of August, 2012, is made and entered into by and between the CITY OF WHEAT RIDGE, STATE OF COLORADO, a home rule municipality of the State of Colorado (the "City"), and the CITY AND COUNTY OF DENVER, acting by and through its Board of Water Commissioners ("Denver Water") a home rule municipality of the State of Colorado.

RECITALS

1. Denver Water owns and operates its Ashland Reservoir in the City of Wheat Ridge, Colorado.
2. Denver Water is in the process of replacing and improving its Ashland Reservoir facilities as described generally below (the "Project").
3. Denver Water may modify its water distribution pipe system and stormwater drainage system in conjunction with the Project.
4. The City's ordinances and processes require that Denver Water undertake certain obligations as part of the Project.
5. The Parties would like to set forth their understanding of these requirements.

AGREEMENT

NOW, THEREFORE, for and in consideration of the covenants and conditions set forth herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows.

1. The Parties agree that the Project is generally described and intended as follows.
 - a. The Project will reduce Denver Water's storage capacity at the Ashland Reservoir site from 42 million gallons in two reservoirs to 20 million gallons in two underground tanks. The Project's replacement of the existing storage reservoirs will result in long-term improvements to Denver Water's water quality and on-site facilities.
 - b. The Project may result in damage to City streets. Prior to commencement of the Project, and upon completion of the Project, Denver Water shall have an independent engineering firm, approved by the City, perform a pavement condition analysis, with the form of analysis approved by the City, on City streets that are along the Project's truck haul routes and work areas. Denver Water will repair the subject streets, as determined by this pavement condition analysis, to their pre-Project condition. The required street repairs shall be made within six (6) months of the completion of the Project. Denver Water will repair any structural damage and perform any major maintenance of the subject streets that may be necessary during the construction of the Project.
 - c. The Project will provide an approximately 24-foot strip of Denver Water property along the West 29th Avenue frontage for public right-of-way in order to achieve the City's desired 61-foot right-of-way so that the City can straighten West 29th Avenue.

- i. The City will provide technical assistance as requested to Denver Water concerning design of the widening of West 29th Avenue adjacent to the Ashland Reservoir site.
 - ii. Denver Water shall include the construction of the improvements described above in its construction contract for the Project.
 - iii. The City shall be responsible for the design and construction of any additional improvements to West 29th Avenue south of the existing centerline of West 29th Avenue or on West 29th Avenue east of Fenton Street and west of Gray Street. The City shall be responsible for any traffic signal modifications at the intersection of W. 29th Avenue and Fenton Street.
 - iv. Denver Water shall convey the right-of-way by quit-claim deed.
2. Denver Water may stage three (3) construction trailers along the south side of 30th Avenue in the City right-of-way immediately east of Harlan Street. The trailers shall be placed entirely south of the south curb of the street with the trailer side doors facing south towards the Project site.
3. The Parties further agree to the following Project-related items.
 - a. Denver Water has sent out an initial notice to neighbors of the Ashland site informing them of the Project. An introductory presentation has also been made at a study session of the City Council. More information and photo simulations are available for viewing on Denver Water's website.
 - b. Denver Water and its construction manager will continue to provide public relations efforts including setting up viewing areas around the perimeter of the site during large concrete placement events.
 - c. Denver Water has been in contact with the homeowner at 5831 West 29th Avenue adjacent to the site's construction entrance regarding special provisions necessary to maintain access to and protect their property during construction.
 - d. Denver Water is taking its 42" Conduit No. 23 in West 29th Avenue from Fenton Street to Sheridan Boulevard permanently out of service during February, 2013. The City will examine the pipeline condition, when Denver Water makes such investigation possible, to determine possible use of the pipeline for a storm sewer. Denver Water shall grant by quitclaim the pipeline to the City at no cost to the City, if the City makes such a request. Any such conveyance shall be in an as-is condition and shall release Denver Water from any further liability for such facilities.
 - e. Denver Water or its contractor shall develop a materials management plan for review by CDPHE as necessary for handling of petroleum contaminated soil and groundwater east of the site.
 - f. Denver Water or its contractor will identify potential sites for off-site storage and staging.
 - g. Denver Water shall invite City personnel to attend the regularly scheduled construction progress meetings on site. The parties expect that these meetings will occur

weekly at the beginning of the Project and become less frequent toward the end of the Project.

- h. The Parties agree that Denver Water will participate in an upcoming City of Wheat Ridge permitting process.
- i. Denver Water will apply for a Special Use Permit (for use of the property for water storage tanks and for the Project's volume of excavation and haul). Accordingly, Denver Water will comply with the City's Special Use Permit application processes.
- j. Denver Water or its contractor will obtain a Building Permit for the Project.
- k. Denver Water or its contractor will pay the City's established use tax.
- l. Denver Water or its contractor will obtain all City permits for work performed in the City street rights-of-way.
- m. Denver Water and its contractor will comply with all appropriate performance standards, performance bond and insurance requirements.

GENERAL PROVISIONS

1. Authorized Representatives. The City designates Steve Nguyen as the City Representative under this Agreement. Denver Water designates Martin Garcia as Denver Water's Representative under this Agreement. Each party shall be notified of any change by the other in its authorized representatives.
2. Release and Indemnification. Each party agrees to the extent permitted by law and subject to all immunities, defenses and other protections afforded it pursuant to the Colorado Governmental Immunity Act, Section 24-10-101, et seq, C.R.S. to indemnify and hold harmless the other party and its employees from and against any and all claims from third parties for damages, loss, injuries, liabilities and expenses for personal injury or property damage, including reasonable attorney's fees, relating to or arising out of any act of omission of the indemnifying party or its agents or employees with respect to the implementation of this Agreement.
3. Governing Law and Venue. This Agreement and the rights and duties of the parties hereunder shall be interpreted in accordance with the laws of the State of Colorado. Venue for any and all legal actions arising hereunder shall lie in the District Court in and for the City and County of Denver, State of Colorado.
4. Non-Appropriation. The payments of either party's obligations in fiscal years subsequent to the current year are contingent upon funds for this Agreement being appropriated and budgeted. If funds for this Agreement are not appropriated and budgeted in any subsequent year, this Agreement shall terminate. As of the date of execution of this Agreement, it is the intent and expectation of the parties to budget and appropriate the funds required for its full and complete performance.
5. Notices. Any notice or communication given pursuant to this Agreement shall be given in writing, either in person or by certified mail, return receipt requested. If given in person, notice shall be deemed given when actually given. If given by certified mail, notice shall be deemed given at the time indicated in the duly completed return receipt.

Notice to Denver Water shall be delivered or mailed to:

Denver Water Engineering

Attn: Martin Garcia

1600 W 12th Avenue

Denver, CO 80204-3412

Notice to the City shall be delivered or mailed to:

Steve Nguyen

City of Wheat Ridge

7500 West 29th Avenue

Wheat Ridge, CO 80033

6. Signing Authority. The parties hereby stipulate and represent that all procedures necessary to authorize the execution of this Agreement have been performed and that the persons signing for each of the parties have been authorized to do so.

7. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Intergovernmental Agreement.

ATTEST:

Bruce Poome, Deputy
Janelle Shaver, City Clerk

CITY OF WHEAT RIDGE

By: [Signature]
Jerry DiTullio, Mayor

Date: _____

APPROVED AS TO FORM:

By: [Signature]
Gerald E. Dahl, City Attorney



{SEAL}

**CITY AND COUNTY OF DENVER,
acting by and through its BOARD OF
WATER COMMISSIONERS**

By: _____
James Lochhead, CEO/ Manager

Date: _____

ATTESTED AND APPROVED:

By: _____
Robert J. Mahoney, Director of Engineering

REGISTERED AND COUNTERSIGNED

By: _____
Auditor

APPROVED AS TO FORM:

Legal Division

{SEAL}