

**INTERGOVERNMENTAL AGREEMENT FOR REIMBURSEMENT OF COSTS
FOR LOCAL CONNECTION INFRASTRUCTURE
TO THE SECOND CREEK INTERCEPTOR**

[Denver Wastewater – Gateway Lift Station]

This Agreement, made and entered as of the Effective Date (as hereinafter defined) by and between the City and County of Denver, a Colorado municipal corporation ("Denver") and Metro Water Recovery, formerly known as 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 ("Metro," referred to herein, together with Denver, as the "Parties" or each individually as a "Party").

WHEREAS, Metro intends to construct a new sanitary sewer, known as the "Second Creek Interceptor" as recommended in the Sand Creek and Second Creek Basins Regional Master Plan (the "Regional Master Plan"); and

WHEREAS Metro considered alignments for the Second Creek Interceptor in collaboration with Denver; and

WHEREAS, after discussions with Denver, the Second Creek Interceptor alignment was chosen as the preferred alignment for the Second Creek Interceptor; and

WHEREAS, the alignment of the Second Creek Interceptor supports Denver's decommissioning of the facilities and related system known as the "Gateway Lift Station" and the replacement of the pumped wastewater conveyance system with gravity conveyance to be provided by connection to the Second Creek Interceptor; and

WHEREAS, after discussion with Denver, the new connection infrastructure from the Gateway Lift Station to the Second Creek Interceptor (referred to herein collectively and the "Connection Infrastructure") will be constructed by Metro and reimbursed by Denver on and subject to the terms and conditions set forth herein; and

WHEREAS, Metro anticipates completing the Connection Infrastructure in the third quarter of 2023; and

WHEREAS, the Connection Infrastructure is more particularly defined and described in the Issued for Construction plans, drawings and specifications listed in Exhibit A attached hereto (the "IFC Plans"); and

WHEREAS, Denver and Metro have determined that it is feasible and beneficial to both Parties to construct the Connection Infrastructure concurrently with construction of the Second Creek Interceptor; and

WHEREAS, after completion of construction in accordance with the terms set forth in this Agreement and the IFC Plans, the Connection Infrastructure will be owned, maintained, and operated by Denver; and

WHEREAS, an estimate of the total cost of the design, construction, real estate acquisition,

Intergovernmental Agreement

and all other costs associated with the Connection Infrastructure is attached hereto as Exhibit B (the "Estimate"); and

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. Metro, through its professional consulting engineer HDR Engineering, Inc. (the "Design Consultant"), has prepared the IFC Plans for the construction of the Connection Infrastructure. Additionally, Metro has obtained all permanent easements/licenses and temporary construction easements/licenses necessary for the completion of the Connection Infrastructure. The IFC Plans have been reviewed and are hereby approved by Denver. Metro shall require the Design Consultant to name Denver as an additional insured party, on a primary and non-contributory basis, on all professional liability and other insurance coverages specified in the Design Contract with respect to the Connection Infrastructure. Proof of insurance shall be provided to Denver prior to commencement of construction. Upon transfer of the Bill of Sale (as further set forth in Paragraph 11 herein) Metro will assign any permanent easements, or portions thereof, held by Metro encumbering land on which the Connection Infrastructure is located.

2. Metro has entered into that certain construction agreement entitled PAR 1232 - Second Creek Interceptor dated November 23, 2020 (the "Construction Contract"), with Garney Companies Inc. (the "Contractor"), for the construction of the Second Creek Interceptor and the Connection infrastructure, in accordance with the IFC Plans. The Contractor shall carry insurance as set forth below, and Metro shall require the Contractor to include Denver as an additional insured party, except for workers' compensation, on a primary and non-contributory basis. Proof of insurance shall be provided to Denver prior to commencement of construction. Coverages to be provided shall include and meet the following minimum requirements:

- a. Commercial General Liability insurance of not less than \$2,000,000 each occurrence and \$2,000,000 aggregate;
- b. Worker's 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.

3. As used herein, the term "Work" shall mean and refer to all labor, management, administration, supervision, materials, supplies, manufactured components, equipment, installation, testing, construction, supervision, professional services, and related effort and work associated with the completion of the Connection Infrastructure pursuant to the IFC Plans. Metro shall provide throughout the term of the construction of the Second Creek Interceptor and Denver Connection Infrastructure, competent and qualified project management, administration, and quality control of and for the Work. Metro has designated a senior engineer as its project manager

for all Work and other matters relating to the Connection Infrastructure related to this Agreement (the "Metro Project Manager"). The Parties acknowledge and agree that the Metro Project Manager shall be Denver's primary contact related to the Work, direction and actions taken by Metro and its contractors with regard to the Connection Infrastructure. Denver shall have the right to visit the site and inspect the Work at any time and to confer with the Metro Project Manager, the Design Consultant, and the Contractor; provided that Denver shall not have the right to direct the actions of the Design Consultant or the Contractor or make any changes to the Work without first consulting with, and obtaining the consent of the Metro Project Manager.

4. Denver shall have the right to review and comment on all shop drawings and other Contractor submittals pertaining to the Connection Infrastructure. Comments from Denver shall be provided to Metro within fifteen (15) calendar days of receipt of the shop drawings and Contractor submittals. If comments are not received by Metro within fifteen (15) calendar days, the shop drawings shall be deemed to be approved in accordance with the approved IFC Plans. Metro, through the Design Consultant, shall submit four (4) approved legible copies of such shop drawings and submittals to Denver prior to construction of the Work described therein. In addition, all shop drawings and other submittals shall be provided to Denver as Adobe Portable Document Format (PDF) files. If any comments from Denver will require a change to the Work from the IFC Plans and an increase in the cost associated with the Connection Infrastructure, as reflected by the Estimate, Metro shall describe and quantify such increased costs in writing to Denver. If approved by Denver in writing, such increased costs shall be paid by Denver in accordance with Paragraph 9 herein. If not approved by Denver in writing, Metro in its sole discretion, and at its sole expense, may unilaterally choose whether to implement the change.

5. Metro, through the Design Consultant, shall notify Denver of any proposed changes to the IFC Plans prior to or during construction and provide written documentation necessary to describe and specify any such changes, including, if applicable, any change that may impact the cost of the Work from the amount reflected in the Estimate (a "Proposed Change"). Denver shall have the right to review and provide comments on the Proposed Change. Metro will review Denver's comments and shall incorporate Denver's comments where reasonably appropriate and not unduly burdensome; provided that any cost increases associated with any Proposed Changes initiated by Metro shall be paid by Denver subject to the terms of Paragraph 9 hereunder and shall be subject to all other terms and conditions set forth herein.

6. Metro shall be responsible for obtaining and complying with any permits or approvals necessary from any governmental entity with jurisdiction over the construction activities associated with the Work. Metro's contract with the Contractor shall cause the Contractor to complete all Work on the Connection Infrastructure in compliance with (1) all applicable laws, permits, codes, ordinances, regulations, and other legal requirements, (2) the approved IFC Plans (including any Proposed Changes thereto), and (3) all applicable Denver wastewater design standards, including the Storm Drainage Criteria Manual and the City and County of Denver Wastewater Standard details (Approved June 2020).

7. Metro, through the Metro Project Manager and the Design Consultant, and Denver shall jointly inspect the Connection Infrastructure upon completion. Denver will notify the Metro in writing within seven (7) calendar days of the joint inspection of items considered to be not in compliance with the requirements set forth in this Agreement. If Denver fails to notify Metro in writing within seven (7) calendar days that the Connection Infrastructure is not in compliance, then

Denver will be deemed to have accepted the Connection Infrastructure, in its then-current state. With regard to any non-compliant aspects of the Connection Infrastructure, Denver shall have the right to inspect corrective measures, if any, and Denver's final acceptance of such items and the Connection Infrastructure generally shall be in the form of written notification of approval from the City's Executive Director of the Department of Transportation and Infrastructure, or his or her designee, within seven (7) calendar days of completion of such corrective measures. If the City's Executive Director of the Department of Transportation and Infrastructure, or his or her designee fails to notify the Metro in writing within seven (7) calendar days of completion of the corrective measures of his or her approval, the Connection Infrastructure, including the corrective measures applied thereto shall be deemed approved by Denver.

8. After completion of construction of the Connection Infrastructure and transfer of ownership of the Connection Infrastructure, Metro shall provide a written instrument, in form and substance reasonably acceptable to both Parties, effectuating a non-exclusive assignment to Denver of (a) all warranties set forth in the Construction Contract relating to the Work and/or the Connection Infrastructure, and (b) any and all other contractual rights, indemnities, and requirements arising under the Construction Contract and relating in any way to the Work and/or the Connection Infrastructure. Similarly, prior to the commencement of construction, Metro shall provide a written instrument, in form and substance reasonably acceptable to both Parties, effectuating a non-exclusive assignment to Denver of (i) all warranties set forth in the Design Contract relating to the Work and/or the Connection Infrastructure, and (ii) any and all other contractual rights, indemnities, and requirements arising under the Design Contract and relating in any way to the Work shall be acknowledged and consented to in writing by the Design Contractor. Metro hereby represents that it has provided true and complete copies of the Design Contract and Construction Contract to Denver.

9. The Estimate attached to this Agreement as Exhibit B includes a contingency amount (the "Contingency") equal to twenty percent (20%) of the total actual estimated costs for the Work for a total actual cost commitment of One Million, three hundred thirty-three and No/100 Dollars (\$1,000,333) (the "Maximum Contract Amount"). Denver will reimburse Metro for the actual design, construction and easement/license costs incurred by Metro for the Work (the "Actual Cost"); provided that nothing contained herein shall constitute a legally binding obligation or commitment by Denver to fund any amount in excess of the Maximum Contract Amount. Metro shall promptly notify and consult with Denver if Metro determines that the total Actual Cost to complete the Work may impose a material impact on the Contingency or cause the total Actual Cost to exceed the Maximum Contract Amount. Metro and Denver will cooperate and work together to mitigate the impact of any cost overruns to avoid the Actual Costs exceeding the Maximum Contract Amount. In any event, if necessary, Denver will pursue reasonable efforts to seek further appropriation to fund any necessary and approved costs in excess of the Maximum Contract Amount and, if deemed necessary by Metro, Metro may stop the Work until such additional appropriation is obtained by Denver. The Estimate will be reconciled to the Actual Cost within thirty (30) calendar days after completion of construction and resolution of any outstanding items that may be identified in accordance with the terms of Paragraph 7 of this Agreement

10. Denver shall pay Metro the Maximum Contract Amount within 60 days after execution of this Agreement. Any Actual Costs exceeding the Maximum Contract amount shall be paid by Denver subject to the provisions of Paragraph 9 herein.

11. Ownership of the Connection Infrastructure shall be transferred by Bill of Sale in the form substantially similar to that attached hereto as Exhibit C by Metro within thirty (30) calendar days after acceptance of construction by Denver.

12. Metro will provide Denver with Record Drawings of the Connection Infrastructure within 30 calendar days of the Denver's resolution of any outstanding items that may be identified in accordance with Paragraph 7 and after receipt of payment for the Work by Metro.

13. With regard to the warranty referenced in Section 8(a) above, Metro shall ensure that the warranty is transferrable to Denver and shall cause the Construction Contract to include a construction warranty covering the Connection Infrastructure of not less than one (1) year from substantial completion and acceptance by Denver.

14. 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 written notice of the default to the other Party and allow a minimum of fourteen (14) calendar days to cure the default, subject to reasonable consultation with the other Party as to the time period to cure the default.

15. 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, the prevailing party shall be entitled to recover their reasonable attorneys' fees and costs.

16. 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.

17. 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 governmental (other than the Parties to this Agreement) or third party action or approval required for full performance, riots, civil disorder, war, floods, earthquakes, acts of God, explosion, or similar occurrences outside the control of such Party.

18. Any payment obligation by Denver, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of this Agreement. Denver does not, by this Agreement, irrevocably pledge present cash reserves for payment or performance in future fiscal years, and this Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of Denver. All payments under this Agreement shall be paid from funds of Denver that have been duly appropriated and encumbered for the purposes hereof. Denver has no obligation to make payments from other sources to satisfy such payments. Denver is not under any obligation to make any future encumbrances or appropriations for this Agreement.

However, if necessary, Denver will pursue reasonable efforts to seek further appropriation to fund any necessary and approved costs in excess of the Maximum Contract Amount.

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 by nationally-recognized overnight courier (such as FedEx) to the following addresses:

To the Metro District:

Chief Executive Officer
Metro Water Recovery
6450 York St.
Denver, CO 80229

To Denver:

Manager of the Department of Transportation and Infrastructure
City and County of Denver
201 W. Colfax, Dept. 614
Denver, CO 80202

With a copy to:

City Attorney's Office – Director of Municipal Operations
201 W. Colfax Ave. Dept. 1207
Denver, CO 80202

20. This Agreement is intended as a complete integration of all understandings between the Parties pertaining to the construction of the Connection Infrastructure. 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.

22. Denver hereby grants to Metro (and the Design Consultant, the Contractor, and their respective agents, employees, and contractors) a non-exclusive license to use and occupy the Denver-owned real property generally shown on Exhibit D attached hereto (the "Denver Land") as necessary to complete Work associated with the Connection Infrastructure. Use of the Denver Land shall be subject to reasonable rules, requirements and limitations imposed by Denver as determined necessary by Denver to preserve Denver's access to the Denver Land and to protect Denver's equipment and operations on the Denver Land, as set forth in the agreement or incorporated therein.

23. Any authorized agent of Denver, including the Denver City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at Denver's election in paper or electronic form, any pertinent books, documents, papers, and records related to Metro's performance pursuant to this Agreement, provision of any goods or services to Denver, and any other transactions related to this Agreement. Metro shall cooperate with Denver representatives, upon reasonable written notice to Metro, and Denver representatives shall be granted access to the foregoing documents and information during reasonable business hours within three (3) years after the final payment under the Agreement. When conducting an audit of this Agreement, the Denver City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this Paragraph 23 shall require Metro to make disclosures in violation of state or federal privacy laws. Denver shall pay any copying or retrieval costs associated with retrieval of such records, as reasonably determined by Metro.

24. This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which together constitute one and the same Agreement. Metro consents to the use of electronic signatures by Denver. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by Denver in the manner specified by Denver. The Parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original. As used herein, the term "Effective Date" shall mean the date of the last signature indicated on the signature page.

[REMAINDER OF PAGE BLANK – SIGNATURE PAGE(S) FOLLOW]

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 WATER RECOVERY

By: _____
William J. Conway, Chief Executive Officer

APPROVED AS TO FORM

By: _____
Metro General Counsel

EXHIBIT A – CONNECTION INFRASTRUCTURE

Connection Infrastructure includes:

- Approximately 112.7 lineal feet of 18-inch sanitary sewer interceptor between Station 1383+90.28 and Station 1385+02.98.
- Approximately 174.9 lineal feet of 18-inch sanitary sewer interceptor between Station 1500+00 and Station 1501+74.94.
- 60-inch manhole labeled SD-322
- 60-inch manhole labeled SD-321
- 96-inch manhole labeled SD-320

As illustrated and detailed in the following documents, which are on file with Metro Water Recovery:

DRAWINGS FOR METRO WASTEWATER RECLAMATION DISTRICT SECOND CREEK INTERCEPTOR; PAR 1232; ISSUED FOR CONSTRUCTION. PREPARED BY HDR INC. ORIGINALLY ISSUED 10-02-2020. INCLUSIVE OF SUBSEQUENT DRAWING REVISIONS. DRAWING NUMBERS:

- ***00G001 – COVER SHEET***
- ***00G010 – BORING AND POTHOLE LOG – DESIGN PACKAGE 3***
- ***00C003 – MAP AND SHEET LAYOUT – DESIGN PACKAGES 3&4***
- ***00C004 – POINT TABLE – SD INTERCEPTOR***
- ***00C505 – PRECAST CONCRETE MANHOLE DETAILS***
- ***00C518 – ACCESS DETAILS***
- ***00C511 – MANHOLE TABLE – DESIGN PACKAGE 3***
- ***03C108 – PLAN & PROFILE – STA 1379+50 TO STA 1387+27.04 AND STA 1500+00 TO STA 1501+74.94***
- ***03C401 – GATEWAY LIFT STATION – ENLARGED PLAN***
- ***09C127 – STA 1380+50 TO STA 1387+27.04 – DESIGN PACKAGE 3***

PROJECT MANUAL FOR CONSTRUCTION OF PAR 1232 SECOND CREEK INTERCEPTOR. PREPARED BY HDR INC., 780 PAGES. ORIGINALLY ISSUED 10-02-2020. INCLUSIVE OF SUBSEQUENT TECHNICAL SPECIFICATION REVISIONS.

EXHIBIT B - CCD IGA ESTIMATED COSTS

Denver IGA - Estimate of Cost to be Reimbursed to the Metro District		
<u>Item Description:</u>		City and County of Denver Costs
1)	MOBILIZATION & DEMOBILIZATION	\$ 4,106
2)	CONNECTION TO GATEWAY LS	\$ 566,236
3)	GEOTECH & CONCRETE TESTING SERVICES	\$ 1,614
4)	SURVEYING SERVICES	\$ 968
5)	ACCESS ROADS	\$ 14,847
		\$ -
6)	BOND & INSURANCE	\$ 2,696
		\$ -
7)	General Conditions (5.5%)	\$ 32,476
8)	Overhead & Profit (8.5%)	\$ 50,190
CONSTRUCTION COST:		\$ 673,131
	Engineering - Preliminary Design (Estimate)	\$ 19,144
	Engineering - Final Design (Estimate)	\$ 37,085
	Engineering - Construction (Estimate)	\$ 47,119
	Resident Engineering (Estimate)	\$ 40,388
DESIGN AND MANAGEMENT COST:		\$ 143,736
COST OF THE WORK (CONSTRUCTION + DESIGN AND MANGEMENT)		\$ 816,867
20% CONTINGENCY ON THE WORK		\$ 163,373
TOTAL COST OF THE WORK		\$ 980,240
	Permanent Easement/License (Actual)	\$ 13,782
	Temporary Construction Easement/Licens (Actual)	\$ 6,311
TOTAL COST OF WORK AND LAND RIGHTS:		\$ 1,000,333

EXHIBIT C

BILL OF SALE

THIS BILL OF SALE is made and entered into this ____ day of _____, 20____ (the "Effective Date"), by and between METRO WATER RECOVERY ("Metro"), a Title 32 special district of the State of Colorado, with an address of 1001 17th Street, Suite 2000, Denver, Colorado 80202, and the CITY AND COUNTY OF DENVER (the "City"), a municipal corporation of the State of Colorado, with an address of 201 W. Colfax Avenue, Denver, Colorado 80202.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt, adequacy and sufficiency of which are hereby acknowledged, Metro hereby sells, assigns, grants, transfers, sets over, bargains, remises, releases and delivers to the City, all of Metro's right, title, and interest in and to the connection infrastructure described on Exhibit 1 attached hereto and incorporated herein (the "Connection Infrastructure") to the City to have and to hold such Connection Infrastructure unto the City for its use and benefit forever.

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

METRO WATER RECOVERY

CITY AND COUNTY OF DENVER

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

APPROVED AS TO FORM:

Metro General Counsel

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 Metro Water Recovery.

Witness my hand and official seal.

My commission expires: _____

Notary Public
Business Address: _____

EXHIBIT 1

Contract Control Number: DOTI-202262227-00
Contractor Name: METRO WATER RECOVERY

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

DOTI-202262227-00
METRO WATER RECOVERY

By:  _____
DocuSigned by:
Emily Jackson
E87D9423B9A6472...

Name: Emily Jackson
(please print)

Title: General Counsel
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)