

INTERAGENCY AGREEMENT
(Raw Water Supply – ASR Project - Harvey Park)

THIS INTERAGENCY AGREEMENT (“Agreement”) is entered into between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, acting by and through its BOARD OF WATER COMMISSIONERS (the “Board”) and the CITY AND COUNTY OF DENVER, acting by and through its DEPARTMENT OF PARKS AND RECREATION (“Parks”), together “the Parties.”

Recitals

A. Under Article X of the Charter of the City and County of Denver (“Charter”), the Board owns and operates a municipal water supply system that provides water supply for inhabitants of the City and County of Denver (“City”) and by contract to certain areas outside the boundaries of the City;

B. Article II, Part 4 of the Charter contains certain provisions that establish the authority of Parks to manage, operate, and control parks and recreational facilities within and without the City’s boundaries;

C. Section 10.1.12 of the Charter contains certain provisions that apply to water service to the municipal government of the City;

D. By agreement dated December 24, 2015 (“Cooperative Agreement”), the Parties agreed to cooperate to attain their individual and joint goals and serve their customers and residents;

E. Parks owns and operates Harvey Park Lake located at 2120 S. Tennyson Way, Denver, CO 80219.

F. Parks has in recent years stored water that is diverted from Clear Creek, delivered through the Agricultural Ditch, and decreed for irrigation uses in Harvey Park Lake. By letter dated February 14, 2017, the Division of Water Resources for the State of Colorado informed Parks that it could no longer use this water for storage without a storage water right.

G. The Board owns non-tributary groundwater in the Arapahoe and Laramie-Fox Hills formations underlying its service area within the City and County of Denver. Parks desires to lease non-potable groundwater from the Arapahoe formation from the Board to supply Harvey Park Lake and as a supplemental supply for the irrigation requirements of Harvey Park.

H. Under the Cooperative Agreement, Parks agreed to allow the Board to evaluate Parks’ golf courses to determine if any of the courses would be suitable for an Aquifer Storage and Recovery Facility (“ASR Facility”). Here, the Board wishes to evaluate whether Harvey Park is suitable for an ASR Facility.

INTERAGENCY AGREEMENT
(Raw Water Supply – ASR Facility - Harvey Park)

NOW THEREFORE, in consideration of the promises set forth herein, the Parties agree as follows:

Article I – Harvey Park

1.1 Overview

A. Parks operates the City-owned Harvey Park, the boundaries of which are shown in **Exhibit 1**. Until Parks received the February 14, 2017 letter from the Division of Water Resources, it had relied upon water diverted from Clear Creek and delivered through the Agricultural Ditch pursuant to and in accordance with its ownership of shares in the Agricultural Ditch water rights.

B. To fill Harvey Park Lake and as a supplemental supply to irrigate the park, Parks intends to drill an on-site well into the Arapahoe Aquifer.

C. Parks has a water management plan for Harvey Park Lake that shows an irrigation need of at least 43 acre-feet annually and a storage need of at least 21 acre-feet to maintain the desired lake level of Harvey Park Lake.

D. The Board owns the non-tributary groundwater in the Arapahoe aquifer.

E. The Board is willing to lease its water from the Arapahoe aquifer to Parks under the following terms and conditions.

1.2 Agreement.

A. Location and use of water. The water leased under this Agreement shall be used only for irrigation and storage at Harvey Park as depicted in Exhibit 1.

B. Amount of Lease. The maximum amount of water to be leased shall not exceed 64 acre-feet per year.

C. Delivery of Water. Parks shall be responsible for the drilling and installation of a well at Harvey Park from the Arapahoe aquifer including measurement devices capable of determining the amount pumped. Parks shall pay all costs of pumping. Parks is responsible for securing the well permit from the Division of Water Resources. Parks shall report end-of-month well meter readings to the Board operating representative by the third day of each subsequent month.

D. Availability of Non-Potable Water. The Board does not warrant that sufficient water will be available from the Arapahoe aquifer as the amount and timing of availability of non-potable groundwater is dependent upon a number of hydrogeologic

INTERAGENCY AGREEMENT
(Raw Water Supply – ASR Facility - Harvey Park)

factors. In the event the Arapahoe aquifer is unable to provide a sufficient volume of non-potable water, the Board will work with Parks to provide an additional supply of water.

E. Untreated Water. All water delivered to Parks pursuant to this Agreement is untreated water of whatever quality is now or in the future available from the sources specified herein and is sometimes referred to in this Agreement as "non-potable water." Delivery of non-potable water under this Agreement will be on an "as is" basis only, and Board neither expressly nor impliedly warrants the quality of the water. The non-potable water leased hereunder is not warranted as suitable for any particular purpose. Parks shall not make any claim against the Board arising from the quality of water delivered, and the Board shall not have water treatment responsibility under this Agreement.

F. Charges for Non-Potable Water. For all raw water, Parks shall pay the amount calculated by utilizing the then-current charge for raw water used by agencies of the City. The January 1, 2020 charge for raw water for agencies of the City and County of Denver is \$114.05/acre-foot.

G. Payment. Consistent with the City's Prompt Payment Ordinance, §§ 20-107–118, the Board shall bill Parks monthly for water pumped during the preceding month and Parks shall pay such invoice within 30 days of receipt.

H. Operating Representatives. The Operating Representatives for day-to-day operations under this Agreement shall be:

The Board	Raw Water Operations 1600 West 12 th Ave Denver, CO 80204 303-628-6514 Dailywateraccounting@denverwater.org
Parks	Parks & Recreation Department City & County of Denver 201 West Colfax Avenue, #613 Denver, CO 80202

I. No Operating Obligation. Nothing herein should be deemed or construed to require the Board to operate its facilities in any particular manner for the benefit of Parks, so long as the Board complies with the express terms of this Agreement.

J. Representatives. Except for day-to-day operations, the Parties' representatives to accept or give any request, notice or approval or the like provided hereunder shall be as follows:

The Board	CEO/manager 1600 West 12 th Ave. Denver CO 80204
-----------	---

INTERAGENCY AGREEMENT
(Raw Water Supply – ASR Facility - Harvey Park)

	<p>With a copy to:</p> <p>General Counsel 1600 West 12th Ave. Denver CO 80204</p>
Parks	<p>Executive Director of Parks & Recreation 201 West Colfax Avenue, #601 Denver, CO 80202</p> <p>With a copy to:</p> <p>Denver City Attorney's Office 1437 Bannock Street, Room 353 Denver, CO 80202</p>

K. Water Use Restrictions. Parks agrees that the Board may limit the pumping of water from the Arapahoe formation in accordance with the Board's Operating Rules during periods of shortages or system emergencies. Accordingly, water pumped to Harvey Park as set forth in this Agreement shall be curtailed progressively during such times as use restrictions are applied to all customers within the Board's combined service area.

L. Alternative Supply. The Board shall have the right to deliver an alternate supply of water in the same amount as described in Section 1.2.B above to Parks for storage and irrigation under this Agreement. The alternate supply may be from any source available to the Board including non-potable or potable sources, so long as water quality is sufficient to meet the needs of Harvey Park.

Article II – The Board's Aquifer Storage and Recovery

2.1 Overview

A. The Board is in the process of determining whether Aquifer Storage and Recovery ("ASR") could be a potential storage mechanism for the future to increase water supply by using the Denver Basin Aquifer as a reservoir. ASR is the injection of potable water into a non-tributary confined aquifer and the subsequent pumping of water when needed. ASR involves finding a suitable site for a well facility and designing and constructing the wells, the pipe connections, and the treatment facilities necessary to operate the wells for injection and recovery of water. Portions of the well facility can be located underground, but some parts of the facility are above ground.

B. The Board desires to evaluate whether Harvey Park would be a suitable site for an ASR Facility. The Board and Parks agree that they will work jointly to evaluate

INTERAGENCY AGREEMENT
(Raw Water Supply – ASR Facility - Harvey Park)

Harvey Park to locate a suitable ASR Facility site that could be protected from public access while maintaining functionality and aesthetics required for park purposes.

2.2 Agreement

A. Board Evaluation of Harvey Park. The Board may evaluate Harvey Park to determine whether it would be suitable for an ASR Facility. The Board's evaluation may include conducting any necessary sampling, surveying, or testing, such as drilling of test wells or exploratory boreholes and collection of core samples. Any such evaluation shall not be invasive or involve significant disturbances of the ground without the prior written permission of the Executive Director of Parks and shall maintain the functionality and aesthetics of Harvey Park.

B. Well Information. During and after drilling and construction of the Harvey Park well, Parks will provide the Board with the following:

- (1) All geophysical logging and pump test data collected by Parks or its contractor;
- (2) At the Board's cost, any nuclear magnetic resonance ("NMR") logging data;
- (3) Design parameters and specifications of the well and equipment including pumps, motors, well casing type, well depth, well diameter, annular packing material, well screen design including length and depth of screened intervals, piping, valves, and other related equipment; and
- (4) Access to drilling and logging operations and construction.

C. Selection of ASR Facility Location. If, after the Harvey Park well is completed, the Board determines that an ASR Facility location at Harvey Park is feasible, the Board will request to use the desired location as follows:

(1) Upon the Board's determination that Harvey Park is suitable for ASR, the Board will notify Parks. Within sixty (60) days after the Board's notification, Parks and the Board's staff will meet to discuss the siting and characteristics of the proposed location. Discussions shall include allowing the Board to retrofit the Harvey Park well and construct the necessary pipe connections, valving, treatment and associated facilities for ASR Facility operations, at the Board's own cost, provided that the Board and Parks agree on how the ASR Facility operation can be integrated with Parks' use of the well. The Parties will continue to meet regularly to develop a project that is mutually agreeable.

INTERAGENCY AGREEMENT
(Raw Water Supply – ASR Facility - Harvey Park)

(2) Once the Executive Director of Parks concurs with the ASR Facility location and characteristics, the Executive Director of Parks will facilitate the Board's application process to the City for use of the location for its ASR Facility site.

(3) The Board shall be responsible for complying with all siting, design, and construction requirements and standards established by Parks for the development and operation of the ASR Facility, including the Denver Parks & Recreation Planning, Design & Construction Standards and any operational restrictions resulting from its location in Harvey Park. All repairs or replacements to Harvey Park resulting from damage, or other mitigation resulting from impacts, due to the operation or use of the ASR Facility shall be promptly made and paid for by the Board.

D. Consideration of Additional ASR Facilities at Harvey Park. If the Board determines that additional facilities related to ASR, such as additional ASR wells, connection to the potable water distribution system, or install of treatment facilities, pumping, or valving, are feasible within Harvey Park, the Board shall request such additional use(s) of Harvey Park. Any such additional use(s) of Harvey Park shall require a separate agreement between the Board and Parks

Article III – General Provisions

3.1 Obligation to Provide Engineering Advice and Legal Counsel. The Board shall provide water rights engineering advice and legal counsel to Parks, with consent and cooperation of the City Attorney's Office, when, in the General Counsel's professional discretion, the Board staff's work load can accommodate the request and Board representation would not cause any conflict of interest. Parks shall pay the Board's cost to provide engineering advice and legal counsel, including the salary and benefits of Board employees for providing such services.

3.2 Assignment. No right hereunder shall be assigned by either party.

3.3 Charter. This Agreement is made under and conformable to the Charter of the City and County of Denver. Insofar as applicable, the Charter provisions are incorporated herein and made a part hereof and shall supersede any apparently conflicting provisions otherwise contained in the Agreement.

3.4 Dominion over Water. Parks shall have no right to make a succession of uses of the water pumped under this Agreement without the express written approval of the Board. Upon completion of the primary use, all dominion over the water shall revert completely to the Board, except to the extent permitted in writing by the Board. Except as herein specifically provided, all property rights to the water delivered under this Agreement are reserved in the Board. Parks is not obligated to create any particular volume of return flow.

INTERAGENCY AGREEMENT
(Raw Water Supply – ASR Facility - Harvey Park)

3.5 Conservation. In furtherance of the Board's objective that water is used in an efficient manner, Parks agrees to engage in a good faith effort to conserve water delivered under this Agreement in a manner generally consistent with the Board's water conservation plan, as it may be amended from time to time.

3.6 Operating Rules. This Agreement is made under and conformable to the Board's Operating Rules and Engineering Standards applicable to the delivery of water within the City.

3.7 Governmental Immunity Act. The Parties agree that they are relying upon, and have not waived, the monetary limitations, rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as it may be amended from time to time.

3.8 Waiver. No party shall waive its rights hereunder by failing to exercise its rights; any such failure shall not affect the right of such party to exercise at some future time the rights not previously exercised.

3.9 Remedies. None of the remedies provided for under this Agreement need to be exhausted or exercised as a prerequisite to either party's pursuit of further relief to which it may be entitled. However, in the event a party fails to meet its obligations hereunder, the other party may suspend performance of its obligations until the Parties can confer regarding how and when the first party will meet its obligations.

3.10 No Exclusive Right. Nothing in this Agreement shall be construed as a grant by either party of any exclusive right or privilege.

3.11 Term of Agreement. This Agreement is perpetual so long as water is needed by Parks at Harvey Park.

3.12 Integration. This Agreement shall be construed and enforced as the fully integrated expression of the Parties' contract with respect to the matters and subjects addressed herein. No express or implied covenant not specifically set forth herein shall be deemed to be a part of this Agreement.

3.13 Effect on Prior Contracts. Except as specifically referenced herein, any other agreements between the Parties shall remain in full force and effect.

3.14 Electronic Signatures & Records. The Parties consent to the use of electronic signatures. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically. The Parties agree not to deny the legal effect or enforceability of the 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 the 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

INTERAGENCY AGREEMENT
(Raw Water Supply – ASR Facility - Harvey Park)

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.

3.15 Subject to Appropriation. The City's payment obligation, 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 purposes of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City. Similarly, the Board's obligations for expenditures hereunder are dependent upon funds being budgeted for those purposes. If the Board fails to budget funds to fulfill its obligations herein, such a failure will not constitute a breach. In the event the Board fails to budget funds to meet its obligations, the Board and Parks will meet and agree to defer the Board's obligations set forth herein until Board funds are available or the Board's next budget cycle, whichever occurs first.

3.16 Venue. This Agreement shall be deemed performable in the City and County of Denver. The forum for resolution of any and all disputes arising hereunder shall be the District Court for the City and County of Denver. This Agreement shall be interpreted and governed in accordance with the laws of the State of Colorado.

3.17 Captions. The captions in this Agreement are for convenience of reference only, and are not part of this Agreement and shall not define or limit any of the terms of provisions hereof.

3.18 Effective Date. This Agreement will become effective ("Effective Date") upon execution by all required signatories below.

[Remainder of page intentionally left blank]

Contract Control Number: PARKS-202054826-00
Contractor Name: BOARD OF WATER COMMISSIONERS

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:

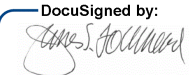
Attorney for the City and County of Denver

By:

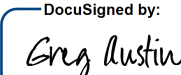
By:

By:

ATTESTED:

By: 
DEDE0A34B77B484...
Secretary

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

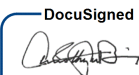
By: 
44260A88889C434...
President

DATE: 9/29/2020

APPROVED:

By: 
D06201CC9B8440B...
Chief External Affairs Officer

REGISTERED AND COUNTERSIGNED:
CITY AND COUNTY OF DENVER

By: 
026994F8B7845D...
Timothy M. O'Brien, CPA
Auditor

APPROVED AS TO FORM:

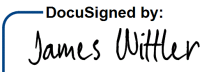
By: 
A1270D17D8334C6...
Office of General Counsel

EXHIBIT 1



Location of new well

New Xcel transformer

Location of new pump station