

RESOLUTION NO. 24-05

**INTRODUCED BY:
Council Member Pearlstein
Council Member Jensen**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FEDERAL HEIGHTS, COLORADO, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF FEDERAL HEIGHTS AND ADAMS 12 FIVE STAR SCHOOLS FOR PROVISION OF COLORADO DISCHARGE PERMIT SYSTEM MUNICIPAL SEPARATE STORM SEWER SYSTEM-STORMWATER PHASE II PERMIT SERVICES

WHEREAS, pursuant to Colo. Const VIV, Sec. 18 and C.R.S. 29-1-203 and in accordance with Sec 18.7 of the City of Federal Heights Home Rule Charter the City of Federal Heights (“City”) and Adams 12 Five Star Schools (“School District”) are authorized to cooperate and contract with one another to provide any function, service or facility lawfully authorized to each other; and

WHEREAS, federal and state law authorize the City to accept responsibility for compliance with State Stormwater Phase II permits and procedures; and

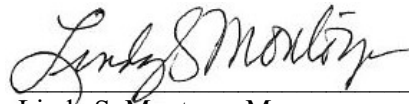
WHEREAS, the parties desire that the City provide the School District consolidated Colorado Discharge Permit System (CDPS) Municipal Separate Storm Sewer System(MS4) and related stormwater permitting services to the School District within the City’s jurisdictional boundaries; and

WHEREAS, the parties agree that the City’s provision of such services is of benefit to the public’s health, safety and welfare.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FEDERAL HEIGHTS, COLORADO THAT:

The City Council of the City of Federal Heights approves the Intergovernmental Agreement between the City of Federal Heights and Adams 12 Five Star Schools for provision of Colorado Discharge Permit System Municipal Separate Storm Sewer System -Stormwater Phase II Permit Services in substantially the same form as the copy attached hereto and made a part of this resolution and the Mayor is authorized to execute the Intergovernmental Agreement on behalf of the City.

INTRODUCED, READ AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF FEDERAL HEIGHTS, COLORADO, THE 16th DAY OF January 2024.



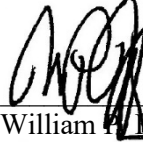
Linda S. Montoya, Mayor

ATTEST:



Patti K. Lowell, CMC, City Clerk

APPROVED AS TO FORM:



William H. Hayashi, City Attorney

**AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF FEDERAL HEIGHTS AND ADAMS 12
FIVE STAR SCHOOLS
FOR PROVISION OF COLORADO DISCHARGE PERMIT SYSTEM
MUNICIPAL SEPARATE STORM SEWER SYSTEM - STORMWATER PHASE II PERMIT SERVICES**

THIS INTERGOVERNMENTAL AGREEMENT FOR PROVISION OF COLORADO DISCHARGE PERMIT SYSTEM MUNICIPAL SEPARATE STORM SEWER SYSTEM STORMWATER PHASE II PERMIT SERVICES ("Agreement") is made and entered into and effective the ____ day of _____ 2024 by and between ADAMS 12 FIVE STAR SCHOOLS, a school district in Federal Heights, Colorado ("Adams 12"), and the CITY OF FEDERAL HEIGHTS, COLORADO, a Colorado home rule municipality ("City"), and provides as follows:

RECITALS:

WHEREAS, pursuant to Colo. Const Art. XIV Sec.18 and C.R.S. 29-1-203 the City and the School District are authorized to cooperate and contract with one another to provide any function, service or facility lawfully authorized to each; and

WHEREAS, Colorado law, through the provisions of the Colorado Water Quality Control Act, (25-8-101 et seq., CRS, 1973 as amended) and the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1251 et seq.) allows the City to accept responsibility for compliance with State Stormwater Phase II permits and procedures; and

WHEREAS, the City desires to provide consolidated Colorado Discharge Permit System (CDPS), Municipal Separate Stormwater System (MS4), and related stormwater permitting services to Adams 12 within its jurisdictional boundaries that are necessary for compliance with CDPS MS4 Phase II regulations; and

WHEREAS, all of the areas subject to CDPS MS4 Phase II discharge permitting are within the jurisdictional boundaries of the City; and

WHEREAS, Adams 12 has placed a high priority on functional stormwater management and stormwater quality and is desirous of entering into this Agreement with the City to obtain consolidated CDPS MS4 Phase II discharge permit ("MS4 permit") services; and

NOW, THEREFORE, in consideration of the recitals, terms, conditions, and promises contained in this Agreement, Adams 12 and the City agree as follows:

1. Duties of the City. The City shall provide certain CDPS MS4 permit services to Adams 12 as stated in the scope of work which is attached hereto and incorporated herein as Exhibit A. On the effective date of the CDPS MS4 permit issued to Adams 12 by Colorado Department of Public Health and Environment (CDPHE), the City shall as set forth herein exercise responsibility for the administration and management of CDPS MS4 program compliance for Adams 12 as an entity covered under the MS4 permit. The City and Adams 12 agree they have mutual and individual obligations under the Agreement to initiate and perform enforcement activities in order to maintain compliance with the CDPS MS4 permit provisions.
2. Duties of Adams 12.
 - A. Adams 12 agrees to reasonably assist the City with the performance of the City's duties as described in Exhibit A of this Agreement and as listed in this subparagraph:

6. Assumption of Risk and Governmental Immunity. The parties to this Agreement agree that each party shall bear responsibility for its own negligence and neither shall be responsible for indemnifying the other pertaining to the subject matter of this Agreement. Nothing herein shall be construed or interpreted by either party as a waiver of monetary limitations or any other rights, immunities, and protections afforded the parties by the Colorado Governmental Immunity Act C.R.S. 24-10-101et. seq as may be amended from time to time.
7. Assignment. Neither party shall assign such party's rights or interest under this Agreement without the prior written consent of the other.
8. Entire Agreement. This Agreement shall constitute the entire agreement between Adams 12 and the City. Any prior understanding or representation of any kind preceding the effective date of this Agreement shall not be binding on either party except to the extent incorporated in this Agreement.
9. Amendment. Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if in writing signed by each party.
10. Non-Waiver. The failure of either party to this Agreement to insist on the performance of any of the terms and conditions of this Agreement or the waiver of any breach of any of the terms and conditions of this Agreement shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.
11. Venue. This Agreement is formed in accordance with laws of the State of Colorado and venue for any action hereunder shall be in the Adams County district court.
12. Standard of Care. The City shall fully and faithfully perform the work required under this Agreement in accordance with the standards of care, skill, training, diligence, and judgment provided by those who perform work of a similar nature to the work described in this Agreement.
13. Dispute Resolution. Disputes arising under, out of, or related to this Agreement or the work which is the subject of this Agreement shall be first addressed by informal means by and among technical staff and management of the parties to the Agreement. If informal means are unsuccessful, disputes shall be mediated using an independent third party. If both informal means and mediation are unsuccessful, the parties expressly reserve the right to pursue any other remedy available pursuant to Colorado law. The parties hereto agree that attempts at informal resolution through mediation shall be a precondition to other action being taken.
14. Cooperation with Adams 12. In providing services in regards to the subject matter of this Agreement, the technical staff of the City shall work cooperatively and in good faith with Adams 12.
15. Agreement Provisions Severable. If any of the provisions of this Agreement are deemed to be invalid or unenforceable, such provisions shall be deemed severable from the remainder of this Agreement and shall not cause the invalidity or unenforceability of the remainder of this Agreement. If any provisions are deemed invalid because of its scope, this provision shall be deemed valid to the extent of the scope permitted by law.
16. Annual Appropriation. Nothing herein shall constitute a multiple fiscal year obligation pursuant to Colorado Constitution Article X, Section 20. Notwithstanding any other provision of this Agreement the City's obligations are subject to the annual appropriation of its City Council. Any failure of a City Council to annually appropriate adequate monies to finance the City's obligations shall terminate this Agreement

at such time as the existing appropriated funds are depleted. The City shall promptly notify the School District of any event of non-appropriation.

IN WITNESS WHEREOF the parties have signed and executed this Agreement on the day first written above.

CITY OF FEDERAL HEIGHTS

ADAMS 12 FIVE STAR SCHOOLS



Linda S. Montoya Mayor

Chief Operations Officer

ATTEST:



Patti Lowell, CMC, City Clerk

Adams 12 Five Star Schools

APPROVED AS TO LEGAL FORM:



William F. Hayashi City Attorney

Environmental Services Manager

Adams 12 Five Star Schools

EXHIBIT A
SCOPE OF WORK

- A. Beginning on the effective date, subject to the specific terms of this Agreement, the City shall administer, coordinate, and perform the following program elements shown as minimum control measures identified below.
- i. Construction program activities as described in the CDPS MS4 permit, specifically including review and approval of construction site stormwater management plans (CSWMPs), issuance of construction stormwater permits, and associated construction related inspection and auditing activities, as assisted by Adams 12.
 - ii. Adams 12 will identify the City as an external review agency for Adams 12's project which are subject to the City's CSWMP review and stormwater construction permit activities.
 - iii. The City will require projects disturbing equal to or greater than 1.0 acre within the City's MS4 permit jurisdiction to be subject to the City's CSWMP review and stormwater construction permit provisions, as assisted by Adams 12.
 - iv. Post-construction program activities as described in the CDPS MS4 permit, including, but not limited to: review and approval of post-construction stormwater control measure requirements contained within final drainage reports or other applicable documents; and associated post-construction inspection and auditing activities, as assisted by Adams 12.
 - v. The City shall work directly to advise Adams 12 of sites that require stormwater construction permits and post-construction stormwater control measures to maintain sites in compliance with stormwater quality requirements contained within the CDPS MS4 permit. Adams 12 will be required to be the responsible official for the CDPS MS4 permit. If continued non-compliance or disregard of stormwater requirements is documented by the City, or work is being done without appropriate approvals and permits and enforcement actions are necessary, then it shall be the City's responsibility to initiate enforcement actions pursuant to the authority granted to the City's staff as described under Section 2, Paragraph A of the Agreement. Upon initiation of enforcement activities, the City shall provide documentation, field support, testimony, or other support as needed, for legal actions initiated by the City.
 - vi. The City will not provide support for any of Adams 12's non-standard permit requirements related to public education and outreach, pollution prevention/good housekeeping for Adams 12's operations, or other sections of Adams 12's non-standard permit not specified above.
- B. To the extent allowed by law, the City shall administer, coordinate, and perform the following tasks associated with program elements shown as minimum control measures in the City's CDPS MS4 permit program description.
- i. Illicit discharge detection and elimination (IDDE) activities specifically identified below and described in the City's CDPS MS4 permit program description.
 - a. Continued operation of stormwater concerns/reporting contact and phone number.
 - b. Coordination and performance of storm drain system mapping efforts. Provide accurate records, files, mapping, mailing list, and other documents and information necessary to establish the jurisdictional boundaries, type, and ownership of properties within the jurisdictional boundaries and physical facilities of Adams 12 for which the City will be providing services, and shall reasonably provide any updates or changes to this information as necessary, as assisted by Adams 12.
 - c. Continuation of pollution awareness efforts, such as the website, stormwater mural inlet program, news publications, and business cards with the appropriate contact information.
 - d. The City will provide Adams 12 technical staff assistance, for enforcement activities associated with issuing NOV's for stormwater construction violations as outlined in the City's enforcement response plan.

- e. Coordinate audits of Adams 12 facilities, as assisted by Adams 12.
 - f. Maintain an effective IDDE program for facilities owned and operated by Adams 12 and comply with CDPHE regulations and the City's CDPS MS4 permit program description, as assisted by Adams 12.
 - ii. The City may periodically review Adams 12s' IDDE program at the request of Adams 12 to ensure Adams 12 is maintaining an effective program in compliance with the City's CDPS MS4 permit program description.
 - iii. Adams 12 will remediate small spills (<5 gallons).
 - iv. In case of large spills (>5 gallons), the City will confer with Adams 12 to provide Adams 12 opportunity to address the spill, including Adams 12's hiring of contractors. If requested or in the case of emergency, the City will contact its selected contractor to remediate the spill. The illicit discharge remediation contractor will bill the City and the City will then bill the responsible party, if known. If there is no responsible party, the City will invoice Adams 12 when the spill occurs within Adams 12's geographical area shown in Exhibit B.
 - v. Spills that initially occur within Adams 12's geographical area shown in Exhibit B are subject to complete remediation and shall include all areas impacted, including nearby/downstream property and related drainage system infrastructure.
- C. The City shall inform Adams 12 of any permit related correspondence with regulatory agencies which may affect Adams 12s' operations or Adams 12s' performance of its duties pursuant to this Agreement and provide Adams 12 a duplicate copy.
- D. The City shall diligently maintain the CDPS MS4 permit consistent with State of Colorado regulations and approval criteria to ensure continued coverage of Adams 12 as an entity covered under said permit. The City shall coordinate with CDPHE on the type and extent of any submittals required, accumulate documents, and/or prepare or coordinate creation of new documents as required for the submittals.
- i. The City shall administer, maintain, prepare annual reports for, and renew the City's CDPS MS4 permit. Adams 12 will be required to maintain its annual reporting requirements for the non-standard permit.
 - ii. The City and Adams 12 shall each be individually responsible for any permit requirements should they arise during the term of this Agreement from total maximum daily load assessments for waterways within the City limits.
 - iii. Per CDPHE guidance, Adams 12 shall be responsible for all permit recordkeeping requirements as they pertain directly to the non-standard permit, COR070000, even if some of the recordkeeping should duplicate the City's efforts.
 - iv. The City shall provide Adams 12 the City's documentation for Adams 12 facilities on an annual basis. This documentation will be provided to Adams 12 by January 31 of the following year of the reporting period.
- E. Each party will designate a representative to be a point of contact between the City and Adams 12 to facilitate communication between the parties regarding technical items, emergency matters, strategic planning, and permit compliance issues in order to assist the City in performing its duties identified in the Agreement.

EXHIBIT B
GEOGRAPHIC AREA APPLICABILITY
(Insert Map)

EXHIBIT C
FEE RATE TABLE

SERVICE	FEE
Engineering Review (e.g. Drainage Reports, Civil Drawings, SWMPs, and O&M Manuals)	Based on current City Development Review Process fee schedule
Construction Inspections	Monthly Site Inspection Fee \$75 Non-Compliance Reinspection Fee \$50
Maintenance of Permanent Stormwater Structures as Communicated by the City	Adams 12 Responsible for all maintenance costs on Permanent Stormwater Structures located on Adams 12 properties
Post-Construction Inspections	One Inspection per Permit Period – No Fee Non-Compliance Reinspection Fee \$50
Illicit Discharges ¹	Cost based on invoice from City-selected contractor
Enforcement ²	Per Federal Heights Municipal Code Section 1-15 and 30-231

Notes:

- 1 In case of large spills (>5 gallons), the City will confer with Adams 12 to provide Adams 12 opportunity to address the spill, including hiring contractors. If requested or in the case of emergency, the City will contact its selected contractor to remediate the spill. Illicit discharge remediation contractors will bill the City, which will bill the responsibly party, if known. If there is no responsible party, the City will invoice Adams 12. Spills are subject to complete remediation and shall include all areas impacted, including nearby/downstream property and related drainage system infrastructure.
- 2 Enforcement fines will be issued in accordance with the City’s current enforcement response plan.
- 3 Federal Heights Municipal Code Section 1-15 sets the maximum penalty for each code violation at \$2650.00 per violation. Federal Heights Municipal Code Section 30-104 each and every day (24-hour period) which any nuisance continues shall be deemed a separate offense and may be prosecuted and punished as a separate offense. Under Federal Heights Municipal Code Section 30-231 an additional fine of \$1,000 may be imposed for each violation of any provision of this article. Each day or part of a day any violation occurs or continues is a separate offense.