



## Board Summary Report

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**File #:** 22-212

**Agenda Date:** 5/24/2022

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**To:** Board of County Commissioners

**Through:** Bryan Weimer, Director Department of Public Works and Development

**Prepared By:**

Robert Hill, Sr. Asst. County Attorney and Ryan Seacrist, PE, CIP Engineer III

**Subject:**

Approval to Grant an Easement to Cherry Creek Valley Water and Sanitation District

**Purpose and Request:**

The Arapahoe County Board of County Commissioners is requested to approve the attached Easement Agreement and Special Conditions addendum granting a permanent easement to Cherry Creek Valley Water and Sanitation District (CCVWSD) for a water main on County owned property and to authorize the Chair to execute the easement on behalf of the Board and the County.

**Background and Discussion:**

In April 2019, Arapahoe County commenced an Open Space trail and pedestrian bridge project near the intersection of Cherry Creek Drive South and Iliff Avenue. Public Works and Development Department provided contract management for the project, which involved the installation of a soil nail array for support for a retaining wall. The location for the soil nails, however, proved to conflict with an existing water main owned and operated by CCVWSD. As such, the installation of the soil nails resulted in one nail striking (but not puncturing) the water main and several other nails surrounding the water main. This situation inhibits access to the water main for maintenance purposes and any excavation within the soil nail array presents a threat of damage to the retaining wall.

CCVWSD filed a lawsuit against the County, its design consultants, contractor and the soil nail subcontractor alleging claims for damages to the water main. In settlement of that lawsuit, the parties entered into a settlement agreement, previously approved by the Board, by which the County agreed to relocate the water main at the soil nail array as part of the County's Iliff Avenue Operational Improvements project. The other parties agreed to provide money towards the cost of the relocation, and the County also agreed to grant an easement to CCVWSD to accommodate the relocated water main and which includes the part of the pipe that is

outside the right of way on County Open Space property.

The water main, including the part within the proposed easement, has existed for years. The property was conveyed to the County by Denver, but apparently there was no pre-existing easement for the water main and the quitclaim deed to the County did not reserve any easement.

The Easement Agreement is a Denver Water template that CCVWSD is required to use by reason of its relationship with Denver Water. The Agreement template is revised to address the County's interests through an attached and incorporated Special Conditions addendum that recognizes the unique circumstances of this easement, such as that it is for an existing water line on property conveyed to the County by Denver through a quitclaim deed. The Special Conditions revisions are intended to protect the County from responsibility for past conditions and preserve the County's ability to use the land for Open Space purposes.

Staff recommends that the Board approve the Easement Agreement as modified by the Special Conditions addendum.

**Alternatives:** The Board can deny approval of the Easement Agreement as presented and direct staff to re-negotiate different terms for granting the easement, but there is little option for requiring removal of the water main without affecting area water users.

**Fiscal Impact:** Granting the easement will have no significant fiscal impact on the County.

**Alignment with Strategic Plan:**

- Be fiscally sustainable
- Provide essential and mandated service
- Be community focused

**Concurrence:** County Attorney's office has reviewed the Easement Agreement and drafted the Special Conditions provisions added to the Easement Agreement. Public Works and Development Department staff have reviewed the Easement Agreement and Special Conditions and concur with the recommendation of approval. Open Space staff have also reviewed and commented on the Easement Agreement and Special Conditions.

**Resolution:** A draft resolution along with the Easement Agreement and Special Conditions addendum, and the original CCVWSD settlement agreement are attached.

