

Cherry Creek Valley Water and Sanitation District v. Arapahoe County, et al
Arapahoe County District Court, Case No. 21CV30385

Settlement Agreement

Cherry Creek Valley Water and Sanitation District ("CCV"), Arapahoe County, Colorado ("County"), David Evans and Associates, Inc. ("DE&A"), Goodbee & Associates, Inc. ("Goodbee"), Sabell's Civil and Landscape, LLC ("Sabell's"), and Thorcon Shotcrete and Shoring, LLC ("Thorcon"), being all the Parties to this Settlement Agreement and the above referenced lawsuit in Case No. 21CV30385 (the "Lawsuit"), mutually agree that said lawsuit be fully resolved and settled as follows:

1. The County agrees to include relocation of the CCV 24-inch water main as part of its Iliff Avenue Operational Improvements Project ("Iliff Project") and to contract with its contractor to perform the work to relocate the water main and abandon the existing pipe, not relocated, in place. The contract documents used for the relocation work will be based upon a change order to the general contract in the Iliff Project and will be timely provided to CCV's legal counsel for review for the purpose of verifying that the provisions referenced in subsections 9.f. and 9.g. below are included.
2. There is an estimated budget for the relocation of the 24-inch water main that includes approximately \$389,000 in "hard" costs to relocate the water main as part of the Iliff Project. This project budget of "hard" costs for the water main work is based on the estimated labor and material costs provided by the County's contractor. The estimated budget is attached hereto and incorporated herein as Exhibit A.
3. The County agrees to pay towards the "hard" costs of relocation the amount of \$100,000 and further agrees to pay for those "soft" costs that the County already will be paying as necessary for the Iliff Project, regardless of whether relocation of the water main is included with the work for the Iliff Project. These soft costs generally include, but may not be limited to, general conditions, permitting, surety bonds, contractor overhead, traffic control, landscaping, seeding and erosion control, asphalt paving, concrete barrier, and drums.
4. The County agrees to provide to CCV a nonexclusive easement for the relocated water main with the dimensions as agreed by County and CCV as necessary to accommodate the relocated water main.
5. DEA, Goodbee, Sabell's, and Thorcon agree to pay the amount of \$20,000 each for a total of \$80,000 toward the "hard" costs to relocate the water main as described in Exhibit A. DEA, Goodbee, Sabell's, and Thorcon shall not be responsible for any other costs or expenses for relocating the water main, or for further contribution for the work/costs associated with Exhibit A. Payment by DEA, Goodbee, Sabell's and Thorcon as provided in this Paragraph shall be in consideration of full and final settlement of all claims filed in the Lawsuit against the paying Defendant or that otherwise may be raised against the paying Defendant by reason of the soil nail installation at issue and/or any

other claim, known or unknown, related to the design and construction of the soil nail installation, as pleaded in the Complaint filed by CCV in the Lawsuit.

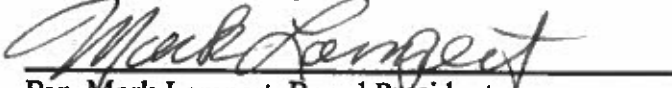
6. CCV agrees to pay the balance of the "hard" costs in the amount of approximately \$209,000 as described in Exhibit A.
7. Payments for "hard" costs shall be made to the County within thirty (30) days of the approval and execution of this Settlement Agreement by all Parties.
8. CCV agrees, at its costs, to supply the engineering design and construction plans and specifications for relocation of the water main and the abandonment of the portion of the water main that will remain in place.
9. CCV and the County agree to the following provisions concerning the relocation of the water main:
 - a. The County will act as the contract administrator including managing the construction contractor and any professional services needed to complete the relocation of the water main, except for the design, plans, and specifications; and will provide all reasonably necessary or desirable expertise and experience (e.g., but not limited to legal, contract administration, engineering, financial, accounting) to manage the performance of the construction contractor.
 - b. CCV will provide construction observation of the relocation of the water main at no cost to the County, and the County will provide each and every CCV representative or authorized designee with access to the water main site during construction.
 - c. The County will promptly confer and consult with CCV concerning any scope modifications, field directives, change orders, disputes with the construction contractor, and any and all other matters affecting the work to relocate the water main or the timely completion thereof, and both the County and CCV will resolve any disputes as quickly as possible.
 - d. The County will provide CCV a full and complete set of as-built plans prepared by the County and the construction contractor, promptly upon substantial completion of the water main relocation work.
 - e. If CCV desires that the County's construction contractor to provide additional services beyond the elements included in the design, plans, and specifications as of the date hereof, CCV will be responsible for those additional costs. The County will not approve a change order for such additional work until it receives a written commitment for funding from CCV. If the County does not receive such funding prior to issuing a notice to proceed with such additional work, such proposed additional work will not be included as part of the Iliff Project.

- f. Because of fire safety concerns the County will schedule the work for the relocation of the water main as referenced in the Exhibit A attached hereto so that once the work to relocate the water main is commenced by the contractor, it will be completed diligently in order to minimize the time that the water main is out of commission. CCV and the County agree, however, that neither Party will be liable to the other or to any third party for any consequential damages incurred by reason of any interruption in the work.
 - g. The County will agree to include a provision in the change order for the water main relocation work, agreeable to its contractor, that CCV is named as a third-party beneficiary of the construction contract for the purposes only of the water main relocation work, and is named as an additional insured on the contractor's insurance policies applicable to the water main relocation work.
- 10. CCV and County agree to share equally any cost over-runs incurred in the relocation "hard" costs for the water main.
- 11. Following the public board approvals mentioned in Paragraph 16 below, the Parties agree to stipulate to dismissal of the Lawsuit with prejudice, with each party to pay its own attorney fees and costs.
- 12. This Settlement Agreement releases all claims that were or could have been raised by any Party, against any Party, related in any way to the water main relocation project and Lawsuit. The terms "Party" or "Parties" include all of the respective Parties' officers, directors, agents, servants, attorneys, contractors, subcontractors, project consultants, experts, and insurers, employees, predecessors, successors, assigns or any other representatives.
- 13. If any of the Parties is required to enforce the terms of this Settlement Agreement against any other party, then the prevailing party shall be entitled to all its reasonable attorneys' fees and costs. Venue shall be in the District Court for Arapahoe County, Colorado.
- 14. The Parties shall cooperate in good faith to implement the terms of this Settlement Agreement.
- 15. The electronic signature of any party shall have the same force and effect as a manual signature. Each party may create a valid electronic signature by (i) causing any authorized representative of such party to type his or her name in the below signature block, and (ii) transmitting the e-signed document by email to the other parties. A signature created in such a manner shall conclusively establish the party's intention to adopt and be bound by the same.
- 16. The Parties understand and agree that, because CCV and County are political subdivisions of the State of Colorado and public bodies, before the County and CCV can legally be bound by this Settlement Agreement, it must be formally approved the Board of County Commissioners for Arapahoe County and the Board of Directors for Cherry Creek Valley


executed by the other Parties' attorneys, this Settlement Agreement shall bind all Parties hereto.

IT IS SO AGREED:

Plaintiff Cherry Creek Valley Water and Sanitation District


By: Mark Lampert, Board President
Date: October 25, 2021

Defendant Arapahoe County, Colorado


By: Nancy Jackson Board Chair
Date: 11/7/21


Defendant David Evans Associates, Inc.

By: _____
Date: _____

Defendant Goodbee & Associates, Inc.

By: _____
Date: _____

Defendant Sabell's Civil and Landscape, LLC


By: Laura Strauch/Owner
Date: 11/2/21

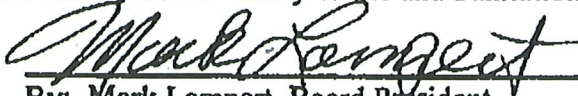
Defendant Thorcon Shotcrete and Shoring, LLC

By: _____
Date: _____


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By: Mark Lampert, Board President
Date: October 25, 2021


Defendant Arapahoe County, Colorado


By: Nancy Jackson Board Chair
Date: 11/7/21

Defendant David Evans Associates, Inc.


By: Erin Austin, General Counsel
Date: 11/11/2021


Defendant Goodbee & Associates, Inc.


By: Mary Keith Floyd, Principal
Date: 11/8/21

Defendant Sabell's Civil and Landscape, LLC

By: _____
Date: _____

Defendant Thoreon Shotcrete and Shoring, LLC


By: Ben Beyerly, General Manager
Date: 11-11-21

| Row | Description | QTY | Unit | Price | Total |
|-----------------------------------|---|-----|------|----------|------------------|
| 1 | Pot Hole | 8 | HR | \$320 | \$2,560 |
| 2 | Plug Structure | 1 | EA | \$1,150 | \$1,150 |
| 3 | Structure Backfill (Flow-Fill) Fill Pipe | 9 | CY | \$235 | \$2,115 |
| 4 | 24" Plug | 1 | EA | \$2,150 | \$2,150 |
| 5 | 24" Tie In | 2 | EA | \$13,000 | \$26,000 |
| 6 | 24" CI 52 DP | 140 | LF | \$500 | \$70,000 |
| 7 | 24" BFV | 1 | EA | \$59,000 | \$59,000 |
| 8 | 24" Tee | 3 | EA | \$10,000 | \$30,000 |
| 9 | 24" 45 Degree Bend | 2 | EA | \$5,700 | \$11,400 |
| 10 | Thrust Block | 6 | EA | \$106 | \$636 |
| 11 | Pipe Protection | 2 | EA | \$735 | \$1,470 |
| 12 | Mobilization | 1 | EA | \$6,000 | \$6,000 |
| 13 | Survey | 1 | EA | \$2,500 | \$2,500 |
| 14 | Structure Backfill (Flow-Fill) Over Pipes (if Required) | 150 | CY | \$235 | \$35,250 |
| CONSTRUCTION SUB-TOTAL | | | | | \$250,231 |
| 15 | Dewatering | 1 | EA | \$50,000 | \$55,000 |
| 16 | Asbestos Pipe or Material Removals | 1 | EA | \$10,000 | \$10,000 |
| ALLOWANCES SUB-TOTAL | | | | | \$65,000 |
| 17 | Water Easement Acquisition (Cherry Creek Property) | 1 | LS | \$10,000 | \$10,000 |
| 18 | General Contingency | 20% | % | \$63,046 | \$63,046 |
| NON CONSTRUCTION SUB-TOTAL | | | | | \$73,046 |
| TOTAL | | | | | \$388,277 |

Exhibit A to Settlement Agreement
*Cherry Creek Valley Water and Sanitation District v. Arapahoe
County, et al.*, Case Number 21 CV 30385