

RESOLUTION NO. 34
SERIES 2018

INTRODUCED BY: AL BLUM
SECONDED BY: EARL HOELLEN

A
RESOLUTION
OF THE CITY COUNCIL
OF THE CITY OF CHERRY HILLS VILLAGE
APPROVING AN INTERGOVERNMENTAL AGREEMENT
WITH THE CITY OF GREENWOOD VILLAGE FOR TRAFFIC SIGNAL DESIGN,
INSTALLATION, AND MAINTENANCE

WHEREAS, C.R.S. Section 29-1-203 authorizes governments to cooperate or contract with one another to provide any function, service, or facility; and

WHEREAS, Section 13.6 of the Cherry Hills Village Home Rule Charter authorizes the City Council, by resolution or by ordinance, to enter into contracts or agreements with other governmental units or special districts for receiving services; and

WHEREAS, the cities of Cherry Hills Village and Greenwood Village (the "Cities") agree there is a public safety and welfare need to install a traffic signal at the intersection of East Belleview Avenue and Glenmoor Drive (within Cherry Hills Village) and Steele Street (within Greenwood Village) located within the jurisdiction of both parties (the "Project"), and desire to establish a cost-sharing mechanism for the Project; and

WHEREAS, the Cities agree that such intergovernmental cooperation creates efficiencies in operation, resources and cost, and thus furthers the public health, safety and welfare of the residents of the Cities; and

WHEREAS, the Cities desire to enter into the attached Intergovernmental Agreement for sharing by the parties of the cost of design, installation, repair, and maintenance of a traffic signal, in accordance with the terms and conditions set forth therein.

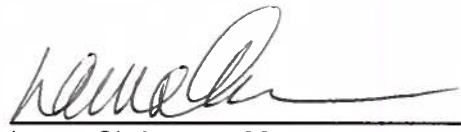
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Cherry Hills Village, Colorado that:

Section 1. The City Council hereby approves the attached Intergovernmental Agreement for Traffic Signal Design, Installation, and Maintenance with the City of Greenwood Village, Colorado, and authorizes the Mayor to execute said Agreement.

Section 2. This Resolution shall be effective immediately.

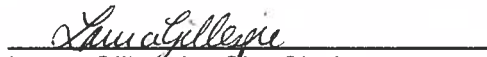
Introduced, passed and adopted at the
regular meeting of City Council this 12th day
of December, 2018, by a vote of 5 yes 0 no.

(SEAL)



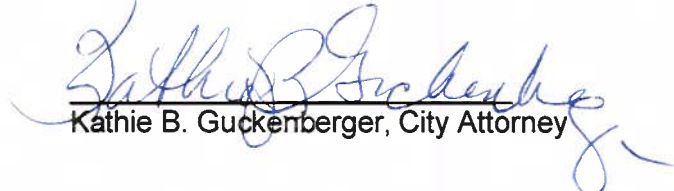
Laura Christman, Mayor

ATTEST:



Laura Gillespie, City Clerk

APPROVED AS TO FORM:



Kathie B. Guckenberger, City Attorney

**ATTACHMENT TO RESOLUTION 34, SERIES 2018:
INTERGOVERNMENTAL AGREEMENT FOR TRAFFIC SIGNAL DESIGN, INSTALLATION,
AND MAINTENANCE**



**INTERGOVERNMENTAL AGREEMENT FOR TRAFFIC SIGNAL DESIGN,
INSTALLATION, AND MAINTENANCE**

THIS AGREEMENT, made and entered into this 12th day of December, 2018 by and between the **CITY of CHERRY HILLS VILLAGE**, a municipal corporation of the State of Colorado, hereinafter referred to as "Cherry Hills Village," and the **CITY OF GREENWOOD VILLAGE**, a municipal corporation of the State of Colorado, hereinafter referred to as "Greenwood Village"; collectively, Cherry Hills Village and Greenwood Village shall referred to herein as the "Parties".

WHEREAS, Greenwood Village is a home rule city pursuant to Article 20 of the Colorado Constitution, and is authorized by C.R.S. § 29-1-203 to enter into a contract or agreement for the sharing by the parties of the cost of design, installation, repair, and maintenance of a traffic signal, as set out below; and

WHEREAS, Cherry Hills Village is a home rule city pursuant to Article 20 of the Colorado Constitution, and is authorized by C.R.S. § 29-1-203 to enter into a contract or agreement for the sharing by the parties of the cost of design, installation, repair, and maintenance of a traffic signal, as set out below; and

WHEREAS, Article 20, Title 29, C.R.S., clearly articulates and affirmatively expresses a state policy that authorizes political subdivisions of the State of Colorado to cooperate and contract to make the most efficient and effective use of their respective powers; and

WHEREAS, in accordance with C.R.S. § 29-1-203, each of the parties is authorized to enter into this Agreement; and

WHEREAS, Cherry Hills Village and Greenwood Village agree there is a public safety and welfare need to install a traffic signal at the intersection of East Belleview Avenue and Glenmoor Drive (within Cherry Hills Village) and Steele Street (within Greenwood Village) located within the jurisdiction of both parties (the "Project"); and

WHEREAS, the timely completion of the Project will benefit the resident and taxpayers of both Parties; and

WHEREAS, the Parties desire to establish a cost-sharing mechanism for the Project; and

WHEREAS, Cherry Hills Village shall assume all responsibility for the design and construction of the traffic signal; and Greenwood Village shall be and remain responsible for the maintenance of paint and street name signs on the traffic signal poles and shall reimburse Cherry Hills Village for fifty percent (50%) of the cost of engineering and construction of the Project as hereinafter described.

NOW, THEREFORE, in consideration of the mutual covenants and agreements, and the premises herein contained, the Parties hereto agree:

1. TERM: This Agreement shall be effective as of the date of mutual execution by the Parties (“Effective Date”) and shall terminate upon completion of the Project and acceptance of the Project work by the Parties (“Term”).

2. PURPOSE OF AGREEMENT: The purpose of this Agreement is to provide the terms and conditions upon which the Parties agree to design, construct, and install a traffic signal on the north and south sides of the intersections of East Belleview Avenue and Glenmoor Drive/Steele Street within Colorado Department of Transportation (“CDOT”) right-of-way (“Traffic Signal”). CDOT shall be and remain responsible for ownership, operation, and maintenance of the Traffic Signal as required pursuant to CDOT’s permit standards, **unless otherwise agreed to between Greenwood Village and CDOT.**

3. RESPONSIBILITY OF PARTIES: Cherry Hills Village shall cause the traffic signal to be installed on East Belleview Avenue within the jurisdiction of Cherry Hills Village and Greenwood Village as set forth in **Exhibit A.** The Parties acknowledge and agree that Cherry Hills Village has issued a request for proposal for design work for the Project and that Kimley-Horn and Associates, Inc. has been selected to complete the design of the Project. Upon completion of the design work as approved by Cherry Hills Village and Greenwood Village, Cherry Hills Village shall issue an invitation for bids or request for proposal for construction of the Traffic Signal. The Parties shall agree on the lowest responsible bidder for construction of the Project and thereafter Cherry Hills Village shall issue a notice of award (“Notice of Award”) and enter into a contract with such bidder (“Contractor”) in a form approved by both Parties. Cherry Hills Village shall supervise and review the work of the Contractor and manage and oversee the Project. Cherry Hills Village’s Representative shall communicate with Greenwood Village’s Representative concerning the Project and Greenwood Village’s Representative shall respond timely to requests for Project input and approvals.

4. TOTAL PROJECT COSTS:

The Parties estimate the total cost of the Project to be no greater than Four Hundred Thousand Dollars (\$400,000.00) (“Estimated Project Cost”). The Parties agree that each shall be responsible for funding as detailed below:

Entity	Share of Estimated Project Cost	Percentage of Project Cost	Percentage for Project Over-Runs
City of Greenwood Village	\$200,000.00	50%	50%
Cherry Hills Village	\$200,000.00	50%	50%
TOTAL	\$400,000.00	100%	100%

Each Party will pay fifty percent (50%) of the total Project Costs including cost overruns that exceed the Estimated Project Cost. Cherry Hills Village and Greenwood Village understand and acknowledge that the construction costs provided in this Agreement are an estimate based on the best available information and that actual construction costs may vary. If there are cost overruns associated with the Project, the Parties will share the cost overruns equally as set forth in the table

above. However, prior to Cherry Hills Village incurring any additional costs for design, equipment, or construction of the Project, Cherry Hills Village shall confer with Greenwood Village to receive authorization for incurring such additional costs. If either Party desires additional work or upgrades to CDOT's standard traffic signal specifications, the Parties and the Contractor shall agree upon the final scope of the work and the costs associated with the same prior to said additional work being authorized. The Party requesting the additional work or upgrade shall pay 100% of the upgrade cost, subject to approval by the other Party and CDOT.

5. STATEMENTS AND PAYMENT:

A. Upon receipt and approval of reimbursement request and accounting of costs from Cherry Hills Village, Greenwood Village shall remit payment to Cherry Hills Village for 50% of the reimbursement request within thirty (30) days of the date of the reimbursement request from Cherry Hills Village. All reimbursements to Cherry Hills Village via this Agreement, based on the cost estimates set forth above, have been appropriated or otherwise lawfully authorized by Greenwood Village.

B. The funding obligation of Cherry Hills Village is expressly contingent upon contribution and payment of 50% of its 50% share of the Project from Glenmoor Country Club and Glenmoor Homeowners Association (collectively, the "Glenmoor Funding"). In the event that Cherry Hills Village fails to obtain the Glenmoor Funding, Cherry Hills Village shall be entitled to terminate this Agreement without liability or obligation to Greenwood Village, provided such termination occurs prior to the issuance of any Notice of Award.

6. PROJECT MANAGEMENT:

A. Cherry Hills Village Representative. Cherry Hills Village hereby designates Jay Goldie (with an email address of Jgoldie@cherryhillsvillage.com) as its Representative to coordinate all communication with Greenwood Village related to the Project, including issues arising under this Agreement.

B. Greenwood Village Representative. Greenwood Village hereby designates Jeremy Hanak (with an email address of Jhanak@greenwoodvillage.com) as its Representative to coordinate all communication with Greenwood Village related to the Project, including issues arising under this Agreement.

7. NOTICE:

Any notice, demand or other communication required or permitted to be given hereunder, except as otherwise provided herein, shall be in writing and delivered personally or sent by overnight national courier service or by overnight or registered mail, postage prepaid, return receipt requested, addressed to the Party at the address that follows or as either Party may subsequently designate from time to time in writing. Notice shall be considered given when delivered or, if mailed by registered mail, on the third day after such notice is mailed.

To Cherry Hills Village:

Jay Goldie
Deputy City Manager/Director of Public Works
2450 E. Quincy Avenue
Cherry Hills Village, CO 80113

With a copy to:

Michow Cox and McAskin, LLP
6530 S Yosemite Street, Suite 200
Greenwood Village, CO 80111

To Greenwood Village:

Jeremy Hanak
Director of Public Works
10001 E. Costilla Avenue
Greenwood Village, Colorado 80112

8. PERMIT APPROVALS: It is mutually agreed that Cherry Hills Village will acquire the necessary permits for execution of work within each Party's jurisdiction and obtain necessary approvals and permits from CDOT.

9. LIABILITY: Each party shall be responsible for its own negligence hereunder to the extent provided by law. Neither party shall be deemed to be an agent for the other party. Cherry Hills Village and Greenwood Village, and their respective elected officials, directors, officials, officers, agents, and employees are relying upon and do not waive or abrogate, or intend to waive or abrogate by any provision of this Agreement, the monetary limitations or any other rights, immunities, or protections afforded by the Colorado Governmental Immunity Act, §§24-10-101 *et seq.*, C.R.S., as the same may be amended from time to time.

10. INSURANCE: Each party shall insure themselves separately against liability, loss, and damages arising out of the operation of and performance under this Agreement.

11. SUBJECT TO LOCAL LAWS; VENUE: Each and every term, provision or condition herein is subject to and shall be construed in accordance with the provisions of Colorado law, and the City of Greenwood Village, and the ordinances, regulations, and executive Orders enacted and/or promulgated pursuant thereto. Venue for any action arising hereunder shall be in the County of Arapahoe, Colorado.

12. ASSIGNMENT AND SUBCONTRACTING: Neither party is obligated or liable under this Agreement to any party other than those specified herein. Cherry Hills Village and Greenwood Village understand and agree that they shall not assign or subcontract with respect to any of the rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the other party, which consent or approval may be withheld in the absolute discretion of that other party, and in the event any such assignment or subcontracting shall occur, such action shall not be construed to create any contractual relationship between either of the parties and such assignee or subcontractor, and Cherry Hills Village and Greenwood Village shall remain responsible to each other according to the terms of this Agreement.

13. CONFLICT OF INTEREST: The parties agree that no official, officer, or employee of either party shall have any personal or beneficial interest whatsoever in the services or property described herein and Cherry Hills Village further agrees not to hire or contract for services any official,

officer, or employee of Greenwood Village which would be in violation of the Greenwood Village Municipal Code.

14. NO THIRD-PARTY BENEFICIARY: It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Cherry Hills Village and Greenwood Village, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of Cherry Hills Village and Greenwood Village that any person other than Cherry Hills Village or Greenwood Village receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

15. STATUS OF PARTIES: It is understood and agreed by and between the Parties that the status of each of the Parties hereto shall be that of separate, independent governmental entities and it is not intended, nor shall it be construed, that either Party or any employer or subconsultant of such Party is an employee, officer, or agent of the other Party for purposes of unemployment compensation, workers' compensation, or for any purpose whatsoever.

16. EXAMINATION OF RECORDS: Cherry Hills Village agrees that any duly authorized representative of Greenwood Village, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of Cherry Hills Village involving transactions related to the Project or this Agreement.

17. PARAGRAPH HEADINGS: The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

18. SEVERABILITY: It is understood and agreed by the parties hereto that if any part, term, or provisions of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

19. AGREEMENT AS COMPLETE INTEGRATION - AMENDMENTS: This Agreement is intended as the complete integration of all understandings between the Parties, their successors and assigns. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent notation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in written amendatory or other Agreement executed by the Parties and signed by the signatories of the original Agreement. This Agreement and any amendments shall be binding upon the Parties, their successors and assigns.

20. LEGAL AUTHORITY:

A. Each party assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution, or action passed or taken, to enter into this Agreement.

B. The person or persons signing and executing this Agreement on behalf of each party, do hereby warrant and guarantee that he/she or they have been fully authorized by Cherry Hills Village or Greenwood Village to execute this Agreement on behalf of Cherry Hills Village or Greenwood Village and to validly and legally bind Cherry Hills Village or Greenwood Village to all the terms, performances and provisions herein set forth.

21. COUNTERPARTS OF THIS AGREEMENT: This Agreement will be executed in two (2) counterparts, each of which shall be deemed to be an original of this Agreement.

22. PROJECT MANAGEMENT: It is mutually agreed between the parties that Cherry Hills Village shall be responsible for management of the project, approval of traffic control plans, testing, and inspection. It is further agreed that Greenwood Village will work through Cherry Hills Village 's project manager to provide direction or comments to any contractor.

23. WHEN RIGHTS AND REMEDIES NOT WAIVED: In no event shall any performance by one Party hereunder constitute or be construed to be a waiver by such Party of any breach of covenant or condition or any default which may then exist on the part of the other Party, and the rendering of any such performance when any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the non-breaking Party with respect to such breach or default, and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of the Agreement shall be deemed or taken to be a waiver of any succeeding or other breach.

24. ARTICLE X, SECTION 20; TABOR: The Parties understand and acknowledge that the Parties are subject to Article X, Section 20 of the Colorado Constitution (“TABOR”). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the Parties are expressly dependent and conditioned upon the continuing availability of funds for such party beyond the term of the Party’s current fiscal period ending upon the next succeeding December 31. Financial obligations of the Parties payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the individual paying Party and other applicable law. Upon the failure to appropriate such funds, this Agreement shall terminate.

*Remainder of page left blank intentionally
Signature page follows*

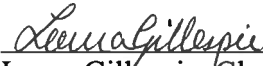
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

CITY OF CHERRY HILLS VILLAGE



Laura Christman, Mayor

ATTEST:



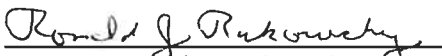
Laura Gillespie, Clerk

APPROVED AS TO FORM:



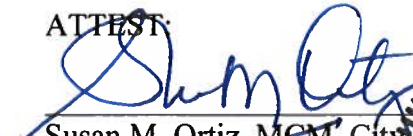
Kathie B. Guckenberger, City Attorney

CITY OF GREENWOOD VILLAGE



Mayor Ronald J. Rakowsky

ATTEST:



Susan M. Ortiz, MCM, City Clerk
mme

APPROVED AS TO FORM:



Torja Haas Davidson, City Attorney



EXHIBIT A

Survey of Area for Signal Installation
(to be provided by Cherry Hills Village)

