

RESOLUTION NO. 15
SERIES OF 2004

INTRODUCED BY: Doug Tisdale
SECONDED BY: Bonnie Blum

A
RESOLUTION
TO APPROVE THE AGREEMENT
FOR PROVISION OF POTABLE WATER
SERVICES - CHARLOU PARK WATER DISTRICT

WHEREAS, CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO, FINDS:

- A. The City of Cherry Hills Village (the "City") and the Charlou Park Water District (the "District") are empowered by the Colorado Constitution and C.R.S. § 29-1-203 to enter into and perform the Agreement for Provision of Potable Water Services, a copy of which is attached to this resolution as Exhibit 1; and
- B. The District entered into a contract with the Denver Board of Water Commissioners ("Denver Water") dated August 25, 1987 ("District Total Service Contract"); and
- C. The City entered into a contract with Denver Water dated April 21, 1992, to provide "total service" within the geographic boundaries of the City ("City Total Service Contract"); and
- D. The District desires to terminate the District Total Service Contract; and
- E. The District Total Service Contract automatically terminates upon consolidation of the District's contract service area with that of the City; and
- F. The City desires to provide potable water services to the District under the City Total Service Contract; and
- G. The District is within the City's contract service area.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO, AS FOLLOWS:

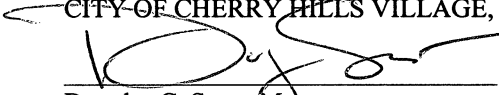
Section 1: City Council hereby determines that upon consideration of the Agreement for Provision of Potable Water Services attached hereto as Exhibit 1 (the "Agreement"), the Agreement shall be and hereby is approved; provided, however, the District fully satisfies the requirements set forth in Sections 2 and 3 below.

Section 2: As set forth in the Agreement, for each single family equivalent tap located within the District that receives service under the City Total Service Contract, the District shall pay to the City a one-time fee of fifty dollars (\$50.00) per single family equivalent tap prior to termination of the District's Total Service Contract.

Section 3: At all times, the District's non-potable well water system shall be operated in full compliance with all Denver Water operating rules, regulations and requirements. By way of explanation and not limitation, as set forth in the Agreement and as required by Denver Water, the District's well water shall under no circumstances be commingled with any treated water supplied by Denver, and the District shall distribute its well water through a distribution system and related facilities that are physically separate from and not in any way connected with the treated water distribution system. At such time as any District well water is used for any purpose on property that receives treated water from Denver Water, a backflow prevention device acceptable to Denver Water shall be installed on the metered treated water connection.

Introduced, passed and adopted at the regular
meeting of City Council this 14th day of December
2004, by a vote of 5 Yes and 0 No.


CITY OF CHERRY HILLS VILLAGE, COLORADO


Douglas C. Scott, Mayor

ATTEST:


Jennifer Pettinger, City Clerk

APPROVED AS TO FORM:


Timothy Flynn, Special Counsel
to the City of Cherry Hills Village



AGREEMENT FOR PROVISION OF POTABLE WATER SERVICES

CHARLOU PARK WATER DISTRICT

THIS AGREEMENT (hereinafter "Agreement") is made and entered into this 14th day of December, 2004, by and between the City of Cherry Hills Village, a municipal corporation of the State of Colorado (sometimes hereinafter referred to as "City") and Charlou Park Water District, a quasi-municipal corporation and political subdivision of the State of Colorado (sometimes hereinafter referred to as "District").

RECITALS:

WHEREAS, the City and the District are municipal and quasi-municipal entities respectively empowered by the Colorado Constitution, and C.R.S. § 29-1-203, to enter into and perform cooperative intergovernmental agreements between public entities; and

WHEREAS, the City has determined it to be in the public interest to centralize and consolidate a fragmented domestic potable water service within the geographic boundaries of the City; and

WHEREAS, the City has entered into a contract with the Denver Board of Water Commissioners ("Denver Water"), attached hereto as Exhibit A and incorporated herein, to provide "total service" within the geographic boundaries of the City in an effort to eliminate or restrict multiple water districts within the City ("City Total Service Contract"); and

WHEREAS, the District entered into a contract with Denver Water dated August 25, 1987 ("District Total Service Contract") which it now wishes to terminate and to enter into this agreement with the City for continuation of potable water services to residents of the District under the City's Total Service Contract; and

WHEREAS, the District desires to retain the authority to acquire, own, operate and maintain a non-potable water irrigation system for the purpose of providing such service within the District's boundaries; and

WHEREAS, the parties are entering into this Agreement for the provision of such water service to the real property currently located within the District's boundaries ("Property"), as described in Exhibit B attached hereto and incorporated herein by reference, for the benefit of the parties and their respective successors, transferees and assigns.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows, to wit:

I. Purpose and Contingency

1.1 Purpose. The purpose of this Agreement is to set forth the procedure by which the potable water service of the District may be transferred to the City in a way which assures equivalent service and responsible administration and maintenance under the City's Total Service Contract with Denver Water.

1.2 Contingency. To the extent that this Agreement requires approval of the District's Amended and Restated Statement of Purposes by the City and approval of the consolidation of services by Denver Water, it is contingent upon obtaining such approvals.

1.3 Effect of Contingency. This Agreement shall not take effect until and unless the City approves the Amended and Restated Statement of Purposes, and Denver Water approves the continuation of potable services under the City Total Service Contract.

II. Plan for Continuation of Water Service

2.1 General. The parties agree that this Agreement shall constitute a plan for continuation of water service to the Property.

2.2 Termination of District Total Service Contract. Pursuant to Section 24(a) of the District Total Service Contract, such Contract shall automatically terminate upon consolidation of the District's contract service area with that of the City.

2.3 Provision of Potable Water Service within the District's Boundaries. Upon termination of the District Total Service Contract as provided in Section 2.2, the District shall be served under the City Total Service Contract, as contemplated by Section 25 thereof, as the Property is within the City's contract service area. The parties to this Agreement acknowledge and agree that the services provided under the City Total Service Contract include only potable water service.

2.3.1 Transfer of Water Facilities. The District shall transfer its potable water facilities (*and any easements required for potable water service*) to the City.

2.3.2 Fees and Charges. The District agrees to submit to Denver Water's water service charges ("Water Service Charges") as described in Section 4 of the City Total Service Contract, as such Water Service Charges may be revised from time to time.

2.3.3 Inclusion Fee. For each single family equivalent tap located within the District that receives service under the City Total Service Contract, the

District shall pay to the City a one-time fee of fifty dollars (\$50.00) per single family equivalent tap.

2.4 Provision of Non-Potable Water Service within the District's Boundaries. The District shall have the authority to acquire, own, operate and maintain a non-potable water irrigation system for the purpose of providing such service to the Property. The water irrigation system shall be separate from the City's potable water system and shall never be operated in a way that would cause the City to be in violation of the City Total Service Contract or any Denver Water rule or regulation governing potable or nonpotable water service. The District's nonpotable water system shall be subject to all applicable City and Denver Water rules and regulations as the same now exist or may hereafter be amended from time to time, including, but not limited to Denver Water's requirement that each customer sign a dual water supply agreement and install a backflow prevention device on the customer's potable water service line.

III. Miscellaneous

3.1 Survival of Obligations. The provisions of this Agreement shall be deemed to survive any transfer of all or part of the Property, and shall inure to the benefit of and be binding upon the successors to, and/or transferees, and assigns of the City and the District.

3.2 Entire Agreement. This Agreement supersedes all prior agreements between the parties with respect to the Property, and shall constitute the entire agreement of the parties for the provision of potable water services.

3.3 Amendments. No amendment of this Agreement may be made except by mutual agreement entered into with the same formality as that employed in the execution of this Agreement.

3.4 Authority. Each of the parties warrants that it has full right, power and authority to enter into and perform this Agreement.

3.5 Further Acts. The parties each covenant that they will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such acts, instruments and transfers as may reasonably be required for the performance of their obligations hereunder.

3.6 Binding Effect. Upon the execution by both parties, this Agreement shall be in full force and effect, and shall be legally binding upon the parties. This Agreement shall continue in perpetuity until terminated by mutual written agreement of the parties hereto. This Agreement shall inure to the benefit of be binding upon the successors and assigns of the parties.

3.7 Severability. If any covenant, term, condition or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term or condition shall not affect any other provision contained herein, the intention of the parties being that all provisions hereof are severable.

3.8 Governing Law. The parties agree that the provisions of this Agreement shall be governed by the laws of the State of Colorado.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement to be effective as of the date and year first above written.

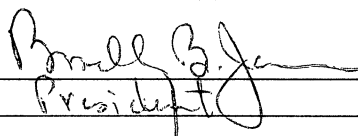
THE CITY OF CHERRY HILLS VILLAGE, a
municipal corporation of the State of Colorado

By: 

ATTEST:



CHARLOU PARK WATER DISTRICT, a quasi-
municipal corporation and political subdivision of
the State of Colorado

By: 
Its: President

ATTEST:

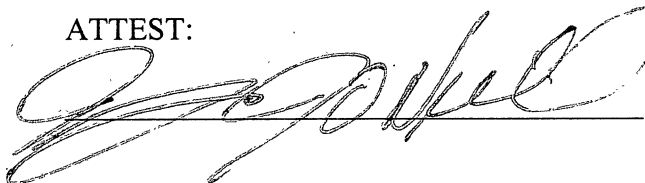


EXHIBIT A

Format Date: December 31, 1985
 Prior Contract No.: N/A
 Date of Prior Contract: N/A
 Contract No.: TS No. 45

TOTAL SERVICE CONTRACT

THIS AGREEMENT, made and entered into as of the 21st day of April, 1992, by and between the CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS, hereinafter sometimes called "Board," and THE CITY OF CHERRY HILLS VILLAGE, a municipal corporation of the State of Colorado, hereinafter sometimes called "Distributor,"

W I T N E S S E T H:

THIS CONTRACT IS MADE UNDER AND SUBJECT TO THE FOLLOWING CONDITIONS:

A. This contract is made under and conformable to the Operating Rules of the Board as amended from time to time, and to the provisions of the Charter of the City and County of Denver which control the operation of the Denver Municipal Water System consisting of Sections C4.14 to C4.35 of 1960 Compilation, adopted by the General City Election of May 19, 1959, and effective on and after May 28, 1959. Insofar as applicable, said Operating Rules and Charter provisions are incorporated herein and made a part hereof and shall supersede any apparently conflicting provision otherwise contained in this contract.

B. This contract involves the use of water outside the territorial limits of the City and County of Denver from the water works system and plant owned by Denver and controlled by the Board, hereinafter referred to as "Denver Municipal Water System," under authority of the Charter of the City and County of Denver which provides, among other things, that, "The Board shall have power to lease water and water rights for use outside the territorial limits of the City and County of Denver, but such leases shall provide for limitation of delivery of water to whatever extent may be necessary to enable the Board to provide an adequate supply of water to the people of Denver. . . ." As used in this contract "Inside Denver" refers to the area constituting the City and County of Denver which is furnished

potable water from the Denver Municipal Water System at any given time.

C. Exhibit "A" attached hereto and made a part hereof describes the territory hereinafter referred to as the "Contract Service Area." The Distributor has the power to own, construct, acquire and operate a water system in the contract service area.

D. The Board has heretofore leased substantial amounts of water to distributors who carried the water to the ultimate consumer by a variety of pipes, pumps, tanks, and other devices with a resultant lack of adequate uniformity of service, rates, and metropolitan area planning.

E. The Distributor finds that the making of this contract will provide for the most satisfactory and dependable water supply and service available to furnish water for current use and continued development within the contract service area.

F. The making and performance of this and similar contracts, which provide for a more economical and complete water service, uniformly planned and operated, for the Denver metropolitan area is desirable to promote the development of the most adequate water system for Denver as it now exists and as it is reasonably expected to enlarge, and for the metropolitan area to which its welfare and growth are related.

G. The securing of an adequate water supply by the Board for the future growth of the Denver metropolitan area is necessary and of mutual advantage to the parties hereto and the users they serve.

NOW, THEREFORE, for and in consideration of the premises and the covenants and agreements to be kept and performed by the parties hereto as hereinafter set forth, it is agreed by and between the Board and the Distributor as follows:

1. The Board agrees to furnish water within the contract service area for all uses and purposes for which it has appropriative rights, of a quality, and in quantities so as to provide water service similar to that furnished inside Denver, without any discrimination against users in the contract service area as against the water service furnished users inside Denver,

except as specifically permitted by the terms of this contract. Except as herein permitted, the water service so rendered by the Board shall be pursuant to the same policies and standards as if the contract service area were inside Denver.

2. The Distributor grants to the Board the right to use, connect, disconnect, modify, renew, extend, enlarge, replace, convey, abandon or otherwise dispose of any and all of the pipes and other devices including fire hydrants for distributing water to users within the contract service area, now owned, controlled, or hereafter acquired by the Distributor, to the fullest extent of the power, or powers of the Distributor to enable the Board to perform its obligations as set forth in paragraph one hereof. For purposes of this contract all pipes and other devices including fire hydrants used for distributing water to users within the contract service area shall hereinafter be referred to as "water service facilities." The Distributor agrees to provide the Board with a certified written inventory showing original plant value and accumulated depreciation of all of said water service facilities it now owns or controls prior to the date of assumption of rights and duties of service by the Board as set forth herein. The Distributor agrees that it will not, during the term of this contract, exercise any dominion whatsoever over any of such water service facilities, inconsistent with the exercise or performance by the Board of its rights and obligations hereunder. The Distributor grants to the Board the right to occupy any place, public or private, which the Distributor might occupy for the purpose of fulfilling the obligations of the Board as set forth in paragraph one hereof. The Distributor warrants that all water service facilities it owns or controls are in public rights-of-way or easements it now owns of sufficient size and free and clear of all liens and encumbrances; and the Distributor agrees to pay for the acquisition of such easements as may be required in such instances where the facilities are situated on private property or the easement is not of sufficient size to allow operation of the facility. To implement the purposes of this contract the

Distributor agrees to exercise such authority, and to do such acts as may be requested by the Board, provided that any legal, engineering, technical or other services required for the performance of this obligation shall be performed by a person or persons in the employment of and paid by the Board.

3. Subject to receipt by the Board of appropriate rates, charges, fees, tolls, or combinations thereof, as set forth in paragraph four below, the Board agrees to maintain all water service facilities it owns or which come under its dominion hereunder with reasonable and normal care to the extent that such maintenance is necessary to the furnishing of the water service provided for hereunder and to construct, operate, maintain and keep a complete inventory of such additional physical facilities as are necessary or desirable to accomplish the obligations it has undertaken for the Distributor, as set forth in paragraph one hereof. The concept "maintain" is intended, for practical purposes, to include the concept of required replacement.

4. The Board may establish, revise, impose and collect charges for the water service it provides users in the contract service area hereunder, which charges shall be referred to as "water service charges." In addition, the Board may at any time impose or discontinue system development charges, participation charges, and such other rates, fees, tolls, charges or combinations thereof, which are utilized for any purpose, including granting a water user the right to take water through the water system the Board owns or controls in the contract service area which charges shall be referred to as "water connection charges." Water service charges and water connection charges are separate charges and one does not include the other or any part thereof. Water connection charges shall be uniform among members of each class of users within the contract service area. Water service charges and system development charges shall be as provided for in Exhibit "B" attached hereto and made a part hereof, and shall remain in full force and effect until the Board shall deem it necessary to raise or lower either or both of such charges. Methods of collection and schedules of charges for

water service outside Denver may be applied uniformly among users similarly situated. Methods of collection and water connection charges for the right to take water in the contract service area outside Denver shall be determined by the Board from time to time as circumstances require. The Distributor grants to the Board all of the Distributor's power and authority for imposition and collection of charges for water service and water connections within the contract service area to the extent necessary to enable the Board to impose and collect its charges for water connections and water service hereunder in the contract service area. It is understood that, due to the Board's mandate under the Charter of the City and County of Denver, water service charges and water connection charges and other appropriate charges in the contract service area will be higher than charges for comparable service inside Denver. Any other provision of this agreement notwithstanding, the taps to be provided hereunder shall only be provided in conformity with any tap allocation program that may be adopted by the Board from time to time.

5. It is mutually agreed that the duration of this contract is such that the passage of time will require changes in the charges to be made for the water service to be rendered hereunder in the contract service area, and that the most feasible way to insure fairness will be to keep charges for the rendering of water service outside Denver uniformly related to charges for the rendering of water service inside Denver for similar service. It is therefore agreed that the Board may modify the schedule of charges for water service provided hereunder, from time to time, in its discretion, provided:

a. Such modification will become effective not earlier than three (3) months after any changed schedule of charges shall be adopted by the Board.

b. The Board will take reasonable steps to notify the Distributor and each water user in the contract service area of such change within a reasonable time after such change shall have been adopted.

c. The new charges will not be disproportionately greater for water service outside Denver than for similar water service inside Denver.

d. The charges under this and other like contracts shall not be deemed to be disproportionately greater to outside users under the reference in subparagraph 5c, if the rate of return (expressed as a percentage) from all the Board's potable water sales outside Denver shall be no more than six (6) percentage points greater than the rate of return from all the Board's potable water sales in Denver. Rate of return shall be derived by dividing total revenue (total outside Denver or total inside Denver) in excess of the applicable costs and charges for operation, maintenance, and depreciation, by the value of the plant devoted to the furnishing of the water supply from which the revenue was derived. The Board shall have reasonable discretion to establish and apply criteria for determining, as to both outside and inside Denver, rate structure, necessary plant, plant value, and operation, maintenance and depreciation expense, provided the application of the criteria shall be made as if there were no differential between charges inside and outside Denver.

6. All the general rules and regulations and amendments thereto placed in force by the Board from time to time, concerning the operation of the Denver Municipal Water System and conditions of service from that system shall be as fully enforceable in the contract service area as inside Denver. The Distributor retains the full right to make and enforce rules not inconsistent with Board rules to govern uses in the contract service area. The Distributor agrees to exercise any rule making or police power it may have to assist the Board in enforcing the Board's rules and regulations including those made to protect purity and safety of the water supply and to prevent waste of water in the contract service area.

7. Both parties to this agreement recognize that the water supply for the Denver metropolitan area is dependant upon

material resources from which the supply is variable in quantity and beyond the control of the Board. No liability shall attach to the Board hereunder on account of any failure to accurately anticipate availability of the water supply or because of an actual failure of the water supply due to inadequate run-off or occurrence beyond the reasonable control of the Board. Subject to receipt of appropriate rates, charges, fees, tolls, or combinations thereof, as set forth in paragraph four above, the Board agrees to provide adequate facilities to make available to the users within the contract service area a permanent water supply in view of historical experience with water run-off, so far as reasonably possible. If conditions develop such that it becomes apparent to the Board that all areas outside Denver for which a water supply has been committed cannot be supplied adequately pursuant to this and similar contracts, the Board reserves the right to discontinue the granting of additional taps hereunder; provided, however, the Board shall be obligated to exercise this right of discontinuance uniformly outside Denver.

8. The parties agree that the Board may, in order to comply with the Charter of the City and County of Denver, and enable it to provide an adequate supply of water to the people of Denver in times of shortage, limit the delivery of water and restrict the use thereof hereunder. The extent to which limitation of water delivery outside Denver may be necessary to enable the Board to provide adequately for users inside Denver is a fact to be determined by the Board as occasion may require. The current determination by the Board on this subject, which will not be changed without good reason is as follows:

"The welfare of Denver and its inhabitants requires a stable water supply not only for them but also that part of the adjacent metropolitan area dependent on Denver for a water supply. While it is the purpose of Denver to maintain a water supply adequate to meet the needs of the metropolitan area dependent upon Denver for water supply, there are many elements which make it uncertain whether the supply can always be adequate for all, and therefore in times of shortage, water use outside Denver will be curtailed

on the following basis, the first listed curtailment being adopted to meet the least serious situation and the succeeding curtailment being adopted in addition to prior listed curtailments, the last to meet the gravest possible situation and one which every reasonable precaution must be taken to avoid, to-wit:

- a. Restriction of uses (such as irrigation), which can be accomplished without serious injury to person or property and prohibition of non-essential uses.
- b. Prohibition of irrigation except for commercial greenhouses.
- c. Prohibition of every use except for domestic use and for essential commercial enterprises, and industry.
- d. Prohibition of all use outside the city except domestic uses.
- e. Prohibition of all uses outside the city.

In order to enable the Board to provide an adequate supply of water to the people of Denver without impairment of essential deliveries of water under this and similar contracts, the Board will impose any restrictions or prohibitions contemplated by Item a. above, uniformly inside and outside Denver."

9. In order to reduce the likelihood of the limitation of delivery or restriction of use of water in the metropolitan area dependent upon Denver for a water supply, the Board may suspend the making of new main extensions and taps in the contract service area; provided, however, that the Board shall be obligated to exercise this right of suspension uniformly among all areas outside Denver which are similarly situated. The Board agrees to give six months written notice to the Distributor of such suspension, unless circumstances require a shorter period.

10. All water furnished by the Board in providing water service hereunder is on a leasehold basis for the use of water users in the contract service area for all the various purposes for which Denver has been decreed the right to appropriate water. Such right to use water by said water users does not include any right to make a succession of uses of such water and upon

completion of the primary use by the water users all dominion over the water so leased reverts completely to the Board. Except as herein specifically otherwise provided, all property rights to the water to be furnished by the Board hereunder are reserved in the Board, provided, however, that nothing herein shall be deemed or construed as creating an obligation on the Board to separate said water from any material added to it in use by the water users or as creating any obligation on the Board regarding purification of the total mass after use by the water users. Nothing contained herein shall be deemed to impose on the Distributor or the water users any obligation by virtue of this contract for the purification of water after use by the water users, any such obligation, if it exists, being such as may arise without respect to anything contained in this contract. It is mutually agreed that there is no obligation on the Distributor or on the water users with respect to creating any particular volume of return flow from water delivered hereunder.

11. Public fire hydrants shall be installed by the Board in the due course of business in the contract service area according to standards of effectiveness followed inside Denver. Private fire hydrants may be installed at locations other than those dictated by said standards of effectiveness. All fire hydrants shall be installed pursuant to the Board's rules, regulations and standards.

12. All water service facilities installed or replaced by the Board in the contract service area shall be installed pursuant to its rules, regulations and standards. Said facilities shall be the property of the Board. All property of the Distributor within the dominion of the Board shall be treated as Board owned property for the purpose of rate calculation.

13. No enlargement of the contract service area or any other amendment of this contract may be made except by mutual agreement entered into with the same formality as that employed in the execution of this contract.

14. The Distributor agrees that it will neither directly nor indirectly furnish, nor authorize the furnishing, of any water

service within the contract service area or through use of any of its facilities except as herein provided.

15. This contract shall remain in force until terminated by mutual agreement.

16. It is agreed that the damage to the Board for failure of the Distributor to perform this contract in all its essential parts will be not less than the reproduction cost of the part of the facilities installed, replaced or used by the Board to supply said contract service area, which damage the Distributor agrees to pay immediately upon the occurrence of such failure.

17. The parties agree that this contract is performable in the City and County of Denver, notwithstanding that either of the parties may find it necessary to take action in furtherance of or compliance with the contract outside said City and County.

18. In the event all or part of the contract service area is annexed to the City and County of Denver, all water service facilities of the Distributor located within the geographical area annexed shall without cost to the Board become the sole property of the Board and the Distributor agrees to pay all liens and encumbrances to which said water service facilities may then be subject and to forthwith execute a conveyance of said facilities to the Board adequate to evidence the property interest so transferred by annexation.

19. This contract supersedes any other former water supply contract existing between the parties hereto.

20. The Distributor agrees that where the Board is directly or impliedly authorized to exercise its judgment under any of the provisions of this contract, its judgment shall not be questioned unless clearly unreasonable.

21. The Board agrees to save the Distributor harmless from the claims of third persons arising out of the Board's operation, maintenance, extension and enlargement of the Distributor's facilities under color of this contract and to defend, at its expense, all actions for damages arising out of such Board action which may be brought against the Distributor by third persons. In the event of an occurrence or loss out of which a claim arises

or could arise, the Distributor agrees to transmit in writing, and at once any notice or information received or learned by the Distributor concerning such claim. Except at its own cost, the Distributor agrees not to voluntarily make any payment, assume any obligation or incur any expense in connection with the subject matter of this paragraph. No claim shall lie against the Board hereunder unless as a condition precedent thereto, the Distributor has fully complied with the provisions of this contract nor until the amount of the Distributor's obligation to pay shall have been fully determined.

22. The parties shall not be deemed to have agreed that the benefits and obligations created by this contract have been modified by any amendment hereafter made to the Constitution or laws of the State of Colorado or the Charter of the City and County of Denver unless actually agreed to by the parties hereto.

23. In the event the Distributor shall, for whatever reason, cease to function as a municipality under the laws of the State of Colorado, written notification of that fact shall be provided to the Board. The Distributor shall provide for continuation of this agreement with a responsible party or parties acceptable to the Board being substituted for the Distributor as a party to this agreement. The substituted party or parties shall accept and assume all rights and obligations of the Distributor hereunder. In the event no such provision is made for assumption of contractual rights and obligations, then immediately upon the Distributor's ceasing to function as a municipality, this agreement shall be null, void and of no further force or effect; and the Board shall have no further obligation to provide water service pursuant to the terms hereof, provided, however, that the Distributor shall be responsible to the Board for any and all costs incurred by the Board on behalf of the Distributor and prior to receipt of actual notice by the Board that the Distributor has ceased to function as a municipality under the laws of Colorado.

24. No assignment by the Distributor of its rights under this contract shall be binding on the Board unless the Board

shall have assented to such assignment with the same formality as employed in the execution of this contract.

25. SPECIAL PROVISIONS:

This Contract is being executed in the interest of the public welfare and to bring to initial fruition years of prior discussion relating to a single Total Service Contract between the Board and the City of Cherry Hills Village. There now exists 23 separate Distributor Contracts within Cherry Hills Village. Cherry Hills Village understands that the Board is in the process of revising its current Distributor Contracts. Both parties agree to use their best efforts to come to agreement on and execute the new contract. The new contract will be submitted to Cherry Hills Village, as well as other Board Distributors, as soon as it is available for review and execution.

Cherry Hills Village, prior to the execution and implementation of this Contract, has not been a purveyor of or owner of water and/or distribution facilities; and in an effort to eliminate the proliferation of small utility districts that are contractees with the Board, Cherry Hills Village contemplates, subject to Board approval, the acquisition of the water distribution facilities of said entities and to grant dominion and control of the same to the Board for the providing of the service contemplated by this contract. It is contemplated that each current Board Total Service Distributor within Cherry Hills Village will transfer its water facilities to Cherry Hills and be served under the Village's Total Service Contract. The other Board Distributors within Cherry Hills Village that wish to be served under the Village's Total Service Contract shall, at their cost, upgrade their water facilities and/or easements to the Board's Total Service Standards as necessary and then transfer their water facilities to Cherry Hills in order to obtain service under this contract.

In the acquisition of easements, Cherry Hills Village contemplates the privilege of consultation with the Board in order to minimize expenses and inconveniences and to, wherever possible, accommodate existing conditions and facility locations.

Cherry Hills Village retains the prerogative to assess fees and charges against the individual users to facilitate the administration of this contract and in duties resulting therefrom. The Board and Cherry Hills Village shall negotiate in good faith to agree upon the terms of a contract whereby the Board shall collect such fees for Cherry Hills Village. Notwithstanding anything to the contrary appearing hereinbefore, it is the understanding of the parties that in times of the shortage of water, use may be curtailed in a manner to be determined by the Board, provided, however, that such restrictions shall be applied uniformly, ~~among Board-Distributor~~ ^{led} ~~contract service areas.~~

The Cherry Hills Village service area shall include all property now located within the existing corporate limits of the Village except for those areas served by the City of Englewood and the Holly Mutual Water Company. The present service area and the exclusions are identified as Exhibit "A" attached hereto and made a part hereof.

IN WITNESS WHEREOF, the parties have executed this agreement.

ATTEST:

CHERRY HILLS VILLAGE
Distributor

Elizabeth D. Dine
(SEAL)

By Joan R. Duncan
Joan R. Duncan, Mayor

ATTEST:

H. J. Barry
H. J. Barry, Secretary
President

CITY AND COUNTY OF DENVER,
ACTING BY AND THROUGH ITS
BOARD OF WATER COMMISSIONERS
By Hubert A. Farbes, Jr.

APPROVED:

Denver

Robert L. Crider
Administration Division

Chene R. Clavery
Legal Division

Chene R. Clavery
Planning Division

REGISTERED AND COUNTERSIGNED:
Auditor, City and County of

By Robert L. Crider
Robert L. Crider

EXHIBIT "A"

Corporate limits of the City of Cherry Hills Village, County of Arapahoe, State of Colorado:

Commencing at the NW corner of the S 1/2 of the NW 1/4 of the NW 1/4 of Section 2, Township 5 South, Range 68 West of the 6th Principal Meridian; thence East to the SW corner of the NE 1/4 of the NE 1/4 of the NW 1/4, thence North to the NW corner of the NE 1/4 of the NE 1/4 of the NW 1/4 of said Section 2, thence East along the North line of Section 2 to the NW corner of Section 1, Township 5 South, Range 68 West, continuing East along the North line of said Section 1 to the NW corner of Section 6, Township 5 South, Range 67 West of the 6th Principal Meridian, continuing East along the North line of said Section 6 to the NE corner of the NW 1/4 of said Section 6, thence South along the East line of the NW 1/4 of said Section 7 to the center of Section 6, Township 5 South, Range 67 West, thence East along the North line of the SE 1/4 of said Section 6, 2,642.16 feet to the NE corner of the SE 1/4 of said Section 6, thence North along the East line of said Section 6, 10.88 feet to the center line of Happy Canyon Road, thence South 44°35'35" East 3,708.45 feet to the North 1/4 corner of Section 8, Township 5 South, Range 67 West of the 6th Principal Meridian, thence South on the West line of the NE 1/4 of Section 8, Township 5 South, Range 67 West to the center of said Section 8, continuing South along the West line of the SE 1/4 of said Section 8 to the SW corner of the SE 1/4 of said Section 8, thence West to the SE corner of Section 7, Township 5 South, Range 67 West of the 6th Principal Meridian; continuing West along the South line of said Section 7 to the SE corner of Section 12, Township 5 South, Range 68 West of the 6th Principal Meridian, continuing West along the South line of said Section 12 to the SE corner of Section 11, Township 5 South, Range 68 West of the 6th Principal Meridian, continuing West along the South line of said Section 11 to the SW corner of said Section 11, thence North along the West line of said Section 11 to the SW corner of Section 2, Township 5 South, Range 68 West of the 6th Principal Meridian, continuing North along the West line of said Section 2 to the point of beginning.

SERVICE AREA EXCEPTIONS
WITHIN CORPORATE LIMITS OF CHERRY HILLS VILLAGE

1. Cherry Hills Rancho Water District served by the City of Englewood:
 - A. All of Cherry Hills Rancho, 2nd Amended Filing and 3rd Amended Filing, in the County of Arapahoe, State of Colorado, excepts Lots 15, 17, 19, and 20;
 - B. The South 1/2 of the East 1/2 of the West 1/2 of the Northeast 1/4 of the Southwest 1/4 of the Northwest 1/4 of Section 2, Township 5 South, Range 68 West of the 6th Principal Meridian, and the North 1/2 of the East 1/2 of the West 1/2 of the Northeast 1/4 of the Southwest 1/4 of the Northwest 1/4, Section 2, Township 5 South, Range 68 West of the 6th Principal Meridian.
2. Holly Mutual Water Company:

Charlou Park Addition and Charlou Park Second Addition Subdivisions, located in the SW 1/4, Section 8, Township 5 South, Range 67 West, 6th Principal Meridian.

EXHIBIT "B"

Rate Schedule No. 3 - Outside City
Metered Total Service and Private Fire Protection Service
Effective March 1, 1990

Applicability: All licensees outside the territorial limits of the City and County of Denver who receive water service from the Board of Water Commissioners under agreements whereby the Board operates and maintains all of the systems used to supply the licensee in a manner to provide complete and total service similar to that furnished inside Denver.

Payment: Rates for water service under this rate schedule are net. Bills are due and payable upon issuance and become delinquent 20 days after billing date.

Rates:**A. All Metered Customers:**

Charges for metered service consist of a consumption charge and a service charge. The consumption charge is based upon the amount of water delivered during the billing period. The service charge is based upon the meter size and applies to all services that are "on" at any time during the billing period.

Consumption Charge:**Residential Customers:**

	Monthly Usage Gallons	Bi-monthly Usage Gallons	Rate Per 1,000 Gallons
First	15,000	30,000	\$1.57
All over	15,000	30,000	1.96

Nonresidential Customers:

First	700,000	1,400,000	1.51
All over	700,000	1,400,000	0.94

Service Charges for all Customers:

Meter Size	Monthly \$	Bi-monthly \$
5/8 inch	4.30	8.60
3/4 inch	6.00	12.00
1 inch	7.00	14.00
1 1/4 inch	7.50	15.00
1 1/2 inch	9.10	18.20
2 inch	13.00	26.00
3 inch	22.00	44.00
4 inch	34.00	68.00
6 inch	63.00	126.00
8 inch	92.00	184.00
10 inch	130.00	260.00
12 inch	162.00	324.00

B. Private Fire Protection Services

	Monthly Charge \$	Bi-monthly Charge \$
Fire Hydrant	7.40	14.80
Sprinkler systems and stand pipes:		
Size of connections:		
1 inch	1.20	2.40
2 inch	2.40	4.80
4 inch	4.80	9.60
6 inch	7.40	14.80
8 inch	11.50	23.00
10 inch	16.50	33.00
12 inch	23.50	47.00
16 inch	53.00	106.00

Board of Water Commissioners
City and County of Denver
1600 W. 12th Avenue
Denver, CO 80254

12/89

EXHIBIT "B" (CONT'D)

System Development Charges
Effective January 1, 1986

Purpose: All new connections to the Denver supplied system (except for fire hydrants, lines or sprinklers) are required to pay System Development Charges according to the size of the connection. System Development Charges are used by the Board to finance the construction of raw water collection, storage, transmission, and treatment facilities and certain backbone transmission facilities.

Charges:

Connection Size	Treated Water		Raw Water
	Inside Denver \$	Outside Denver \$	
3/4 inch	2,730	3,820	1,605
1 inch	5,460	7,640	3,210
1 1/4 inch	8,190	11,460	6,420
1 1/2 inch	10,920	15,280	8,025
2 inch	21,840	30,560	17,655
3 inch	49,140	68,760	43,335
4 inch	98,280	137,520	83,460
6 inch	256,620	359,080	215,070
8 inch	546,000	764,000	420,510
10 inch	982,800	1,375,200	698,175
12 inch	1,638,000	2,292,000	1,072,140

Board of Water Commissioners
City and County of Denver
1600 W. 12th Avenue
Denver, CO 80254

1/86

EXHIBIT B

LEGAL DESCRIPTION OF CHARLOU PARK WATER DISTRICT

Subdivisions located within the NW ¼, Section 8, Township 5 South, Range 67 West, Arapahoe County, Colorado described as follows:

Charlou Park Subdivision and Charlou Park Subdivision Third Filing, which is more particularly described as follows: Lots 1 through 10, Charlou Park Amended Plat, and Lots 11 through 24, Charlou Park Third Filing.