

A RESOLUTION
OF THE CITY COUNCIL
OF THE CITY OF CHERRY HILLS VILLAGE
ENTERING INTO AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF
CHERRY HILLS VILLAGE AND THE CHERRYVALE SANITATION DISTRICT FOR
REIMBURSEMENT OF COSTS FOR THE CHERRYMOOR SOUTH SEWER TRUNK LINE
REHABILITATION PROJECT

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 the use of buildings, equipment or facilities, and for furnishing or receiving commodities or services; and

WHEREAS, the City of Cherry Hills Village ("City") and the Cherryvale Sanitation District ("District") agree there is a public safety and welfare need to improve and rehabilitate the South Interceptor Trunk Line portion of its sewer system (the "Trunk Line"); and

WHEREAS, pursuant to the terms of an existing agreement with the District, as amended, the District is required to pay its *pro rata* share of the operation and maintenance costs of the Trunk Line, including repair and reconstruction costs; and

WHEREAS, the City Council has approved a construction contract to improve and rehabilitate the Trunk Line, identified as the 2020 Cherrymoor South Interceptor Rehabilitation (City Project No. 2020-003) (the "Project"), on the condition that the District enters into an intergovernmental agreement concerning the terms under which the District will pay the City for its share of the Project costs; and

WHEREAS, the City and the District 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 City; and

WHEREAS, the City Council desires to enter into the attached Intergovernmental Agreement according to the terms and conditions set forth therein.

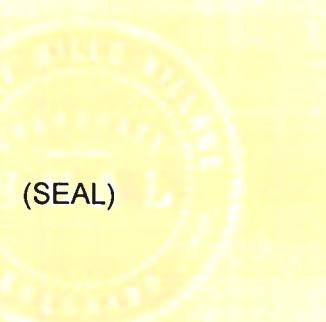
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO THAT:

Section 1. The City Council accepts and approves the Intergovernmental Agreement with Cherryvale Sanitation District, in substantially the same form as set forth in Attachment A, attached hereto and incorporated herein by reference, subject to minor modifications and revisions approved by the City Manager and City Attorney that do not increase the City's financial obligations, and authorizes the Mayor to execute the same.

Section 2. This Resolution is effective upon adoption.

Introduced, passed and adopted at the regular meeting of City Council this 18th day of August, 2020, by a vote of 5 yes 0 no.

(SEAL)

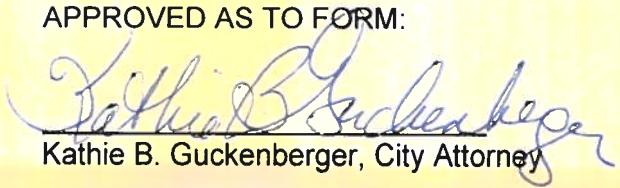

Russell O. Stewart

Russell O. Stewart, Mayor

ATTEST:


Laura Gillespie, City Clerk

APPROVED AS TO FORM:


Kathie B. Guckenberger, City Attorney

ATTACHMENT A:

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF CHERRY HILLS VILLAGE
AND THE CHERRYVALE SANITATION DISTRICT FOR REIMBURSEMENT OF COSTS FOR
THE CHERRYMOOR SOUTH SEWER TRUNK LINE REHABILITATION PROJECT**

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF CHERRY HILLS VILLAGE AND
CHERRYVALE SANITATION DISTRICT
FOR REIMBURSEMENT OF COSTS
FOR THE CHERRYMOOR SOUTH SEWER TRUNK LINE
REHABILITATION PROJECT**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into effective this 18th day of August, 2020, by and between the **CITY of CHERRY HILLS VILLAGE**, a home rule municipal corporation of the State of Colorado, hereinafter referred to as "Cherry Hills Village" or "City," and **CHERRYVALE SANITATION DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado, hereinafter referred to as "District." Cherry Hills Village and the District may be referred to herein individually as a "Party" or collectively as the "Parties."

WHEREAS, the City and the District, as Colorado governmental entities, are empowered pursuant to Article XIV, §18 of the Colorado Constitution and C.R.S. §§ 29-1-201, *et seq.*, to cooperate or contract via intergovernmental agreement to provide functions, services, or facilities authorized to each cooperating government; and

WHEREAS, the City is scheduled to commence work on rehabilitating the South Interceptor Trunk Line portion of its sewer system (the "Trunk Line") in 2020, pursuant to a construction contract for the 2020 Cherrymoor South Interceptor Rehabilitation (City Project No. 2020-003) (the "Project"); and

WHEREAS, the District connected to the Trunk Line pursuant to a May 1, 1972 agreement with the Cherrymoor South Water and Sanitation District ("Cherrymoor South"), as amended December 31, 1976 (the "Original Agreement"), which Original Agreement is attached and incorporated herein as **Exhibit A**; and

WHEREAS, pursuant to the Original Agreement, as amended, the sewage generated by District users is conveyed through the Trunk Line, and the District pays its *pro rata* share of the operation and maintenance costs of the Cherrymoor South sanitary sewer system, including repair and reconstruction costs; and

WHEREAS, Cherrymoor South was dissolved in 2002, and the City assumed responsibility for operation of the Cherrymoor South sanitary sewer system and succeeded to Cherrymoor South's existing contractual obligations under the Original Agreement, thus allowing the City to seek payment from the District for operation and maintenance costs; and

WHEREAS, the City and the District agree there is a public safety and welfare need to repair, reconstruct, and modernize the Trunk Line, which constitutes operation and maintenance costs as contemplated by the Original Agreement; and

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

WHEREAS, the City Council of Cherry Hills Village has approved a construction contract to complete the Project, on the condition that the Parties enter into an intergovernmental agreement concerning the terms under which the District will pay the City for its share of the Project costs; and

WHEREAS, the Parties desire to enter into this Agreement to supplement the terms of the Original Agreement to establish the District's obligation to pay its *pro rata* share of the costs for the Projects in installments.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

AGREEMENT

1. PURPOSE. The purpose of this Agreement is to: (1) memorialize the District's obligation to pay the City for the District's *pro rata* share of the Project costs; and (2) establish the terms and conditions under which the District's share of the Project costs shall be repaid to the City.

2. EFFECTIVE DATE; TERM. This Agreement shall commence on the date of mutual execution of the Parties (the "Effective Date") and shall continue until the Parties have fulfilled their obligations as set forth herein, or unless otherwise terminated by mutual written agreement of the Parties. Notwithstanding anything herein to the contrary, the Parties understand and agree that all terms and conditions of this Agreement that may require continued performance or compliance beyond the termination date of this Agreement, including, without limitation, Section 5 of this Agreement, shall survive such termination date and shall be enforceable as provided herein in the event of a failure by a Party to perform or to comply under this Agreement.

3. RESPONSIBILITY OF PARTIES. The City has awarded the bid for the Project to the lowest qualified bidder ("Contractor") to complete the Project. The Parties agree that the City shall be responsible for managing the Project, including supervising and reviewing the work of the Contractor, overseeing any required testing and inspection, and acquiring the necessary permits for completion of the Project, all in full compliance with all applicable laws and/or regulations, whether federal, state or local. The City's Representative shall communicate with the District's Representative concerning the Project and the District's Representative shall respond timely to requests for Project input and approvals. The District shall not have any ownership, operation or maintenance responsibilities associated with the Project or the Trunk Line except as set forth in this Agreement and the Original Agreement.

4. TOTAL PROJECT COSTS. The estimated total not-to-exceed cost of the Project is One Million One Hundred Seventy-Two Thousand Eight Hundred Thirty-Five Dollars and Fifty Cents (\$1,172,835.50) ("Estimated Project Cost"). The Parties agree that the District shall pay the City for its share of the Estimated Project Cost, as well as its share of cost overruns that exceed the Estimated Project Cost. The District's share of the Estimated Project Cost is estimated to be Two

Hundred Five Thousand Two Hundred Forty-Six Dollars and Sixteen Cents (\$205,246.16) (“District’s Project Cost”).

The District understands and acknowledges that the Estimated Project Cost is 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 District will pay the City its *pro rata* share of the cost overruns, which shall be calculated in the same proportion by which the District’s Project Cost was calculated (“Cost Overruns”). If there are cost savings associated with the Project, as determined upon completion of the Project and the City’s acceptance of the Project, the City will refund to the District its *pro rata* share of the cost savings, which shall be calculated in the same proportion by which the District Project Costs were calculated (“Cost Savings”).

5. DISTRICT PAYMENT IN INSTALLMENTS; FINANCE FEE; LATE PAYMENT; DEFAULT.

A. Installments. The District shall pay the District’s Project Cost as follows:

- i. Within thirty (30) calendar days of the Effective Date, the District shall remit **Forty-Five Thousand Two Hundred Forty-Six Dollars and Sixteen Cents (\$45,246.16)** to the City.
- ii. The City shall provide the District with invoices for the remaining installment payments of the District Project Cost on an annual basis on or before December 31 beginning in 2020. Such invoices shall reflect, and the District shall pay, the installment payments as detailed below, along with Cost Overruns, if any. Notwithstanding the prior sentence, if the City determines that the total cost of the Project exceeds the Estimated Project Cost by ten percent (10%) or more, the District may pay the City no later than May 1, 2025 the resulting Cost Overruns, along with the applicable finance fee and late payments due, if any.

Installment Payment	Amount Due*	Date Due
2	\$40,000.00	May 1, 2021
3	\$40,000.00	May 1, 2022
4	\$40,000.00	May 1, 2023
5	\$40,000.00	May 1, 2024

*Also to include late payment penalties and finance fees due per this Agreement.

- iii. The District may at any time in its sole and absolute discretion prepay any portion of the District Project Cost in advance of the installment schedule set forth above from any legally available funds of the District. Any such prepayments shall be applied first to the next due installment(s) and shall reduce the District’s finance fee as applicable.
- iv. All payments by the District may be made to the City in any manner mutually agreeable to the Parties.

- B. Finance Fee. In recognition of the fact that the City will be making payments to the Contractor prior to receiving the full amount of the District Project Cost, the District agrees to pay the City a finance fee as set forth in **Exhibit B**.
- C. Late Payment. Any payment by the District that is made after the deadlines specified in this Section 5 shall be subject to a late payment penalty calculated at the rate of five percent (5%) per month or fraction thereof, and interest calculated at the rate of one percent (1%) per month or fraction thereof. The City can use any late payment penalties it receives pursuant to this Agreement for the Project or for any other authorized purpose.
- D. Default. If the District fails to pay the City the requisite portion of the District Project Cost by the due dates specified herein, or if the District fails to appropriate funds to fulfill its obligations under this Agreement, then the City, at its option and in the exercise of its sole discretion, has the following rights to enforce collection of the District Project Costs, along with any finance fee or late payment penalty then due and owing pursuant to this Agreement ("Fees and Penalties"):
 - i. Bill the users within the District directly on a pro rata basis for the District Project Costs and Fees and Penalties and exercise all avenues for payment and collection therof, including imposing liens as provided by law;
 - ii. Exercise any other remedy available at law or in equity.

The District acknowledges and agrees that if the City undertakes any litigation or other proceeding to enforce collection of the District Project Costs and Fees and Penalties, the City shall be entitled to recover the costs it incurs in the collection of such Costs, Fees, and Penalties, including reasonable attorneys' fees.

6. PARTIES' REPRESENTATIVES.

- 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 the District related to the Project, including issues arising under this Agreement.
- B. District Representative. The District hereby designates Drew Damiano (with an email address of drew@unitedwaterdistrict.com) as its Representative to coordinate all communication with the City 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 the District:

Cherryvale Sanitation District
Attn: Board of Directors
c/o Haynie & Company, P.C
1221 West Mineral Avenue, Suite 202
Littleton, CO 80120-4544

With a copy to:

Cherryvale Sanitation District
c/o Spencer Fane LLP
1700 Lincoln Street, Suite 2000
Denver, CO 80203

8. LIABILITY. Neither Party shall be deemed to assume any liability for intentional or negligent acts, errors, or omissions of the other Party, or any officer or employee thereof. Neither Party shall be deemed to be an agent for the other Party, and no agent, employee, or volunteer of any Party shall be deemed an agent, employee, or volunteer of the other Party under this Agreement. The Parties 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, C.R.S., §§24-10-101 *et seq.*, as the same may be amended from time to time.

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

10. 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 Home Rule Charter and Municipal Code of the City of Cherry Hills Village. Exclusive venue for any action arising hereunder shall be in the County of Arapahoe, Colorado.

11. ASSIGNMENT AND SUBCONTRACTING. The District shall not assign or subcontract with respect to any of the rights, benefits, obligations, or duties under this Agreement except upon express prior written consent and approval from the City.

12. 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 the Parties, 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 the Parties that any person other than the Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

13. 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.

14. EXAMINATION OF RECORDS. The Parties agree that any duly authorized representative of the Parties shall have access to and the right to examine any directly pertinent books, documents, papers, and records of the other Party involving transactions related to the Project or this Agreement, until the expiration of three (3) years after the final payment under this Agreement.

15. SECTION 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.

16. SEVERABILITY. It is understood and agreed by the Parties that if any part, term, or provisions of this Agreement is held by the courts 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.

17. 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 a written amendment 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.

18. 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 the City or the District to execute this Agreement on behalf of the City or the District and to bind the City or the District validly and legally to all the terms, performances and provisions herein set forth.

19. COUNTERPARTS OF THIS AGREEMENT. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

20. 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-breaching 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.

21. 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.

22. NO PERSONAL LIABILITY. No elected official, director, officer, agent or employee of either Party shall be charged personally or held contractually liable by or under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

23. HEADINGS. The headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

[remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates noted below.

CITY OF CHERRY HILLS VILLAGE



Russell O. Stewart, Mayor

8/18/20

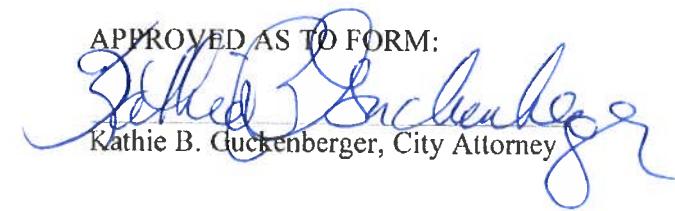
Date

ATTEST:



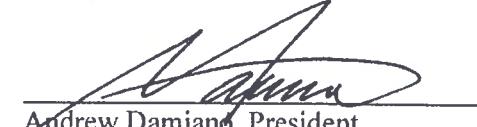
Laura Gillespie, City Clerk

APPROVED AS TO FORM:



Kathie B. Cuckenberger, City Attorney

CHERRYVALE SANITATION DISTRICT



Andrew Damiano, President

8/12/2020

Date

ATTEST:



Digitally signed by Ty Holman
DN: cn=Ty Holman, o=Haynes &
Company, ou
=spencerfane.com, c=US
Date: 2020 08 12 14 49 11 -05'00'

Secretary

APPROVED AS TO FORM:



Digitally signed by Tom George
DN: cn=Tom George, o=Spencer Fane LLP, ou
=spencerfane.com, c=US
Date: 2020 08 12 14 28 39 -06'00'

Thomas N. George, District Counsel

AGREEMENT

THIS AGREEMENT, made this 1st day of May, 1972, by
and between CHERRYMOOR SOUTH WATER AND SANITATION DISTRICT, sometimes
referred to as "Cherrymoor South", and CHERRYVALE SANITATION DISTRICT,
Arapahoe County, Colorado, sometimes hereinafter referred to as "Cherryvale",
acting by and through their duly elected, qualified, and authorized officers;

WITNESSETH THAT:

WHEREAS, Cherrymoor South and Cherryvale are quasi-municipal
corporations organized and existing by virtue of the laws of the State of Colorado;
and

WHEREAS, Cherrymoor South owns and maintains a sewage transmission
system in the County of Arapahoe, State of Colorado, which sewage transmission
system connects with the sewage disposal plant of the City of Englewood, State
of Colorado; and

WHEREAS, Cherrymoor South has entered into a contract with the City
of Englewood for the processing of sewage from the Cherrymoor South sanitary
sewer system by the City of Englewood; and

WHEREAS, Cherryvale contemplates constructing sanitary sewer lines
within its service area as may be necessary, convenient, and proper with respect
to the care and treatment of the sewage from said service area and Cherryvale
desires to use the sewage transmission system of Cherrymoor South to transport
sewage from Cherryvale to the sewage disposal plant of the City of Englewood;

NOW, THEREFORE, IT IS MUTUALLY UNDERSTOOD AND AGREED BY
THE PARTIES HERETO AS FOLLOWS:

1. Cherryvale may connect its sewage transmission lines into the
sewage transmission lines of Cherrymoor South and transmit its sewage through
said lines to the sewage disposal plant of the City of Englewood in accordance
with the terms and conditions hereinafter set forth. Before Cherryvale transmits

sewage into Cherrymoor South's lines, such connections shall be inspected by a representative of the City of Englewood and Cherrymoor South prior to covering or backfilling. Cherrymoor South shall, at the sole cost and expense of ~~Cherryvale~~, provide a trunk line to the Northwest corner of the Beck's property, to which Cherryvale shall connect its system. Cherrymoor South shall have the right to connect its distribution system to Cherryvale's 8" line proceeding North from the Southeast corner of the Goodstein property so long as this Agreement shall be in existence, and subject to the capacity limitations of said 8" line. The inspection provisions of this paragraph and paragraph 4 and 5 below shall apply to such connection by Cherrymoor South to said 8" line.

2. Attached hereto and identified as Exhibit "A" is a plat of the area upon which there is depicted the sewer lines and connections to be made thereto in connection with this Agreement.

SEWER TAPS PERMITS AND INSPECTION

3. Cherryvale shall pay to Cherrymoor South an amount determined by the schedule set forth on Exhibit "B" affixed hereto and made a part hereof by reference as if fully set forth herein, for each sewer tap made on the transmission lines of Cherryvale connecting to the transmission lines of Cherrymoor South, said payment to be made at the time application is made to Cherrymoor South for a permit to make such a tap.

4. No taps shall be made on the transmission lines of Cherryvale connecting to the transmission lines of Cherrymoor South without first obtaining a permit therefor from City of Englewood.

5. No tap shall be covered or backfilled until an inspection has been made and approval granted by all governmental agencies and authorities having jurisdiction thereover. The parties hereto acknowledge, however, that Cherryvale has an existing six-inch distribution system to which existing users have connected. The inspection and approval provisions of this paragraph will apply, however, to the connection of the distribution system to the new lines to be laid, and to any

further connections into the existing distribution system.

6. It is specifically understood and agreed that Cherrymoor South shall not undertake or have any responsibility for the proper connection of such taps, and further that Cherryvale shall have the full responsibility for such taps; provided, however, that such taps shall be in accordance with the rules and regulations of Cherrymoor South now or hereinafter enforced, the terms of this Agreement, and the requirements of the City of Englewood and all governmental agencies and authorities having jurisdiction thereover.

7. Cherryvale shall keep and maintain in good repair all sanitary sewers and sewer facilities within its service area and shall have the sole responsibility therefor.

ENGINEERING

8. All engineering and design of Cherryvale relating to sewer lines, lifting and pumping stations, laterals, manholes, and any other appurtenances of its system which may accept and transmit sewage into the lines of Cherrymoor South, including plans and specifications, must be submitted to Cherrymoor South in duplicate.

9. Said engineering and design must be approved by the engineer of Cherrymoor South, by the City of Englewood, and by all other agencies and authorities having jurisdiction thereover. Said approval shall be in writing and submitted to Cherrymoor South prior to any construction or implementation of said engineering and design.

10. Any construction of sewer lines and related installations by Cherryvale shall be certified in writing to Cherrymoor South upon completion thereof. Said certification shall state that such construction or installation has been in conformity and compliance with the plans and specifications previously approved.

PAYMENT OF COSTS AND EXPENSES

11. Cherryvale agrees to pay to Cherrymoor South all costs and expenses relating to the inspection and approval of the plans and specifications submitted

to it concerning the engineering and design of Cherryvale's system, together with attorney fees, if any, incurred by Cherrymoor South in connection with this Agreement.

TERMINATION

12. Any provision herein contained to the contrary notwithstanding, Cherrymoor South, at its option, may unilaterally terminate this Agreement upon the default of Cherryvale of any of the terms and conditions of this Agreement; provided Cherrymoor South shall give written notice of such default to Cherryvale. If the default is not cured within thirty (30) days after receipt of said notice, this Agreement, at the option of Cherrymoor South, shall thereupon terminate.

REPAIR OR RECONSTRUCTION OF LINES

13. The annual service charge herein provided is intended to cover normal operation and maintenance expenses only and not any major replacement or repair due to damage to the trunk lines of Cherrymoor South by flood or other acts of God.

14. Whenever it is necessary, due to an act of God, or other disaster, for Cherrymoor South to repair or reconstruct any transmission line through which service is transported under the terms of this Agreement, and the charge for such repair or reconstruction is made by Cherrymoor South against all users of such lines within its service area, a like charge may be made by Cherrymoor South against Cherryvale. Such charges shall be assessed on a mill levy basis and shall be assessed by Cherrymoor South against Cherryvale at the same time as the charges assessed against other users served by Cherrymoor South and shall be paid by Cherryvale under the same terms, time requirements, and conditions that Cherrymoor South imposes upon other users for such charges. Cherrymoor South shall have no responsibility for collecting such charges from users within the service area of Cherryvale.

See page 11

15. The obligation of Cherrymoor South to transmit sewage for Cherryvale

under the terms of this Agreement shall be suspended if its inability to perform shall be due to circumstances beyond its control, or if such inability is due to repair and maintenance of the lines, in which latter event such obligation shall be suspended during the time required to make such repairs or perform such maintenance.

DUTY TO INSPECT LINES

16. Cherryvale agrees to undertake a program to inspect and police all of the lines and facilities within its service area connected to Cherrymoor South lines in order to reasonably prevent and detect any unauthorized connection thereto. Cherryvale further agrees to notify Cherrymoor South of any such unauthorized taps and to cause the same to be disconnected forthwith from such lines.

17. The failure of Cherryvale to conduct such reasonable inspections or to knowingly permit unauthorized sewer taps on its lines shall be grounds for termination of this Agreement as provided for herein.

18. Cherryvale hereby grants unto Cherrymoor South the right, but not the obligation, to inspect any and all of Cherryvale's sewer lines, installations, facilities, and appurtenances; provided, however, the exercise of this right by Cherrymoor South in no way relieves or waives the obligation and responsibility of Cherryvale to inspect as herein provided.

CHERRYSOUTH IS NOT A PUBLIC UTILITY

19. Cherrymoor South is not a public utility and is not subject to the control of the Public Utilities Commission of the State of Colorado, nor is Cherrymoor South a guarantor of services to Cherryvale or its users. By this Agreement the intendment is to make the presently existing transmission lines of Cherrymoor South available to Cherryvale for the transmission of sewage to the Englewood sewage plant for the terms of this Agreement. Parties hereto specifically negate any intention to impose upon Cherrymoor South any responsibility to the public generally or to the users within the service area of Cherryvale except as specifically provided for herein.

AGREEMENT NOT ASSIGNABLE

20. This Agreement is not assignable by either party nor shall amendments hereto be effective unless the same be in writing executed by both parties hereto.

APPROVAL BY CITY OF ENGLEWOOD

21. This Agreement is subject to the written approval of the City of Englewood and is subject also to a Connector's Agreement by Cherryvale with the City of Englewood to process sewage transmitted. This Agreement, at the option of Cherrymoor South, shall become null and void at any time the City of Englewood discontinues acceptance of sewage to be processed under such Connector's Agreement.

PLAT

22. Cherryvale shall furnish to Cherrymoor South and to the City of Englewood a plat showing the location of the proposed users within the service area of Cherryvale, together with the name and address of each party tapping its lines. There shall be allotted to Cherryvale sixty (60) residential sewer taps or the equivalent thereof within the service area of Cherryvale as described in Exhibit A attached hereto, with the understanding that additional taps may be purchased by Cherryvale at prevailing rates within a reasonable time.

ARBITRATION

23. In the event of any dispute or controversy with respect to the interpretation, construction, or performance of this Agreement, the matter shall be determined under the provisions of the construction industry rules of the American Arbitration Association and the parties hereby agree to be bound by such determination. It is further agreed that such arbitration is a condition precedent to the filing or bringing of any suit in law or equity by either party with respect to this Agreement.

INDEMNIFICATION

24. Cherryvale covenants and agrees that it will indemnify and save harmless Cherrymoor South from all demands, claims, costs, causes of action,

or judgments, and from all expenses that may be incurred in investigating or resisting the same, arising from or growing out of any act of neglect of Cherryvale, its contractors, agents, employees, invitees, servants, users, successors, or assigns, in connection with the operation, maintenance, or use of the lines and facilities within its service area.

NOTICE

25. All notices provided for shall be sent by registered or certified mail, return receipt requested, addressed to:

Cherryvale
111 Summit Boulevard
Englewood, Colorado 80110

Cherrymoor South Water and Sanitation District
222 Milwaukee St.
Denver, Colorado 80206

TERM OF AGREEMENT

26. This Agreement shall be for a term of ten (10) years commencing from the date hereof and shall automatically terminate upon the expiration of such term. However, it is the intention of the parties hereto that this Agreement shall be renewed for successive five-year terms thereafter if the circumstances of the parties hereto permit; provided, however, this expression of intent shall in no way be binding upon either party. This Agreement shall be binding upon the successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused their respective duly authorized officers to execute this Agreement the day and year first above written

CHERRYSOUTH WATER AND SANITATION
DISTRICT

ATTEST:

Edward R. Heiney
Secretary

By Eugene P. Sanders
President

CHERRYVALE SANITATION DISTRICT
ARAPAHOE COUNTY, COLORADO

ATTEST:

Charles R. Federly
Secretary

By John S. Mann
President

(S E A L)

The foregoing Agreement is approved this 20 day of November,
1972.

CITY OF ENGLEWOOD

By Mitchell S. Stein
Mayor

ATTEST:

Karl W. Oberberger
City Clerk

(S E A L)

CHESTER VALLE SANITATION DISTRICT

Beck
Property

Conover San
itary District
Ground Water

Goodstein
Property

Probably Wood
ford

②

①

NORTH

— District boundary

CHERRYVALE SANITATION DISTRICT
LEGAL DESCRIPTION

Lots 71, 72, 73 and So. 25' lot 74
in Swastika Acres No. 1 Subdivision

Lots 5, 6, 7, 8 in Line Subdivision

Lots 59, 60, 61, 62 in Swastika Acres
No. 2 Subdivision

SW 1/4, SE 1/4 Sec. 11

NW 1/4, SE 1/4 of Sec. 11 except that part
platted as the Winwood Subdivision

EXHIBIT "B"

TAP AND MAINTENANCE FEE SCHEDULE

1. Tap Fees. Cherrymoor South has established the following tap fees for each residence connected to the Cherrymoor South system or trunk sewer:

1971	\$ 300
1972	350
1973	400

1974 and thereafter 9%

increase per year

Cherryvale shall pay the tap fee at the time application is made to Cherrymoor South for permit, or such fee may be paid prior to application for permit to make such tap and the privilege to tap shall thereby be reserved at the rate controlling at the time such payment is made. In addition, any Cherryvale customer shall pay a tap fee to the City of Englewood.

2. Maintenance. Cherrymoor South has established a service charge of \$1.00 per month per tap in use to cover normal operation and maintenance expenses relating to trunk lines ten inches in diameter or greater and Cherryvale's 8" line described below. Said service charge shall be collected by each District with whom Cherrymoor South has a connection agreement and shall be paid to Cherrymoor South not less often than annually. Maintenance costs of other sewer lines shall be the responsibility of the District in which such maintenance is undertaken; provided, however, Cherrymoor South shall have responsibility for maintaining the 8" sewer line proceeding north from the southeast corner of Goodstein property abutting the Shafroth property.

AMENDMENTS TO CHERRYVALE-
CHERRYMOOR MAY 1, 1972 AGREEMENT

THIS AGREEMENT made this 31 day of December, 1976
by and between Cherrymoor South Water and Sanitation District
hereinafter referred to as "Cherrymoor", and Cherryvale Sanita-
tion District hereinafter referred to as "Cherryvale",

WITNESSETH:

WHEREAS, the parties hereto on May 1, 1972 executed an
agreement pertaining to the connection of Cherryvale's sewage
transmission lines to Cherrymoor's transmission system and the
use of Cherrymoor's system, hereinafter referred to as the May 1,
1972 Agreement, and

WHEREAS, the parties hereto desire to amend said agreement
as set forth hereinafter, subject to the approval of the City of
Englewood.

NOW, THEREFORE, in consideration of the mutual covenants
hereinafter contained and of the transfer by Cherryvale to
Cherrymoor of a portion of its sewage transmission line fully
described in the agreement dated December 31, 1976 between
Cherryvale, Cherrymoor and GID#1, Cherrymoor and Cherryvale
hereby agree as follows:

1. The 10 year initial term of the May 1, 1972 Agree-
ment set forth in paragraph 26 is hereby extended to May 1,
2006 and for such additional time as Cherrymoor and any
party with which it has contracted are utilizing the sewer
line above described for the transmission of sewage.

2. The tap fees established in paragraph 1 of Exhibit "B"
to said May 1, 1972 Agreement, whether paid at the time
application is made to Cherrymoor for a permit, or prior to
application in order to reserve the privilege to tap, shall
from date hereof be established as follows:

- (a) 1976 - \$518.01 per tap;
- (b) 1977 - \$564.63 per tap;
- (c) January 1, 1978 through December 31, 1982 -
\$600.00 per tap;
- (d) January 1, 1983 through December 31, 1986 -
\$750.00 per tap;
- (e) On or after January 1, 1987 - \$750.00 plus
eight (8) percent per annum compounded per tap, viz.,
the tap fee for calendar year 1987 shall be \$810.00.

3. Paragraph 2 of Exhibit "B" is amended to include
the following additional paragraph:

The service charge of \$1.00 per month per tap in
use shall continue through 1982. Thereafter in lieu of
the flat monthly service charge an annual service
charge for each tap served under this Agreement shall
be made by the Board of Directors of Cherrymoor to
cover normal operation and maintenance expenses of
Cherrymoor lines through which Cherryvale sewage
flows. Such charge shall not be more than the annual
service charge made for service within the boundaries
of Cherrymoor. Such charge shall be billed to Cherryvale
quarterly or otherwise as Cherrymoor shall determine
and shall be paid by Cherryvale within thirty (30) days
of receipt of billing.

4. Paragraphs 13 and 14 shall be deleted and the following substituted therefor:

13. The annual service charge provided for herein is intended to cover normal operation and maintenance expenses only.

14. Cherryvale shall pay and bear its prorated share, based upon the number of users of the line, of all unusual operation and maintenance costs, or costs beyond those covered by the annual service charge, or repair or reconstruction costs of any transmission lines through which sewage is transported under the terms of this Agreement, and shall remit to Cherrymoor such costs and charges within thirty (30) days of receipt of billing. Cherrymoor shall have no responsibility for collecting any charges from users within the service area of Cherryvale.

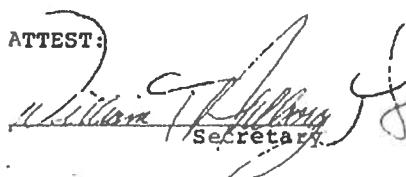
5. The parties acknowledge an error in the fourth line of paragraph 1 on page 2 of the May 1, 1972 Agreement and the name "Cherrymoor" should be substituted for the name "Cherryvale."

6. Except as specifically provided for above, the terms of the May 1, 1972 Agreement shall remain in full force and effect.

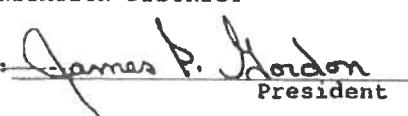
IN WITNESS WHEREOF, the parties hereto have caused their respective duly authorized officers to execute this Agreement the day and year first above written.

CHERRYMOOR SOUTH WATER AND
- SANITATION DISTRICT

ATTEST:



William T. Williams
Secretary

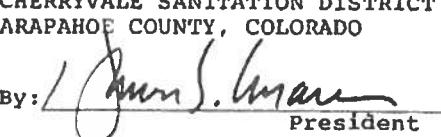
By: 
James P. Morton
President

CHERRYVALE SANITATION DISTRICT
ARAPAHOE COUNTY, COLORADO

ATTEST:



Charles R. Fiedenbach
Secretary

By: 
John S. Moore
President

(SEAL)

The foregoing Agreement is approved this ____ day of ____
1976.

CITY OF ENGLEWOOD

ATTEST:

By: _____
Mayor

City Clerk

EXHIBIT B

Cherryvale Sanitation District		Total Remaining Balance
Total Due	\$205,246.16	
2020 payment	\$45,246.16	\$160,000.00
2021 payment	\$40,000.00	
2021 interest	\$1,168.50	\$97.38 per month
2022 payment	\$40,000.00	\$120,000.00
2022 interest	\$876.48	\$73.04 per month
2023 payment	\$40,000.00	\$80,000.00
2023 interest	\$584.20	\$48.69 per month
2024 payment	\$40,000.00	\$40,000.00
2024 interest	\$292.20	\$24.34 per month
		\$0.00
2025		
Total Interest estimate	\$2,921.38	