

A RESOLUTION  
OF THE CITY COUNCIL  
OF THE CITY OF CHERRY HILLS VILLAGE  
APPROVING AN INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN  
THE CITY OF CHERRY HILLS VILLAGE AND THE CITY OF GREENWOOD  
VILLAGE REGARDING COST-SHARING FOR CONSTRUCTING THE HIGH  
LINE CANAL UNDERCROSSING IMPROVEMENTS AT BELLEVUE AVENUE

WHEREAS, pursuant to C.R.S. § 29-1-203, governments are authorized to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each government; 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 construct a concrete bottom in the High Line Canal undercrossing at Bellevue Avenue (the "Project"); and

WHEREAS, Greenwood Village will construct the Project, and Cherry Hills Village desires to reimburse Greenwood Village for one-half of the Project's construction costs; 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 Regarding Cost-Sharing for Constructing the High Line Canal Undercrossing Improvements at Bellevue Avenue.

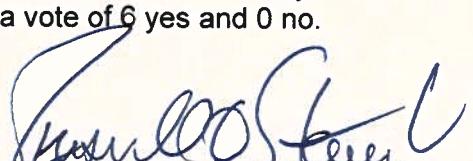
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO THAT:

Section 1. The City Council approves the Intergovernmental Agreement by and between the City of Cherry Hills Village and the City of Greenwood Village Regarding Cost-Sharing for Constructing the High Line Canal Undercrossing Improvements at Bellevue Avenue, as set forth in **Attachment A**, attached hereto and incorporated herein, and authorizes the Mayor to execute the same.

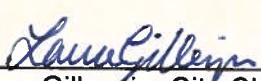
Section 2. Effective Date. This Resolution shall be effective immediately.

Introduced, passed and adopted at the regular meeting of the City Council this 3<sup>rd</sup> day of November, 2020, by a vote of 6 yes and 0 no.

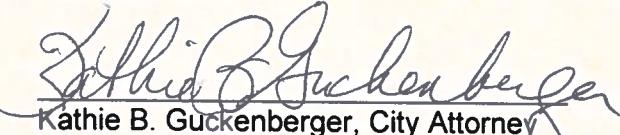
(SEAL)

  
Russell O. Stewart

ATTEST:

  
Laura Gillespie, City Clerk

Approved as to form:

  
Kathie B. Guckenberger, City Attorney

**ATTACHMENT A**

**INTERGOVERNMENTAL AGREEMENT REGARDING COST-SHARING FOR  
CONSTRUCTING THE  
HIGH LINE CANAL UNDERCROSSING IMPROVEMENTS  
AT BELLEVIEV AVENUE**

**THIS INTERGOVERNMENTAL AGREEMENT** ("Agreement"), made and entered into 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." Cherry Hills Village and Greenwood Village shall be referred to individually as a "Party" and collectively 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 Parties to share the cost of the improvements to the High Line Canal undercrossing at Bellevue Avenue, as set forth 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 Parties to share the cost of the improvements to the High Line Canal undercrossing at Bellevue Avenue, as set forth 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 are authorized to construct improvements on their portions of the High Line Canal Trail right-of-way within the boundaries of their respective jurisdictions pursuant to their own Lease Agreement for Recreational Use of the High Line Canal; as amended ("HLC Lease Agreement") and install permanent improvements in accordance with the Denver Water Operating Plan for Recreational Use and Management of the High Line Canal Trail; and

**WHEREAS**, Greenwood Village is constructing a concrete bottom in the High Line Canal undercrossing at Bellevue Avenue, which is located within the boundaries of both Parties ("Project"), and Cherry Hills Village has agreed to reimburse Greenwood Village for one-half of the cost of constructing the Project; and

**WHEREAS**, Greenwood Village anticipates entering into a contract with a third party ("Contractor") and paying the Contractor to complete the Project in November of 2020, and the Parties desire to establish a cost-sharing mechanism for the Project.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements, and the

promises herein contained, the Parties hereto agree:

**1. TERM:** This Agreement shall commence on the date of mutual execution by the Parties (“Effective Date”) and terminate upon completion of the Project and the Parties’ fulfillment of their obligations set forth in this Agreement (“Term”).

**2. PURPOSE OF AGREEMENT:** The purpose of this Agreement is to provide the terms and conditions upon which the Parties agree to construct a concrete bottom in the High Line Canal undercrossing at Bellevue Avenue and to pay the costs of such construction.

**3. RESPONSIBILITY OF PARTIES.** Greenwood Village shall: (1) enter into a contract with a Contractor to complete the Project; (2) acquire the necessary permits for the Project including approval from the Denver Water Board in accordance with each jurisdiction’s Operating Plan for Recreational Use and Management of the High Line Canal Trail, regardless of the location of the work being performed; (3) supervise and review the work of the Contractor, ensure completion of all required inspections, and manage and oversee the completion of the Project by December 31, 2020; and (4) pay the Contractor for the Project. Greenwood Village further acknowledges that it has appropriated or otherwise lawfully authorized sufficient funds to complete the Project. Cherry Hills Village shall reimburse Greenwood Village for one-half of the construction costs of the Project as set forth in Sections 4 and 5 of this Agreement.

**4. TOTAL PROJECT COSTS; ALLOCATION OF RESPONSIBILITY FOR COSTS:** The Parties acknowledge and agree that Greenwood Village has obtained bids for the Project, and that on the basis of those bids the Parties estimate the total cost of construction for the Project to be no greater than Thirty-Five Thousand Dollars (\$35,000.00) (“Estimated Project Cost”). Cherry Hills Village shall reimburse Greenwood Village for one-half of the actual final cost of construction, provided, however, that Cherry Hills Village shall in no case be obligated to reimburse Greenwood Village more than Twenty Thousand Dollars (\$20,000.00) if the actual final cost of construction exceeds the Estimated Project Cost.

**5. STATEMENTS AND PAYMENT:** Upon completion of the Project and acceptance of the Project by the Parties, and after receipt and approval of a reimbursement request from Greenwood Village, Cherry Hills Village shall remit to Greenwood Village one-half of the actual final cost of construction, in accordance with the limitations established in Section 4 of the Agreement. Such payment shall be remitted within thirty (30) days of the date of the reimbursement request from Greenwood Village.

**6. REPRESENTATIVES:**

a. Cherry Hills Village Representative. Cherry Hills Village hereby designates Emily Black (with an email address of [ebblack@cherryhillsvillage.com](mailto:ebblack@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 Suzanne Moore (with an email address of [smoore@greenwoodvillage.com](mailto:smoore@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:

Emily Black  
Parks and Recreation Coordinator  
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:

Suzanne Moore  
Director of Parks, Trails, and Recreation  
10001 E. Costilla Avenue  
Greenwood Village, Colorado 80112

**8. 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-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.

**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. In addition, Greenwood Village agrees to require the Contractor responsible for completing the Project to name Cherry Hills Village as an additional insured and to provide Cherry Hills Village with proof of compliance with this requirement prior to the Contractor beginning any work on the Project.

**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 Parties, and the ordinances, regulations, and executive Orders enacted and/or promulgated pursuant thereto, as well as the terms of the Cherry Hills Village's HLC Lease Agreement. 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. The Parties 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 as otherwise provided in this Agreement or 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 the Parties shall remain responsible to each other according to the terms of this Agreement.

**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 an independent contractor 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, nor does this Agreement establish a separate legal entity, nor constitute either Party as an agent of the other.

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

**15. 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.

**16. SEVERABILITY:** It is understood and agreed by the Parties hereto that if any part, term, or provision 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.

**17. 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 to execute this Agreement and legally bind their Party to all the terms, performances and provisions herein set forth.

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

**19. 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.

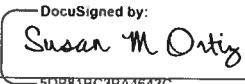
**20. AGREEMENT AS COMPLETE INTEGRATION - AMENDMENTS:** This Agreement is intended as the complete integration of all understandings between the Parties, their successors and assigns. No prior or contemporaneous addition, deletion or other amendment hereto shall have any force or effect whatsoever, unless 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.

**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.

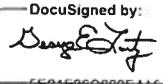
*Remainder of page left blank intentionally  
Signature page follows*

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

ATTEST:

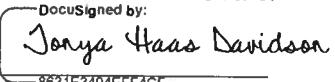
DocuSigned by:  
  
Susan M. Ortiz, MMC  
City Clerk

**CITY OF GREENWOOD VILLAGE**

DocuSigned by:  
  
George E. Lantz  
Mayor

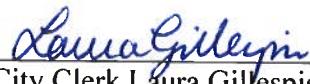
Date: 11/03/2020

APPROVED AS TO FORM:

DocuSigned by:  
  
Tonya Haas Davidson  
City Attorney



ATTEST:

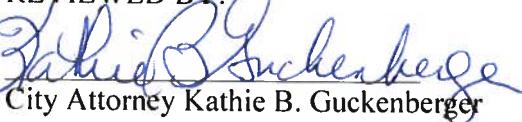
  
City Clerk Laura Gillespie

**CITY OF CHERRY HILLS VILLAGE**

Mayor Russell O. Stewart

Date: 11/3/20

REVIEWED BY:

  
City Attorney Kathie B. Guckenberger