

RESOLUTION NO. 28
SERIES 2017

INTRODUCED BY: KATY BROWN
SECONDED BY: DAN SHELDON

**A
RESOLUTION
OF THE CITY COUNCIL
OF THE CITY OF CHERRY HILLS VILLAGE
APPROVING AN INTERGOVERNMENTAL AGREEMENT
WITH URBAN DRAINAGE AND FLOOD CONTROL DISTRICT FOR FUNDING OF
DRAINAGE DESIGN WORK ON GREENWOOD GULCH RELATED TO THE
CONSTRUCTION OF THE NEW VILLAGE CENTER AND JOHN MEADE PARK/ALAN
HUTTO MEMORIAL COMMONS PROJECTS**

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

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

WHEREAS, the City has been awarded funding from Urban Drainage and Flood Control District ("UDFCD") for up to \$100,000 in matching funds for the design work related to Greenwood Gulch and the floodplain within John Meade Park/Alan Hutto Memorial Commons ("Park") and the Village Center property; and

WHEREAS, the City is committed to improving the floodplain in and around John Meade Park/Alan Hutto Memorial Commons and the Village Center as part of the current redevelopment project; and

WHEREAS, the City desires to proceed with development of the new Village Center and Park improvements and wishes to partner with UDFCD on the design of the floodplain in Greenwood Gulch to improve the health and safety of its residents; and

WHEREAS, the City desires to partner with UDFCD through matching funds from the District as part of the District's capital improvement program for 2017 in an amount not to exceed one hundred thousand dollars (\$100,000) as set forth in the Intergovernmental Agreement attached hereto as **Attachment A**.

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

Section 1. The City Council hereby approves the attached Intergovernmental Agreement with Urban Drainage and Flood Control District regarding funding of the design of the floodplain in and around Greenwood Gulch (**Attachment A**) in substantially the same form as attached hereto, subject to minor modifications that do not increase the City's maximum financial obligation related to the Village Center and Park improvement projects.

Section 2. This Resolution shall be effective immediately.

Introduced, passed and adopted at the regular meeting of City Council this 13th day of December, 2017, by a vote of 6 yes and 0 no.

(SEAL)


Laura Christman, Mayor

ATTEST:


Laura Smith, City Clerk

APPROVED AS TO FORM:


Linda C. Michow, City Attorney

Attachment A

**Intergovernmental Agreement with Urban Drainage and Flood Control District Regarding
Funding of Design Work on Greenwood Gulch**

AGREEMENT REGARDING
FINAL DESIGN, RIGHT-OF-WAY ACQUISITION, AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
GREENWOOD GULCH AT QUINCY AVENUE
CITY OF CHERRY HILLS VILLAGE

Agreement No. 17-11.16
Project No. 106922

THIS AGREEMENT, dated December 13, 2017, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT") and CITY OF CHERRY HILLS VILLAGE (hereinafter called "CITY") and collectively known as "PARTIES";

WITNESSETH:

WHEREAS, DISTRICT, in a policy statement previously adopted (Resolution No. 14, Series of 1970 and Resolution No. 11, Series of 1973) expressed an intent to assist public bodies which have heretofore enacted floodplain regulation measures; and

WHEREAS, PARTIES participated in a joint planning study titled "Little Dry Creek (Arapco) Watershed Downstream Portions Major Drainageway Planning," dated August 2004 (hereinafter called "PLAN"); and

WHEREAS, PARTIES now desire to proceed with the design and construction of drainage and flood control improvements for Greenwood Gulch at Quincy Avenue located within the CITY (hereinafter called "PROJECT"); and

WHEREAS, DISTRICT has adopted at a public hearing a Five-Year Capital Improvement Program (Resolution No. 53, Series of 2016) for drainage and flood control facilities in which PROJECT was included in the 2017 calendar year; and

WHEREAS, DISTRICT has heretofore adopted a Special Revenue Fund Budget for calendar year 2017 subsequent to public hearing (Resolution No. 49, Series of 2016) which includes funds for PROJECT; and

WHEREAS, DISTRICT'S Board of Directors has authorized DISTRICT financial participation for PROJECT (Resolution No. 63, Series of 2017); and

WHEREAS, the City Council of CITY and the Board of Directors of DISTRICT have authorized, by appropriation or resolution, all of PROJECT costs of the respective PARTIES.

NOW, THEREFORE, in consideration of the mutual promises contained herein, PARTIES hereto agree as follows:

1. SCOPE OF THIS AGREEMENT

This Agreement defines the responsibilities and financial commitments of PARTIES with respect to PROJECT.

2. SCOPE OF PROJECT

A. Final Design. PROJECT shall include the final design of improvements in accordance with the recommendations defined in PLAN. Specifically, the final design of facilities shall extend from approximately Quincy Avenue to Meade Lane as shown on Exhibit A.

B. Construction. PROJECT shall include construction by CITY through separate construction contract between CITY and contractor of the drainage and flood control improvements as set forth in the final design and vegetation establishment.

3. PUBLIC NECESSITY

PARTIES agree that the work performed pursuant to this Agreement is necessary for the health, safety, comfort, convenience, and welfare of all the people of the State, and is of particular benefit to the inhabitants of PARTIES and to their property therein.

4. PROJECT COSTS AND ALLOCATION OF COSTS

A. PARTIES agree that for the purposes of this Agreement PROJECT costs shall consist of and be limited to the following:

1. Final design services;
2. Construction of improvements;
3. Contingencies mutually agreeable to PARTIES.

B. It is understood that PROJECT costs as defined above are not to exceed \$200,000 without amendment to this Agreement.

PROJECT costs for the various elements of the effort are estimated as follows:

<u>ITEM</u>	<u>AMOUNT</u>
1. Final Design	\$ 175,000
2. Construction*	-0-
3. Contingency	\$ 25,000
Grand Total	\$ 200,000

* It is anticipated that funds for construction shall be added to this Agreement at a future date.

This breakdown of costs is for estimating purposes only. Costs may vary between the various elements of the effort without amendment to this Agreement provided the total expenditures do not exceed the maximum contribution by all PARTIES plus accrued interest, if applicable.

C. Based on total PROJECT costs, the maximum percent and dollar contribution by each party shall be:

	<u>Percentage Share</u>	<u>Maximum Contribution</u>
DISTRICT	50.00%	\$100,000
CITY	50.00%	\$100,000
TOTAL	100.00%	\$200,000

5. MANAGEMENT OF FINANCES

As set forth in DISTRICT policy (Resolution No. 11, Series of 1973, Resolution No. 49, Series of 1977, and Resolution No. 37, Series of 2009), the funding of a local body's one-half share may come from its own revenue sources or from funds received from state, federal, or other sources of funding without limitation and without prior DISTRICT approval.

Within 30 days of request for payment by CITY, DISTRICT shall remit to CITY 50% of these costs attributed to PROJECT, up to DISTRICT's full share of \$100,000. CITY shall provide a periodic written accounting of PROJECT funds as well as a periodic written notification to DISTRICT of any unpaid obligations.

6. FINAL DESIGN

The contracting officers for PARTIES, as defined under Paragraph 13 of this Agreement, shall select an engineer mutually agreeable to both PARTIES. CITY shall contract with selected engineer and shall supervise and coordinate the final design including right-of-way delineation subject to approval of the contracting officer for DISTRICT. Payment for final design services shall be made by CITY as the work progresses from the PROJECT fund established as set forth above.

Final design services shall consist of, but not be limited to, the following:

- A. Preparation of a work plan schedule identifying the timing of major elements in the design;
- B. Preparation of detailed construction plans and specifications;
- C. Preparation of an estimate of probable construction costs of the work covered by the plans and specifications;
- D. Preparation of an appropriate construction schedule.

CITY shall provide any written work product by the engineer to DISTRICT.

7. OWNERSHIP OF PROPERTY AND LIMITATION OF USE

CITY shall own the property upon which PROJECT is constructed specifically identified as the construction footprint of the drainage improvements, hereinafter "Project Area" either in fee or non-revocable easement and shall be responsible for same. It is specifically understood that the Project Area is being used for drainage and flood control purposes. The Project Area upon which PROJECT is constructed shall not be used for any purpose that shall diminish or preclude its use for drainage and flood control purposes. CITY may not dispose of or change the use of the Project Area within which the PROJECT is constructed without approval of DISTRICT. If, in the future, CITY disposes of any portion of or all of the Project Area upon which PROJECT is constructed pursuant to this Agreement; changes the use of any portion or all of the Project Area upon which PROJECT is constructed pursuant to this Agreement; or modifies any of the improvements located on any portion of the Project Area upon which PROJECT is constructed pursuant to this Agreement; and CITY has not obtained the written approval of DISTRICT prior to such action, CITY shall take any and all action necessary to reverse said unauthorized activity and return the Project Area and improvements thereon, acquired and constructed pursuant to this Agreement, to

the ownership and condition they were in immediately prior to the unauthorized activity at CITY 's sole expense. In the event CITY breaches the terms and provisions of this Paragraph 7 and does not voluntarily cure as set forth above, DISTRICT shall have the right to pursue a claim against CITY for specific performance of this portion of the Agreement.

8. **MANAGEMENT OF CONSTRUCTION**

- A. **Costs.** Construction costs shall consist of those costs as incurred by the most qualified contractor(s) including detour costs, licenses and permits, utility relocations, and construction related engineering services as defined in Paragraph 4 of this Agreement.
- B. **Construction Management and Payment**
 - 1. CITY, with the concurrence of DISTRICT, shall administer and coordinate the construction-related work as provided herein.
 - 2. CITY, with concurrence of DISTRICT, shall select and award construction contract(s).
 - 3. CITY shall require the contractor to provide adequate liability insurance that includes DISTRICT. The contractor shall be required to indemnify DISTRICT. Copies of the insurance coverage shall be provided to DISTRICT.
 - 4. CITY, with assistance of DISTRICT, shall coordinate field surveying; staking; inspection; testing; acquisition of right-of-way; and engineering as required to construct PROJECT. CITY, with assistance of DISTRICT, shall assure that construction is performed in accordance with the construction contract documents including approved plans and specifications and shall accurately record the quantities and costs relative thereto. Copies of all inspection reports shall be furnished to DISTRICT on a weekly basis. CITY shall retain an engineer to perform all or a part of these duties.
 - 5. CITY, with concurrence of DISTRICT, shall contract with and provide the services of the design engineer for basic engineering construction services to include addendum preparation; survey control points; explanatory sketches; revisions of contract plans; shop drawing review; as-built plans; weekly inspection of work; and final inspection.
 - 6. PARTIES shall have access to the site during construction at all times to observe the progress of work and conformance to construction contract documents including plans and specifications.
 - 7. CITY shall review and approve contractor billings. CITY shall remit payment to contractor based on billings.
 - 8. CITY, with concurrence of DISTRICT, shall prepare and issue all written change or work orders to the contract documents.
 - 9. PARTIES shall jointly conduct a final inspection and accept or reject the completed PROJECT in accordance with the contract documents.
 - 10. CITY shall provide DISTRICT a set of reproducible "as-built" plans.

C. Construction Change Orders. In the event that it becomes necessary and advisable to change the scope or detail of the work to be performed under the contract(s), such changes shall be rejected or approved in writing by the contracting officers. No change orders shall be approved that increase the costs beyond the funds available in the PROJECT fund, including interest earned on those funds, unless and until the additional funds needed to pay for the added costs are committed by all PARTIES.

9. MAINTENANCE

PARTIES agree that CITY shall own and be responsible for maintenance of the completed and accepted PROJECT. PARTIES further agree that DISTRICT, at CITY's request, shall assist CITY with the maintenance of all facilities constructed or modified by virtue of this Agreement to the extent possible depending on availability of DISTRICT funds. Such maintenance assistance shall be limited to drainage and flood control features of PROJECT. Maintenance assistance may include activities such as keeping flow areas free and clear of debris and silt, keeping culverts free of debris and sediment, repairing drainage and flood control structures such as drop structures and energy dissipaters, and clean-up measures after periods of heavy runoff. The specific nature of the maintenance assistance shall be set forth in a memorandum of understanding from DISTRICT to CITY, upon acceptance of DISTRICT's annual Maintenance Work Program.

DISTRICT shall have right-of-access to right-of-way and storm drainage improvements at all times for observation of flood control facility conditions and for maintenance when funds are available.

10. FLOODPLAIN REGULATION

CITY agrees to regulate and control the floodplain of Greenwood Gulch within CITY in the manner prescribed by the National Flood Insurance Program and prescribed regulations thereto as a minimum.

PARTIES understand and agree, however, that CITY cannot obligate itself by contract to exercise its police powers. If CITY fails to regulate the floodplain of Greenwood Gulch within CITY in the manner prescribed by the National Flood Insurance Program and prescribed regulations thereto as a minimum, DISTRICT may exercise its power to do so and CITY shall cooperate fully.

11. TERM OF AGREEMENT

The term of this Agreement shall commence upon final execution by all PARTIES and shall terminate three (3) years after the final payment is made to the construction contractor retained by CITY to construct the PROJECT improvements and the final accounting of funds on deposit at CITY is provided to all PARTIES pursuant to Paragraph 5 herein, except for Paragraph 10.

FLOODPLAIN REGULATION, Paragraph 7. Ownership of Property and Limitation of Use, and Paragraph 9. MAINTENANCE, which shall survive termination and run in perpetuity.

12. LIABILITY

Each party hereto shall be responsible for any suits, demands, costs, or actions at law resulting from its own acts or omissions and may insure against such possibilities as appropriate.

13. CONTRACTING OFFICERS

- A. The contracting officer for CITY shall be the City Manager, 2450 East Quincy Avenue, Cherry Hills Village, Colorado 80113.
- B. The contracting officer for DISTRICT shall be the Executive Director, 2480 West 26th Avenue, Suite 156B, Denver, Colorado 80211.
- C. The contracting officers for PARTIES each agree to designate and assign a PROJECT representative to act on the behalf of said PARTIES in all matters related to PROJECT undertaken pursuant to this Agreement. Each representative shall coordinate all PROJECT-related issues between PARTIES, shall attend all progress meetings, and shall be responsible for providing all available PROJECT-related file information to the engineer upon request by DISTRICT or CITY. Said representatives shall have the authority for all approvals, authorizations, notices or concurrences required under this Agreement. However, in regard to any amendments or addenda to this Agreement, said representative shall be responsible to promptly obtain the approval of the proper authority.

14. RESPONSIBILITIES OF PARTIES

CITY shall be responsible for coordinating with DISTRICT the information developed by the various consultants hired by CITY and for obtaining all concurrences from DISTRICT needed to complete PROJECT in a timely manner. DISTRICT agrees to review all concept plans, preliminary design plans, and final plans and specifications; and to provide comments within 21 calendar days after the drafts have been provided by CITY to DISTRICT.

15. AMENDMENTS

This Agreement contains all of the terms agreed upon by and among PARTIES. Any amendments to this Agreement shall be in writing and executed by PARTIES hereto to be valid and binding.

16. SEVERABILITY

If any clause or provision herein contained shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such invalid or unenforceable clause or provision shall not affect the validity of the Agreement as a whole and all other clauses or provisions shall be given full force and effect.

17. APPLICABLE LAWS

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Jurisdiction for any and all legal actions regarding this Agreement shall be in the State of Colorado and venue for the same shall lie in County where PROJECT is located.

18. ASSIGNABILITY

No party to this Agreement shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the non-assigning party or parties to this Agreement.

19. BINDING EFFECT

The provisions of this Agreement shall bind and shall inure to the benefit of PARTIES hereto and to their respective successors and permitted assigns.

20. **ENFORCEABILITY**

PARTIES hereto agree and acknowledge that this Agreement may be enforced in law or in equity, by decree of specific performance or damages, or such other legal or equitable relief as may be available subject to the provisions of the laws of the State of Colorado.

21. **TERMINATION OF AGREEMENT**

This Agreement may be terminated upon thirty (30) days' written notice by any party to this Agreement, but only if there are no contingent, outstanding contracts. If there are contingent, outstanding contracts, this Agreement may only be terminated upon the cancellation of all contingent, outstanding contracts. All costs associated with the cancellation of the contingent contracts shall be shared between PARTIES in the same ratio(s) as were their contributions.

22. **PUBLIC RELATIONS**

It shall be at CITY's sole discretion to initiate and to carry out any public relations program to inform the residents in PROJECT area as to the purpose of PROJECT and what impact it may have on them. Technical information shall be presented to the public by the selected engineer. In any event DISTRICT shall have no responsibility for a public relations program, but shall assist CITY as needed and appropriate.

23. **NO DISCRIMINATION IN EMPLOYMENT**

In connection with the performance of work under this Agreement, PARTIES agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified because of race, color, ancestry, creed, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability and further agree to insert the foregoing provision in all subcontracts hereunder.

24. **APPROPRIATIONS**

Notwithstanding any other term, condition, or provision herein, each and every obligation of CITY and/or DISTRICT stated in this Agreement is subject to the requirement of a prior appropriation of funds therefore by the appropriate governing body of CITY and/or DISTRICT.

25. **NO THIRD PARTY BENEFICIARIES**

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 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 PARTIES that any person or party other than anyone of PARTIES receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

26. **ILLEGAL ALIENS**

PARTIES agree that any public contract for services executed as a result of this intergovernmental agreement shall prohibit the employment of illegal aliens in compliance with §8-17.5-101 C.R.S. *et seq.* The following language shall be included in any contract for public services: "The contractor certifies, warrants, and agrees that the contractor does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and will confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the United States Department of Homeland Security and the Social Security Administration E-Verify Program or the Colorado Department of Labor and Employment (CDLE) program established pursuant to 8-17.5-102 (5)(c) C.R.S. The contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a subcontract with a subcontractor that fails to certify to the contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under Agreement. The contractor shall (a) not use the E-Verify Program or the CDLE program established pursuant to 8-17.5-102 (5)(c) C.R.S., to undertake pre-employment screening of job applicants while this Agreement is being performed, (b) notify the subcontractor and CITY within three days if the contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Agreement, (c) terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) comply with the reasonable request made in the course of an investigation, undertake pursuant to 8-17.5-102 (5)(c) C.R.S, by the CDLE. If the contractor participates in the CDLE program, the contractor shall, within twenty days after hiring an employee who is newly hired for employment to perform work under this Agreement, deliver to CITY a written, notarized affirmation, affirming that the contractor has examined the legal work status of such employee, retained file copies of the documents required by 8 U.S.C. Section 1324a, and not altered or falsified the identification documents for such employees. If the contractor fails to comply with any requirement of this Section or 8-17.5-101 *et seq.* C.R.S, CITY may terminate this Agreement for breach and, if so terminated, the contractor shall be liable for actual and consequential damages. CITY shall notify the Colorado Office of the Secretary of State if the contractor violates this Section and CITY terminates this Agreement for such a breach.

The contractor acknowledges that the CDLE may investigate whether the contractor is complying with this Section of the Agreement. This may include on-site inspections and the review of documentation that proves the citizenship of any person performing work under this Agreement and any other reasonable steps necessary to determine compliance with the provisions of this Section."

27. GOVERNMENTAL IMMUNITIES

PARTIES hereto intend that nothing herein shall be deemed or construed as a waiver by any party of any rights, limitations, or protections afforded to them under the Colorado Governmental

Immunity Act (§ 24-10-101, *et seq.*, C.R.S.) as now or hereafter amended or otherwise available at law or equity.

28. **INTENT OF AGREEMENT**

Except as otherwise stated herein, this Agreement is intended to describe the rights and responsibilities of and between PARTIES and is not intended to and shall not be deemed to confer rights upon any person or entities not named as PARTIES, nor to limit in any way the powers and responsibilities of the CITY, the DISTRICT or any other entity not a party hereto.

29. **EXECUTION IN COUNTERPARTS – ELECTRONIC SIGNATURES**

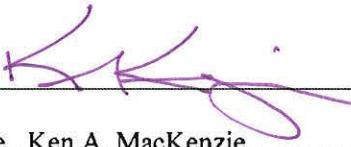
This Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement, may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. PARTIES approve the use of electronic signatures for execution of this Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement. Only the following two forms of electronic signatures shall be permitted to bind PARTIES to this Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement.

- A. Electronic or facsimile delivery of a fully executed copy of a signature page; or
- B. The image of the signature of an authorized signer inserted onto PDF format documents.

Documents requiring notarization may also be notarized by electronic signature, as provided above. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, CRS §§ 24-71.3-101 to -121.

WHEREFORE, PARTIES hereto have caused this instrument to be executed by properly authorized signatories as of the date and year first above written.

URBAN DRAINAGE AND
FLOOD CONTROL DISTRICT

By 

Name Ken A. MacKenzie

Title Executive Director


Checked By

CITY OF CHERRY HILLS VILLAGE

By 

Name Laura Christman

Title Mayor

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Exhibit A

