

RESOLUTION NO. 30
SERIES 2018

INTRODUCED BY: DAN SHELDON
SECONDED BY: KATY BROWN

A
RESOLUTION
OF THE CITY COUNCIL
OF THE CITY OF CHERRY HILLS VILLAGE
APPROVING AN INTERGOVERNMENTAL AGREEMENT
WITH THE CITY AND COUNTY OF DENVER BOARD OF WATER COMMISSIONERS FOR
TREE MAINTENANCE ON THE HIGH LINE CANAL

WHEREAS, the City and County of Denver, acting by and through its Board of Water Commissioners, a Colorado municipal corporation ("Board") operates the High Line Canal as a water supply facility located in the Metro Denver Region of Colorado; and

WHEREAS, the City of Cherry Hills Village ("Cherry Hills Village") manages the Recreation on a portion of the Canal through a Lease Agreement for the Recreational Use of The High Line Canal between Cherry Hills Village and the Board signed on July 13, 2005 (the "Recreational Lease"); 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 for receiving services; and

WHEREAS, as part of its tree management efforts on the High Line Canal, the Board plans to enter into a contract with qualified contractor(s) for the trimming and removal of approximately eight hundred fifty (850) trees along the High Line Canal ("Tree Maintenance Contract");

WHEREAS, approximately seventy-five (75) of the trees covered by the Tree Maintenance Contract requiring an estimated \$77,000.00 of maintenance are located within the area leased and managed by Cherry Hills Village; and

WHEREAS, Cherry Hills Village has determined it to be in its best interests to participate in the Board's tree management effort along the High Line Canal.

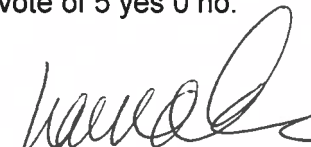
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Cherry Hills Village, Colorado that:

Section 1. The City Council hereby approves the attached Intergovernmental Agreement between the City of Cherry Hills Village and the City and County of Denver Board of Water Commissioners in the not to exceed amount of Ten Thousand Dollars and No Cents (\$10,000.00), and authorizes the Mayor to execute said Agreement.

Section 2. This Resolution shall be effective immediately.

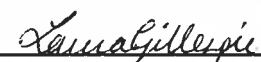
Introduced, passed and adopted at the
regular meeting of City Council this 20th day
of November, 2018, by a vote of 5 yes 0 no.

(SEAL)



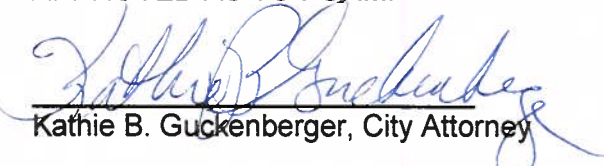
Laura Christman, Mayor

ATTEST:



Laura Gillespie, City Clerk

APPROVED AS TO FORM:



Kathie B. Guckenberger, City Attorney

**ATTACHMENT TO RESOLUTION 30, SERIES 2018:
INTERGOVERNMENTAL AGREEMENT
WITH THE CITY AND COUNTY OF DENVER BOARD OF WATER COMMISSIONERS
FOR TREE MAINTENANCE ON THE HIGH LINE CANAL**



INTERGOVERNMENTAL AGREEMENT CONCERNING TREE MAINTENANCE ON THE HIGH LINE CANAL

This Intergovernmental Agreement is made this 20th day of November 2018, between the City and County of Denver, acting by and through its Board of Water Commissioners, a Colorado municipal corporation (“Board”), and the City of Cherry Hills Village, a Colorado municipal corporation (“Cherry Hills Village”), who together may also be referred to herein as the “Parties,” or individually as a “Party.”

WHEREAS, the Board operates the High Line Canal as a water supply facility located in the Metro Denver Region of Colorado; and

WHEREAS, Cherry Hills Village manages the Recreation on a portion of the Canal through a Lease Agreement for the Recreational Use of The High Line Canal between Cherry Hills Village and the Board signed on July 13, 2005 (the “Recreational Lease”); and

WHEREAS, as part of its tree management efforts on the High Line Canal, the Board plans to enter into a contract with qualified contractor(s) for the trimming and removal of approximately eight hundred fifty (850) trees along the High Line Canal (“Tree Maintenance Contract”);

WHEREAS, approximately seventy-five (75) of the trees covered by the Tree Maintenance Contract requiring an estimated \$77,000.00 of maintenance are located within the area leased and managed by Cherry Hills Village; and

WHEREAS, Cherry Hills Village has determined it to be in its best interests to participate in the Board’s tree management effort along the High Line Canal.

NOW THEREFORE, in consideration of the above and the mutual covenants and commitments made herein, the Parties enter into the following Intergovernmental Agreement (“Agreement”) to define their relative rights and responsibilities related to the Tree Maintenance Contract on the portion of the High Line Canal leased and managed by Cherry Hills Village.

1. Effective Date

- A. This Agreement is effective December 1, 2018 (“Effective Date”).
- B. This Agreement shall expire on October 1, 2020.

2. Rights and Responsibilities of Cherry Hills Village

- A. Cherry Hills Village agrees to contribute Ten Thousand Dollars and No Cents (\$10,000.00) to assist with funding the portion of tree maintenance scheduled in

the section of the High Line Canal leased and managed by Cherry Hills Village (“Contribution”). Cherry Hills Village shall pay the Contribution to the Board in no more than two payments. All payments shall be made prior to the date on which this Agreement expires.

- C. Cherry Hills Village continues to have the right to manage recreation on the portion of the High Line Canal leased and managed by Cherry Hills Village according to the terms of the Recreational Lease and the Operating Plan established pursuant to the Recreational Lease.
- D. Cherry Hills Village may only terminate this Agreement before work starts in the portion of the High Line Canal leased and managed by Cherry Hills Village. Cherry Hills Village may terminate this Agreement by giving the Board ten (10) days’ written notice of such termination. Cherry Hills Village may also terminate this Agreement if, for any reason, the Tree Maintenance Contract is terminated and not replaced with one or more contracts with the same intent and purpose, and the Board shall refund Cherry Hills Village equitably for work completed in accordance with the provisions of Section 3.C. of this Agreement.
- E. The rights and responsibilities granted to Cherry Hills Village by this Agreement may not be assigned without the written consent of the Board.

3. Rights and Responsibilities of the Board

- A. The Board agrees to participate in funding the Tree Maintenance Contract in the amount of \$650,000.00. The Board also agrees to manage the Tree Maintenance Contract, and that Cherry Hills Village shall have no responsibility for funding or managing the Tree Maintenance Contract except as provided in this Agreement.
- B. The Board reserves the right to make full use of its property as may be necessary or convenient in the operation of the water plant and system under the control of the Board. The Board retains all rights to operate, maintain, repair, remove, relocate or install any of its facilities within the Board’s property at any time and in such a manner as it deems necessary or convenient.
- C. The Board may, at any time, by giving Cherry Hills Village thirty (30) days’ written notice, terminate this Agreement in the event that the Contract is terminated and not replaced with one or more contracts with the same intent and purpose. In the event of such termination, the Board shall refund Cherry Hills Village equitably for work completed on the portion of the High Line Canal leased and managed by Cherry Hills Village within thirty (30) days of such termination. The Board shall, upon request by Cherry Hills Village, provide Cherry Hills Village with documentation supporting the completion of such work and the portion of the Contribution used for such work.

4. Recreational Lease

The Lease Agreement for the Recreational Use of The High Line Canal between Cherry Hills Village and the Board signed on July 15th, 2005 and amended on July 13, 2015 remains in full force and effect through October 1, 2020.

7. Governmental Immunity

Both parties expressly rely upon and do not waive the protections and limitations of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq., as it may be amended from time to time.

8. Liability

To the extent it legally may, each Party agrees to provide a defense and pay any damages and costs for any liability or claim of whatever nature arising in any way out of this Agreement, which is caused by any negligent or wrongful act or omission of such Party or such Party's officers, agents, or employees.

9. Notices

All notices required or given under this Agreement shall be in writing and shall be deemed effective: (a) when delivered personally to the other Party; or (b) seven (7) days after posting in the United States mail, first-class postage prepaid, properly addressed as follows; or (c) when sent by e-mail. If notice is provided by e-mail, the notifying Party must follow up with a hard copy of the notice sent by United States mail; however, the notice will be effective as of the original e-mail date.

If to the Board: Brandon Ransom, Manager of Recreation
 Denver Water
 1600 West 12th Avenue
 Denver, CO 80204
 e-mail: brandon.ransom@denverwater.org

If to Cherry Hills Village: Jay Goldie, Public Works Director
 City of Cherry Hills Village
 2450 E. Quincy Ave.
 Cherry Hills Village, CO 80113
 Email: jgoldie@cherryhillsvillage.com

or such other persons or addresses as the Parties may have designated in writing.

10. Binding Effect

The agreements and covenants as set forth herein shall be binding upon the Parties, their heirs, successors and assigns.

11. Waiver

The failure of either Party to exercise any of its rights under this Agreement shall not be a waiver of those rights. A Party waives only those rights specified in writing and signed by the Party waiving such rights.

12. Applicable Law

This Agreement shall be interpreted in all respects in accordance with the laws of the State of Colorado.

13. Venue

For the resolution of any dispute arising from this Agreement, venue shall be in the District Court in and for the City and County of Denver.

14. Counterparts

This Agreement may be executed in several counterparts and/or signature pages, and all counterparts and signature pages so executed shall constitute one agreement binding on all parties hereto.

15. Severability

In case one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

16. No Third-Party Beneficiaries

It is the intent of the parties that they be and remain the sole beneficiaries of this Agreement, and no other person or party shall be entitled to the benefits thereof except as described in Paragraph 10.

17. Charter of the City and County of Denver

This Agreement is made under and in conformance with Article X of the Charter of the City and County of Denver, which controls the operation of the Denver Municipal Water System. The Charter provisions are incorporated by this reference and shall supersede any apparently conflicting provisions otherwise contained in this Agreement.


18. Entire Agreement

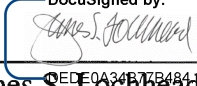
This Agreement constitutes the entire agreement between the parties and replaces all prior written or oral agreements and understandings. It may be altered, amended, or repealed only by a duly executed written instrument.

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

**CITY AND COUNTY OF DENVER,
acting by and through its
BOARD OF WATER COMMISSIONERS**

APPROVED:

By: 
Brian Good
Chief Administrative Officer


By: 
James S. Lochhead
CEO/Manager

DATE: 11/30/2018

APPROVED AS TO FORM:

By: 
Office of General Counsel

REGISTERED AND COUNTERSIGNED:
CITY AND COUNTY OF DENVER


By: 
Timothy M. O'Brien, CPA
Auditor

DS
JAG

THIS AGREEMENT IS ACCEPTED BY:

CITY OF CHERRY HILLS VILLAGE

By execution, signer certifies that s/he is authorized to accept and bind the Cherry Hills Village to the terms of this Agreement.

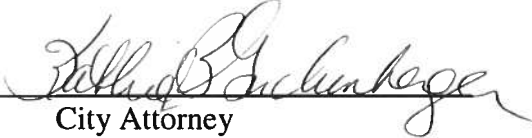
By: 
Laura Christman, Mayor

DATE: 11-20-18

ATTEST:


Laura Gillespie, City Clerk

APPROVED AS TO FORM:


City Attorney