



CITY COUNCIL AGENDA

NOTICE TO READERS: City Council meeting packets are prepared several days prior to the meetings. Timely action and short discussion on agenda items is reflective of Council's prior review of each issue with time, thought and analysis given. Many items have been previously discussed at a Council Study Session.

Members of the audience are invited to speak at the Council meeting. Citizen Communication (Section 7) is reserved for comments on any issues or items pertaining to City business except those for which a formal public hearing is scheduled under Section 10 when the Mayor will call for public testimony. Please limit comments to no more than 5 minutes duration.

1. Pledge of Allegiance
2. Roll Call
3. Consideration of Minutes of Preceding Meetings
4. Report of City Officials
 - A. City Manager's Report
5. City Council Comments
6. Presentations
7. Citizen Communication (5 minutes or less)

The "Consent Agenda" is a group of routine matters to be acted on with a single motion and vote. The Mayor will ask if any Council member wishes to remove an item for separate discussion. Items removed from the consent agenda will be considered immediately following adoption of the amended Consent Agenda.

8. Consent Agenda
 - A. Designation of Official Places to Post Public Notices
 - B. Ratify 2014 Gasoline Purchase for City Vehicles
 - C. Fleet Maintenance Cumulative Fuel Purchases of Over \$75,000
 - D. Cell Tower Site Agreement with New Cingular Wireless PCS at Fire Station 6
9. Appointments and Resignations
 - A. Resolution No. 1 Reappointing Members to Boards and Commissions and Filling Vacancies
10. Public Hearings and Other New Business
11. Old Business and Passage of Ordinances on Second Reading
 - A. Second Reading of Councillor's Bill No. 54 Authorizing Supplemental Appropriation of Brownfields Grant
12. Miscellaneous Business and Executive Session
 - A. City Council
13. Adjournment

WESTMINSTER HOUSING AUTHORITY (separate agenda)

GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS

- A.** The meeting shall be chaired by the Mayor or designated alternate. The hearing shall be conducted to provide for a reasonable opportunity for all interested parties to express themselves, as long as the testimony or evidence being given is reasonably related to the purpose of the public hearing. The Chair has the authority to limit debate to a reasonable length of time to be equal for both positions.
- B.** Any person wishing to speak other than the applicant will be required to fill out a “Request to Speak or Request to have Name Entered into the Record” form indicating whether they wish to comment during the public hearing or would like to have their name recorded as having an opinion on the public hearing issue. Any person speaking may be questioned by a member of Council or by appropriate members of City Staff.
- C.** The Chair shall rule upon all disputed matters of procedure, unless, on motion duly made, the Chair is overruled by a majority vote of Councillors present.
- D.** The ordinary rules of evidence shall not apply, and Council may receive petitions, exhibits and other relevant documents without formal identification or introduction.
- E.** When the number of persons wishing to speak threatens to unduly prolong the hearing, the Council may establish a time limit upon each speaker.
- F.** City Staff enters a copy of public notice as published in newspaper; all application documents for the proposed project and a copy of any other written documents that are an appropriate part of the public hearing record;
- G.** The property owner or representative(s) present slides and describe the nature of the request (maximum of 10 minutes);
- H.** Staff presents any additional clarification necessary and states the Planning Commission recommendation;
- I.** All testimony is received from the audience, in support, in opposition or asking questions. All questions will be directed through the Chair who will then direct the appropriate person to respond.
- J.** Final comments/rebuttal received from property owner;
- K.** Final comments from City Staff and Staff recommendation.
- L.** Public hearing is closed.
- M.** If final action is not to be taken on the same evening as the public hearing, the Chair will advise the audience when the matter will be considered. Councillors not present at the public hearing will be allowed to vote on the matter only if they listen to the tape recording of the public hearing prior to voting.



WESTMINSTER
Strategic Plan
2013-2018
Goals and Objectives

STRONG, BALANCED LOCAL ECONOMY

- Maintain/expand healthy retail base, increasing sales tax receipts
- Attract new targeted businesses, focusing on primary employers and higher paying jobs
- Develop business-oriented mixed use development in accordance with Comprehensive Land Use Plan
- Retain and expand current businesses
- Develop multi-modal transportation system that provides access to shopping and employment centers
- Develop a reputation as a great place for small and/or local businesses
- Revitalize Westminster Center Urban Reinvestment Area



SAFE AND HEALTHY COMMUNITY

- Maintain citizens feeling safe anywhere in the City
- Public safety departments: well-equipped and authorized staffing levels staffed with quality personnel
- Timely response to emergency calls
- Citizens taking responsibility for their own safety and well being
- Manage disaster mitigation, preparedness, response and recovery
- Maintain safe buildings and homes
- Protect residents, homes, and buildings from flooding through an effective storm water management program



FINANCIALLY SUSTAINABLE CITY GOVERNMENT PROVIDING EXCEPTIONAL SERVICES

- Invest in well-maintained and sustainable city infrastructure and facilities
- Secure and develop long-term water supply
- Focus on core city services and service levels as a mature city with adequate resources
- Maintain sufficient reserves: general fund, utilities funds and self insurance
- Maintain a value driven organization through talent acquisition, retention, development and management
- Prepare for next generation of leaders; managers and employees.
- Maintain and enhance employee morale and confidence in City Council and management
- Invest in tools, training and technology to increase organization productivity and efficiency



VIBRANT NEIGHBORHOODS IN ONE LIVABLE COMMUNITY

- Develop transit oriented development around commuter rail stations
- Maintain and improve neighborhood infrastructure and housing
- Preserve and restore historic assets
- Have HOAs and residents taking responsibility for neighborhood private infrastructure
- Develop Westminster as a cultural arts community
- Have a range of quality homes for all stages of life (type, price) throughout the City
- Have strong community events and active civic engagement



BEAUTIFUL AND ENVIRONMENTALLY SENSITIVE CITY

- Have energy efficient, environmentally sensitive city operations
- Reduce energy consumption citywide
- Increase and maintain green space (parks, open space, etc.) consistent with defined goals
- Preserve vistas and view corridors
- A convenient recycling program for residents and businesses with a high level of participation



Mission statement: We deliver exceptional value and quality of life through SPIRIT.



WESTMINSTER

Staff Report

TO: The Mayor and Members of the City Council

DATE: January 8, 2014

SUBJECT: Briefing and Post-City Council Briefing Agenda for January 13, 2014

PREPARED BY: J. Brent McFall, City Manager

Please Note: Study Sessions and Post City Council briefings are open to the public, and individuals are welcome to attend and observe. However, these briefings are not intended to be interactive with the audience, as this time is set aside for City Council to receive information, make inquiries, and provide Staff with policy direction.

Looking ahead to Monday night's Briefing and Post-City Council meeting briefing, the following schedule has been prepared:

Dinner 6:00 P.M.

Council Briefing (*The public is welcome to attend.*) 6:30 P.M.

POST BRIEFING (*The public is welcome to attend.*)

PRESENTATIONS

1. Public Works and Utilities Briefing: Functions, Responsibilities and Issues
2. Water Tanks Major Repair and Replacement Program Update and Northridge Tank
No. 3 Design Contract Negotiations
3. City Council Assignments

CITY COUNCIL REPORTS

None at this time.

EXECUTIVE SESSION

None at this time.

INFORMATION ONLY

None at this time.

Items may come up between now and Monday night. City Council will be apprised of any changes to the post-briefing schedule.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
January 13, 2014



SUBJECT: Designation of Official Places to Post Public Notices

Prepared By: Linda Yeager, City Clerk

Recommended City Council Action

Designate the bulletin board in the lobby of City Hall and the City of Westminster website as the locations for posting public notices of official meetings of the City Council, the Westminster Housing Authority, the Westminster Economic Development Authority, Special and General Improvement Districts, and the City's Boards and Commissions pursuant to Section 24-6-402 (2)(c), C.R.S. of the Colorado Open Meetings Act.

Summary Statement

- The referenced section of the Colorado Open Meetings Act provides that the places where notices of official public meetings are posted shall be designated annually by the governing body at its first regular meeting of each calendar year.
- The City Council is the governing body of the City, and is also the governing body of the City's Special and General Improvement Districts (pursuant to Section 31-25-609, C.R.S.), the Westminster Housing Authority (pursuant to Section 29-4-205, C.R.S.), and the Westminster Economic Development Authority (pursuant to Section 31-25-114, C.R.S.).
- City Staff posts all notices of City Council meetings and study sessions, all Special and General Improvement Districts, all Westminster Economic Development Authority meetings, all Westminster Housing Authority meetings, and other official public meetings on the bulletin board across from the cashiers' counter in the lobby of City Hall. Identical notifications are posted on the City's website.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Does City Council concur with the designation of the City Hall lobby bulletin board and City of Westminster website as the locations for posting public notices for official meetings?

Alternative

Identify other locations for posting public notices. This is not recommended as the City Hall bulletin board and City website not only serve the purpose of providing public notice, but also are the locations on which the public has come to rely for notices of meetings and agendas.

Background Information

The Open Meetings Act, more commonly called the Colorado Sunshine Act, provides that the public place or places for posting public notice of meetings shall be designated annually at the local governing body's first regular meeting of each calendar year. Historically, notices have been posted in paper format on the City Hall lobby bulletin board and electronically on the City's website. This process appears to work well as a means of providing public notice of upcoming agenda items, and the Staff recommends the continuing designation of these locations.

Remaining compliant with State statutes is key to City Council's strategic goal of being a Financially Sustainable City Government Providing Exceptional Services.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
January 13, 2014



SUBJECT: Ratify 2014 Gasoline Purchase for City Vehicles

Prepared By: Jeffery H. Bowman, Fleet Manager

Recommended City Council Action

Ratify the 2014 contracted purchase for 185,000 gallons of unleaded, E-10 gasoline from Hill Petroleum to be delivered to City sites for a cost not to exceed \$528,955.

Summary Statement

- The City of Westminster uses approximately 220,000 gallons of gasoline annually.
- During 2013, approximately 90% of the gasoline used by the City of Westminster was purchased through Fleet Maintenance Division's Commodities Fuel Account on a pre-determined fuel contract with Hill Petroleum.
- Fuel contract lock timelines have changed in the past few years; most notably in the amount of time the purchaser has to make a decision. While previously a fuel vendor could wait days for a purchaser to decide whether or not to lock in a price, in today's fast-paced futures market, the purchaser needs to respond immediately.
- As described in an October 21, 2013 Staff Report, City Staff decided to use a "strike price" approach where the Fleet Manager is pre-authorized to lock in futures fuel prices when the price per gallon decreases to a specific per gallon cost. Once the purchase was made, City Council would be asked to ratify the purchase contract at a subsequent City Council meeting.
- The 2014 prices for gasoline were locked on December 24, 2013, as futures gasoline prices declined.
- The \$528,955 represents the costs for approximately 85% of Westminster's 2014 gasoline consumption based on historical 2013 use. The projected gasoline cost is based on the lowest bid price of \$2.8592 per gallon for combined transport and tank wagon loads.
- City Council approved \$1,061,550 in the 2014 Fleet Maintenance Fund Budget to purchase both gasoline and diesel fuel.
- The 185,000 gallon purchase for gasoline will be acquired under the City of Westminster's \$3.00 per gallon gasoline "strike price" shared with City Council in the October Staff Report.

Expenditure Required: Not to exceed \$528,955

Source of Funds: Fleet Maintenance Funds

Policy Issue

Should City Council ratify a fixed price agreement for gasoline purchases for 2014?

Alternative

The City could buy gasoline on a spot market bid, as it purchased diesel fuel in 2012. This is not recommended, as fuel prices on spot market can move up and down, based on remote factors such as worldwide political activity and weather trends in the Gulf Coast. Additionally, contracted fuel is a guaranteed take-or-pay supply that assures a “first at the pipe” priority over fleets that purchase on spot pricing.

Background Information

The last time the City of Westminster entered a fuel contract lock price was 2012 for the 2013 budget year. In the last three years, the speed with which fuel contract transactions happen has increased, leaving decision time to lock a contract often to mere minutes. In comparison to the days, or even weeks of decision time to lock a contract in years past, municipal fleets need to be able to react to short term dips in fuel pricing. Municipal fleets are a primary user of fuel contracts because fuel contracts not only secure a price within the fleet’s budget, it also creates a “first at the pipe” priority assuring fuel supply over fleets that purchase on spot pricing. For example, as refineries decrease fuel production for maintenance, customers holding contracts are first to receive their allotted fuel delivery. The City was purchasing diesel fuel on the spot market in 2012. As such, the City of Westminster was more susceptible to fuel shortages. While spot purchasing allows the City to take advantage of price decreases, the City also pays market price when prices soar.

The City’s vehicle fleet uses approximately 340,000 gallons of motor fuel annually. Gasoline use is highest at 220,000 gallons, while diesel fuel use averages 120,000 gallons. Approximately 15% of 2014 gasoline purchases is expected to be purchased on spot market. Fuel is dispensed at three City locations: the Municipal Service Center (MSC), Big Dry Creek Facility (BDC) and City Park. Only the MSC has large enough storage capacity to receive full transport deliveries. A full transport load of gasoline is 8,500 gallons. The fuel quantity and ability to accept it is important, as fuel contract prices are based on full transport loads and monthly consumption. The fuel tanks at BDC and City Park are smaller, so deliveries are not shipped in transport load sized trailers, but are shipped via “tank wagons.” A tank wagon is a straight truck with an attached tank whose volume is less than transport loads. A tank wagon delivery can cost as much as 20 cents per gallon more than a transport load on contracted price.

Determining the amount and type of fuel issued at each City fuel location and the method used to deliver that fuel, along with the fuel budget number, enabled Staff to develop the strike price for 2014 fuel contracts. With the 185,000 gallon purchase, gasoline for 2014 will be acquired for less than the City of Westminster’s \$3.00 per gallon “strike price” that was shared with City Council in a Staff Report on October 21, 2013.

The City of Westminster uses an E-10 blend of unleaded gasoline: 10% ethanol and 90% gasoline. This blend is the standard fuel blend along the Front Range. Fleet Maintenance began soliciting futures prices for 151,000 gallon transport trailer fuel loads and 34,000 gallon tank wagon loads of E-10 gasoline in November 2013 as costs started trending downward. Three vendors were solicited: Chief Petroleum, Gray Oil Company and Hill Petroleum. Each vendor has government contracts that outline all criteria for fuel quality and delivery. Hill Petroleum’s pricing represents the low bid for the 185,000 gallons of gasoline.

Quoted fuel pricing from each vendor is as follows:

	Chief Petroleum	Gray Oil Company	Hill Petroleum
E-10 Transport Load	\$2.979 / Gallon Quarterly Requirements of transport and tank wagon deliveries; January- March 42,000 gallons April-June 42,000 gallons July-September 63,000 gallons October-December 42,000 gallons	Quarter 1 \$3.0065 Quarter 2 \$ 3.0522 Quarter 3 \$ 3.0579 Quarter 4 \$2.8227	\$2.8592 / Gallon Includes freight rate calculated on a weighted average of \$0.0250 per gallon
E-10 Tank Wagon Load	\$2.979 / Gallon Quarterly Requirements of transport and tank wagon deliveries; January- March 42,000 gallons April-June 42,000 gallons July-September 63,000 gallons October-December 42,000 gallons	Quarter 1 \$3.1175 Quarter 2 \$3.2232 Quarter 3 \$3.2289 Quarter 4 \$ 2.9937	\$2.8592 / Gallon Includes freight rate calculated on a weighted average of \$0.0800 per gallon

This contract for fuel purchases meets Council’s Strategic Plan goals of “Safe and Healthy Community” and “Financially Sustainable City Government Providing Exceptional Services” by keeping the City’s fleet on the street and maintaining service levels at a reasonable cost.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
January 13, 2014



SUBJECT: Fleet Maintenance Cumulative Fuel Purchases of Over \$75,000

Prepared By: Jeffery Bowman, Fleet Manager

Recommended City Council Action

Determine that the public interest will be best served by approving Fleet Maintenance cumulative purchases in 2014 with Chief Petroleum, Gray Oil and Hill Petroleum for total fuel purchases not to exceed \$532,595 total among the three vendors.

Summary Statement

- The Westminster Municipal Code requires that all purchases over \$75,000 be brought to City Council. Staff has taken a conservative approach in interpreting this requirement to include transactions where the cumulative total purchases of similar commodities or services from one vendor in a calendar year exceeds \$75,000.
- The Fleet Maintenance Division is purchasing 185,000 gallons of gasoline via a futures contract method, competitively bid and awarded to Hill Petroleum totaling \$528,955 in 2014. This item appears separately on Monday night's City Council Agenda and is not included in this request.
- Historic gasoline and diesel fuel use averages 340,000 gallons annually, so the remaining non-contracted fuel may equal 155,000 gallons. Staff is asking for approval of purchases not to exceed \$532,595 among all three vendors through 2014.
- Adequate funds are appropriated in the 2014 Fleet Maintenance Commodities Fund and are available for the needed purchases.

Expenditure Required: Not to exceed \$532,595

Source of Funds: 2014 Fleet Maintenance Fund

Policy Issue

Should Council approve the cumulative purchase of vehicle fuel from various vendors that total over \$75,000 per vendor, but not to exceed \$532,595 in 2014?

Alternative

Do not approve the expenditures as recommended. While it could be argued that each transaction represents a separate purchase, City Staff believes that a more prudent approach is to treat the smaller transactions as cumulative larger purchases with the vendors that are subject to Council approval.

Background Information

Fleet Maintenance uses a variety of fuel vendors to provide no-lead, E-10 gasoline and #2 diesel fuel in City vehicles. The 2014 Fleet Maintenance Commodities budget contains \$1,061,550 in the line item for vehicle fuel. Beyond the 185,000 gallon quantity outlined in the 2014 futures contract with Hill Petroleum, additional on-going purchases will be necessary and will include routine, competitively bid fuel deliveries.

Fleet Maintenance has three vendors that are used on a regular basis. Any one of the three vendors (Chief Petroleum, Gray Oil and Hill Petroleum) could be awarded individual spot bids totaling 155,000 gallons. While the futures contract is the primary gasoline acquisition method in 2014, spot pricing will provide timely, reasonably-priced deliveries of fuel for the City. When spot fuel deliveries are necessary, prices are requested from three vendors and the low price for the day is awarded the purchase. Spot pricing also allows fluctuation of up to 15% for gasoline use above the futures contract.

Staff anticipates that it will be purchasing fuel from all three vendors throughout the year that will surpass \$75,000 each, but not exceed a total of \$532,595 for these spot purchases.

Staff will be continuing to monitor diesel prices closely and if a diesel future pricing contract becomes advantageous, the Fleet Manager will lock in a price for diesel fuel.

This recommended approach to purchasing fuel helps achieve the City Council's Strategic Plan Goals of "Safe and Healthy Community" and "Financially Sustainable City Government Providing Exceptional Services" by providing the basic resources necessary to ensure the timely response to emergency calls and provide other City services in a cost effective manner.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
January 13, 2014



SUBJECT: Site Agreement Between the City and New Cingular Wireless PCS, LLC – Fire Station 6 Cell Tower

Prepared By: Doug Hall, Fire Chief
Russ Bowers, Public Safety Communications Administrator

Recommended City Council Action

Adopt a motion to authorize the City Manager to enter into a Site Agreement with New Cingular Wireless PCS, in substantially the same form as attached, to permit a telecommunications facility to be located at Fire Station #6 and recognize the permit will be retroactive to January 1, 2014.

Summary Statement

- The Site Agreement will allow New Cingular Wireless PCS (Company) (formerly AT&T Wireless) to continue use of the 100-foot monopole located at Fire Station #6. The Site Agreement term is from January 1, 2014, to December 31, 2018, unless it is terminated as provided in the Agreement.
- Approval provides a long-term Agreement for the shared use of the Tower by the City of Westminster to maintain a telecommunications facility at Fire Station #6.
- The equipment necessary for the City's recently approved Citywide radio system has been installed on the monopole.
- City Council approval of the Site Agreement by the motion is consistent with § 11-4-11(J), W.M.C.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Should the City Council approve the Site Agreement to allow continued operation of the monopole at Fire Station #6?

Alternative

Do not approve the Site Agreement. Without approval, the telecom provider will be compelled to cease operation and remove equipment from the site. The City would likely need to pursue the purchase and installation of a similar monopole in order to provide essential radio system signal coverage. Approval of the Site Agreement is recommended because it will maintain the continuity of the Citywide communications system equipment, ensuring minimal interruption in the essential coverage of the Citywide radio system. Thus, the City would not be required to pursue acquisition of a similar monopole tower.

Background Information

The initial agreement allowing construction of the existing 100-foot monopole and use of Fire Station #6 for private telecom purposes dates back to April 1, 1991. Initially, the City advised the monopole owner that their lease would not be renewed after its expiration in May 2011. In order to allow the Company time to relocate its facility, the City agreed to enter into a short-term agreement pursuant to §11-4-11, W.M.C., to give the Company time to find another location for its monopole. Over the course of the next 18 months, the City determined that the existing 100-foot monopole tower was strategically located to accommodate the installation of the radio system equipment and ensures that essential radio signal coverage is provided in the northern portions of the City.

On January 14, 2013, City Council approved the purchase and installation of infrastructure of a Citywide radio system. The radio system provides emergency and non-emergency communication service to the Police and Fire Departments, and is utilized by other City Departments. This installation included radio tower equipment that was installed on the monopole in the Fall of 2013.

The short-term agreement was extended by prior actions of City Council to provide sufficient time for the City and New Cingular Wireless PCS to finalize a long-term Agreement for the shared use of the tower. Through negotiations by the City's Special Counsel for telecom issues, Ken Fellman, a long-term shared-use agreement was pursued and has been finalized. Pending approval of this long-term agreement, the tower owner has allowed the installation and use of the City's communications equipment. As both the City's and the Company's equipment is currently installed and operating, this action acknowledges that the new site agreement commences effective January 1, 2014, since a new rental rate for the site has been negotiated that is higher than the short-term agreement expired December 31, 2013. The term of this agreement is five years, ending on December 31, 2018, with three additional five-year options available to New Cingular Wireless.

The Site Agreement also stipulates that the Company pay the City a monthly fee for the Site in the sum of \$2,400 (base fee) per month for the first year and the base fee will increase annually by an amount equal to 4% over the base fee paid in the prior year. Also paid by the Company are any government imposed fees, permit fees, taxes or costs required, including legal fees incurred by the City, in connection with the negotiation of this Agreement. If the Company sublets or licenses space on the Tower to a third party collocator with the City's permission, the Company shall remit 25% of the rent or license fees collected.

Approval of the Site Agreement will further the following strategic plan goals: (1) a Safe and Healthy Community by providing the City a strategically geographically located site for the public safety radio system, and (2) a Financially Sustainable City Government by providing reasonable market compensation to the City for the use of its property.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Site Agreement

SITE AGREEMENT

THIS SITE AGREEMENT (“Agreement”) entered into as of this 1st day of January 1, 2014, by and between the City of Westminster (“City”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company, with its principal office located at 575 Morosgo Dr., Atlanta, GA 30324 (“Company”).

Background

A. City is the owner of land and facilities located at 999 West 124th Avenue in the City of Westminster, Adams County, State of Colorado (the “**Property**”). Westminster Fire Station No. 6 is located on the Property.

B. Company is a wireless communications provider, and permitted or licensed by the applicable federal or state governmental authority to operate in all or some areas of the City of Westminster.

C. Pursuant to a lease in 1990 with the Company’s predecessor in interest, the City permitted the Company to construct, own, operate and maintain a communications tower and related equipment on a portion of the Property. A subsequent site agreement between the City and the Company, permitting the continued operation and maintenance of this equipment, is due to expire December 31, 2013.

D. City desires to permit the continued use by the Company and the Company desires to continue to use a portion of the Property as described below in order for Company to operate and maintain a certain wireless communications tower (the “**Tower**”) and related, ancillary facilities (Tower and ancillary facilities collectively referred to as the “**Company Equipment**”) of Company in connection with its wireless communications business.

E. City has located some of its public safety communications equipment on the Tower pursuant to a sublease with Company, and Company desires to permit such use as partial consideration for this Agreement.

F. City and the Company believe that the interests of the public will be served by permitting the use of the Property in accordance with the terms and conditions of this Agreement.

Agreement

In consideration of the mutual covenants, obligations, terms and conditions recited below, the parties agree as follows:

1. Grant of Permit. City grants to Company a revocable Permit for the use of a portion of the Property (the “**Site**”) for the operation and maintenance of the Company Equipment as described in Exhibit A, attached hereto. The Property and the Site are legally described on Exhibit B attached hereto and made a part hereof.

a. No use of the Site or payment of any charges required under this Agreement shall create or vest in the Company any easements or ownership of property rights of any nature in the Site.

b. Company shall not construct or install any equipment other than the Company Equipment as specifically shown on Exhibit A, without the prior written approval of the City or as provided elsewhere herein.

c. City reserves the right to require Company to relocate any portion of Company Equipment to another location on the Property in the event that a City project reasonably requires such relocation. Company shall complete the relocation of its facilities within one hundred eighty (180) days after written notice from City. One relocation during the initial term and one relocation in any renewal term shall be at Company's expense. Such projects may include but are not limited to installation of public streets, water, sewer, or storm drainage mains or lines; flood control improvements; repair, replacement or maintenance of the City Facility on the Property. If the City requires relocation more often than as set forth herein, such relocation shall be accomplished without cost to the Company.

d. This grant does not authorize Company to grant or authorize any other entity the right to use any portion of the Property for any other purpose, except as set forth herein. All other uses of the Property shall remain within the City's sole discretion.

2. Term and Renewal. The term of this Agreement shall commence on January 1, 2014 (the "**Commencement Date**") and end on December 31, 2018, unless it is terminated earlier as this Agreement provides. At its option, the Company may renew this Agreement for three (3) additional five (5) year terms (each, a "**Renewal Term**"). Company shall notify the City of its desire to renew the Agreement one hundred and eighty (180) days before each expiration date. For any Renewal Term, the Base Fee shall be subject to rate renegotiation, as described below. This Agreement shall renew if both parties sign a memorandum of renewal, reflecting the new rate, thirty (30) days before the applicable expiration date. Otherwise, this agreement shall terminate at the end of the applicable term.

3. Compensation.

a. In addition to the Company's permitting City to make attachments to the Tower as described in Section 4e below, Company shall pay to the City a monthly fee for the Site in the sum of Two Thousand Four Hundred and 00/100 Dollars (\$2,400.00) ("**Base Fee**"). Company shall pay City a monthly Base Fee for the first year, as of the Commencement Date and on the 1st day of each month thereafter. The Base Fee shall be increased annually as described hereafter. The initial Base Fee shall be provided to City within thirty (30) days after full execution of this Agreement.

b. Company shall pay City a late payment charge equal to ten percent (10%) of the late payment for any payment not paid when due. Any amounts not paid when due shall bear interest until paid at the rate of two percent (2%) per month.

c. Company agrees to pay any government imposed fees or costs required as a result of this Agreement. Company acknowledges that the fees imposed by City to cover its reasonable

costs and expenses include legal fees incurred by City in connection with the negotiation of this Agreement.

d. The Base Fee for the initial term shall be increased annually effective as of each anniversary of the Commencement Date by an amount equal to four percent (4%) over the Base Fee paid in the immediately preceding year.

e. For any Renewal Term, negotiations shall commence regarding the renewal Base Fee within 30 days of Company's notice that it intends to exercise its renewal option. In no event shall the annual renewal Base Fee be less than the annual Base Fee of the previous calendar year.

g. If this Agreement is terminated, the Base Fee shall be prorated as of the date of termination and, in the event of termination for any reason other than nonpayment of the Base Fee, all prepaid fees shall be refunded to the Company. Company may not add additional equipment and/or antennas from that shown on Exhibit A without the approval of the City, not to be unreasonably withheld, conditioned or delayed provided; however, Company may add or change equipment within its equipment shelter without City's prior approval or upgrade or replace equipment upon notice to City as provided in Section 8, herein and in accordance with Section 7.

4. Revenue Share.

a. In the event Company sublets or licenses space on the Tower to a third party collocator ("**Collocator**") with the City's permission under Section 1d of this Agreement, Company shall remit twenty-five percent (25%) of the rent or license fees collected by Company from such Collocator (the "**Collocator Rent**") to City (the "**City's Revenue Share**"). The Collocator Rent shall be negotiated by and between Company and Collocator, on terms acceptable to Company, in Company's sole discretion. In calculating the amount of City's Revenue Share, Collocator Rent shall not include (i) any payment received by Company under the applicable sublease or license for reimbursement of operating expenses or construction costs relating to the Tower paid by Company or (ii) any other payment other than regular recurring rent or license fees. City acknowledges and agrees that City's Revenue Share may or may not be passed through as a cost to Collocator and in the event that City's Revenue Share is passed through as a cost to Collocator, the same shall not be subject to the City's Revenue Share payable to City. In the event Company sublets to more than one Collocator, Company shall be obligated to pay the City's Revenue Share for each Collocator. Company's obligation to pay City's Revenue Share to City shall expire or abate, as applicable, at such time as the Collocator does not pay Collocator Rent to Company, and shall resume, as applicable, if and when the Collocator resumes paying such recurring Collocator Rent and the City's Revenue Share shall be prorated for partial periods.

5. Use of Site.

a. Company may use the Site for the installation, operation, and maintenance of its Company Equipment for the transmission, reception and operation of a communications system and uses incidental thereto, and for storage of related equipment in accordance with the terms of this Agreement. This use shall be non-exclusive. Company may erect and operate twelve (12) GSM/UMTS/LTE antennas and the associated equipment and facilities as described on Exhibit A, and only after City has obtained, at Company's expense, a certified evaluation indicating that each additional antenna will not interfere with existing antennas or proposed antennas, will not interfere

with the City's public safety communications system, will not create additional radio frequency ("RF") emissions that cause the total emissions at the Site to exceed federal standards, and the Tower at the Site can structurally support the additional antennas. No replacement or substitute antennas or other equipment may be larger than the height and mass shown on Exhibit A.

b. Company shall, at its expense, comply with all present and future federal, state and local laws, ordinances, rules and regulations (including laws and ordinances relating to health, radio frequency emissions, other radiation and safety) in connection with the use, operation, maintenance, construction and/or installation of the Company Equipment.

c. Company shall have the access rights only as described in Sections 9 and 11 of this Agreement.

d. Subject to the City's franchises and City's right to approve proposed utility routes and manner of installation, Company shall have the right at its sole cost and expense to obtain and connect to telephone and electrical service from the local utility that provides or is willing to provide such service to the Company Equipment on the Site.

e. As a condition of this Agreement, the City shall be allowed to use the Tower for the connection of antennas for governmental communications purposes. Any proposed changes and/or alterations by the City to its communications equipment on the Tower shall be submitted in writing to the Company for prior approval, particularly including the location and method of attachment of said communications equipment, said approval not to be unreasonably withheld. City's attachments to the Tower are shown on Exhibit C. No payment shall be due to the Company from City for such use.

6. Painting. Company Equipment shall, at all times, be painted, at Company's expense, the same color as exists at present, or other color as the City may specify. Such painting shall be maintained in good condition, at Company's expense.

7. Installation of Company Equipment and Improvements.

a. Company shall have the right, at its sole cost and expense, to install, operate and maintain on the Site, in accordance with good engineering practices and with all applicable FCC rules and regulations, and all applicable building and safety codes, its Company Equipment as described on Exhibit A.

b. Company shall obtain all permits required by the City Code. Company's installation of all such Company Equipment shall be done according to the building permits approved by City, which approval shall not be unreasonably withheld, conditioned, or delayed. Any damage done to the Site during installation and/or during operations shall be repaired or replaced within ten (10) days at Company's expense and to City's reasonable satisfaction, or longer if the nature of such repairs require longer than ten (10) days and Company commenced the cure within the ten (10) day period and diligently undertakes the actions necessary to complete the repairs as soon as reasonably possible.

c. Within thirty (30) days after the Commencement Date, Company shall provide City with as-built drawings of the Company Equipment and any utilities installed on the Site, which

show the actual location of all equipment and improvements consistent with Exhibit A. Said drawings shall be accompanied by a complete and detailed inventory of all equipment, personal property, and antenna facilities.

8. Equipment Upgrade. Company may update or replace the Company Equipment located outside of the equipment shelter from time to time with prior written notice to City, provided that the replacement facilities are not greater in number or size than the existing facilities. All other changes outside of the equipment shelter shall be subject to City's prior written approval. Company shall submit to City a detailed proposal for any such replacement or updated facilities and any supplemental materials as may be requested, for City's notice or approval, whichever is applicable. At a minimum, prior to construction, Company shall submit fully dimensioned site plans that are drawn to scale and show (i) the proposed location of the antennas, equipment shelter, and any accessory equipment or facilities, (ii) any proposed changes in the landscape, (iii) the proposed type and height of any fencing, (iv) the proposed color of all structures, including fencing, and (v) the proposed type of construction material for all structures, including fencing.

9. Maintenance.

a. Company shall, at its own expense, maintain any equipment on or attached to the Site in a safe condition, in good repair and in a manner suitable to City so as not to conflict with the use of or other permitting or use of the Site by City. Company shall not interfere with the use of the Site, related facilities or other equipment of other existing users.

b. Company shall have sole responsibility for the maintenance, repair, and security of its equipment, personal property, antenna facilities, and improvements, and shall keep the same in good repair and condition during the Agreement term.

c. Company shall keep the Site free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise, interference or alterations at the Site. Company shall take reasonable measures at Company's cost to cover Company's Equipment and personal property and protect such from paint and debris fallout which may occur during the painting, construction or alteration process.

d. Except for emergency situations (which shall include, but are not limited to, the necessity for repairs to restore service), work at the Site shall be Monday through Friday, between the hours of 7:00 a.m. and 6:00 p.m. Company is responsible to promptly repair any damage to the Site and to any adjacent property resulting from activities on the equipment or personal property of Company and/or its contractors.

e. Company shall provide to the City Engineer a twenty four (24) hour per day, seven (7) day per week, emergency contact name and telephone number. Company shall additionally post such emergency contact information in a visible location on the Site.

10. Interference.

a. The communications equipment that Company installs on the Site shall be of the type and frequency which will not cause measurable interference, as defined by the Federal Communications Commission ("FCC"), to any currently leased and operating communications equipment of City, other existing companies on the Property prior to Company, or adjacent landowners. In the event Company's communications equipment causes such interference, Company shall take all reasonable steps necessary to correct and eliminate the interference.

b. Upon the Commencement Date, and prior to commercial operations, Company shall provide written assurance, in a format reasonable and customarily accepted by the federal government, ensuring that the Company Equipment complies with all federal requirements for RF emissions, and that Company Equipment will not cause measurable interference with the equipment located on the Site and adjacent property existing prior in time to the Company Equipment.

c. Company understands that no use of the Site will be permitted which exceeds federal RF emissions standards within and at the boundaries of the Site. If the cumulative RF emissions levels ever exceed federal standards, all users of the Site, including Company, will be required to modify operations on a reasonably comparable level, in order to bring the overall RF emissions into compliance.

d. Company's installation, operation, and maintenance of its transmission facilities shall not damage or interfere in any way with City's operations at the Site or related repair and maintenance activities or with such activities of other entities with interests prior in time to those of Company. Company agrees to cease all such actions which materially interfere with City's use of the Site immediately upon actual notice of such interference (except Company may power-up the interfering causing equipment intermittently for testing purposes, upon providing direct, actual prior notice to the Fire Chief or his or her designee), provided however, in such case, Company shall have the right to terminate the Agreement if such interference cannot be remedied within a reasonable period of time.

e. City does not guarantee to Company subsequent noninterference with Company's communications operations, provided, however, that in the event any other party except a governmental unit, office or agency requests a permit and/or permission to place any type of additional antenna or transmission facility on the Property, the procedures of this paragraph 9 shall govern to determine whether such antenna or transmission facility will interfere with Company's transmission operations.

If City receives any such request, City shall submit a proposal complete with all technical specifications reasonably requested by Company to Company for review for noninterference; however, City shall not be required to provide Company with any specifications or information claimed to be of a proprietary nature by the third party. The third party shall be responsible for the reasonable cost of preparing the technical specifications for its proposed transmission facility. Company shall have thirty (30) days following receipt of said proposal to make any objections thereto, if Company gives notice of objection due to interference during such 30 day period and Company's objections are verified by City to be valid based upon then-existing industry standards for wireless communications, then City shall not proceed with such proposal unless City modifies the proposal in a manner determined, in City's reasonable judgment, to adequately reduce the potential for interference. In that case, City may proceed with and be allowed to place, or allow

the third party to place, antennas or other communications facilities on the Property, provided however, if Company's use of the Site is materially affected by the subsequent equipment, City will assist Company by taking active steps to resolve the interference, which steps may include a request that the interfering equipment be powered-down until the interference is resolved. If such interference cannot be remedied within a reasonable period of time, Company may terminate the Agreement.

11. Site Access.

a. Company, at all times during this Agreement, shall have vehicle ingress and egress routes to the Site only as depicted on Exhibit A.

b. Except for emergency situations (which shall include, but may not be limited to, the necessity for repairs to restore service), Company shall request access to the Site twenty-four (24) hours in advance.

c. City shall be allowed and granted access to the Site at reasonable times to examine and inspect the Site for safety reasons or to ensure that the Company's covenants are being met. Company shall provide City with a key or lock combination, which may be used for emergency access or as may be otherwise authorized by Company. In exchange for providing the City with the requested key or lock combination, the City shall notify the Company of its intent to access the Site via the telephone number posted at the Site at least twenty-four (24) hours in advance, except in the case of an emergency, in which case, City shall notify Company of such access as soon as reasonably possible thereafter.

d. Company shall have the right to park its vehicles on the Site in locations the City designates when Company is installing and servicing its equipment or facilities, subject to any reasonable conditions the City may impose.

12. Utilities. Company shall, at its expense, separately meter charges for the consumption of electricity and other utilities associated with its use of the Site and shall timely pay all costs associated therewith.

13. Fees, Permit Fees, Taxes. Company shall pay, as they become due and payable, all fees, charges, taxes and expenses required for or occasioned by Company's use of the Site.

14. Compliance with Statutes, Regulations, and Approvals. Company's use of the Site is contingent upon its obtaining all approvals that may be required by any federal, state or local authority. Company shall erect, maintain and operate the Company Equipment in accordance with the site standards, state statutes, ordinances, rules and regulations now in effect or that thereafter may be issued by the FCC or any other governing bodies.

15. Default.

a. It shall be a default if Company defaults in the payment or provision of the Base Fee or any other sums to City when due, and does not cure such default within ten (10) days after receipt of written notice; or if Company defaults in the performance of any other covenant or condition of this Agreement and does not cure such other default within (30) thirty days after

written notice from City specifying the default complained of (or longer than thirty (30) days if the nature of such default requires longer than thirty (30) days to cure and Company commences the cure within such thirty (30) day period, but not to extend beyond ninety (90) day and diligently undertakes the actions necessary to complete the repairs as soon as reasonably possible); or if Company abandons the Site; or if Company is adjudicated as bankrupt or makes any assignment for the benefit of creditors; or if Company becomes insolvent or City reasonably believes itself to be insecure.

b. In the event of a default, City shall have the right, at its option, in addition to and not exclusive of any other remedy City may have by operation of law, without any further demand or notice, to re-enter the Site and eject all persons therefrom, and either (a) declare this Agreement at an end, in which event Company shall immediately remove the Company Equipment, proceed with the other requirements set forth in subparagraph 16(b), and pay City a sum of money equal to the total of (i) the amount of the unpaid fee accrued through the date of termination; (ii) any other reasonable amount necessary to compensate City for all detriment caused by Company's failure to perform its obligations under the Agreement.

c. The City and the Company hereby expressly agree and acknowledge that it is the intention of both parties that in the event that during the term of this Agreement, either party shall become a debtor in any voluntary or involuntary bankruptcy proceeding (a "**Proceeding**") under the United States Bankruptcy Code, 11 U.S.C. 101, *et seq.* (the "**Code**"), for the purposes of proceeding under the Code, this Agreement shall be treated as an unexpired lease of nonresidential real property under Section 365 of the Code, 11 U.S.C. 365 (as may be amended), and, accordingly, shall be subject to the provisions of subsections (d)(3) and (d)(4) of said Section 365.

d. Any person or entity to which this Agreement is assigned pursuant to the provisions of the Bankruptcy Code, 11 USC Sections 101, *et seq.*, shall be deemed without further act to have assumed all of the obligations of the Company arising under this Agreement both before and after the date of such assignment. Any such assignee shall upon demand execute and deliver to the City an instrument confirming such assumption. Any monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid to the City, shall be the exclusive property of the City, and shall not constitute property of the Company or of the estate of Company within the meaning of the Bankruptcy Code. Any monies or other considerations constituting the City's property under the preceding sentence not paid or delivered to the City shall be held in trust for the benefit of the City and be promptly paid to the City.

e. No re-entry and taking of possession of the Site by City shall be construed as an election on City's part to terminate this Agreement, regardless of the extent of renovations and alternation by City, unless a written notice of such intention is given to the Company by the City.

f. It shall be a default of City if City fails to perform any term, condition, or breach of any warranty or covenant under this Agreement within thirty (30) days after written notice of such failure (or longer than thirty (30) days if the nature of such default requires longer than thirty (30) days to cure and City commences the cure within such thirty (30) day period, but not to extend beyond ninety (90) days). If City remains in default beyond any applicable cure period, Company will have all rights available to it under law or equity.

16. Cure of Default. In the event of any default of this Agreement by Company beyond applicable cure periods, City may at any time, after 30 days written notice, cure the default for the account of and at the reasonable expense of Company. If City is compelled to pay or elects to pay any sum of money or to do any act which will require the payment of any sum of money or is compelled to incur any expense, including reasonable attorney's fees in instituting, prosecuting or defending any action to enforce City's rights under this Agreement, the reasonable sums so paid by City, with all interest, costs and damages shall be deemed to be an "Additional Fee" and shall be due from the Company to City within fifteen (15) days following receipt of an invoice detailing the respective expenses.

17. Optional Termination. This Agreement may be terminated (i) by Company if it is unable to obtain or maintain any lease, permit, or other governmental approval necessary for the construction and/or operation of the Company Equipment or Company's business; (ii) by City if the City, by action of the Westminster City Council, decides to discontinue use of the Site, provided such termination shall only occur upon three (3) month's prior written notice to Company; (iii) by the City if it determines in its sole, reasonable discretion that continued use of the Site by Company is in fact a threat to health, safety or welfare or violates applicable laws or ordinances. Upon termination of this Agreement for any reason, Company shall remove its improvements as provided in Section 21, herein.

18. Effect of Termination. Notice of Company's termination pursuant to Section 17 shall be given to City in writing by certified mail, return receipt requested, and shall be effective upon receipt of such notice. Upon termination pursuant to Section 17, this Agreement shall become null and void and the parties shall have no further obligations to each other except in connection with the warranties and indemnities that by their nature shall survive such termination.

19. Alteration, Damage or Destruction. If the Site or any portion thereof is altered, destroyed or damaged so as to materially hinder the effective use of the Company Equipment through no fault or negligence of Company, Company may elect to terminate this Agreement upon thirty (30) days written notice to City. In such event, Company shall, pursuant to Section 21, remove the Company Equipment from the Site and shall restore the Site to the same condition as existed prior to this Agreement, normal wear and tear excepted. This Agreement (and Company's obligation to pay) shall terminate upon Company's fulfillment of the obligations set forth in the preceding sentence, at which time Company shall be entitled to the reimbursement of any Fee prepaid by Company.

20. Condemnation. N/A

21. Removal and Restoration.

a. Unless otherwise directed by the City within fifteen (15) days of the termination date, the Company shall remove the Company Equipment from the Site within ninety (90) days after termination of the Agreement. Such removal shall be done in a workmanlike and careful manner and without interference or damage to any other equipment, structures or operations on the Site, including use of the Site by City or any of City's assignees. At the City's option, upon termination of this Agreement for any reason, ownership of the Tower and all related equipment shall be transferred to City for the sum of ten dollars, and the same thereafter shall be the sole and entire

property of City. Company shall execute any documentation necessary to effect such transfer of ownership and Company shall be relieved of its duty to otherwise remove same.

b. Upon removal of the improvements (or portions thereof) as provided above in subparagraph (a), Company shall restore the affected area of the Site to the reasonable satisfaction of the City, reasonable wear and tear excepted.

c. All costs and expenses for the removal and restoration to be performed by Company pursuant to subparagraphs (a) and (b) above shall be borne by Company, and Company shall hold City harmless from any portion thereof.

22. Indemnity and Insurance.

a. Disclaimer of Liability. City shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of Company's construction, maintenance, repair, use, operation, condition or dismantling of the Site or Company's Equipment, except to the extent that any such injury or damage is due to the negligence or intentional acts of City, its employees or agents.

b. Indemnification. Except to the extent due to the negligence or intentional acts of an Indemnitee (defined below), Company shall, at its sole cost and expense, indemnify and hold harmless City and its officers, boards, commissions, employees, agents, attorneys, and contractors, their heirs, successors, assigns and authorized agents, (hereinafter referred to as "Indemnitees"), from and against:

i. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees, arising directly or indirectly by reason of any act or omission of Company, its personnel, employees, agents, contractors or subcontractors, or any invitees, guests, or other persons permitted on the Site by Company, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any person, firm or corporation, which may arise out of or be in any way connected with the construction, installation, operation, maintenance, use or condition of the Site or Company Equipment or the Company's failure to comply with any federal, state or local statute, ordinance or regulation.

ii. Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and other consultants), which are imposed upon, incurred by or asserted against the Indemnitees by reason of any claim or lien arising out of work, labor, materials or supplies provided or supplied to Company, its contractors or subcontractors, for the installation, construction, operation, maintenance or use of the Site and, upon the written request of City, Company shall cause such claim or lien covering City's property to be discharged or bonded within thirty (30) days following such request.

c. Defense of Indemnitees. In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Company shall, upon notice from any of the Indemnitees, at Company's sole cost and expense, defend the same with legal counsel selected by Company; provided however, that Company shall not admit liability in any such matter on behalf of the Indemnitees without the written consent of City and provided further that Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of Company.

d. Notice, Cooperation and Expenses. City shall give Company prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section 22. Nothing herein shall be deemed to prevent City from cooperating with Company and participating in the defense of any litigation by City's own counsel. Company shall pay all reasonable expenses incurred by City in response to any such actions, suits, or proceedings. These expenses shall include all out-of-pocket expenses such as reasonable attorney fees and shall also include the reasonable value of any services rendered by the City's attorney, and the actual expenses of City's agents, employees or expert witnesses, and disbursements and liabilities assumed by City in connection with such suits, actions or proceedings but shall not include attorney fees for services that are unnecessarily duplicative of services provided to City by Company.

e. Insurance. During the term of the Agreement, Company shall maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, the following types and limits of insurance:

i. Worker's compensation insurance meeting applicable statutory requirements and employer's liability insurance with minimum limits of One Hundred Thousand Dollars (\$100,000.00) for each accident.

ii. Commercial general liability insurance with minimum limits of Five Million Dollars (\$5,000,000.00) as the combined single limit for each occurrence and Ten Million Dollars (\$10,000,000.00) in the aggregate for bodily injury, personal injury and property damage. The policy shall provide blanket contractual liability insurance for all written contracts, and shall include coverage for products and completed operations liability, independent contractor's liability; coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage.

iii. Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by Company, its employees and agents, with personal protection insurance and property protection insurance to comply with the provisions of state law with minimum limits of One and one-half Million Dollars (\$1,500,000.00) as the combined single limit for each occurrence for bodily injury and property damage.

iv. At the start of and during the period of any construction, builders all-risk insurance, together with an installation floater or equivalent property coverage covering cables, materials, machinery and supplies of any nature whatsoever which are to be used in or incidental to the installation or modification of the Company Equipment. Upon

completion of any installation or modification to the Company Equipment, Company shall substitute for the foregoing insurance policies of fire, extended coverage and vandalism and malicious mischief insurance on the Company Equipment. The amount of insurance at all times shall be representative of the insurable values installed or constructed. Company may self-insure this coverage.

v. All required policies other than those for Worker's Compensation shall be written on an occurrence and not on a claims made basis.

vi. The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.

f. Additional Insureds. Company shall include City and its officers, boards, commissions, employees, and agents as additional insureds (herein referred to as the "Additional Insureds") on required commercial general liability insurance policies, with respect to the operations of the named insured. Customer's additional insured status shall (i) be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by Company, its employees, agents or independent contractors; and (ii) not extend to claims for punitive or exemplary damages arising out of the acts or omissions of Customer, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of Customer, its employees, agents or independent contractors.

g. Evidence of Insurance. Certificates of insurance for each insurance policy required to be obtained by Company in compliance with this paragraph, shall be filed and maintained with City annually during the term of the Agreement. Company shall immediately advise City of any claim or litigation that may result in liability to City.

h. Cancellation of Policies of Insurance. Company shall provide at least thirty (30) days' advance written notice to the Fire Chief of the City of Westminster of any cancellation or non-renewal of any required coverage that is not replaced.

i. Insurance Companies. All insurance shall be effected under valid and enforceable policies, insured by insurers eligible to do business by the State of Colorado or surplus line carriers on the State of Colorado Insurance Commissioner's approved list of companies qualified to do business in the State of Colorado. All insurance carriers and surplus line carriers shall be rated A minus or better by A.M. Best Company.

j. Deductibles. Company agrees to indemnify and hold harmless City, the Indemnitees, and Additional Insureds from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished by this Agreement.

k. Self Insurance. Notwithstanding the foregoing, Company may, in its sole discretion, self insure any of the required insurance under the same terms as required by this Agreement. In the event Company elects to self-insure its obligation under this Agreement to include Customer as an additional insured, the following conditions apply:

(i) City shall promptly and no later than thirty (30) days after notice thereof provide Company with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Company with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like;

(ii) City shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Company; and

(iii) City shall fully cooperate with Company in the defense of the claim, demand, lawsuit, or the like.

l. Contractors. Company shall require that every one of its contractors and their subcontractors who perform work on the Site carry, in full force and effect, workers' compensation, commercial general liability and automobile liability insurance coverages of the type which Company is required to obtain under the terms of this paragraph with appropriate limits of insurance.

m. Review of Limits. Once during each Renewal Term year during the term of this Agreement, City may review the insurance coverages to be carried by Company. If City reasonably determines that higher limits of coverage are necessary to protect the interests of City or the Additional Insureds, Company shall be so notified and shall obtain the additional limits of insurance, at its sole cost and expense.

23. Hazardous Substances. Company represents and warrants that its use of the Site herein will not generate any Hazardous Substance, and it will not store or dispose on the Site nor transport to or over the Site any Hazardous Substance, except for Hazardous Substance that is customarily used in back-up batteries or a back-up power generator necessary to provide emergency back-up power for the Company Equipment. Company further agrees to hold City harmless from and indemnify City against any release of any such Hazardous Substance and any damage, loss, or expense or liability resulting from such release including all reasonable attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the negligence of City, its employees or agents. City shall be responsible for any release of a Hazardous Substance caused by City, including any damage, loss, or expense or liability resulting from such release. "Hazardous Substance" shall be interpreted broadly to mean any substance or material defined or designated, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease.

24. Security Deposit. Contemporaneously with the execution of this Agreement, Company shall deposit with the City the sum of Five Thousand and 00/100 Dollars (\$5,000.00) as a security deposit. The deposit shall be held by City, without liability for interest, as security for the faithful performance by the Company of all the terms, covenants, and conditions of this Agreement to be kept and performed by the Company during the term hereof, and for those obligations of this Agreement that are to be undertaken after termination. If all payments owed by the Company have been timely made and Company removes all Company Equipment as provided in this Agreement, taking into account if City elects to obtain ownership of the Tower, Company shall be entitled to return of the entire security agreement.

25. Acceptance of Site. By taking possession of the Site, Company accepts the Site in the condition existing as of the Commencement Date. City makes no representation or warranty with respect to the condition of the Site.

26. Notices. All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, to the following addresses. At a minimum, each such notice shall contain the title and date of this Agreement, the names of the original parties to this Agreement, and the street address of the Property:

If to City, to: City of Westminster
Attn: City Manager
4800 West 92nd Avenue
Westminster, Colorado 80031

With a copy to: City of Westminster
Attn: City Attorney
4800 West 92nd Avenue
Westminster, Colorado 80031

If to Company, to: New Cingular Wireless PCS, LLC,
Attn: Network Real Estate Administration
Re: Cell Site #COU1253; Cell Site Name: Cozy Corner (CO)
Fixed Asset No. #10093717
575 Morosgo Drive
Suite 13-F West Tower
Atlanta, GA 30324

With a copy to: New Cingular Wireless PCS, LLC,
Attn: AT&T Legal Department
Re: Cell Site #COU1253; Cell Site Name: Cozy Corner (CO)
Fixed Asset No. #10093717
208 S. Akard Street
Dallas, Texas 75202-4206

The copy sent to the Legal Department is an administrative step which alone does not constitute legal notice.

27. Assignment and Transfer.

a. Company may not assign this Agreement without the prior written consent of City. In addition to the conditions relating to assignment, any transaction resulting in a transfer of this Agreement, including but not limited to a change in operational control of Company (including

acquisition of a majority of the voting interest of Company or any parent Company) shall be subject to such prior written approval of City.

b. Nothing in this Agreement shall preclude City from granting a permit to use other space on the Property for communications equipment to any person or entity that may be in competition with Company, or any other party.

28. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

29. Non-Waiver. Failure of the City to insist on strict performance of any of the conditions, covenants, terms or provisions of this Agreement or to exercise any of its rights hereunder shall not waive such rights, but City shall have the rights to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity. The receipt of any sum paid by Company to City after a breach of this Agreement shall not be deemed a waiver of such breach unless expressly set forth in writing.

30. Miscellaneous.

a. City and Company represent that each, respectively, has full right, power and authority to execute this Agreement.

b. This Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Agreement must be in writing and executed by both parties.

c. This Agreement shall be construed in accordance with the laws of the State of Colorado. Venue for any proceeding under this Agreement shall be in Adams County.

d. Each term and condition of this Agreement is an integral part of the consideration given by each party and as such, the terms of this Agreement are not severable.

e. Except for the indemnity obligations set forth in this Agreement, and otherwise notwithstanding anything to the contrary in this Agreement, City and Company each waives any claims that each may have against the other with respect to consequential, incidental, or special damages, however, caused, based on any theory of liability.

f. Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term “including” will be interpreted to mean “including but not limited to”; (iii) whenever a party’s consent under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed, (iv) exhibits are an integral part of this Agreement and are incorporated by reference into this Agreement; (v) use of the terms “termination” or “expiration” are interchangeable; (vi) reference to a default will take into consideration any applicable notice, grade, and cure periods; (vii) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Agreement, the ambiguity shall

not be resolved on the basis of who drafted the Agreement; and (viii) the singular use of words includes the plural where appropriate.

g. Each party, to the extent permitted by law, knowingly, voluntarily, and intentionally waives its right to a trial by jury in any action or proceeding under any theory of liability arising out of or in any way connected with this Agreement or the transactions it contemplates.

This Agreement was executed as of the date first set forth above.

CITY:

CITY OF WESTMINSTER, COLORADO

By: _____

Name: _____

Its: City Manager

COMPANY:

New Cingular Wireless PCS, LLC, a Delaware limited liability company

By: AT&T Mobility, its Manager

By: _____

Name: _____

Its: _____

EXHIBIT A

Company Site Location and Equipment Description and Plans

(Information to include at a minimum shall be: general type of equipment, powering arrangement of equipment, description of equipment, network layout, and plan view and elevation views of the site and equipment placement on the site)

Construction Drawings by Black & Veatch, dated October 17, 2013, that were issued for permit are attached.

EXHIBIT B

LEGAL DESCRIPTION

Legal Description of Property

THE EAST 385 FEET OF THE WEST 610 FEE OF PLOT 16, NORTH COZY CORNER, EXCEPT THOSE PARCELS CONVEYED IN DEEDS RECORDED FEBRUARY 14, 1985 IN BOOK 2968 AT PAGE 185, APRIL 22, 1985 IN BOOK 2991 AT PAGE 766, AND MAY 16, 1985 IN BOOK 3002 AT PAGE 111, COUNTY OF ADAMS, STATE OF COLORADO, CONTAINING 1.287 ACRES, MORE OR LESS.

Legal Description of Site

A 43.25 FOOT BY 40.25 FOOT PARCEL LYING IN A PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 20, TOWNSHIP 2 SOUTH, RANGE 68 WEST OF THE 6TH P.M., COUNTY OF ADAMS, STATE OF COLORADO MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 20, BEING MONUMENTED WITH AN ILLEGIBLE 3" ALUMINUM CAP IN RANGE BOX, WHENCE THE CENTER QUARTER CORNER BEING MONUMENTED WITH AN ILLEGIBLE 3" ALUMINUM CAP IN RANGE BOX BEARS S 89°53'20" W, A DISTANCE OF 660.41 FEET; THENCE ALONG THE SOUTHERLY LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 20, S 89°53'20" W, A DISTANCE OF 260.17 FEET; THENCE N 00°49'18" W, A DISTANCE OF 206.51 FEET TO THE NORTHEAST CORNER OF A PARCEL OF LAND AS RECORDED ON DECEMBER 1, 1990 AT REC. NO. 978447 OF THE ADAMS COUNTY CLERK AND RECORDER'S OFFICE AND THE POINT OF BEGINNING;

THENCE ALONG THE EASTERLY LINE OF SAID REC. NO. 978447, S 00°49'18" E, A DISTANCE OF 43.25 FEET; THENCE S 89°43'17" W, A DISTANCE OF 40.25 FEET; THENCE N 00°49'18" W, A DISTANCE OF 43.25 FEET TO A POINT ON THE NORTHERLY LINE OF SAID REC. NO. 978447; THENCE ALONG SAID NORTHERLY LINE, N 89°43'17" E, A DISTANCE OF 40.25 FEET TO THE POINT OF BEGINNING.

THE ABOVE LEGAL DESCRIPTION CONTAINS 1,740.81 SQUARE FEET MORE OR LESS.

EXHIBIT C

Description of City antennas and related facilities on the Tower site

Antenna Owner	Mount Height (ft)	Antenna CL (ft)	Quantity	Type	Manufacturer	Model
City of Westminster	97	117	1	Omni	Sinclair	SC412-HF2LDF
City of Westminster	97	107	1	TTA	dBSpectra	DS7TMA31
City of Westminster	77	85	1	Omni	Sinclair	SC479-HF1LDF



Agenda Memorandum

City Council Meeting
January 13, 2014



SUBJECT: Resolution No. 1 Reappointing Members to Boards and Commissions and Filling Vacancies

Prepared By: Linda Yeager, City Clerk

Recommended City Council Action

Adopt Resolution No. 1 reappointing members whose terms of office expired on December 31, 2013, to an additional two-year term and appointing alternate members to regular membership, where applicable, on the Board of Building Code Appeals, the Election Commission, the Environmental Advisory Board, the Historic Landmark Board, the Human Services Board, the Open Space Advisory Board, the Parks, Recreation and Libraries Advisory Board, the Personnel Board, the Planning Commission, and the Special Permit and License Board.

Summary Statement

- City Council action is requested to reappoint citizens serving as members of the aforementioned established City Boards and Commissions whose terms of appointment expired on December 31, 2013, and to appoint alternate members to regular membership where vacancies exist.
- All affected Board members were contacted to determine interest and willingness to continue serving. New terms are for two-year periods.
- The remaining vacancies on City Boards and Commissions will be filled at a later date after City Council has had the opportunity to conduct interviews with interested Westminster citizens.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Does City Council want to reappoint those individuals on Boards and Commissions whose terms of office expired on December 31, 2013, and to fill vacancies through the appointment of alternate members to regular membership?

Alternative

None identified.

Background Information

The terms of office of three members on the Board of Building Code Appeals expired on December 31. Dan Orecchio (second alternate), Nancy Partridge (first alternate) and Jonathan Talbott (regular member) would like to be reappointed to the Board. There are two vacancies on this Board. One was created in May of 2013 when a Board member moved outside of Westminster and was no longer eligible to serve; the other occurred when Emma Pinter was elected to City Council. Adoption of the attached resolution will reappoint Mr. Talbott to an additional two-year term that will expire December 31, 2015. Further, it will name Nancy Partridge, first alternate, to regular membership, filling the vacancy of Jacob Starkovich; and Dan Orecchio, second alternate, to regular membership, filling Ms. Pinter's vacancy. Ms. Partridge's term will expire December 31, 2015; Mr. Orecchio's, December 31, 2014. The Westminster Municipal Code's requirement for a certain percentage of this Board's membership to have specific professional experience remains intact with four of the five members having the necessary experience. The vacancies in the first and second alternate memberships will need to be filled at a later date.

The terms of all members of the Election Commission expired on December 31. Denis DuFresne, Shannon Bird, and William Noonung wish to be reappointed to another two-year term. Having served on the Commission for 29 years, Jeanne Nearing submitted her resignation and thanked City Council for the opportunity to serve and be involved. If adopted, the attached resolution reappoints Ms. Bird and Messrs. DuFresne and Noonung to two-year terms that will expire December 31, 2015. The vacancy created by Ms. Nearing's resignation will be filled at a later date.

The terms of Lisa Bressler, Ellen Buckley, Edwin Cook (alternate), and Nick Pizzuti on the Environmental Advisory Board expired December 31. All have indicated they would like to be reappointed and will be if the attached resolution is adopted. Their terms of office will expire December 31, 2015. There are no vacancies on this Board.

The terms of office of Linda Cherrington, Barbara Cox (alternate), Linda Graybeal, and Julie Marino on the Historic Landmark Board expired on December 31. All have voiced interest in being reappointed for additional two-year terms, which the attached resolution will accomplish if adopted. All terms of office will expire December 31, 2015. This Board has no vacancies.

The terms of office of David Aragoni (alternate), Alison O'Kelly and Dennis White on the Human Services Board expired December 31. Ms. O'Kelly has moved from Westminster and is no longer eligible to hold office. The Board has had another vacancy since March 2013 when Mr. Jerry Hersey had to resign with regrets. Both Messrs. Aragoni and White have indicated a desire to be reappointed to terms of office that will expire December 31, 2015. Mr. Aragoni, the alternate, will be appointed a regular member and Mr. White reappointed, if the attached resolution is adopted. The regular and alternate member vacancies on this Board will be filled at a later date.

The terms of four members of the Open Space Advisory Board expired on December 31, and Ben Beaty, Jonathan Herrmann (alternate), and Pat Wales have expressed interest in being reappointed. JoAnn Price resigned, stating it had been her pleasure to serve and it is time for another citizen to have an opportunity.

Randal Tucker moved to Steamboat Springs in October and resigned from this Board. If adopted, the attached resolution names Jonathan Herrmann, the current alternate, a regular member to fill the vacancy created by Mr. Tucker's resignation and reappoints Mr. Beaty and Ms. Wales to regular membership. Mr. Herrmann's term of office will expire December 31, 2014; the terms of Mr. Beaty and Ms. Wales on December 31, 2015. The Open Space Advisory Board has vacancies in one regular and one alternate member that will need to be filled at a later date.

The terms of office of three members on the Parks, Recreation and Libraries Advisory Board expired at year end. Janet Bruchmann, Dan Dolan (alternate), and Terrance Ramirez would like to be reappointed. Paula Saunders, whose term would have expired the end of 2013, submitted her resignation in October because she was moving from Westminster. The attached resolution names Dan Dolan, the alternate, to regular membership and reappoints Ms. Bruchmann and Mr. Ramirez with all terms to expire December 31, 2015. This Board has an alternate member vacancy that will need to be filled at a later date.

The terms of office of three regular members and two alternates on the Personnel Board expired on December 31. John Brann, Wesley Underwood, Candee Wells (first alternate) and Darrell Fuller (second alternate) have indicated they would be interested in being reappointed. Stacy Worthington has resigned to seek appointment to another Board or Commission that meets with more frequency and increases her involvement in local government. The attached resolution reappoints Messrs. Brann and Underwood, names Candee Wells a regular member, and names Mr. Fuller the first alternate. All terms of office expire on December 31, 2015. The vacancy in the second alternate position will be filled at a later date.

On the Planning Commission, the terms of James Boschert, David Carpenter (first alternate), Richard Mayo, and Tracey Welch (second alternate) expired on December 31. All four would like to continue serving another two-year term. If adopted, the attached resolution reappoints them to additional terms that will expire December 31, 2015. There are no vacancies on the Planning Commission.

The terms of office of five members of the Special Permit and License Board expired on December 31. Martha Brundage, Mildred DeSmet, Melanie Lawrence Calvert, and Eric Wyns have indicated they would like to be reappointed. Brian Harms, the alternate member, resigned as he has accepted a new position that requires him to travel and to relocate to another state in the next six months. The attached resolution reappoint Ms. Brundage, Ms. DeSmet, Ms. Calvert and Mr. Wyns to terms that will expire on December 31, 2015. The alternate vacancy will be filled at a later date.

Letters expressing City Council's appreciation for their years of service and contributions to the community have been signed by Mayor Atchison and mailed to the individuals who resigned their offices.

The citizens volunteering to serve on the City's Boards and Commissions play important roles in helping the City reach its strategic goals. Working in coordination with Staff and City Council, the member contributions assist the City to have a Strong, Balanced Local Economy; to be a Financially Sustainable City Government Providing Exceptional Service; to be a Safe and Healthy Community; to have Vibrant Neighborhoods in One Livable Community; and to be a Beautiful and Environmentally Sensitive City.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Resolution

RESOLUTION

RESOLUTION NO. **1**

INTRODUCED BY COUNCILLORS

SERIES OF 2014

**A RESOLUTION FOR CITY OF WESTMINSTER BOARD AND COMMISSION
REAPPOINTMENTS AND NEW APPOINTMENTS**

WHEREAS, each member of the City's Boards and Commissions whose term expired on December 31, 2013 has been contacted and the majority of them have conveyed the desire to be re-appointed to the Board where they are currently serving; and

WHEREAS, it is important to have each City Board or Commission working with its full complement of authorized members to carry out the business of the City of Westminster with citizen representation; and

WHEREAS, Council has, with regret, accepted the resignations received from Jacob Starkovich of the Board of Building Code Appeals, from Jeanne Nearing of the Election Commission, from Jerry Hersey and Alison O'Kelly of the Human Services Board, from Randal Tucker and JoAnn Price of the Open Space Advisory Board, from Paula Saunders of the Parks, Recreation and Libraries Advisory Board, from Stacy Worthington of the Personnel Board, and from Brian Harms of the Special Permit and License Board.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER:

Section 1. The following individuals are hereby reappointed members of the City of Westminster Board or Commission listed below with terms of office to expire December 31, 2015.

<u>BOARD/COMMISSION</u>	<u>NAMES OF RE-APPOINTEES</u>
Board of Building Code Appeals	Jonathan Talbott
Election Commission	Denis DuFresne, Shannon Bird, and William Noonig
Environmental Advisory Board	Lisa Bressler, Ellen Buckley, Edwin Cook (alternate), and Nick Pizzuti
Historic Landmark Board	Linda Cherrington, Barbara Cox (alternate), Linda Graybeal, and Julie Marino
Human Services Board	Dennis White
Open Space Advisory Board	Ben Beaty and Pat Wales
Parks, Recreation and Libraries Advisory Board	Janet Bruchmann and Terrance Ramirez
Personnel Board	John Brann and Wesley Underwood
Planning Commission	James Boschert, David Carpenter (first alternate), Richard Mayo, and Tracey Welch (second alternate)
Special Permit and License Board	Martha Brundage, Mildred DeSmet, Melanie Lawrence Calvert, and Eric Wyns

Section 2. The following appointments of alternate members are being made to fill vacancies in regular memberships created by resignations with terms of office to expire December 31, 2014:

<u>BOARD/COMMISSION</u>	<u>NAMES OF APPOINTEES</u>
Board of Building Code Appeals	Dan Orecchio (regular)
Open Space Advisory Board	Jonathan Herrmann (regular)

Section 3. The following appointments are made to fill vacancies in regular and alternate memberships with terms of office to expire December 31, 2015.

<u>BOARD/COMMISSION</u>	<u>NAMES OF APPOINTEE</u>
Board of Building Code Appeals	Nancy Partridge (regular)
Human Services Board	David Aragoni (regular)
Parks, Recreation and Libraries Advisory Board	Dan Dolan (regular)
Personnel Board	Candee Wells (regular) and Darrell Fuller (first alternate)

PASSED AND ADOPTED this 13th day of January, 2014.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney



Agenda Item 11 A

Agenda Memorandum

City Council Meeting
January 13, 2014



SUBJECT: Second Reading of Councillor's Bill No. 54 Authorizing Colorado Brownfields Grant Supplemental Appropriation – Recommendation to Table

Prepared By: Andrew Hawthorn, Senior Engineer

Recommended City Council Action

Table the second reading of Councillor's Bill No. 54.

Summary Statement

- The Colorado Brownfield's Revolving Loan Fund program has awarded the City of Westminster a grant in the amount of \$200,000 for the costs associated with the remediation of groundwater contamination at the former Barnum Printing site. This is a federal grant from the Environmental Protection Agency (EPA) that is passed through the State of Colorado.
- City Council approved the pursuit and acceptance of this grant on June 10, 2013. On December 23, 2013, Council passed Councillor's Bill No. 54 on first reading for the supplemental appropriation of these funds.
- Staff has been alerted to the possibility of certain restrictions imposed by the EPA that could be applicable to the City's use of the funds. For this reason, Staff would prefer to fully investigate this matter with the proper representatives of the federal and State governments before recommending that Council pass Councillor's Bill No. 54 on second reading.

Expenditure Required: \$200,000

Source of Funds: Federal Grant from the Colorado Brownfield's Revolving Loan Fund

Policy Issue

Should the City delay the supplemental appropriation of the Colorado Brownfield's Revolving Loan Fund grant until all potential restrictions on the use of the funds are fully identified?

Alternative

Council could elect to pass Councillor's Bill No. 54 on second reading at this time. That alternative is not recommended since, under a worst case scenario, some or all of the funds could not be used for the intended purpose.

Background Information

Appropriate City Staff are currently in the midst of following up on provisions of the Colorado Brownfield's Revolving Loan Fund program that could have an impact on the City's use of the 2013 grant that is intended to help pay for the costs of remediation of contaminated groundwater at the Barnum Printing site. Specifically, Staff is attempting to verify if certain federal regulations apply to this grant that is passed through the State of Colorado. Staff anticipates that this matter will be resolved quickly, and, if appropriate, the second reading of Councillor's Bill No. 54 could be rescheduled for Council action within the next month.

This grant supports the City Council's goals of a Financially Sustainable City Government Providing Exceptional Services and Vibrant Neighborhoods in One Livable Community by providing outside revenues that would help to clean up a contaminated site and transform it into a transportation hub, park and open space.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Councillor's Bill No. 54

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **54**

SERIES OF 2013

INTRODUCED BY COUNCILLORS
Pinter - Seitz

A BILL

**FOR AN ORDINANCE AMENDING THE 2013 BUDGET OF THE STORM DRAINAGE FUND
AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2013 ESTIMATED
REVENUES IN THE FUND**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2013 appropriation for the Storm Drainage Fund, initially appropriated by Ordinance No. 3655 is hereby increased by \$200,000. This appropriation is due to the receipt of federal grant funds.

Section 2. The \$200,000 increase in the Storm Drainage Fund shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10 A, dated December 23, 2013 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

Storm Drainage Fund	<u>\$200,000</u>
Total	<u>\$200,000</u>

Section 3 – Severability. The provisions of this Ordinance shall be considered as severable. If any section, paragraph, clause, word, or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part shall be deemed as severed from this ordinance. The invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect the construction or enforceability of any of the remaining provisions, unless it is determined by a court of competent jurisdiction that a contrary result is necessary in order for this Ordinance to have any meaning whatsoever.

Section 4. This ordinance shall take effect upon its passage after the second reading.

Section 5. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED
PUBLISHED this 23rd day of December, 2013.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED
this 13th day of January, 2014.

ATTEST:

Mayor

City Clerk

AGENDA

WESTMINSTER HOUSING AUTHORITY SPECIAL MEETING

MONDAY, JANUARY 13, 2014

AT 7:00 P.M.

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (November 11, 2013)
- 3. Public Hearings and New Business**
 - A. Resolution No. 55 re Adoption of 2014 Budget
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER HOUSING AUTHORITY
MONDAY, NOVEMBER 11, 2013 AT 7:45 P.M.

ROLL CALL

Present at roll call were Chairperson McNally, Vice Chairperson Winter, and Board Members Atchison, Briggs, Kaiser, Major and Lindsey. Also present were J. Brent McFall, Executive Director, Martin McCullough, Attorney, and Linda Yeager, Administrative Secretary.

MINUTES OF PRECEDING MEETING

Board Member Major moved, seconded by Kaiser, to approve the minutes of the meeting of August 12, 2013 as written and distributed. The motion carried unanimously.

RESOLUTION NO. 54 AUTHORIZING SUPPLEMENTAL APPROPRIATION TO 2013 BUDGET

Board Member Atchison moved, seconded by Lindsey, to adopt Resolution No. 54 authorizing a supplemental appropriation of \$50,000 to the 2013 Westminster Housing Authority Budget. On roll call vote, the motion passed unanimously.

ADJOURNMENT

There being no further business to conduct, the meeting adjourned at 7:46 p.m.

Chairperson

ATTEST:

Administrative Secretary

WHA Agenda Item 3 A

Agenda Memorandum

Westminster Housing Authority Meeting
January 13, 2014



SUBJECT: Resolution No. 55 re 2014 Westminster Housing Authority Budget

Prepared By: Tony Chacon, Senior Projects Coordinator

Recommended Board Action

Adopt Resolution No. 55 approving the 2014 Westminster Housing Authority Budget.

Summary Statement

- The proposed 2014 Westminster Housing Authority (WHA) budget of \$18,500 provides funding to cover operational and maintenance costs relative to properties owned at 7287 Lowell Boulevard and 3630 W. 73rd Avenue, collectively known as the Vehicle Service Center which houses a community theater, and 3915 W. 73rd Avenue being the Rodeo Market Community Art Center and the immediately adjacent park area.
- The WHA generates no rental revenues from any of the properties, as the buildings are made available to the City-created South Westminster Arts Group (SWAG) at \$10 per year to promote and support arts and culture as a component of the South Westminster revitalization efforts.
- The WHA is not expected to generate any other revenues, other than a minimal amount of interest, in 2014.
- The WHA has a fund balance from previous years of about \$95,420 that is available to use towards operations and maintenance.
- The proposed operating budget expenses for the WHA include \$3,500 for direct costs associated with gas, electric and water utilities, and \$15,000 in contractual services to cover maintenance, insurance, repairs and other miscellaneous expenses.
- The WHA budget for 2014 is being submitted at this late date to provide for an accurate accounting of funds balances from the sale of the Westminster Commons Senior Apartments and actual expenditures made in 2013 so as to ensure sufficient funding is available for the proposed budget.

Expenditure Required: \$ 18,500

Source of Funds: Westminster Housing Authority

Policy Issue

Does the Board of the WHA wish to support the activities of the Westminster Housing Authority by adopting the proposed 2014 budget?

Alternative

- Reduce the 2014 Westminster Housing Authority Budget. This alternative is not recommended as Staff believes the proposed funding level is essential to fully cover the cost of utilities and other operations and maintenance, while continuing to support the endeavors of SWAG by making the space available for their use.
- Do not adopt the 2014 Westminster Housing Authority Budget. This is not recommended as some level of funding is needed to pay for utilities, insurance, general operations and maintenance to protect the integrity of the building's systems and grounds regardless of occupancy of the buildings. An approved budget is necessary to provide funding for these purposes.

Background Information

The Westminster Housing Authority (WHA) was initially created as a means of constructing and operating the Westminster Commons Senior Apartments at 76th Avenue at 3180 W. 76th Avenue. Through operations of this apartment complex, the WHA generated about \$60,000 in revenues annually to the general administrative and operations account. In 2012, the WHA sold the Westminster Commons senior apartments to Volunteers of America (VOA) so as to provide an infusion of about \$6.5 million in funds for a needed rehabilitation of the 30-year old complex. With the sale, the WHA no longer had this revenue stream to rely upon although it retains an estimated ending cash balance of \$95,420 as of the end of 2013 that was generated from this revenue source and other refinancing transactions over time.

The WHA did receive net proceeds of \$2,989,092 in 2012 as a result of the sale of the Westminster Commons senior apartment. These revenue proceeds were used by the WHA to pay off its remaining debt of approximately \$233,000 due to the Colorado Brownfield's Revolving Loan Fund for a loan used to assist the City of Westminster in cleaning up environmentally contaminated property along Little Dry Creek adjacent to the planned commuter rail station. Another \$2.2 million was transferred from the WHA to the City of Westminster to be used in making infrastructure improvements in the South Westminster Transit Oriented Development (TOD) area in support of affordable housing. This leaves the WHA with an approximate balance of \$505,000 remaining from the sale of the Westminster Commons, which has not as yet been appropriated. As such, this amount is reflected as an adjustment in the 2013 estimated column; therefore, it is not accounted for in the 2013 or 2014 ending cash balance.

In addition to operating the Westminster Commons, the WHA has also been utilized to assist the City of Westminster in its affordable housing and South Westminster revitalization efforts. From these efforts the WHA purchased properties at 7287 Lowell Boulevard and 3630 W. 73rd Avenue, collectively known as the Vehicle Service Center, which houses a community theater, and 3915 W. 73rd Avenue being the Rodeo Market Community Art Center and the immediately adjacent park area. As part of its South Westminster Strategic Revitalization Plan, the City initiated an effort to promote arts as a means of attracting new residents and businesses, which resulted in the creation of the South Westminster Arts Group (SWAG). In an effort to further this initiative, the WHA has previously agreed to lease the premises to SWAG at a nominal fee (\$10.00/year) and pay the cost for utilities, until such time as SWAG can generate sufficient operating revenues to cover such costs and higher rent. Given SWAG has yet to generate sufficient revenue, WHA in return is not expected to see any revenue generation from SWAG's use of these properties in 2014.

Staff is proposing a total 2014 budget of \$18,500. Of this amount, \$3,500 is requested to cover the cost of utilities, including gas, electric and water, for the Vehicle Service Center property and the park area adjacent to the Rodeo Market Community Arts Center. This is double the amount budgeted in 2013; however, this increase is reflective of the WHA again assuming responsibility for paying the gas and electric bill for the Vehicle Service Center buildings. Rather than leasing the Vehicle Service Center buildings directly to SWAG, the WHA will work with SWAG to rent the premises to a theater company(s) that will pay for the cost of electricity and gas directly to the WHA. SWAG was responsible for these utility costs in 2013. The budget also reflects an outlay of \$15,000 of expenditure for contractual services that includes the cost of property insurance, legal, weed mowing, general maintenance and repairs, and other miscellaneous costs, along with funding to reimburse SWAG for utility costs associated with their lease and operation of the Rodeo Market Community Arts Center. The 2013 WHA budget had an estimated ending cash balance of \$95,420 that is available to fund the 2014 budget. The 2014 budget would leave the WHA with a cash balance of \$76,920, not including the approximate \$505,000 in remaining proceeds from the Westminster Commons sale, to be carried forward into 2014.

Approval of the 2014 WHA budget meets the Westminster City Council's goal of maintaining a "Financially Sound City Government" by ensuring the adequate provision of funding with which to operate the Westminster Housing Authority effectively and efficiently. Adoption of the budget also supports the goal of maintaining "Revitalized Aging Neighborhoods and Commercial Areas", whereby continued WHA investment in its properties and the South Westminster community promote further private investment into the neighborhood.

Respectfully submitted,

J. Brent McFall
Executive Director

Attachments:

- Resolution
- 2014 WHA Proposed Budget

WESTMINSTER HOUSING AUTHORITY

RESOLUTION NO. **55**

INTRODUCED BY BOARD MEMBERS

SERIES OF 2014

**A RESOLUTION ADOPTING THE 2014 BUDGET FOR THE
WESTMINSTER HOUSING AUTHORITY**

WHEREAS, the Westminster Housing Authority is a political subdivision of the State of Colorado, duly organized, existing, and acting pursuant to C.R.S. section 29-4-201 *et seq.* (the "Act"); and

WHEREAS, the Authority was created to carry out the purposes of a public housing authority pursuant to the Act; and

WHEREAS, the Westminster Housing Authority Board has not yet adopted a formal operating budget for fiscal year 2014 for the Authority; and

WHEREAS, the Westminster Housing Authority anticipates expenditures for various purposes relating to the goals of the Authority.

NOW, THEREFORE, be it resolved by the Board of Commissioners of the Westminster Housing Authority that the attached 2014 Westminster Housing Authority Budget is hereby approved and the amounts stated therein are hereby appropriated for the fiscal year 2014.

PASSED AND ADOPTED this 13th day of January, 2014.

ATTEST:

Chairperson

Authority Secretary

APPROVED AS TO LEGAL FORM:

Authority Attorney

WESTMINSTER HOUSING AUTHORITY
2014 Proposed Budget

	<u>2012 Actual</u>	<u>2013 Budget</u>	<u>2013 Estimated</u>	<u>2014 Proposed</u>
Revenues				
Transfers from Commons	\$ 3,383,341	\$ -	\$ -	\$ -
Rental Income (Rodeo Market)	839	-	10	-
Interest	25,319	-	500	-
<i>Total Operating Revenues</i>	<u>3,409,499</u>	<u>-</u>	<u>510</u>	<u>-</u>
Expenditures				
Administrative Fee		-	-	-
Utilities	8,339	1,500	1,500	3,000
Contractual	27,870	66,000	66,000	15,500
<i>Total Operating Activities</i>	<u>36,209</u>	<u>67,500</u>	<u>67,500</u>	<u>18,500</u>
Net Operating Surplus (Deficit)	<u>3,373,290</u>	<u>(67,500)</u>	<u>(66,990)</u>	<u>(18,500)</u>
Other Financing Sources (Uses)				
Debt Service:				
Interest expense	(4,179)	-		
Transfers In (out)	-	(2,200,000)	(2,200,000)	-
Capital Contributions	40,098			
<i>Total other financing sources (uses)</i>	<u>35,919</u>	<u>(2,200,000)</u>	<u>(2,200,000)</u>	<u>-</u>
Net change in cash balance	3,409,209	(2,267,500)	(2,266,990)	(18,500)
Cash balance beginning	155,431	144,883	2,868,399	95,420
Accrual and Balance Sheet Adjustments	<u>(696,241)</u>	<u>2,705,989</u>	<u>(505,989)</u> *	<u>-</u>
Cash balance ending	<u>\$ 2,868,399</u>	<u>\$ 583,372</u>	<u>\$ 95,420</u>	<u>\$ 76,920</u>

* The remaining portion of funds received from the sale of the Westminster Commons Senior Housing project have not yet been appropriated. A portion of these funds was used to payoff the Brownfields loan and transferred to the Transit Oriented Development project. Staff is in the process of determining the best use of the remaining funds. An adjustment was included for the year ending 2013 estimated balance to accurately reflect the amount of cash available at year end for future years.