



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
 - A. Presentation of Colorado Government Association of Information Technology Award
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. Financial Report for October 2013
 - B. Police Department Payment to the North Metro Task Force
 - C. Biosolids Composting
 - D. 2013 Utility Materials and Water Pipe Purchase
 - E. Lowell Boulevard Project Permanent Easement Acquisition from the Metzger Farm Open Space
9. Appointments and Resignations
10. Public Hearings and Other New Business
 - A. Public Hearing re Comcast Franchise Agreement
 - B. Councillor's Bill No. 50 Authorizing a Ten-year Franchise Agreement with Comcast of Colorado IX LLC
 - C. Resolution No. 32 Adopting Customer Service Standards for Cable Operators
 - D. Councillor's Bill No. 51 Authorizing 2013 3rd Quarter Budget Supplemental Appropriation
11. Old Business and Passage of Ordinances on Second Reading
12. Miscellaneous Business and Executive Session
 - A. City Council
13. Adjournment

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.

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, NOVEMBER 11, 2013, AT 7:00 P.M.

MOMENT OF SILENCE

Mayor McNally asked for a moment of silence in memory of Butch L. Hicks, former Westminster City Councillor, who has passed away the previous week.

PLEDGE OF ALLEGIANCE

Before leading the Council, Staff, and audience in the Pledge of Allegiance, Mayor McNally recognized those present who were veterans of the United States Armed Forces and thanked them for their service to the country.

ROLL CALL

Mayor Nancy McNally, Mayor Pro Tem Faith Winter and Councillors Herb Atchison, Bob Briggs, Mark Kaiser, Mary Lindsey, and Scott Major were present at roll call. City Manager J. Brent McFall, City Attorney Martin McCullough, and City Clerk Linda Yeager were also present.

CONSIDERATION OF MINUTES

Councillor Kaiser moved, seconded by Councillor Major, to approve the minutes of the regular meeting of October 28, 2013, as presented. The motion carried unanimously.

CITY MANAGER'S REPORT

Mr. McFall reviewed the procedures for meetings of the seated City Council, the Westminster Housing Authority Board of Directors, and the newly elected City Council, the latter to begin at 8 p.m. in accordance with provisions of the City Charter. Between meetings, refreshments would be served in the lobby. Following the 8 p.m. meeting, the City Council would conduct a post-meeting briefing to hear a presentation on the proposed new franchise agreement for cable television with Comcast and to provide direction concerning the vacancy on City Council created by Herb Atchison's election to the office of Mayor.

In conclusion, Mr. McFall thanked Councillors Kaiser, Lindsey, and Major for their service on City Council for the past eight years and to Mayor McNally for twelve years of service as a member of the City Council, the Mayor Pro Tem, and the Mayor. Possibly no one had given more heart and soul to the community than Mayor McNally. Her leadership on the City Council and within the region, as well as her service to the citizens of Westminster had been never failing and noteworthy. All of the individuals were thanked for their devoted service to Westminster.

CITY COUNCIL COMMENTS

Mayor Pro Tem Winter thanked those who were leaving the Council because of term limits. They had been the best team in the world to have taught others on the Council how to govern. She thanked them for their dedication and for all their service to the community.

Councillor Major thanked citizens for their confidence in electing him to two terms on City Council, which had been an honor and a privilege; past and current members of Council with whom he had served and Mayor McNally, who he believed was the best Mayor Westminster had ever elected. Much had been accomplished, and there had been highs and lows. Council had the opportunity to celebrate Westminster's 100th Anniversary, and the duty of make difficult decisions when the economy plummeted. He praised the City Council's direct employees, the department heads, and the front-line employees for always operating at the highest level of ethical behavior. The administrative leaders managed by example and had created a well-oiled machine that made it look easy. Councillor Major was proud of his service to the community and of the fact that he had never traded or swapped a vote. In conclusion he thanked his wife for the sacrifices she had made, her understanding, and her support. He looked forward to being a full-time husband, father, and grandfather.

Councillor Kaiser thanked citizens for supporting him and allowing him the opportunity to give back to a community that had been so good to him. He was appreciative of staff and their dedicated work on behalf of the citizens. His personal highlight was the steps the Council had taken to reclaim the Westminster Mall and to envision a downtown Westminster on the site. He praised Mayor McNally for her energy and time management and looked forward to watching the new City Council move the community forward.

Councillor Lindsey thanked her fellow Councillors, her friends, and the citizens of Westminster for giving her the honor and privilege of serving. She was proud of the way that Council had teamed together, stated their varied opinions and then drawn together to work on behalf of the community. She encouraged the new Council to respect one another and continue to strengthen staff and community partnerships to carry Westminster forward in the years to come.

Mayor McNally announced a gift she had left to the community that she hoped would be enjoyed. The gift was leg warmers on the bronzed elk at the Yale Avenue entrance to City Hall and the Public Safety Center. They had looked very large when she knitted them but perhaps not as proportionately accurate as she would have liked once placed on the artwork. It had been an honor and a privilege to serve Westminster. The staff was the best in Colorado, not only competent but also trustworthy. The City was well-run because of City Manager McFall. She wished the new Council continued successes.

DECADE OF SERVICE AWARDS PRESENTED TO OPEN SPACE VOLUNTEERS

Patti Wright, Open Space Volunteer Coordinator, and Councillor Major presented Decade of Service Awards to Tom Claspell, Dennis Emily, Stewart Linder, Jim McGinnis, Chrystal Owin, Norm Rasmussen, and Lisa Williams for their selfless contributions to the City's Open Space Volunteer Program throughout the last ten years.

PROCLAMATION

Councillor Lindsey read a proclamation in recognition of Albert "Al" Schaub, Westminster's oldest living retired volunteer firefighter. In addition to serving over 20 years as a volunteer firefighter, Mr. Schaub was a 57-year resident of the City, a charter member of the Westminster Elks Lodge, and a veteran of World War II. Upon celebration of his 90th birthday in December, Mr. Schaub would become the oldest living retired Westminster volunteer firefighter.

CITIZEN COMMUNICATION

Representatives of Plato BioPharma, Inc. and DigitalGlobe thanked the City Council for providing Economic Development Agreements to financially assist their companies expand and relocate in Westminster. They would be creating more than 1,400 jobs within the community and hoped to be longstanding good neighbors in the years to come.

Colorado Representative Cheryl Peniston thanked the members of City Council for partnering with her to better serve the citizens. Westminster was not only a pretty community, but also a well-managed City. She particularly thanked Mayor McNally for being a role model of excellent leadership in the metro area.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: authorize the City Manager to execute a \$967,340 contract with the low bidder, Riley Industrial Services, for repairs to the Northwest Water Treatment Facility water tank and authorize a 10% contingency in the amount of \$96,734 for a construction budget of \$1,064,074; authorize the City Manager to execute a contract amendment with Carollo Engineer's Inc. for a net contract increase of \$227,414 for engineering services during construction of the Northwest Water Treatment Facility improvements; final passage on second reading of Councillor's Bill No. 41, as amended, to adopt the 2013 Comprehensive Land Use Plan; final passage on second reading of Councillor's Bill No. 42 to rezone the site of the

former Westminster Mall to downtown Westminster Planned Unit Development, based on a finding that the criteria as set forth in sections 11-5-3 and 11-5-14 of the Westminster Municipal Code had been considered and satisfied; final passage on second reading of Councillor's Bill No. 43 amending the Westminster Municipal Code concerning the General Employee and Police Pension Plans in order to comply with changes required by applicable federal pension laws and U.S. Treasury regulations; final passage on second reading of Councillor's Bill No. 45 to amend Section 1-8-1(A) of the Westminster Municipal Code to increase the maximum fine that could be imposed by the Westminster Municipal Court from \$1,000 to \$2,500; final passage on second reading of Councillor's Bill No. 46 authorizing the City Manager to sign an amendment to a lease for agricultural land at the City's Strasburg Natural Resources Farm; final passage on second reading of Councillor's Bill No. 47 authorizing the City Manager to execute and implement an Economic Development Agreement with DigitalGlobe; and final passage on second reading of Councillor's Bill No. 48 authorizing the City Manager to execute and implement an Economic Development Agreement with Plato BioPharma, Inc.

Councillor Major moved, seconded by Councillor Kaiser, to approve the consent agenda as presented. The motion carried with all Council members voting in favor.

PUBLIC HEARING ON MANDALAY GARDENS-ANTHEM TRACT 63A CLUP AMENDMENT, PDP & ODP

At 7:36 p.m., Mayor McNally opened a public hearing to consider amending the Comprehensive Land Use Plan (CLUP) and the Mandalay Gardens-Anthem Tract 63A Preliminary Development Plan (PDP) and Official Development Plan (ODP). Mac Cummins, Planning Manager, entered the agenda memorandum and its attendant documents and advised that legal requirements had been satisfied to provide notice of this public hearing. As a result of the adoption of the 2013 Comprehensive Land Use Plan in Councillor's Bill No. 41 earlier in the meeting, the proposed CLUP amendment was no longer needed, as a change in the land use designation was included in the updated plan. The proposed PDP would establish the land uses necessary for memory care and senior housing options; the ODP, a one-story building of 36,556 gross square feet. The property was located on the southwest corner of Church Ranch Boulevard and Wadsworth Boulevard.

Steve Miller, Development Director of Anthem Memory Care, was present to answer any questions about the proposed facility, which would include 60 rooms and approximately 76 beds.

Mayor McNally opened the hearing for public comment, of which there was none.

There were no questions from City Council and Mr. Cummins advised that the Planning Commission had reviewed this proposal in public hearing and had recommended approval.

Mayor McNally closed the hearing at 7:40 p.m.

COUNCILLOR'S BILL NO. 49 TO AMEND THE CLUP FOR MANDALAY GARDENS-ANTHEM TRACT 63A

It was moved by Councillor Lindsey, seconded by Councillor Kaiser, to postpone indefinitely the adoption of Councillor's Bill No. 49 to amend the Comprehensive Land Use Plan by changing the designation of the site from Retail/Commercial to R-18. The motion passed unanimously at roll call.

MANDALAY GARDENS-ANTHEM TRACT 63A PDP

Councillor Lindsey moved to approve the Mandalay-Anthem Tract 63A Preliminary Development Plan based on a finding that the criteria set forth in Section 11-5-14 of the Westminster Municipal Code had been met. Councillor Kaiser seconded the motion and it carried with all Council members voting affirmatively.

MANDALAY GARDENS-ANTHEM TRACT 63A OPD

It was moved by Councillor Lindsey and seconded by Councillor Kaiser to approve the Mandalay Gardens-Anthem Tract 63A Official Development Plan based on a finding that the criteria set forth in Section 11-5-15 of the Westminster Municipal Code had been met. The motion passed unanimously.

RESOLUTION NO. 31 AMENDING THE NORTH HURON URBAN RENEWAL AREA

Upon a motion by Councillor Major, seconded by Councilor Atchison, the Council voted unanimously on roll call vote to adopt Resolution No. 31 amending the North Huron Urban Renewal Area to add the right-of-way area needed for Orchard Parkway and the McKay Drainageway.

ORCHARD PARKWAY CONSTRUCTION CONTRACT

Councillor Atchison moved, seconded by Councillor Major to authorize the City Manager to award the project and execute a \$7,179,248.95 contract with Scott Contracting, Inc. for the construction of Orchard Parkway between 137th Avenue and 144th Avenue, and 142nd Avenue between Orchard Parkway and Huron Street, and to authorize a construction contingency of \$300,000. Councillor Kaiser announced that he would abstain from voting due to a potential conflict of interest. The motion passed by a 6:1 margin with Councillor Kaiser abstaining.

ORCHARD PARKWAY CONSTRUCTION ENGINEERING SERVICES CONTRACT

Councillor Atchison moved to authorize the City Manager to execute a construction engineering services contract for the Orchard Parkway Project with JR Engineering in the amount of \$322,540 and to authorize a construction services contingency of \$10,000. The motion, seconded by Councillor Major, passed unanimously.

SEATED COUNCIL ADJOURNS

There being no further business to come before the seated Council, the meeting recessed at 7:45 p.m.

MEETING RECONVENED

At 8 p.m. the City Clerk reconvened the meeting.

SWEARING IN OF NEW MAYOR

Judge John Stipech administered the Oath of Office to newly elected Mayor Herb Atchison and presented him with a plaque prepared by the City Clerk to certify his election.

SWEARING IN OF NEW COUNCILLORS

Judge Stipech administered the Oath of Office to newly elected City Councillors Emma Pinter and Bruce Black and presented each with a plaque prepared by the City Clerk to certify their election.

Commerce City Municipal Court Judge David Juarez administered the Oath of Office to newly elected City Councillor Alberto Garcia and presented him a plaque prepared by the City Clerk to certify his election.

ELECTION OF MAYOR PRO TEM

Receiving the majority of votes cast by secret ballot of City Council, Faith Winter was elected to serve as Mayor Pro Tem for the next two years.

Mr. McFall congratulated the newly elected officers and looked forward to working with each of them over the next four years. Following adjournment of the meeting, the Council would be meeting in the Board Room for a post-meeting briefing.

Newly elected City Councillors thanked their supporters and families. They looked forward to the honor of serving the community.

ADJOURNMENT

There was no further business to come before the newly seated City Council. It was moved by Councillor Baker, seconded by Councillor Briggs to adjourn. The vote was unanimous and the meeting adjourned at 8:20 p.m.

ATTEST:

Mayor

City Clerk



Agenda Memorandum

City Council Meeting
November 25, 2013



SUBJECT: Colorado Government Association of Information Technology Award Presentation

Prepared By: David Puntteney, Information Technology Director

Recommended City Council Action

Councillor Briggs to accept the 2013 Colorado Government Association of Information Technology (CGAIT) Award presented by Don Ingle, Vice-Chairman, in recognition of the success that the City of Westminster Information Technology Department has achieved in providing exceptional internal customer service.

Summary Statement

- The Vice-Chairman of the CGAIT group will be in attendance to present the City with the 2013 CGAIT Award recognizing the City for innovative use of technology to provide exceptional internal services.
- This award was originally presented to David Puntteney, Information Technology Director, at the 2013 CGAIT Conference.
- Information Technology Director David Puntteney and Web Software Engineer Randy Land will be in attendance at the meeting to jointly accept the award.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

The Colorado Government Association of Information Technology Group is a non-profit organization formed in 1980 by a few organizations in the Denver area who found value in discussing technology issues. The City of Westminster has been a member of this group since 1986, and CGAIT was chaired by IT Director David Puntenny in 1994-1995. This non-profit group has been instrumental in bringing together public sector IT Directors and Managers from across the state to promote advances in information technology that have the potential to improve government efficiency and effectiveness, broaden educational opportunities, promote collaboration among jurisdictions, share experiences, and enhance services to Colorado communities and citizens.

In 2013, the City of Westminster applied for and was selected as winner of the “Providing Exceptional Customer Service” award. The City’s project submittal was titled “Information Technology Forums – Experts helping Experts.”

A portion of the submittal summarizing the project is included below:

Many local government Information Technology Departments are faced with the challenge of improving or enhancing internal customer service levels while maintaining the number of technology support staff positions. This is occurring at the same time organizations dependence on and use of technology is expanding. Information Technology departments must continually seek innovative approaches and tools to provide exceptional services.

At the City of Westminster, we recognize and value the technical knowledge that many of the employees possess, and had a vision to enhance internal customer service by connecting experts with other employees who may have questions related to a specific technology or software product used for City operations.

That vision led to the creation of an in-house developed Information Technology Forum application, providing the necessary infrastructure to enable employees across departments and facilities to easily connect with one another for technology questions and answers. This forum, moderated by the Information Technology Department, is beginning to accomplish that vision through users and experts seeking advice and providing ideas and answers on topics such as Microsoft Office, Microsoft Windows, Laserfiche, JD Edwards ERP, GIS and more.

A growing number of software applications and users continue to increase the volume of support calls received by the Westminster IT service center and application support staff. In an effort to maintain exceptional customer service and to exceed established customer service performance measures, the IT Department needed to assess innovative strategies to meet demands. At home, many of the City’s employees understand how to use on-line forums when researching and posting questions related to cars, appliances and even technology. Why not provide the same opportunity for our employees to leverage the expertise of other City employees when faced with a technology challenge or to serve as an expert to others. That idea led to the concept of an IT Department moderated Intranet based employee technology forum.

The Information Technology Forum was designed to allow City of Westminster employees the opportunity to share and receive answers to questions related to city-provided technologies from other employees who use those same technologies. Employees can volunteer to moderate topics related to their particular expertise. Employees of the City of Westminster have used the forum to connect with other employees (experts) on topics such as Office 2013 transition, JD Edwards, GIS, mobile devices, Microsoft Windows, and Microsoft Office. Connecting employees with experts throughout the organization will free IT staff resources to address other technology support priorities and more challenging customer support needs.

This project directly supports the City Council goal of “Financially Sustainable City Government Providing Exceptional Services” by addressing the objective of “Investing in the tools, training and technology to increase organizational productivity and efficiency.”

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
November 25, 2013



SUBJECT: Financial Report for October, 2013
Prepared By: Tammy Hitchens, Finance Director

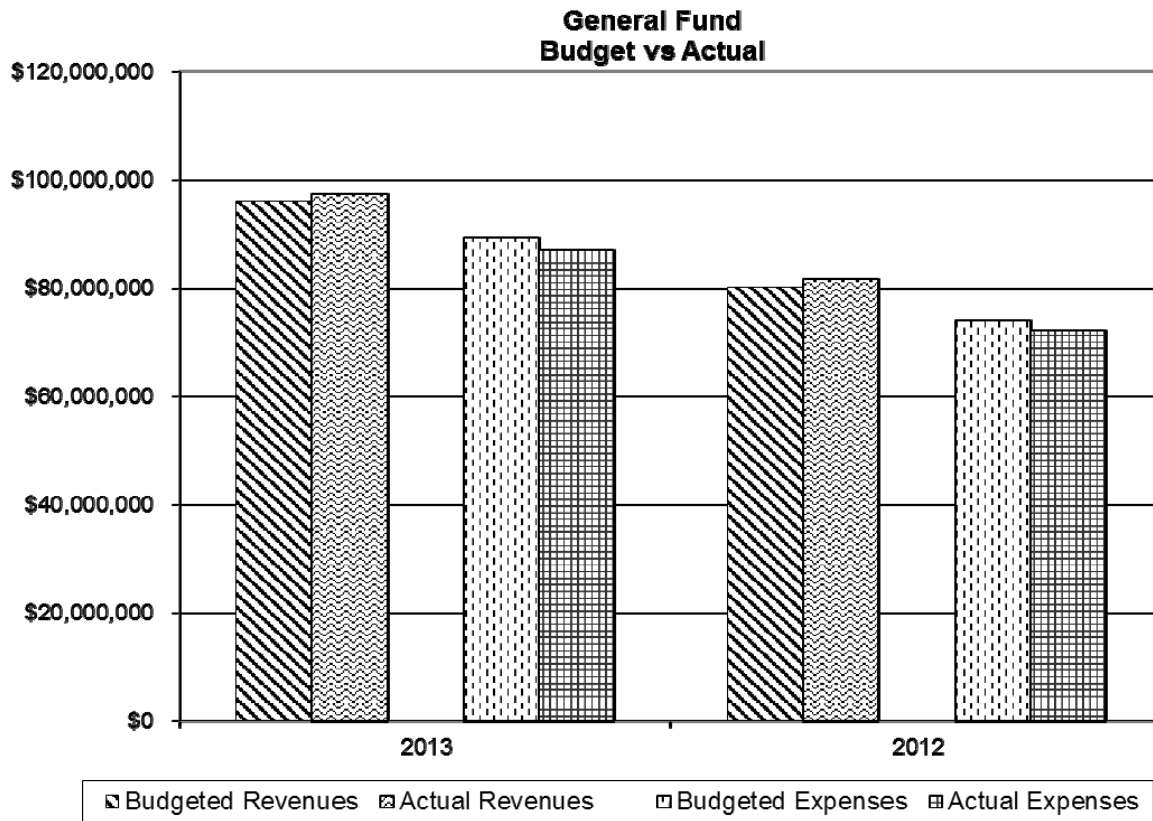
Recommended City Council Action

Accept the Financial Report for October as presented.

Summary Statement

City Council is requested to review and accept the attached monthly financial statement. The Shopping Center Report is also attached. Unless otherwise indicated, "budget" refers to the pro-rated budget. The budget numbers that are presented reflect the City's amended adopted budget. Both revenues and expense are pro-rated based on 10-year historical averages.

Current projections show General Fund revenues exceeding expenditures by \$3,513,741. The following graph represents Budget vs. Actual for 2012-2013.

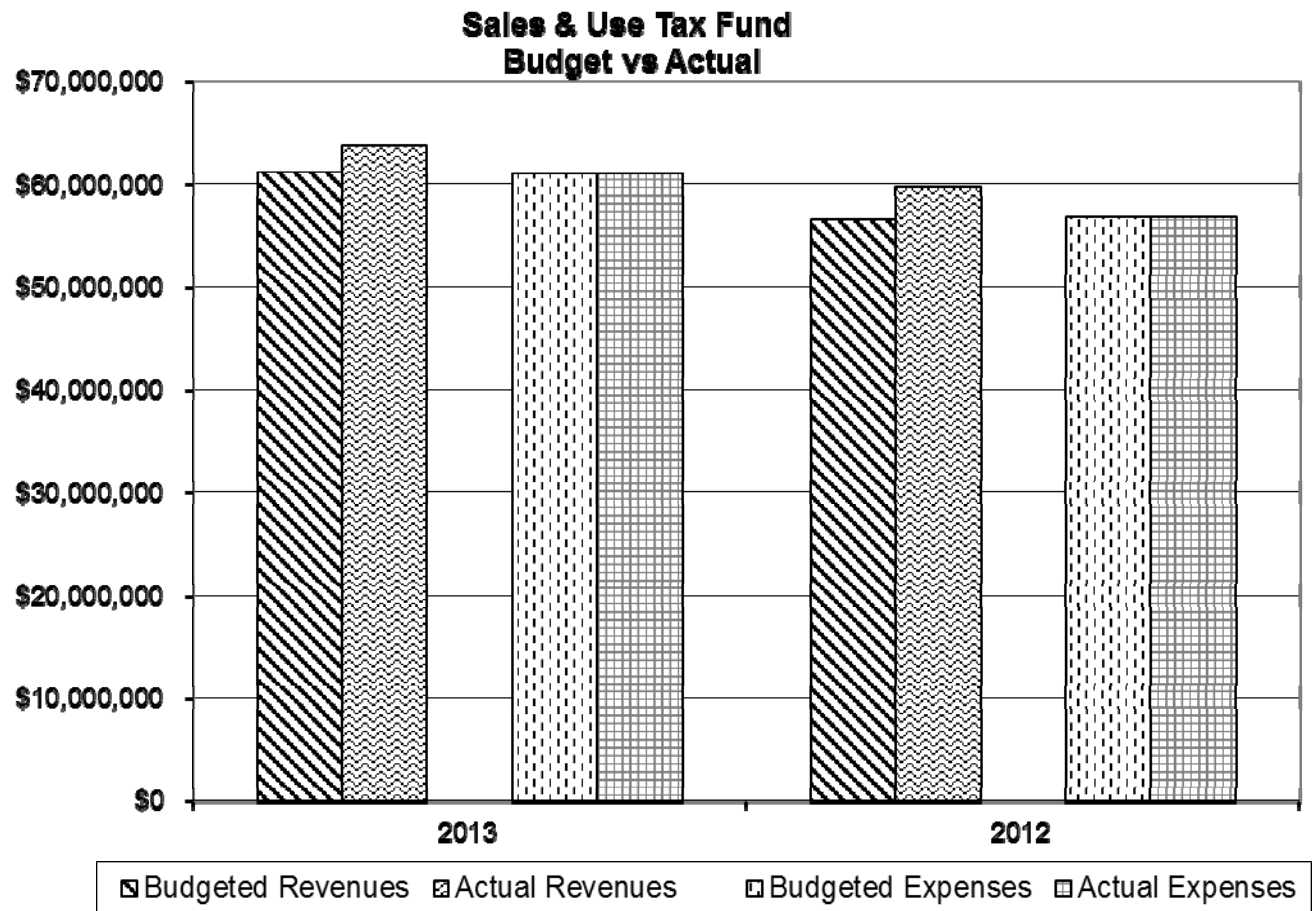


The revenue and expense variance between years reflects the 2013 refinancing of the 2005 Certificates of Participation.

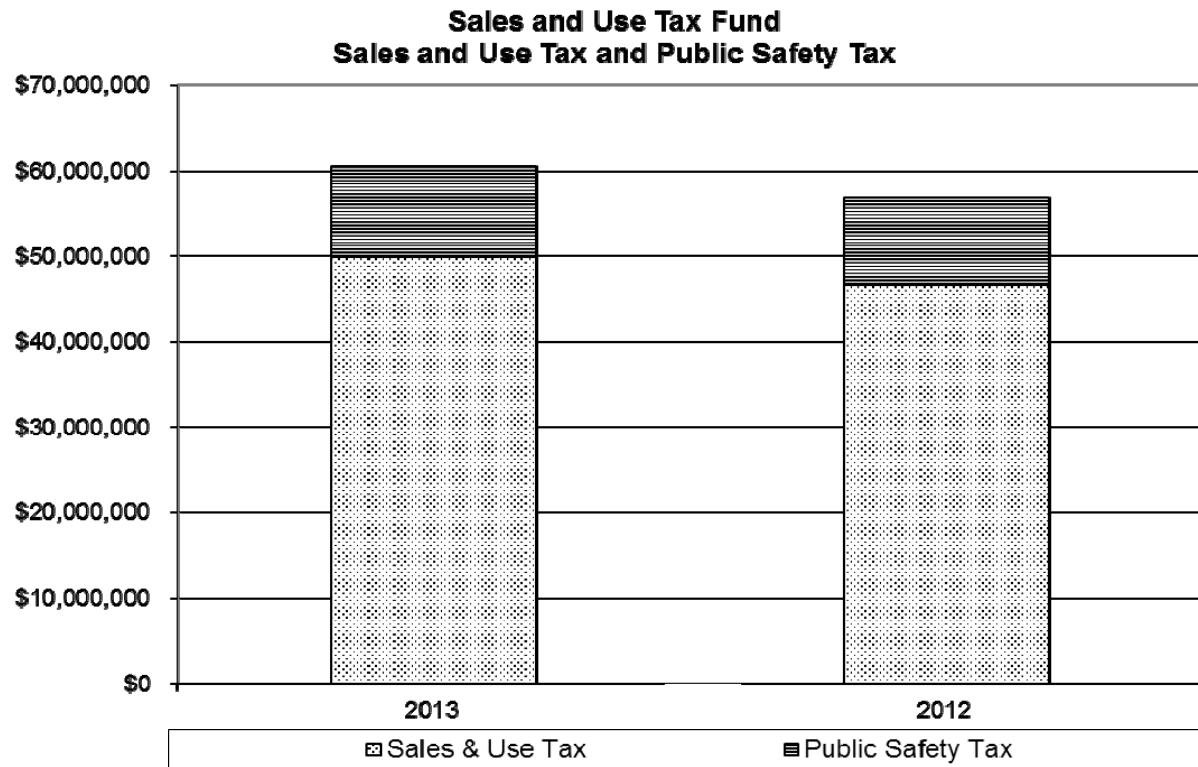
Public Works and Utilities has savings in the street rehabilitation maintenance and repair account. This should correct itself as the year progresses.

Current projections show the Sales and Use Tax Fund revenues exceeding expenditures by \$2,693,321. On a year-to-date cash basis, total sales and use tax is up 6.7% from 2012. Key components are listed below:

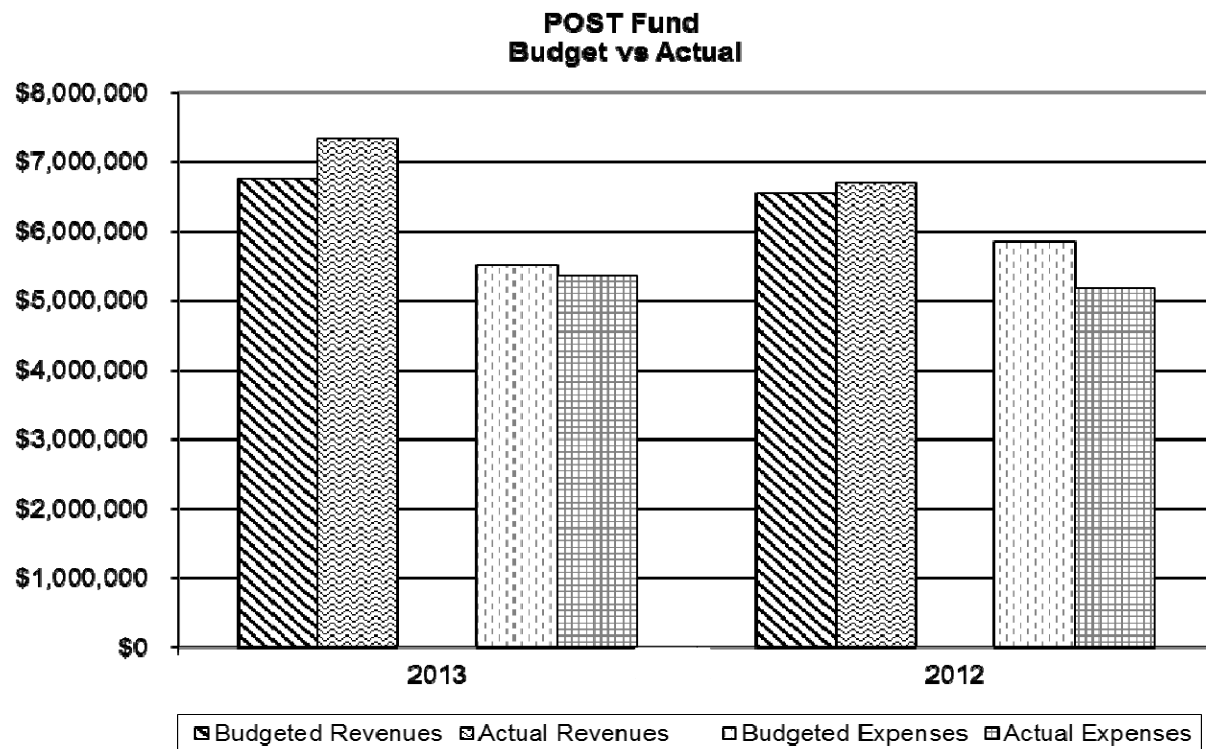
- On a year-to-date basis, across the top 25 shopping centers, total sales and use tax receipts are up 3.0% from the prior year.
- Sales tax receipts from the top 50 Sales Taxpayers, representing about 57.4% of all collections, are down 1.0% for the month when compared to 2012.
- Urban renewal areas make up 40.6% of gross sales tax collections. After urban renewal area and economic development assistance adjustments, 86.2% of this money is being retained for General Fund use.



The graph below reflects the contribution of the Public Safety Tax to the overall Sales and Use Tax revenue.

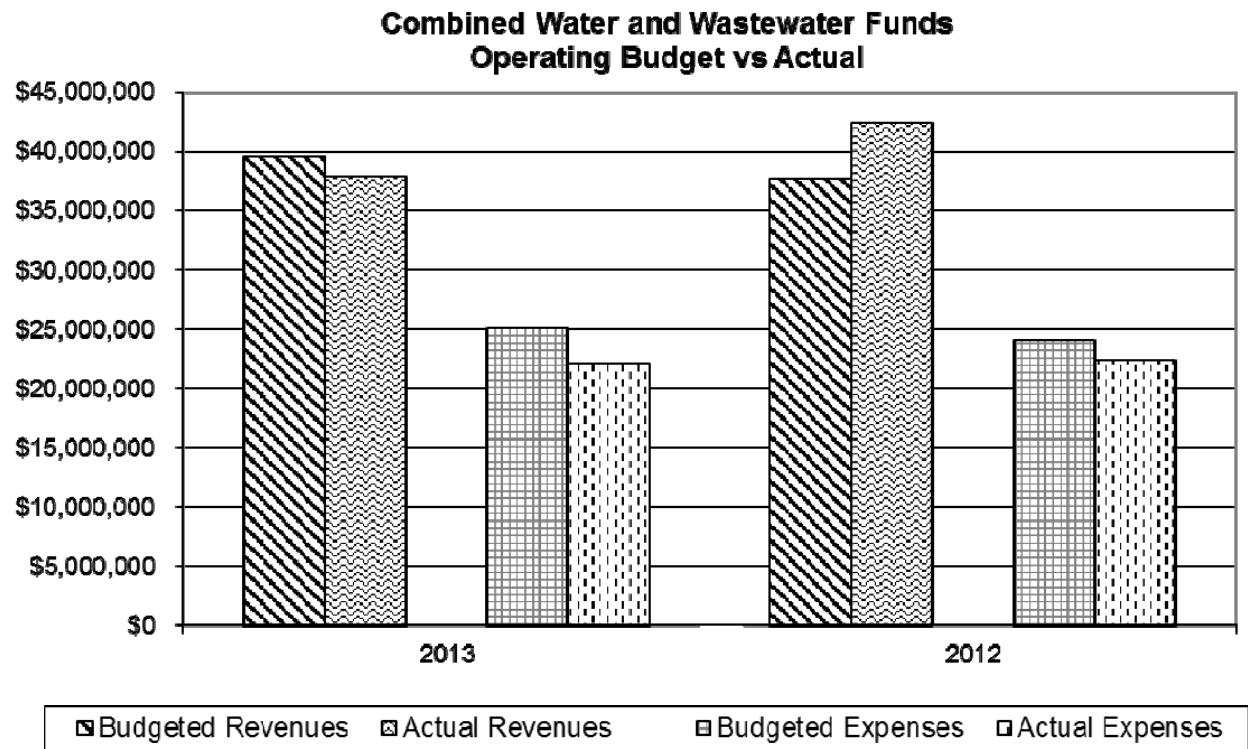


Current projections show the Parks Open Space and Trails Fund revenues exceeding expenditures by \$743,239.

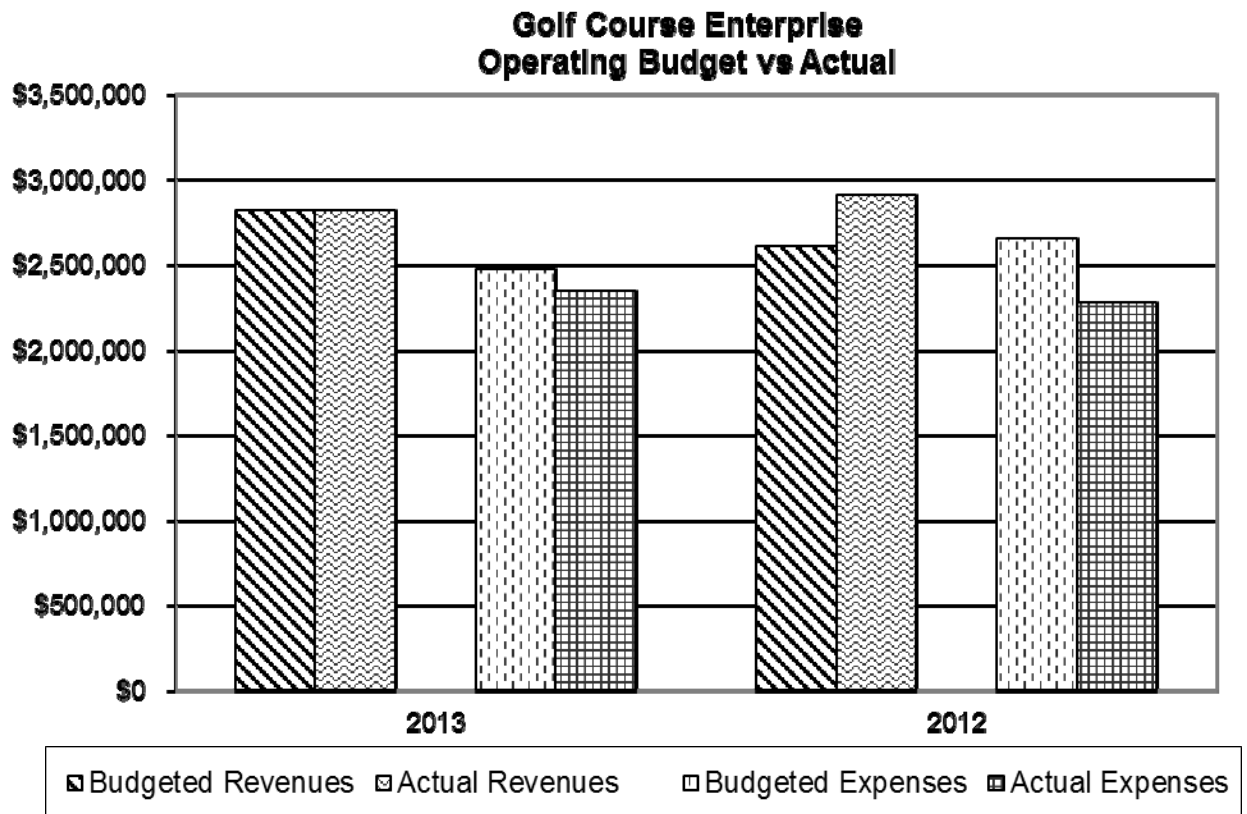


Intergovernmental reimbursements appropriated in prior years are reflected in the 2013 budget to actual revenue variance.

Current projections show Water & Wastewater Fund revenues exceeding expenditures by \$678,651. As 2012 was a drier year, water revenues were up.



Current projections show Golf Course Fund revenues exceeding expenditures by \$686,353.



At this time in 2012, green fees and driving range fees were slightly higher. The snowy Spring decreased the number of rounds played in 2013.

Policy Issue

A monthly review of the City’s financial position is the standard City Council practice; the City Charter requires the City Manager to report to City Council on a quarterly basis.

Alternative

Conduct a quarterly review. This is not recommended, as the City’s budget and financial position are large and complex, warranting a monthly review by the City Council.

Background Information

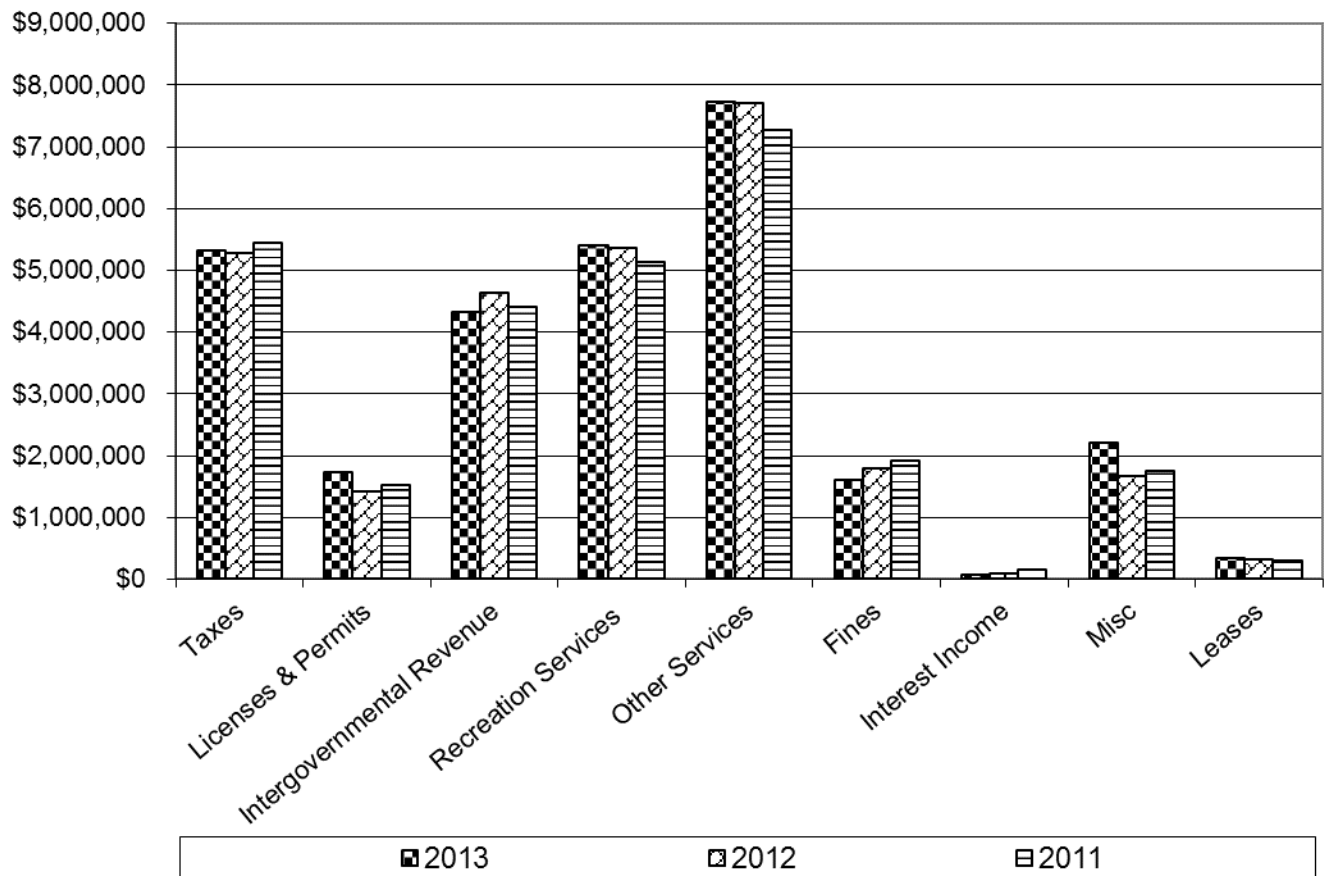
This section includes a discussion of highlights of each fund presented.

General Fund

This fund reflects the result of the City’s operating departments: Police, Fire, Public Works (Streets, etc.), Parks Recreation and Libraries, Community Development, and the internal service functions: City Manager, City Attorney, Finance, and General Services.

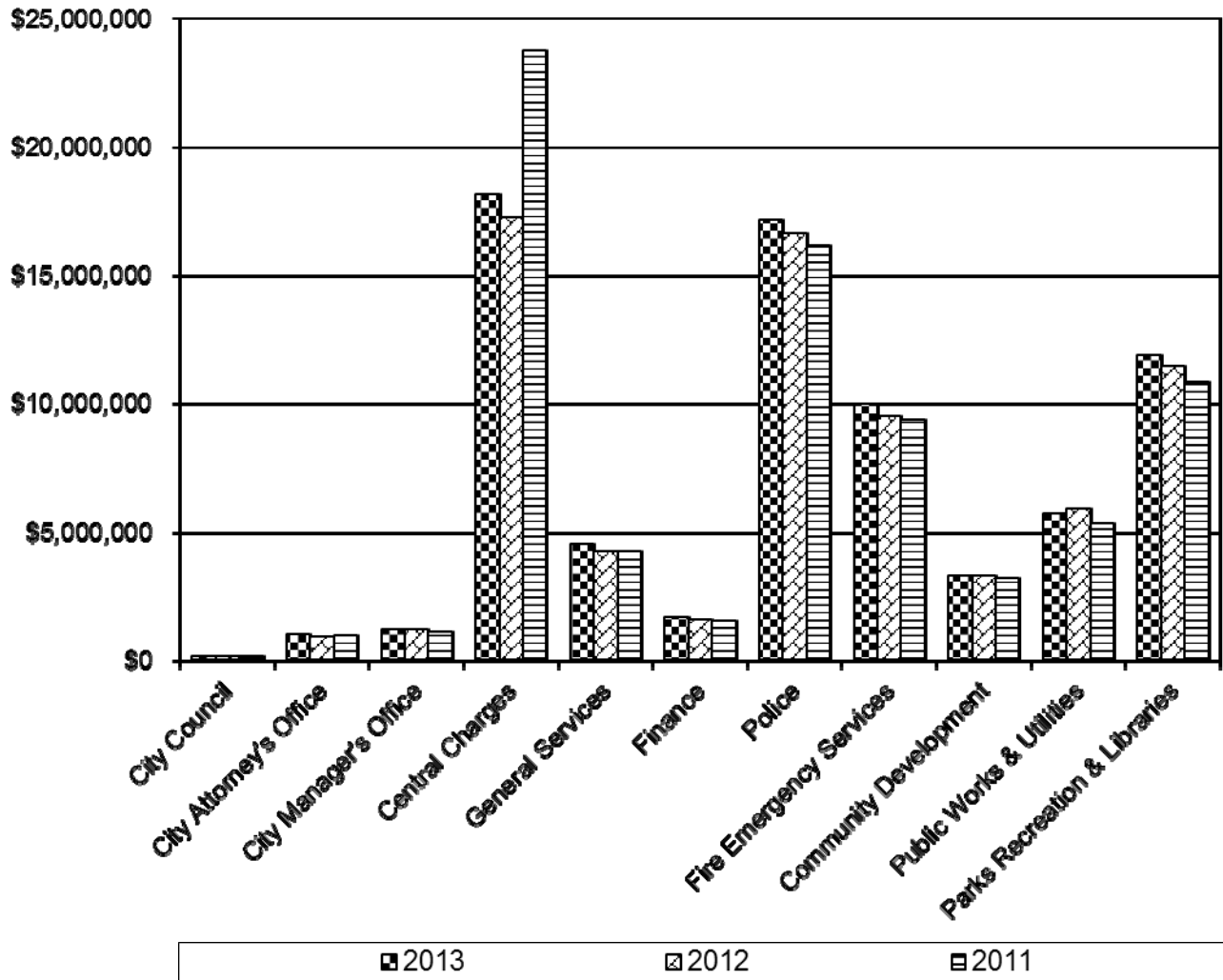
The following chart represents the trend in actual revenues from 2011-2013 year-to-date.

**General Fund Revenues without Transfers, Carryover, and Other Financing Sources
2011-2013**



Licenses and Permits revenue is up due mostly to Adams County building permits, including the residential project at The Orchard. Miscellaneous revenue includes a significant receipt from the Utility Fund for the purchase of a park property easement.

**General Fund Expenditures by Function, less Other Financing Uses
2011-2013**

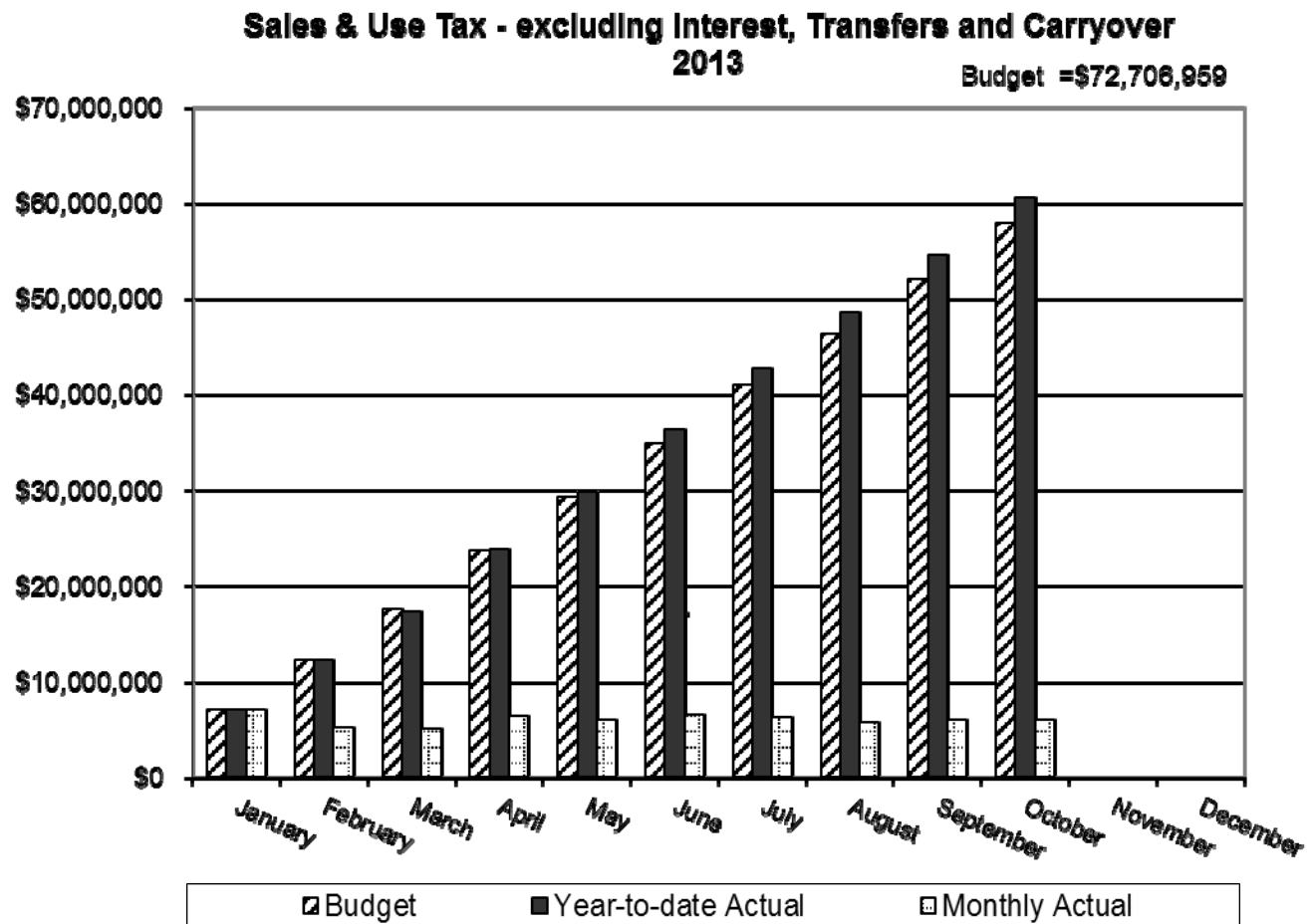


Central Charges expenditures is higher in 2011 primarily due to a transfer to WEDA of \$5.1 million.

Sales and Use Tax Funds (Sales & Use Tax Fund and Parks, Open Space and Trails Sales & Use Tax Fund)

These funds are the repositories for the 3.85% City Sales & Use Tax. The Sales & Use Tax Fund provides monies for the General Fund, the General Capital Improvement Fund, and the Debt Service Fund. The Parks, Open Space, and Trails Sales & Use Tax Fund revenues are pledged to meet debt service on the POST bonds, pay bonds related to the Heritage Golf Course, buy open space land, and make park improvements on a pay-as-you-go basis. The Public Safety Tax (PST) is a 0.6% sales and use tax to be used to fund public safety-related expenses.

This chart indicates how the City’s Sales and Use Tax revenues are being collected on a monthly basis. This chart does not include Parks, Open Space, and Trails Sales & Use Tax.

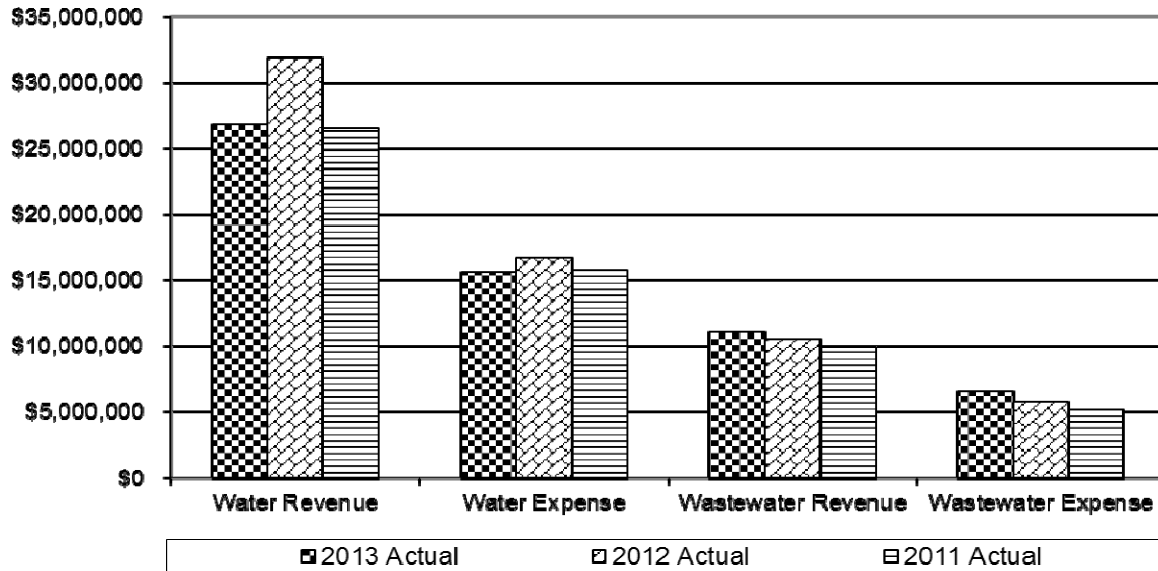


Water, Wastewater and Storm Water Drainage Funds (The Utility Enterprise)

This fund reflects the operating results of the City’s water, wastewater and storm water systems. It is important to note that net revenues are used to fund capital projects and reserves.

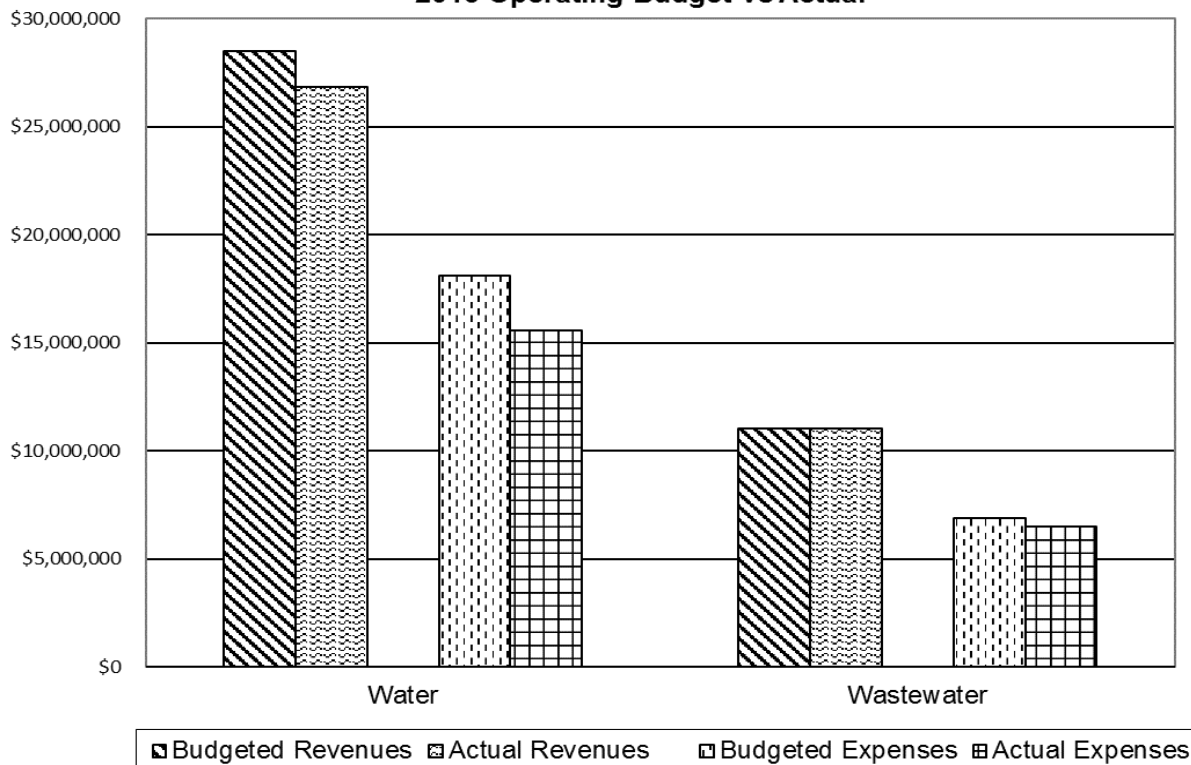
These graphs represent segment information for the Water and Wastewater funds.

**Water and Wastewater Funds
Operating Revenue and Expenses 2011-2013**



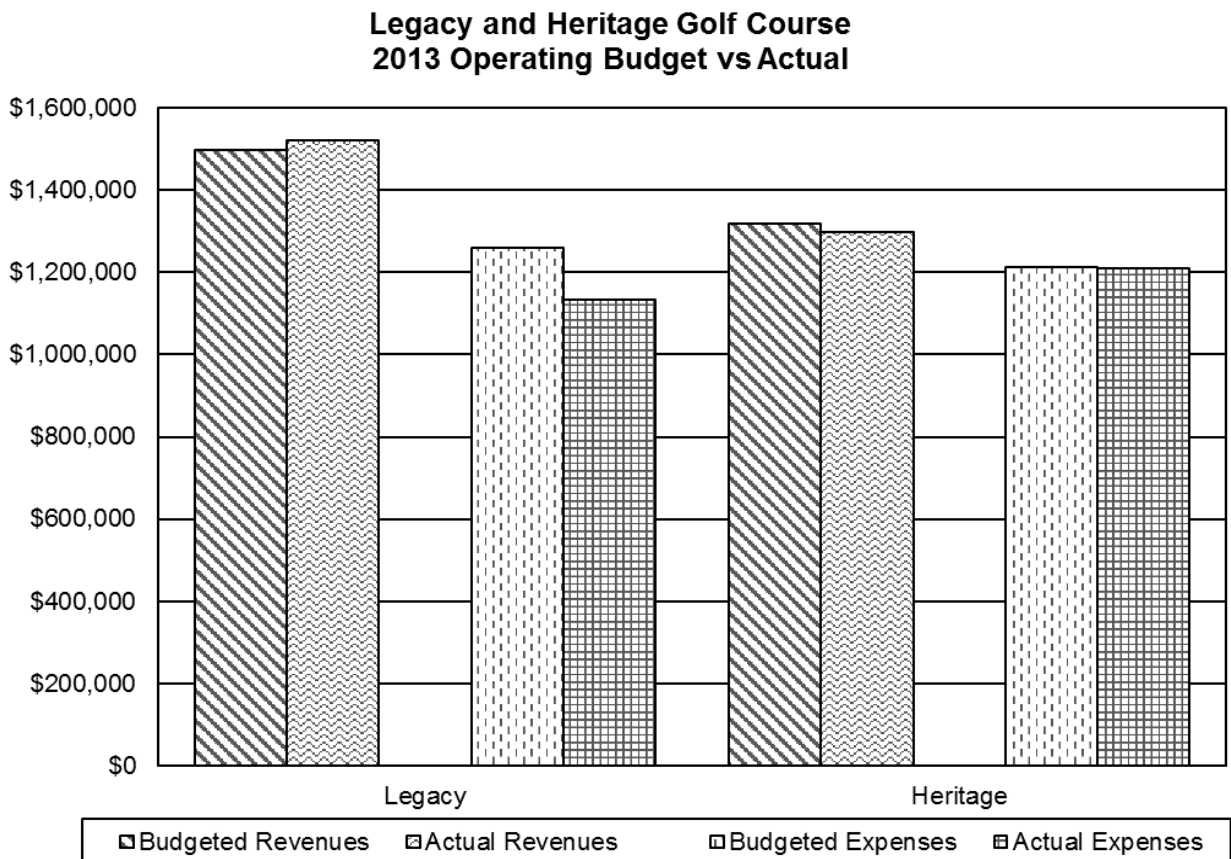
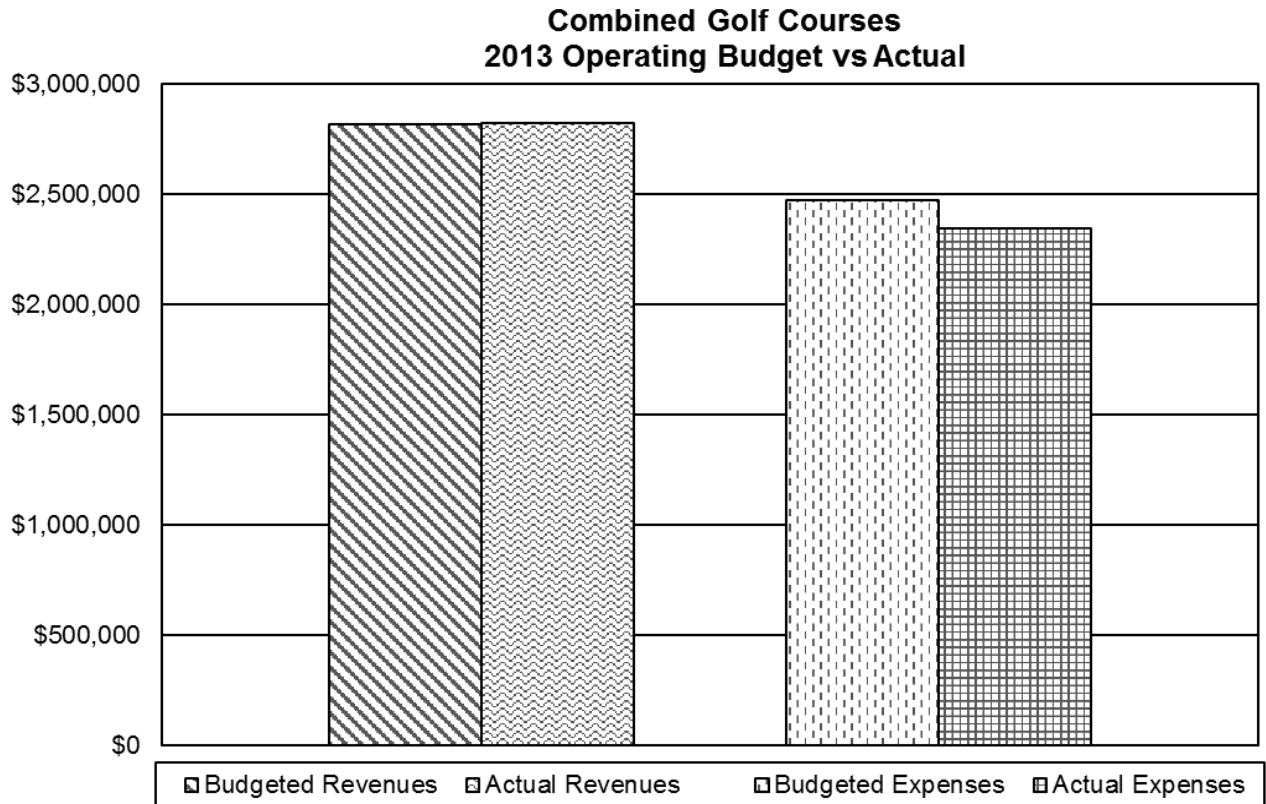
The Water Fund revenue variance is due to the effect of climatic variations on water consumption as well as changes in billing rates. 2012 was an exceptionally dry year and 2013 has seen a lot of rain. 2013 Wastewater revenues are up slightly due to changes in billing rates. 2013 Wastewater expenses exceed prior years due to capital purchases for field operations.

**Water and Wastewater Funds
2013 Operating Budget vs Actual**



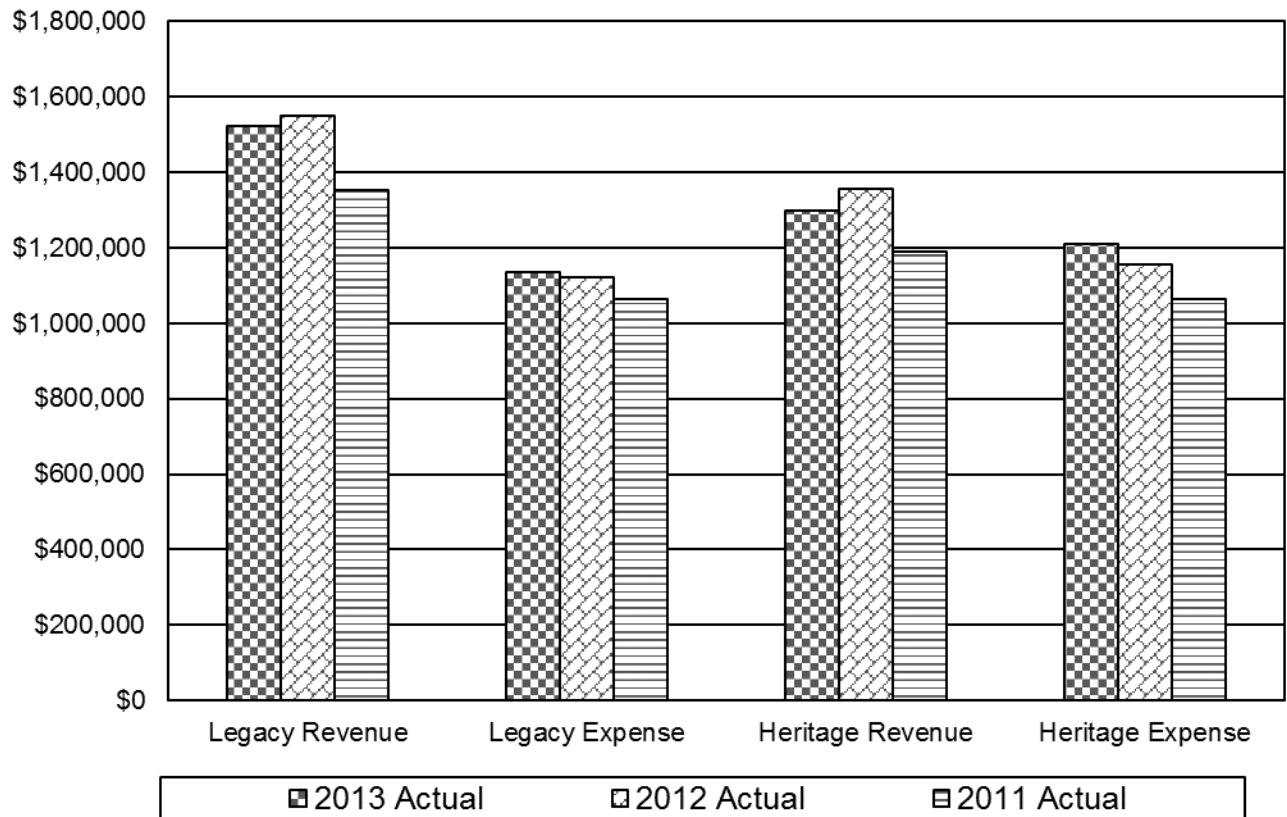
Golf Course Enterprise (Legacy and Heritage Golf Courses)

This enterprise reflects the operations of the City's two municipal golf courses.



The following graphs represent the information for each of the golf courses.

Legacy and Heritage Golf Courses Operating Revenue and Expenses 2011-2013



Revenue variances are due primarily to charges for services including driving range and greens fees.

This financial report supports City Council’s Strategic Plan Goal of Financially Sustainable City Government Providing Exceptional Services by communicating timely information on the results of City operations and to assist with critical decision making.

Respectfully submitted,

J. Brent McFall
City Manager

- Attachments
- Financial Statements
 - Shopping Center Report

**City of Westminster
Financial Report
For Ten Months Ending October 31, 2013**

Description General Fund	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Revenues						
Taxes	5,729,500	5,534,966	(1)	5,310,741	(224,225)	95.9%
Licenses & Permits	1,619,750	1,316,302		1,724,033	407,731	131.0%
Intergovernmental Revenue	5,077,706	3,920,524		4,329,565	409,041	110.4%
Charges for Services						
Recreation Services	6,710,438	5,343,567		5,407,813	64,246	101.2%
Other Services	9,881,292	7,455,038		7,732,908	277,870	103.7%
Fines	2,260,000	1,937,383	(2)	1,608,075	(329,308)	83.0%
Interest Income	125,000	97,567		68,413	(29,154)	70.1%
Miscellaneous	1,745,932	1,551,425	(3)	2,208,437	657,012	142.3%
Leases	401,779	331,876		331,876	0	100.0%
Interfund Transfers	64,049,819	53,374,849		53,374,849	0	100.0%
Other Financing Sources	12,262,165	12,262,165		12,262,165	0	100.0%
Sub-total Revenues	<u>109,863,381</u>	<u>93,125,662</u>		<u>94,358,875</u>	<u>1,233,213</u>	<u>101.3%</u>
Carryover	2,921,136	2,921,136		2,921,136	0	100.0%
Total Revenues	<u>112,784,517</u>	<u>96,046,798</u>		<u>97,280,011</u>	<u>1,233,213</u>	<u>101.3%</u>
Expenditures						
City Council	254,094	198,323		160,196	(38,127)	80.8%
City Attorney's Office	1,256,450	1,008,134		991,487	(16,647)	98.3%
City Manager's Office	1,573,013	1,243,262		1,211,638	(31,624)	97.5%
Central Charges	40,536,771	30,724,754		30,418,782	(305,972)	99.0%
General Services	6,009,953	4,726,462		4,547,959	(178,503)	96.2%
Finance	2,110,661	1,684,762		1,654,677	(30,085)	98.2%
Police	21,446,162	17,197,588		17,176,854	(20,734)	99.9%
Fire Emergency Services	12,574,040	10,100,160		10,002,458	(97,702)	99.0%
Community Development	4,228,402	3,375,263		3,279,888	(95,375)	97.2%
Public Works & Utilities	8,046,221	6,679,796		5,704,622	(975,174)	85.4%
Parks, Recreation & Libraries	14,748,750	12,396,893		11,906,308	(490,585)	96.0%
Total Expenditures	<u>112,784,517</u>	<u>89,335,397</u>		<u>87,054,869</u>	<u>(2,280,528)</u>	<u>97.4%</u>
Revenues Over(Under) Expenditures						
	<u>0</u>	<u>6,711,401</u>		<u>10,225,142</u>	<u>3,513,741</u>	

(1) The budget to actual Taxes variance is due mostly to property, admissions and accommodations taxes.

(2) The budget to actual Fines variance is due mostly to traffic fines.

(3) The budget to actual Miscellaneous variance is due mostly to the purchase of a City park property easement by the Utility Fund.

**City of Westminster
Financial Report
For Ten Months Ending October 31, 2013**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Sales and Use Tax Fund						
Revenues						
Sales Tax						
Sales Tax Returns	47,601,952	39,938,488		41,037,297	1,098,809	102.8%
Sales Tx Audit Revenues	724,000	603,092		603,608	516	100.1%
S-T Rev. STX	<u>48,325,952</u>	<u>40,541,580</u>		<u>41,640,905</u>	<u>1,099,325</u>	102.7%
Use Tax						
Use Tax Returns	8,017,000	6,472,917		7,202,563	729,646	111.3%
Use Tax Audit Revenues	785,000	653,905		975,898	321,993	149.2%
S-T Rev. UTX	<u>8,802,000</u>	<u>7,126,822</u>		<u>8,178,461</u>	<u>1,051,639</u>	114.8%
Total STX and UTX	<u><u>57,127,952</u></u>	<u><u>47,668,402</u></u>		<u><u>49,819,366</u></u>	<u><u>2,150,964</u></u>	104.5%
Public Safety Tax						
PST Tax Returns	11,883,683	9,937,490		10,443,586	506,096	105.1%
PST Audit Revenues	308,500	256,981		315,781	58,800	122.9%
Total Rev. PST	<u><u>12,192,183</u></u>	<u><u>10,194,471</u></u>		<u><u>10,759,367</u></u>	<u><u>564,896</u></u>	105.5%
Interest Income	85,000	70,833		48,294	(22,539)	68.2%
Interfund Transfers	265,458	221,215		221,215	0	100.0%
Carryover	3,036,366	3,036,366		3,036,366	0	100.0%
Total Revenues	<u><u>72,706,959</u></u>	<u><u>61,191,287</u></u>		<u><u>63,884,608</u></u>	<u><u>2,693,321</u></u>	104.4%
Expenditures						
Central Charges	<u>72,706,959</u>	<u>61,095,194</u>		<u>61,095,194</u>	<u>0</u>	100.0%
Revenues Over(Under) Expenditures	<u><u>0</u></u>	<u><u>96,093</u></u>		<u><u>2,789,414</u></u>	<u><u>2,693,321</u></u>	

**City of Westminster
Financial Report
For Ten Months Ending October 31, 2013**

Description POST Fund	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Revenues						
Sales & Use Tax	5,085,325	4,248,902		4,481,921	233,019	105.5%
Intergovernmental Revenue	832,899	832,899	(1)	1,232,899	400,000	148.0%
Interest Income	10,000	8,333		13,196	4,863	158.4%
Miscellaneous	87,130	72,608		21,614	(50,994)	29.8%
Interfund Transfers	19,542	16,285		16,285	0	100.0%
Sub-total Revenues	<u>6,034,896</u>	<u>5,179,027</u>		<u>5,765,915</u>	<u>586,888</u>	<u>111.3%</u>
Carryover	1,566,139	1,566,139		1,566,139	0	100.0%
Total Revenues	<u>7,601,035</u>	<u>6,745,166</u>		<u>7,332,054</u>	<u>586,888</u>	<u>108.7%</u>
Expenditures						
Central Charges	7,270,219	5,284,466		5,119,571	(164,895)	96.9%
Park Services	330,816	222,069		230,613	8,544	103.8%
Total Expenditures	<u>7,601,035</u>	<u>5,506,535</u>		<u>5,350,184</u>	<u>(156,351)</u>	<u>97.2%</u>
Revenues Over(Under) Expenditures	<u>0</u>	<u>1,238,631</u>		<u>1,981,870</u>	<u>743,239</u>	

(1) Actual Intergovernmental Revenue reflects a \$400,000 grant reimbursement that was budgeted in a prior year.

**City of Westminster
Financial Report
For Ten Months Ending October 31, 2013**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Water and Wastewater Funds - Combined						
Operating Revenues						
License & Permits	75,000	62,500		85,550	23,050	136.9%
Intergovernmental Revenue	0	0	(1)	272,564	272,564	
Rates and Charges	45,315,766	39,099,980		37,259,310	(1,840,670)	95.3%
Miscellaneous	435,000	362,500		259,690	(102,810)	71.6%
Total Operating Revenues	45,825,766	39,524,980		37,877,114	(1,647,866)	95.8%
Operating Expenditures						
Central Charges	6,299,672	5,249,727		5,105,727	(144,000)	97.3%
Finance	646,064	527,834		413,562	(114,272)	78.4%
Public Works & Utilities	21,486,266	16,793,878		14,291,426	(2,502,452)	85.1%
Parks, Recreation & Libraries	152,415	144,642		111,556	(33,086)	77.1%
Information Technology	2,868,928	2,312,356		2,165,702	(146,654)	93.7%
Total Operating Expenditures	31,453,345	25,028,437		22,087,973	(2,940,464)	88.3%
Operating Income (Loss)	14,372,421	14,496,543		15,789,141	1,292,598	
Other Revenue and Expenditures						
Tap Fees	4,560,000	3,905,805		3,247,668	(658,137)	83.1%
Interest Income	365,000	304,166		258,052	(46,114)	84.8%
Interfund Transfers	2,533,172	2,110,977		2,110,977	0	100.0%
Sale of Assets	0	0		90,304	90,304	
Carryover	9,058,544	9,058,544		9,058,544	0	100.0%
Debt Service	(7,221,199)	(3,044,987)		(3,044,987)	0	100.0%
Reserve Transfer	(5,941,977)	(5,941,977)		(5,941,977)	0	100.0%
Total Other Revenue (Expenditures)	3,353,540	6,392,528		5,778,581	(613,947)	
Revenues Over(Under) Expenditures	17,725,961	20,889,071		21,567,722	678,651	

(1) The Intergovernmental budget variance is primarily reflective of the 2010 Build America Bonds interest rate subsidy.

**City of Westminster
Financial Report
For Ten Months Ending October 31, 2013**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Water Fund						
Operating Revenues						
License & Permits	75,000	62,500		85,550	23,050	136.9%
Intergovernmental Revenue	0	0	(1)	272,564	272,564	
Rates and Charges	32,100,766	28,087,480		26,223,193	(1,864,287)	93.4%
Miscellaneous	425,000	354,167		250,940	(103,227)	70.9%
Total Operating Revenues	32,600,766	28,504,147		26,832,247	(1,671,900)	
Operating Expenditures						
Central Charges	4,427,473	3,689,561		3,555,786	(133,775)	96.4%
Finance	646,064	527,834		413,562	(114,272)	78.4%
Public Works & Utilities	14,527,801	11,441,346		9,317,973	(2,123,373)	81.4%
PR&L Standley Lake	152,415	144,642		111,556	(33,086)	77.1%
Information Technology	2,868,928	2,312,356		2,165,702	(146,654)	93.7%
Total Operating Expenditures	22,622,681	18,115,739		15,564,579	(2,551,160)	85.9%
Operating Income (Loss)	9,978,085	10,388,408		11,267,668	879,260	
Other Revenue and (Expenditures)						
Tap Fees	3,500,000	3,000,500		2,368,107	(632,393)	78.9%
Interest Income	250,000	208,333		177,083	(31,250)	85.0%
Interfund Transfers	2,097,065	1,747,554		1,747,554	0	100.0%
Sale of Assets	0	0		90,304	90,304	
Carryover	7,451,335	7,451,335		7,451,335	0	100.0%
Debt Service	(5,714,756)	(2,466,478)		(2,466,478)	0	100.0%
Reserve Transfer	(4,777,768)	(4,777,768)		(4,777,768)	0	100.0%
Total Other Revenues (Expenditures)	2,805,876	5,163,476		4,590,137	(573,339)	
Revenues Over(Under) Expenditures	12,783,961	15,551,884		15,857,805	305,921	

(1) The Intergovernmental budget variance is primarily reflective of the 2010 Build America Bonds interest rate subsidy.

**City of Westminster
Financial Report
For Ten Months Ending October 31, 2013**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Wastewater Fund						
Operating Revenues						
Rates and Charges	13,215,000	11,012,500		11,036,117	23,617	100.2%
Miscellaneous	10,000	8,333		8,750	417	105.0%
Total Operating Revenues	<u>13,225,000</u>	<u>11,020,833</u>		<u>11,044,867</u>	<u>24,034</u>	100.2%
Operating Expenditures						
Central Charges	1,872,199	1,560,166		1,549,941	(10,225)	99.3%
Public Works & Utilities	6,958,465	5,352,532		4,973,453	(379,079)	92.9%
Total Operating Expenditures	<u>8,830,664</u>	<u>6,912,698</u>		<u>6,523,394</u>	<u>(389,304)</u>	94.4%
Operating Income (Loss)	<u>4,394,336</u>	<u>4,108,135</u>		<u>4,521,473</u>	<u>413,338</u>	
Other Revenue and Expenditures						
Tap Fees	1,060,000	905,305		879,561	(25,744)	97.2%
Interest Income	115,000	95,833		80,969	(14,864)	84.5%
Interfund Transfers	436,107	363,423		363,423	0	100.0%
Carryover	1,607,209	1,607,209		1,607,209	0	100.0%
Debt Service	(1,506,443)	(578,509)		(578,509)	0	100.0%
Reserve Transfer	(1,164,209)	(1,164,209)		(1,164,209)	0	100.0%
Total Other Revenues (Expenditures)	<u>547,664</u>	<u>1,229,052</u>		<u>1,188,444</u>	<u>(40,608)</u>	
Revenues Over(Under) Expenditures	<u>4,942,000</u>	<u>5,337,187</u>		<u>5,709,917</u>	<u>372,730</u>	

**City of Westminster
Financial Report
For Ten Months Ending October 31, 2013**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Storm Drainage Fund						
Revenues						
Charges for Services	2,082,000	1,735,000		1,679,687	(55,313)	96.8%
Interest Income	50,000	41,667		26,718	(14,949)	64.1%
Miscellaneous	0	0		23	23	
Sub-total Storm Drainage Revenues	<u>2,132,000</u>	<u>1,776,667</u>		<u>1,706,428</u>	<u>(70,239)</u>	96.0%
Carryover	44,136	44,136		44,136	0	100.0%
Total Revenues	<u>2,176,136</u>	<u>1,820,803</u>		<u>1,750,564</u>	<u>(70,239)</u>	96.1%
Expenditures						
General Services	86,200	66,805		67,138	333	100.5%
Community Development	174,090	142,580		137,901	(4,679)	96.7%
PR&L Park Services	200,000	100,400		58,144	(42,256)	57.9%
Public Works & Utilities	358,590	228,780		216,075	(12,705)	94.4%
Total Expenditures	<u>818,880</u>	<u>538,565</u>		<u>479,258</u>	<u>(59,307)</u>	89.0%
Revenues Over(Under) Expenditures	<u>1,357,256</u>	<u>1,282,238</u>		<u>1,271,306</u>	<u>(10,932)</u>	

**City of Westminster
Financial Report
For Ten Months Ending October 31, 2013**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Golf Courses Combined						
Operating Revenues						
Charges for Services	2,967,608	2,815,866		2,819,085	3,219	100.1%
Total Revenues	<u>2,967,608</u>	<u>2,815,866</u>		<u>2,819,085</u>	<u>3,219</u>	100.1%
Operating Expenditures						
Central Charges	217,435	181,435		144,610	(36,825)	79.7%
Recreation Facilities	2,594,708	2,290,976		2,198,461	(92,515)	96.0%
Total Expenditures	<u>2,812,143</u>	<u>2,472,411</u>		<u>2,343,071</u>	<u>(129,340)</u>	94.8%
Operating Income (Loss)	<u>155,465</u>	<u>343,455</u>		<u>476,014</u>	<u>132,559</u>	
Other Revenues and Expenditures						
Interest Income	0	0		3,794	3,794	
Other Financing Sources	484,283	484,283		484,283	0	100.0%
Other Financing Use	(484,283)	(484,283)		(484,283)	0	100.0%
Debt Service	(737,608)	(423,551)		(423,551)	0	100.0%
Interfund Transfers In	617,771	520,747	(1)	1,070,747	550,000	205.6%
Interfund Transfers Out	(585,628)	(585,628)		(585,628)	0	100.0%
Carryover	550,000	550,000		550,000	0	100.0%
Total Other Revenue (Expenditures)	<u>(155,465)</u>	<u>61,568</u>		<u>615,362</u>	<u>553,794</u>	
Revenues Over(Under) Expenditures	<u>0</u>	<u>405,023</u>		<u>1,091,376</u>	<u>686,353</u>	

(1) Interfund Transfers In reflects a reallocation of funds from Legacy to Heritage at Westmoor.

**City of Westminster
Financial Report
For Ten Months Ending October 31, 2013**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Legacy Ridge Fund						
Operating Revenues						
Charges for Services	1,582,258	1,498,398		1,521,003	22,605	101.5%
Total Revenues	<u>1,582,258</u>	<u>1,498,398</u>		<u>1,521,003</u>	<u>22,605</u>	101.5%
Operating Expenditures						
Central Charges	113,659	94,678		73,982	(20,696)	78.1%
Recreation Facilities	1,274,371	1,166,049		1,060,636	(105,413)	91.0%
Total Expenditures	<u>1,388,030</u>	<u>1,260,727</u>		<u>1,134,618</u>	<u>(126,109)</u>	90.0%
Operating Income (Loss)	<u>194,228</u>	<u>237,671</u>		<u>386,385</u>	<u>148,714</u>	
Other Revenues and Expenditures						
Interest Income	0	0		3,853	3,853	
Other Financing Sources	240,539	240,539		240,539	0	100.0%
Other Financing Use	(240,539)	(240,539)		(240,539)	0	100.0%
Debt Service	(158,600)	(152,059)		(152,059)	0	100.0%
Interfund Transfers Out	(585,628)	(585,628)		(585,628)	0	100.0%
Carryover	550,000	550,000		550,000	0	100.0%
Total Other Revenue (Expenditures)	<u>(194,228)</u>	<u>(187,687)</u>		<u>(183,834)</u>	<u>3,853</u>	
Revenues Over(Under) Expenditures	<u>0</u>	<u>49,984</u>		<u>202,551</u>	<u>152,567</u>	

**City of Westminster
Financial Report
For Ten Months Ending October 31, 2013**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Heritage at Westmoor Fund						
Operating Revenues						
Charges for Services	1,385,350	1,317,468		1,298,082	(19,386)	98.5%
Total Revenues	<u>1,385,350</u>	<u>1,317,468</u>		<u>1,298,082</u>	<u>(19,386)</u>	98.5%
Operating Expenditures						
Central Charges	103,776	86,757		70,628	(16,129)	81.4%
Recreation Facilities	1,320,337	1,124,927		1,137,825	12,898	101.1%
Total Expenditures	<u>1,424,113</u>	<u>1,211,684</u>		<u>1,208,453</u>	<u>(3,231)</u>	99.7%
Operating Income (Loss)	<u>(38,763)</u>	<u>105,784</u>		<u>89,629</u>	<u>(16,155)</u>	
Other Revenues and Expenditures						
Interest Income	0	0		(59)	(59)	
Other Financing Sources	243,744	243,744		243,744	-	100.0%
Other Financing Use	(243,744)	(243,744)		(243,744)	-	100.0%
Debt Service	(579,008)	(271,492)		(271,492)	-	100.0%
Interfund Transfers In	617,771	520,747	(1)	1,070,747	550,000	205.6%
Total Other Revenue (Expenditures)	<u>38,763</u>	<u>249,255</u>		<u>799,196</u>	<u>549,941</u>	
Revenues Over(Under) Expenditures	<u>0</u>	<u>355,039</u>		<u>888,825</u>	<u>533,786</u>	

(1) Interfund Transfers In reflects a reallocation of funds from Legacy to Heritage at Westmoor.

CITY OF WESTMINSTER
GENERAL RECEIPTS BY CENTER
MONTH OF OCTOBER 2013

Center Location Major Tenant	/----- Current Month -----/			/----- Last Year -----/			/--- %Change ---/		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	467,632	11,018	478,649	374,156	5,391	379,546	25	104	26
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	323,702	1,364	325,066	330,762	1,014	331,776	-2	35	-2
SHOPS AT WALNUT CREEK 104TH & REED TARGET	261,863	3,387	265,250	251,613	1,609	253,222	4	110	5
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	214,442	2,814	217,256	197,726	776	198,502	8	263	9
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	203,205	1,239	204,444	176,619	1,126	177,745	15	10	15
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	176,705	2,709	179,413	213,603	19,848	233,451	-17	-86	-23
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	164,423	378	164,801	157,417	559	157,975	4	-32	4
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	160,089	419	160,508	181,961	766	182,727	-12	-45	-12
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	121,149	15,241	136,390	104,668	12,717	117,384	16	20	16
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	120,118	2,202	122,320	112,178	721	112,899	7	206	8
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	99,222	454	99,675	130,250	680	130,930	-24	-33	-24
WESTMINSTER MALL 88TH & SHERIDAN JC PENNEY	85,144	1,581	86,725	43,773	1,552	45,325	95	2	91
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	81,688	360	82,048	75,350	220	75,570	8	64	9
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	78,727	1,371	80,097	111,122	433	111,555	-29	217	-28
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	75,480	134	75,614	110,077	246	110,323	-31	-45	-31

CITY OF WESTMINSTER
 GENERAL RECEIPTS BY CENTER
 MONTH OF OCTOBER 2013

Center Location Major Tenant	Current Month			Last Year			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	59,321	436	59,758	57,679	264	57,943	3	65	3
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	53,528	733	54,261	79,333	901	80,234	-33	-19	-32
LUCENT/KAISER CORRIDOR 112-120 HURON - FEDERAL LUCENT TECHNOLOGY	26,567	22,223	48,790	8,561	40,803	49,364	210	-46	-1
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	45,470	1,980	47,450	42,458	643	43,100	7	208	10
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	42,584	229	42,813	59,073	388	59,461	-28	-41	-28
BROOKHILL IV E SIDE WADS 90TH-92ND MURDOCH'S	33,212	325	33,537	24,357	390	24,747	36	-17	36
WILLOW RUN 128TH & ZUNI SAFEWAY	32,503	166	32,668	50,382	323	50,706	-35	-49	-36
ELWAY/DOUGLAS CORRIDOR NE CORNER 104TH & FED ELWAY MOTORS	27,125	1,223	28,349	34,724	558	35,282	-22	119	-20
BOULEVARD SHOPS 94TH & WADSWORTH CORRIDOR AMERICAN FURNITURE WAREHOUSE	26,946	417	27,364	23,997	284	24,281	12	47	13
STANDLEY PLAZA SW CORNER 88TH & WADS WALGREENS	25,823	1,148	26,970	26,764	1,040	27,804	-4	10	-3
	<u>3,006,665</u>	<u>73,553</u>	<u>3,080,218</u>	<u>2,978,603</u>	<u>93,249</u>	<u>3,071,852</u>	<u>1</u>	<u>-21</u>	<u>0</u>

CITY OF WESTMINSTER
GENERAL RECEIPTS BY CENTER
OCTOBER 2013 YEAR-TO-DATE

Center Location Major Tenant	YTD 2013			YTD 2012			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	4,389,461	147,389	4,536,851	3,923,759	132,927	4,056,686	12	11	12
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	3,366,602	25,895	3,392,497	3,456,235	20,770	3,477,005	-3	25	-2
SHOPS AT WALNUT CREEK 104TH & REED TARGET	2,553,504	32,559	2,586,063	2,377,979	17,434	2,395,412	7	87	8
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	2,401,734	8,974	2,410,708	2,298,998	9,492	2,308,490	4	-5	4
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	2,162,337	52,842	2,215,180	1,903,753	19,002	1,922,755	14	178	15
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	1,739,050	6,346	1,745,395	1,948,497	5,486	1,953,983	-11	16	-11
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	1,725,358	10,265	1,735,623	1,723,413	36,522	1,759,935	0	-72	-1
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	1,677,188	14,240	1,691,428	1,649,800	5,829	1,655,629	2	144	2
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	1,372,493	193,389	1,565,882	1,257,575	179,761	1,437,336	9	8	9
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	1,290,342	13,326	1,303,668	1,196,959	7,845	1,204,804	8	70	8
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	1,078,567	13,982	1,092,549	1,187,706	7,561	1,195,266	-9	85	-9
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	868,212	4,220	872,432	805,112	1,998	807,110	8	111	8
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	766,606	4,944	771,550	757,229	6,464	763,693	1	-24	1
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	679,431	26,718	706,150	642,205	5,504	647,709	6	385	9
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	625,899	5,791	631,690	607,744	2,607	610,351	3	122	4

CITY OF WESTMINSTER
 GENERAL RECEIPTS BY CENTER
 OCTOBER 2013 YEAR-TO-DATE

Center Location Major Tenant	YTD 2013			YTD 2012			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	571,648	6,673	578,321	559,721	7,886	567,607	2	-15	2
WESTMINSTER MALL 88TH & SHERIDAN JC PENNEY	480,976	7,809	488,785	761,782	19,255	781,037	-37	-59	-37
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	463,690	19,234	482,924	434,608	21,624	456,232	7	-11	6
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	448,755	2,052	450,807	451,150	7,429	458,580	-1	-72	-2
WILLOW RUN 128TH & ZUNI SAFEWAY	338,497	2,531	341,028	351,367	3,199	354,566	-4	-21	-4
BROOKHILL IV E SIDE WADS 90TH-92ND MURDOCH'S	307,247	5,937	313,185	275,421	1,290	276,710	12	360	13
BOULEVARD SHOPS 94TH & WADSWORTH CORRIDOR AMERICAN FURNITURE WAREHOUSE	305,468	4,723	310,191	276,190	2,718	278,909	11	74	11
NORTHVIEW 92ND AVE YATES TO SHERIDAN SALTGRASS	269,721	21,100	290,821	253,247	4,813	258,060	7	338	13
STANDLEY PLAZA SW CORNER 88TH & WADS WALGREENS	257,561	6,538	264,099	255,079	9,173	264,252	1	-29	0
ELWAY/DOUGLAS CORRIDOR NE CORNER 104TH & FED ELWAY MOTORS	247,289	8,516	255,804	305,697	5,977	311,673	-19	42	-18
	<u>30,387,638</u>	<u>645,994</u>	<u>31,033,632</u>	<u>29,661,224</u>	<u>542,567</u>	<u>30,203,791</u>	<u>2</u>	<u>19</u>	<u>3</u>



Agenda Memorandum

City Council Meeting
November 25, 2013



SUBJECT: Police Department Payment to the North Metro Task Force

Prepared By: Lee Birk, Chief of Police

Recommended City Council Action

Authorize payment of \$24,552 to the North Metro Task Force bringing the total to be paid to the North Metro Task Force in 2013 to \$74,238.

Summary Statement

- The Westminster Municipal Code requires that all purchases over \$50,000 be brought to City Council. Staff has taken a conservative approach in interpreting this requirement to include transactions where the cumulative total purchase or payment by individual City departments for services from one vendor in a calendar year that exceeds \$50,000.
- A current Intergovernmental Agreement (IGA) establishes the North Metro Task Force (NMTF) as a separate legal entity operating as a drug task force with the following participating agencies and their respective law enforcement entities: Adams County, City and County of Broomfield, and the municipalities of Brighton, Commerce City, Federal Heights, Northglenn, Thornton and Westminster.
- On August 9, 2013, the Police Department was awarded the 2013 Edward Byrne Memorial Justice Assistance Grant from the U.S. Department of Justice, Office of Justice Programs' Bureau of Justice Assistance (JAG) in the amount of \$24,552. This Grant is for partial funding of the NMTF 2013/2014 budget cycle and is awarded based on a reimbursement of the City of Westminster's obligation to the NMTF operations budget for the 2013/2014 fiscal year. Because these grant funds are a reimbursement for the 2013/2015 fiscal year, the payment to NMTF and the request to the Grantor (JAG) must be made after October 1, 2013.
- The NMTF operating budget relies on the annual contribution from its participating agencies as well as grants and other external revenue sources. As a participating agency, the Police Department is obligated to provide a cash-in-kind payment to the NMTF, who operate on a Federal fiscal year (October 1 through September 30). The Police Department has already paid the City of Westminster Police Department's full assessment toward the 2012/2013 NMTF fiscal year obligation. The authorization being requested for the additional payment of \$24,552 will actually be applied toward the 2013/2014 NMTF fiscal year obligation.

Expenditure Required: \$24,552

Source of Funds: General Fund – Police Operating Budget
(to be reimbursed by US Department of Justice Grant)

Policy Issue

Should Council authorize the additional payment of \$24,552 to the NMTF, thereby increasing the total payment to the task force in 2013 to \$74,238?

Alternative

Council could choose not to authorize the additional payment of \$24,552 to the NMTF in 2013. However, this is not recommended because the City and the Police Department are still obligated to pay their fiscal obligations to the NMTF. The NMTF continues to be a critical effort in the battle against drug trafficking.

Background Information

The City of Westminster (including the Jefferson County portion of Westminster), along with Adams County, City and County of Broomfield, and the municipalities of Brighton, Commerce City, Federal Heights, Northglenn, Thornton and their respective Law Enforcement entities, participate in the North Metro Task Force. The NMTF operates under a Federal fiscal year, and the funding sources for the task force are through asset forfeiture seizures, grant funding, and funding obligations from participating agencies. Westminster's contribution to the NMTF is budgeted in the Police Department's General Fund Budget each year.

The Police Department pursued the 2013 Edward Byrne Memorial Justice Assistance Grant (JAG) from the U.S. Department of Justice, Office of Justice Programs' Bureau of Justice Assistance for partial funding of the City of Westminster's obligation to the NMTF's Operations Budget for the 2013/2014 Fiscal Year. The purpose of JAG grants is to support all components of the criminal justice system, such as multi-jurisdictional drug task forces like the NMTF. The JAG grant helps fund efforts to prevent and control crime, improve the effectiveness and efficiency of the criminal justice system, and to implement processes and procedures based on local needs and conditions.

The Department received notification that the City's grant request was approved and would be awarded the total amount of \$24,552 towards the obligation to the NMTF for the 2013/2014 fiscal year operations. The payment to the NMTF that is being reimbursed (\$24,552) as well as the grant draw down request for reimbursement must be made after October 1, 2013.

The Police Department has paid the total 2013/2013 NMTF fiscal year obligation. Those payments, along with the requested authorization of payment of \$24,552 for the 2013/2014 fiscal year that is also being reimbursed with the JAG grant, will bring the total paid to the North Metro Task Force for calendar year 2013 to \$74,238.

Council's approval to authorize this payment supports City Council's Strategic Plan goals of Financially Sustainable City Government Providing Exceptional Services and Safe and Healthy Community.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
November 25, 2013



SUBJECT: Biosolids Composting

Prepared By: Tim Woodard, Wastewater Treatment Superintendent
Stephen Gay, Utilities Operations Manager

Recommended City Council Action

Authorize the City Manager to raise the contract limit from \$50,000 to \$70,000 for both the A-1 Organics Composting Facility contract and the Renewable Fiber Composting Facility contract for the composting of biosolids in 2013 to allow for the possibility of further inclement weather in 2013, only to be used if necessary.

Summary Statement

- The Big Dry Creek Wastewater Treatment Facility uses the A-1 Organics Composting Facility and the Renewable Fiber Composting Facility to dispose of biosolids during wet weather or wet field conditions. Existing agreements and City policies allow expenditures up to \$50,000 per facility in 2013 for this purpose. Due to inclement weather in 2013, the City has already expended approximately \$41,000 at A-1 Organics and \$23,000 at Renewable Fiber.
- Anticipating that further inclement weather in 2013 may be possible, the City Manager is seeking authority to continue using these facilities if necessary to a new limit of \$70,000 each, with the increased funding of up to \$40,000 to come from existing sources already approved by City Council.
- A-1 Organics and Renewable Fiber are the only biosolids composting facilities available along the Front Range that can be utilized for biosolids disposal.

Expenditure Required: \$40,000

Source of Funds: Utility Fund – Utility Operations Budget

Policy Issue

Should City Council authorize the Big Dry Creek Wastewater Treatment Facility to spend additional funds of up to \$40,000 and raise the contract limits from \$50,000 to \$70,000 for both A-1 Organics and Renewable Fiber for biosolids composting in the remainder of 2013?

Alternative

The City of Westminster could contract with a biosolids contractor to dewater and haul biosolids from the Big Dry Creek Treatment Facility during inclement weather. This alternative would be more expensive than contracting with A-1 Organics and/or Renewable Fiber and is not recommended.

Background Information

Prior to 2004, the Big Dry Creek Treatment Facility applied biosolids on farm fields located near the facility. The closer fields allowed operators to transport and dispose of larger volumes of biosolids in a given week. Residential development of farm properties relatively close to the facility impacted the disposal of biosolids, and in 2004 the City began using A-1 Organics on an as-needed basis to dispose of biosolids.

Currently, the Big Dry Creek Treatment Facility transports and disposes of 18 tractor trailer loads of thickened biosolids per week at the Strasburg Natural Resources Farm in Strasburg, Colorado. In the event of downtime or wet farm fields, the production at the facility exceeds application abilities, requiring the use of A-1 Organics and/or Renewable Fiber.

To date in 2013 the City has experienced significant inclement weather, resulting in increased use of A-1 Organics and Renewable Fiber. Staff is recommending increasing the limit from \$50,000 to \$70,000 for both the A-1 Organics and the Renewable Fiber contracts to allow for the possibility that the inclement weather continues to the end of 2013. These funds will only be expended if necessary.

Composting biosolids properly helps achieve City Council's Strategic Plan goals of "Financially Sustainable City Government Providing Exceptional Services" by contributing to the objectives of well-maintained City infrastructure and facilities.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
November 25, 2013



SUBJECT: 2013 Utility Materials and Water Pipe Purchase

Prepared By: Robert Booze, Distribution and Collection Superintendent
Stephen Gay, Utilities Operations Manager

Recommended City Council Action

Authorize the City Manager to purchase waterworks materials and water pipe from the low bidders as follows: Dana Kepner in the amount of \$47,288, Ferguson in the amount of \$44,405, and HD Supply in the amount of \$111,849, for a purchase total of \$203,542; and authorize a corresponding increase in the cumulative 2013 contract value for these existing City suppliers as follows: Dana Kepner to not exceed \$92,000; Ferguson to not exceed \$55,000; and HD Supply to not exceed \$142,000, for a total of \$289,000.

Summary Statement

- This request consists of the purchase of eight individual lots of related waterworks materials and one individual bid for water pipe.
- Formal bids for these materials were issued and a bid opening took place on November 11, 2012. A total of three vendors provided bids. All three vendors are existing City suppliers who have provided materials to the City in 2013 as a result of earlier competitive bids in accordance with the City's purchasing policy 2002-09.
- Dana Kepner was the lowest bidder on two material lots totaling \$47,288. Ferguson was the lowest bidder on two lots totaling \$44,405. HD Supply was the lowest bidder on four material lots totaling \$111,849.
- The suggested motion authorizes the award of the low bids for the above-referenced purchases, as well as a corresponding increase in the total amount of cumulative purchases from these existing City suppliers.
- Adequate funds were budgeted and are available for this planned expense.

Expenditure Required: \$289,000

Source of Funds: Utility Fund - Utilities Operations Division Operating Budget

Policy Issue

Should the City authorize the purchase of waterworks materials and water pipe from the low bidders?

Alternative

Purchase materials only on an as-needed basis and negotiate prices for each purchase individually throughout the year. This would take a large amount of staff time and likely increase the prices for each piece of material purchased, particularly for those purchases made during the peak construction season. This would also require City Council action for each expenditure that exceeds \$50,000. This option is not recommended since the City requested and received bids for these materials and would most likely receive higher unit costs if items were purchased on an as-needed basis.

Background Information

The City purchases waterworks materials through competitive tenders during the year. In addition, on an annual basis, the City strategically purchases commonly used materials near the end of the year to take advantage of better pricing and availability in the winter months as opposed to the peak construction season. The materials will be used in late 2013 and into 2014. This year’s annual material purchase was advertised on the internet site “Demand Star” with bids being opened on November 11, 2013. The bid was separated into lots so a bidder could submit pricing for any or all of the material. Delivery is to be immediate and in one shipment.

The results of the submitted bids are as follows (numbers in bold indicate low bid):

Lot Description	Dana Kepner	Ferguson	HD Supply	Mountain States	
1. Mechanical Joint Fittings	\$36,658	\$35,813	\$33,450	\$37,939	
2. Mechanical Joint Restraints	\$9,772	\$10,066	\$9,554	\$12,307	
3. Fire Hydrants	\$40,039	NO BID	\$44,775	\$43,666	
4. Valves	\$60,914	\$58,036	\$56,696	\$62,326	
5. Brass/Copper	\$12,711	\$14,174	\$12,149	\$17,719	
6. Miscellaneous	\$7,249	\$8,124	\$7,387	\$12,012	
7. Water Main Repair Clamps	\$6,090	\$6,066	\$7,020	\$6,565	
8. Pipe	\$39,864	\$38,339	\$40,035	\$42,316	
Totals	\$47,288	\$44,405	\$111,849	n/a	\$203,542

Based on the above bids, it is recommended that the City purchase waterworks materials and water pipe from the low bidders as follows: Dana Kepner in the amount of \$47,288, Ferguson in the amount of \$44,405, and HD Supply in the amount of \$111,849, for a purchase total of \$203,542.

Since all three low bid bidders are existing City suppliers, the cumulative 2013 contract value for each vendor will need to be increased to include the amount already purchased in 2013 as well as the above-referenced bid amounts in new totals as follows: Dana Kepner at \$92,000, Ferguson at \$55,000, and HD Supply at \$142,000, for a total of \$289,000.

These purchases help achieve the City Council's Strategic Plan Goals of "Financially Sustainable City Government Providing Exceptional Services", "Safe and Healthy Community" and "Vibrant Neighborhoods and in one Livable Community" by meeting the following objectives: well-maintained City infrastructure and facilities; citizens are safe anywhere in the City; and maintain and improve neighborhood infrastructure and housing.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 8 E

Agenda Memorandum

City Council Meeting
November 25, 2013



SUBJECT: Lowell Boulevard Project – Permanent Easement Acquisition from the Metzger Farm Open Space

Prepared By: David W. Loseman, Senior Projects Engineer
Heather Cronenberg, Open Space Coordinator

Recommended City Council Action

Authorize the payment of \$166,519.20 to the Broomfield-Westminster Open Space Foundation for the acquisition of a permanent easement needed for the construction of the Lowell Boulevard, 120th Avenue to 124th Avenue, Improvement Project and the Colorado Department of Transportation 120th Avenue Project.

Summary Statement

- The City of Westminster and the City and County of Broomfield previously entered into an Intergovernmental Agreement (IGA) for the design, construction, maintenance and sharing of costs for the widening of Lowell Boulevard between 120th Avenue and 124th Avenue to a four-lane, arterial roadway.
- The Lowell Boulevard Improvement Project includes the addition of raised medians, two vehicular lanes on the east side of Lowell Boulevard, a bike lane, an 8-foot wide concrete sidewalk, improved landscaping, a pedestrian underpass beneath Lowell Boulevard at about 121st Avenue, a pedestrian crossing of Nissen Channel, other drainage improvements and the underground relocation of overhead utilities.
- An area of land along the western edge of the Metzger Farm Open Space, located between 120th Avenue and 124th Avenue, being generally 2,555 feet long and varying between 43 feet and 33 feet in width adjacent to the existing Lowell Boulevard right-of-way, is needed for the Lowell Boulevard Project and a future Colorado Department of Transportation (CDOT) Project along 120th Avenue for use as additional right-of-way and for utility relocations. The total area needed for these purposes is not to exceed 2.4 acres. A permanent Right of Way and Utility Easement to be conveyed from the Foundation to the City of Westminster is proposed to accomplish these needs (see attached Exhibit A).
- The value of the Permanent Easement based upon the original purchase price is \$166,519.20. The current appraised value of the Permanent Easement is \$127,171.19. Westminster Open Space policies call for the higher of these two valuations to be used as the reimbursement amount to its Open Space fund. The Foundation approved acceptance of this value and the sale of the easement at its Board meeting on November 4, 2013.
- Adequate funds have been budgeted and are available for this expense.

Expenditure Required: \$166,519.20

Source of Funds: General Capital Improvement Fund – Lowell Boulevard Project

Policy Issue

Should the City pay \$166,519.20 for the Permanent Easement needed for the Lowell Boulevard, 120th Avenue to 124th Avenue, and the 120th Avenue CDOT Projects to the Broomfield-Westminster Open Space Foundation?

Alternative

The City's obligation to acquire this Permanent Easement was identified in the Intergovernmental Agreement by and between the City and County of Broomfield and the City of Westminster Providing for the Acquisition, Financing, Ownership, Operation and Maintenance of the Metzger Property that was signed in 2005. In order to comply with this agreement, staff recommends Council's authorization of the payment of \$166,519.20 for this Permanent Easement.

Background Information

The City and County of Broomfield began the design of improvements to Lowell Boulevard from 120th Avenue to 124th Avenue in 2008. At that time, Broomfield staff asked Westminster staff to participate in the cost of this project since a portion of this road adjacent to the Metzger Farm Open Space is located within the City of Westminster. This project will widen Lowell Boulevard from two to four "through" lanes between 120th Avenue and 124th Avenue and install sidewalks on both sides of the street as well as a pedestrian underpass of the street at the approximate 121st Avenue alignment. The project was delayed due to a lack of funding but has now been scheduled for construction by Broomfield in 2014 with completion anticipated in the fall of next year.

Staff negotiated and Broomfield agreed to the terms of this agreement to allow the City to budget its share (\$1.7M) of the project costs in 2015, 2016, 2017 and 2018 (\$425K in each year), subject to annual appropriations by the City Council. Council approved this agreement at its meeting held on October 14, 2013. In addition to the \$1.7M, the City is obligated to purchase the right-of-way needed for the project from the Metzger Foundation. This obligation is a prior commitment outlined in the Intergovernmental Agreement by and between the City and County of Broomfield and the City of Westminster Providing for the Acquisition, Financing, Ownership, Operation and Maintenance of the Metzger Property that was signed in 2005. Funding for this expense of \$166,519.20 has already been appropriated in 2013. In addition to the Permanent Easement, a Temporary Easement to Broomfield will be required for the construction of the trail and the crossing of the Nissen Channel within the Metzger Farm property. The Broomfield Temporary Easement adjoins the Permanent Easement and covers the area adjacent to the widened Lowell Boulevard and certain areas within the Metzger Farm where new trail improvements and revisions to the Nissen Channel are being made. No reimbursement for the Temporary Easement is being proposed due to the benefits that the property will receive from the improvements.

The second project identified in this IGA is the design and construction of 120th Avenue approximately 1,000 feet east and west of Lowell Boulevard. The Colorado Department of Transportation is designing and constructing this project with funding coming from the Funding Advancement for Surface Transportation and Economic Recovery (FASTER) program and participation from the City and County of Broomfield. The City of Westminster requested an expansion of the scope of this project to include raised medians east of the 120th Avenue and Lowell Boulevard intersection as well as the addition of a third "through" lane for east-bound traffic. Because of this scope change, staff was asked to share in the participation that Broomfield is required to provide to the project, with the Westminster share of the cost equaling \$110,000. Since the improvements that City staff requested are estimated to cost approximately \$200,000, Staff believes this proposal is very advantageous to the City. This project will commence in the spring of 2014 and be completed by the fall of 2014. The project will construct double left turn lanes in all four quadrants of the intersection plus detached sidewalks. Westminster staff plans to issue a permit and oversee CDOT's construction of the right turn lane at the northeast corner of Lowell Boulevard and 120th Avenue on a small portion of the Permanent Easement. A temporary easement will also be necessary from

the Foundation for this construction. This temporary easement is located within the larger Broomfield Temporary Easement, so no reimbursement is being proposed.

The area impacted by the Temporary Construction Easements will be revegetated and returned to its current open space character. Wetlands and trees within this area that are identified to remain will be protected. ERO Resources Corporation was hired by Broomfield staff to review environmental impacts of the proposed Lowell Boulevard Project. The construction requires the removal of approximately 20 trees and creates wetland impacts totaling 0.30 acres in the vicinity of the Nissen Channel. The Lowell Boulevard Project will provide replacement trees and comply with the United States Army Corps of Engineers' requirements for wetland mitigation. The intent is to complete the wetland mitigation on the Metzger Farm site. The maintenance of all of the improvements in the Permanent Easement is addressed in the Lowell Boulevard IGA. Westminster will be responsible for maintaining the trail and channel crossing while Broomfield will maintain improvements associated with the road project such as drainage facilities, sidewalks and landscaping. The Foundation is not responsible for maintenance of any of the improvements associated with the Lowell Boulevard Project.

The Adams County Open Space Program provided a portion of the funding for the Metzger Farm land purchase through Open Space grants to Westminster in the amount of \$1,502,500 in 2003 and 2004, and, therefore, must be reimbursed based on the percentage (14.86%) of the purchase price that was funded by the grant. Westminster plans to reimburse Adams County \$24,740 based on the final agreed upon value of the Permanent Easement.

However, Great Outdoors Colorado (GOCO) also provided a grant used towards the acquisition of Metzger Farm. The Permanent Easement does not impact the portion of the Metzger Farm that was purchased with GOCO funding. In addition, Certificates of Participation were issued to pay for the acquisition of the Metzger property. Therefore, the payment that the City will make for the Permanent Easement will be distributed by the Foundation as follows:

- City of Westminster sends \$166,519.20 to the Foundation.
- The Foundation prepares a check to the City of Westminster in the amount of \$24,740 for the Adams County Grant reimbursement. The City of Westminster then sends these funds to Adams County. This payment represents Adams County's contribution of 14.86% towards the original Metzger land purchase.
- The Foundation sends \$76,036 to the Trustee at UMB Bank for the City of Westminster's share (45.66% of the original Metzger purchase) to be applied to future payments.
- The Foundation sends \$65,743 to the Trustee at UMB Bank for the City and County of Broomfield's share (39.48% of the original Metzger purchase) to be applied to the future payments.

These projects fulfill the City Council's goal of providing a Financially Sustainable City Government Providing Exceptional Services through these investments in public infrastructure.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments – Exhibit A: Vicinity Map and Permanent Easement

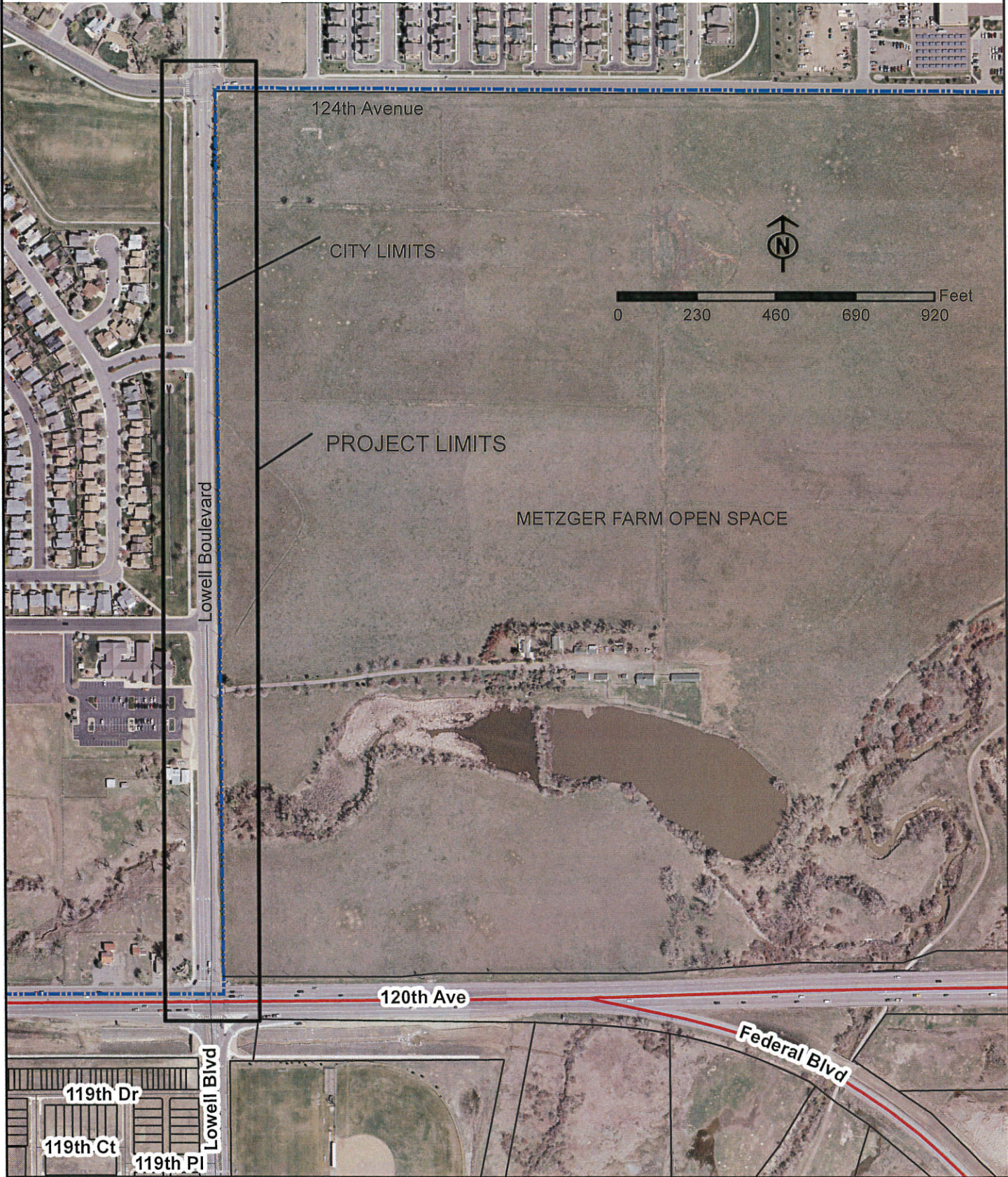


EXHIBIT A (4 PAGES)
LOWELL BOULEVARD PROJECT



CROSS OF CHRIST LUTHERAN
CHURCH SUBDIVISION

LOT 1

LOT 1

MARTIN
SUBDIVISION

SE 1/4
SECTION 31
T1S, R68W, 6TH PM

TRACT A

SW 1/4
SECTION 32
T1S, R68W, 6TH PM

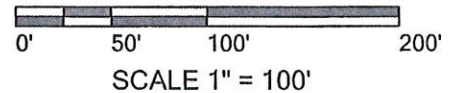
UNPLATTED
REC. NO. 20060501000437060

UNPLATTED
REC. NO. 2004013018
PARCEL 1

UNPLATTED
REC. NO. 2004013505
PARCEL A

UNPLATTED
REC. NO. 2004013018
PARCEL 2

PARCEL CONTAINS
104,223 SQ. FT.
(2.393 ACRES)



Lowell Blvd.

N00°21'00"W 2646.30'
WEST LINE SW1/4 SEC. 32, T1S, R68W, 6TH P.M.

N00°21'00"W 2556.16'

S00°21'00"E 1176.48'

Broomfield County
Adams County

N89°57'21"E 106.50'
S00°21'00"E 15.00'

S89°57'21"W 150.00'

POINT OF BEGINNING

N74°24'38"E 186.56'

US Highway-287 (W. 120th Ave.)

N89°57'21"E 2643.55'

NE 1/4
SECTION 6
T2S, R68W, 6TH PM

POINT OF COMMENCEMENT

SW COR SEC 32
T1S, R68W, 6TH PM
3-1/4" ALUMINUM CAP
(ILLEGIBLE)

NW 1/4
SECTION 5
T2S, R68W, 6TH PM

SHEET NO
2

CHKD BY: JPS
DRAWN BY: JPS
303.431.1203
120307

MULLER ENGINEERING CO., INC.
CONSULTING ENGINEERS
777 S. WADSWORTH BLVD. 4-109
LAKEWOOD, COLORADO 80236
(303) 958-4939

MULLER

CITY AND COUNTY
OF BROOMFIELD

EXHIBIT "A"

DATE	REVISION COMMENTS
10-16-13	Update acres

HKS HARRIS KOCHER SMITH
1120 Lincoln Street, Suite 1000
Denver, Colorado 80203
P: 303-623-6300 F: 303-623-6311
HarrisKocherSmith.com

MATCH LINE SHEET 3
SHEET 2

BRANDYWINE SUBDIVISION
FILING NO. 4

SE 1/4
SECTION 31
T1S, R68W, 6TH PM

TRACT B

W. 21st Pl.

**CROSS OF CHRIST LUTHERAN
CHURCH SUBDIVISION**

LOT 1

Broomfield County
Adams County

WEST LINE SW1/4 SEC. 32, T1S, R68W, 6TH P.M.
N00° 21'00"W 2646.30'
N00° 21'00"W 2556.16'

Lowell Blvd.



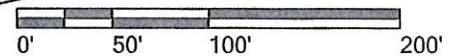
PARCEL CONTAINS
104,223 SQ. FT.
(2.393 ACRES)

SW 1/4
SECTION 32
T1S, R68W, 6TH PM

UNPLATTED
REC. NO. 20060501000437060

50' Drainage Easement
City of Broomfield
B2337-P46

20' Sanitary
Sewer Easement
(per ALTA survey)
B1290-P188



SCALE 1" = 100'

MATCH LINE SHEET 2
SHEET 1

LUTHERAN
VISION

LOT 1

SHEET NO
3

CHK'D BY: JFB
DRAWN BY: JFB
1033 MPM
120597
MULLER ENGINEERING CO., INC.
CONSULTING ENGINEERS
777 S. WADSWORTH BLVD. 4TH FL
LAKEWOOD, COLORADO 80126
(303) 955-4939



CITY AND COUNTY
OF BROOMFIELD

EXHIBIT "A"

DATE	REVISION COMMENTS
10-16-13	Update acres

HKS HARRIS KOCHER SMITH
1120 Lincoln Street, Suite 1000
Denver, Colorado 80203
P: 303-623-6300 F: 303-623-6311
HarrisKocherSmith.com

NW COR SEC 32, T1S, R68W, 6TH PM
3-1/4" ALUMINUM CAP (ILLEGIBLE)

CROFTON PARK FILING NO. 1 - REPLAT J

LOT 3

N89° 46'30"W 2646.41'

NORTH LINE SW1/4 SEC. 32, T1S, R68W, 6TH P.M.

Broomfield County
Adams County

W. 124th Ave.

W. 124th Ave.

S89° 46'30"E
62.00'

S00° 21'00"E
10.00'
28.50'
N89° 46'30"W

50' Utility Easement
City of Broomfield
(per ALTA survey)
Rec. No. C0723341

BRANDYWINE SUBDIVISION
FILING NO. 1

TRACT A

SE 1/4
SECTION 31
T1S, R68W, 6TH PM

SW 1/4
SECTION 32
T1S, R68W, 6TH PM

UNPLATTED
REC. NO. 20060501000437060

BRANDYWINE SUBDIVISION
FILING NO. 4

TRACT A

W. 124th Pl.

TRACT B

Lowell Blvd.

WEST LINE SW1/4 SEC. 32, T1S, R68W, 6TH P.M.
N00° 21'00"W 2646.30'

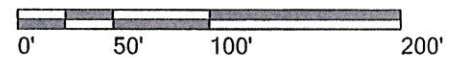
N00° 21'00"W 2556.16'

S00° 21'00"E 395.14'

S01° 37'29"E 224.78'

S00° 21'00"E 510.00'

PARCEL CONTAINS
104,223 SQ. FT.
(2.393 ACRES)



SCALE 1" = 100'

MATCH LINE SHEET 3
SHEET 2

SHEET NO
4

CHKD BY: JFB
DRAWN BY: JFB
JCA NFP
120507
MULLER
MULLER ENGINEERING CO., INC.
CONSULTING ENGINEERS
277 S. WADSWORTH BLVD., 4-100
LAKEWOOD, COLORADO 80226
(303) 955-4939

CITY AND COUNTY
OF BROOMFIELD

EXHIBIT "A"

DATE	REVISION COMMENTS
10-16-13	Update acres

HKS HARRIS
Kocher
SMITH
1120 Lincoln Street, Suite 1000
Denver, Colorado 80203
P: 303-423-6300 F: 303-423-6311
HarrisKocherSmith.com



Agenda Memorandum

City Council Meeting
November 25, 2013



SUBJECT: Public Hearing and Action re Comcast Franchise Agreement

Prepared By: David Puntenney, Information Technology Director

Recommended City Council Action

1. Conduct a Public Hearing.
2. Pass Councillor's Bill No. 50 on first reading, authorizing the City Manager to execute a ten-year franchise agreement with Comcast of Colorado IX LLC to provide cable television services in the City of Westminster.
3. Adopt Resolution No. 32 adopting Customer Service Standards for cable operators.

Summary Statement

In 1995, the City granted a cable TV franchise agreement to Mountain States Video, with Comcast later assuming the franchise agreement due to acquisition of Mountain States Video. The franchise agreement expires December 31, 2013. Staff has been working closely with an outside legal expert, Ken Fellman, and Comcast to negotiate a new ten year franchise agreement for City Council's consideration.

Council may find several provisions of the new agreement to be of interest, including:

- The definition of gross revenues has been amended to ensure that the 5% franchise fee generates the greatest possible revenue to the City that is permitted under federal law.
- Franchise language has been updated to address competitive equity issues.
- Public, Educational and Government (PEG) channel provisions and fees were updated to include the ability to meet future community needs.
- Web-based video on demand as an alternative to or in addition to PEG program delivery has been added.
- Customer service standards have been updated to ensure that Westminster citizens receive appropriate levels of service and responsiveness from Comcast.

This agreement and the Customer Service Standards were negotiated with Comcast and they are in concurrence with the terms and conditions as set forth in the attached documents.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the City continue to grant a franchise agreement to Comcast to provide cable TV services in the City of Westminster and adopt Customer Service Standards?

Alternative

The current franchise agreement includes a provision that would permit the City to let the current franchise agreement expire and then purchase the cable system at fair market value. Staff is not recommending this alternative as Comcast has successfully fulfilled their obligations under the current franchise agreement, and recognizes that Comcast is much better positioned to manage a cable system than the City of Westminster.

Background Information

To provide cable services to subscribers, cable companies must locate facilities within public rights of way, either on utility poles or underground. In consideration for a cable operator's right to utilize the City's rights of way, the City requires the cable operator to enter into a franchise agreement. Federal law allows local governments to negotiate cable franchise agreements with cable providers, and dictates what rights and limitations of local governments. A cable franchise sets the terms of the provision of cable services, including service standards; requirements of compliance with conditions under which work in the rights of way can be conducted; franchise fees; compliance with federal technical standards; variety of cable services provided; public/educational/government (PEG) programming requirements; system standards; procedures for addressing franchise transfers; procedures for remedying franchise violations; and franchise termination. Under federal law, Comcast is *entitled* to a franchise renewal if it offers and has the legal, technical, and financial ability to comply with a franchise agreement that meets the future cable-related needs of the City.

In 1995, City Council adopted ordinance No. 2355 approving the grant of a 15 year nonexclusive Franchise Agreement to Mountain States Video, with Comcast later assuming the franchise agreement due to acquisition of Mountain States Video. At the July 26, 2010 meeting, City Council passed Councillor's Bill No. 40, extending the Franchise agreement to December 31, 2013.

David Puntteney, Jane Greenfield, and Dan Hord have been working closely with Ken Fellman (legal counsel for Colorado Communications and Utility Alliance (CCUA) and local expert on franchise agreements), and Comcast representatives to negotiate a new franchise agreement for the City of Westminster. During negotiations, Staff from various department were asked to review and provide input on specific sections of the franchise agreement that would involve their operations. Requested changes from those departments were addressed during negotiations with Comcast. The new franchise agreement and customer service standards are based on a framework from a model agreement negotiated by the CCUA and the City of Denver. That model franchise agreement sought to 1) maintain favorable provisions and benefits in the current franchise agreement, 2) eliminate regulatory provisions that are no longer relevant, 3) address issues of changing technology and regulations in a manner that benefits the City and its citizens.

Several highlights from the new franchise agreement include:

1. Definition of Gross Revenues (Franchise section 1.29) – The City is compensated by Comcast by the receipt of a franchise fee, which is 5% of the gross revenues generated from the provisions of cable services in the City. The wording from the definition of gross revenues in the new agreement has been amended from the current franchise agreement to ensure that the 5% franchise fee generates the greatest possible revenue for the City that is permitted under federal law. In 2012, the City of Westminster received \$1,172,276 in franchise fees from Comcast.

2. Competitive Equity (Franchise section 2.6) - This provision used to be called “level playing field” and required the franchise authority to impose comparable terms and conditions on any new entrant requesting a franchise within the City. A new provision, allowed by the FCC to promote competition and known as “competitive equity”, generally indicate that the City can offer a new franchise to any other operator on any terms and conditions it chooses, but if those terms and conditions are more favorable than the incumbent cable operator’s franchise, that incumbent would have the right to force the City to change the terms of its franchise to match the terms offered to the new competitor. The CCA and City of Denver were able to negotiate language into the model agreement that is more equitable for cities. The negotiated new agreement for Westminster contains these same provisions, which provides that if a new cable operator is given a franchise that Comcast believes is a better deal, then Comcast will be obligated to demonstrate in writing why they view the deal is better, and then provide specific language that it deems appropriate for a franchise amendment. The parties are required to negotiate, and there is no obligation that the City accept Comcast’s position. If there is a dispute that cannot be resolved, either party can seek a determination in Court on whether the new terms for the existing franchise are required.
3. Public, Educational and Government (PEG) provisions and fees (Franchise sections 9.1 – 9.4 and section 9.6) – The new franchise agreement includes specific provisions that offer opportunities to meet future public, educational and government programming needs. The agreement provides the City with the option to have two SD channels and two HD channels. Upon execution of the agreement, Comcast will provide one SD channel for PEG use. At any time following execution of the agreement and with 120 day notice, Comcast will provide one additional SD channel. Additionally, with 120 day notice following execution of the agreement, Comcast has agreed to provide one HD channel for PEG use. Thirty-six months from the execution date of the agreement, Comcast will provide a second HD channel. There are franchise provisions which govern use and minimum programming requirements for PEG HD channels. While there are no PEG HD channel needs within Westminster today, these negotiated provisions provide the City with future options for public, educational or government programming. Section 9.6 of the franchise agreement provides the option for the City to initiate a PEG fee to be paid by subscribers in an amount not to exceed \$.50/month to fund capital costs related to PEG access channels.
4. Web-based Video on Demand and Streaming (Franchise section 9.5) – the new franchise agreement provides the City with a no cost business class broadband connection and all necessary hardware to enable the City to deliver web based PEG content programming in addition to or as an alternative to PEG channel delivery. Under the terms of the new agreement, Comcast will provide the City with a one-time grant of \$7,500 to purchase a video on demand server for facilitating web-based access programming.
5. Language and compliance with Westminster City Code - The new franchise agreement removes obsolete language and updates verbiage to comply with standard practices and Westminster City Code.

Staff is confident that the negotiated franchise agreement will effectively meet the City’s current as well as future cable-related needs.

Attached are the new proposed franchise agreement and customer service standards for City Council review.

SUBJECT: Public Hearing and Action re Comcast Franchise Agreement

Page 4

Execution of this new franchise agreement and Customer Service Standards will support the City Council strategic plan goal of “Financially Sustainable City Government Providing Exceptional Services.”

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Councillor’s Bill with Exhibit A Franchise Agreement
- Resolution with Exhibit A Customer Service Standards

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **50**

SERIES OF 2013

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE GRANTING A CABLE TELEVISION SERVICES FRANCHISE
TO COMCAST OF COLORADO IX, LLC**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council of the City of Westminster hereby finds:

a. COMCAST OF COLORADO IX, LLC was granted a franchise pursuant to the laws of the State of Colorado and the City Charter and said franchise will expire on midnight, December 31, 2013 ; and

b. COMCAST OF COLORADO IX, LLC has applied for a renewed ten-year cable television services franchise; and

c. The public interest will be served by granting a non-exclusive right to COMCAST OF COLORADO IX, LLC to make reasonable use of the City streets and utility easements in order that it may provide cable television services to the residents and businesses within the City; and

d. All provisions of the City Charter regarding grants of franchise have been met.

Section 2. The City Council of the City of Westminster hereby grants to COMCAST OF COLORADO IX, LLC, a franchise, in the form attached as Exhibit A hereto and which is herein incorporated by reference, for a period of ten years, commencing on January 1, 2014, and authorizes the Mayor and the City Manager to sign the same.

Section 3. Chapter 4 of Title XVI of the Westminster Municipal Code is repealed in its entirety.

Section 4. This ordinance shall take effect upon its passage after second reading. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 25th day of November, 2013.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 9th day of December, 2013.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

EXHIBIT A

CABLE FRANCHISE AGREEMENT

**COMCAST OF COLORADO IX, LLC AND
THE CITY OF WESTMINSTER, COLORADO**

CABLE FRANCHISE AGREEMENT

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**COMCAST OF COLORADO IX, LLC AND
CITY OF WESTMINSTER, COLORADO**

CABLE FRANCHISE AGREEMENT

SECTION 1. DEFINITIONS AND EXHIBITS

(A) DEFINITIONS

For the purposes of this Franchise, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

1.1 “Access” means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including the City and its designees, of the Cable System to acquire, create, receive, and distribute video Cable Services and other services and signals as permitted under Applicable Law including, but not limited to:

a. “Public Access” means Access where community-based, noncommercial organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary users.

b. “Educational Access” means Access where schools are the primary users having editorial control over programming and services. For purposes of this definition, “school” means any State-accredited educational institution, public or private, including, for example, primary and secondary schools, colleges and universities.

c. “Government Access” means Access where governmental institutions or their designees are the primary users having editorial control over programming and services.

1.2 “Access Channel” means any Channel, or portion thereof, designated for Access purposes or otherwise made available to facilitate or transmit Access programming or services.

1.3 “Activated” means the status of any capacity or part of the Cable System in which any Cable Service requiring the use of that capacity or part is available without further installation of system equipment, whether hardware or software.

1.4 “Affiliate,” when used in connection with Grantee, means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

1.5 “Applicable Law” means any statute, ordinance, judicial decision, executive order or regulation having the force and effect of law, that determines the legal standing of a case or issue.

1.6 “Bad Debt” means amounts lawfully billed to a Subscriber and owed by the Subscriber for Cable Service and accrued as revenues on the books of Grantee, but not collected after reasonable efforts have been made by Grantee to collect the charges.

1.7 “Basic Service” is the level of programming service which includes, at a minimum, all Broadcast Channels, all PEG SD Access Channels required in this Franchise, and any additional Programming added by the Grantee, and is made available to all Cable Services Subscribers in the Franchise Area.

1.8 “Broadcast Channel” means local commercial television stations, qualified low power stations and qualified local noncommercial educational television stations, as referenced under 47 USC § 534 and 535.

1.9 “Broadcast Signal” means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System by antenna, microwave, satellite dishes or any other means.

1.10 “Cable Act” means the Title VI of the Communications Act of 1934, as amended.

1.11 “Cable Operator” means any Person or groups of Persons, including Grantee, who provide(s) Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System or who otherwise control(s) or is (are) responsible for, through any arrangement, the management and operation of such a Cable System.

1.12 “Cable Service” means the one-way transmission to Subscribers of video programming or other programming service, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.13 “Cable System” means any facility, including Grantee’s, consisting of a set of closed transmissions paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any Right-of-Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with federal statutes; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

1.14 “Channel” means a portion of the electromagnetic frequency spectrum which is used in the Cable System and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

1.15 “City” is the City of Westminster, Colorado, a body politic and corporate under the laws of the State of Colorado.

1.16 “City Council” means the Westminster City Council, or its successor, the governing body of the City of Westminster, Colorado.

1.17 “Colorado Communications and Utility Alliance” or “CCUA” means the non-profit entity formed by franchising authorities and/or local governments in Colorado or its successor entity, whose purpose is, among other things, to communicate with regard to franchising matters collectively and cooperatively.

1.18 “Commercial Subscribers” means any Subscribers other than Residential Subscribers.

1.19 “Designated Access Provider” means the entity or entities designated now or in the future by the City to manage or co-manage Access Channels and facilities. The City may be a Designated Access Provider.

1.20 “Digital Starter Service” means the Tier of optional video programming services, which is the level of Cable Service received by most Subscribers above Basic Service, and does not include Premium Services.

1.21 “Downstream” means carrying a transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.

1.22 “Dwelling Unit” means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy. Buildings with more than one set of facilities for cooking shall be considered Multiple Dwelling Units unless the additional facilities are clearly accessory.

1.23 “FCC” means the Federal Communications Commission.

1.24 “Fiber Optic” means a transmission medium of optical fiber cable, along with all associated electronics and equipment, capable of carrying Cable Service by means of electric lightwave impulses.

1.25 “Franchise” means the document in which this definition appears, *i.e.*, the contractual agreement, executed between the City and Grantee, containing the specific provisions of the authorization granted, including references, specifications, requirements and other related matters.

1.26 “Franchise Area” means the area within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise.

1.27 “Franchise Fee” means that fee payable to the City described in subsection 3.1 (A).

1.28 “Grantee” means Comcast of Colorado IX, LLC or its lawful successor, transferee or assignee.

1.29 “Gross Revenues” means, and shall be construed broadly to include all revenues derived directly or indirectly by Grantee and/or an Affiliated Entity that is the cable operator of the Cable System, from the operation of Grantee’s Cable System to provide Cable Services within the City. Gross revenues include, by way of illustration and not limitation:

- monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event and video-on-demand Cable Services);
- installation, reconnection, downgrade, upgrade or similar charges associated with changes in subscriber Cable Service levels;
- fees paid to Grantee for channels designated for commercial/leased access use and shall be allocated on a pro rata basis using total Cable Service subscribers within the City;
- converter, remote control, and other Cable Service equipment rentals, leases, or sales;
- Advertising Revenues as defined herein;
- late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the City;
- revenues from program guides;
- Franchise Fees;
- FCC Regulatory Fees; and,
- commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service subscribers within the City.

(A) “Advertising Revenues” shall mean revenues derived from sales of advertising that are made available to Grantee’s Cable System subscribers within the City and shall be allocated on a pro rata basis using total Cable Service subscribers reached by the advertising. Additionally, Grantee agrees that Gross Revenues subject to franchise fees shall include all commissions, rep fees, Affiliated Entity fees, or rebates paid to National Cable Communications (“NCC”) and Comcast Spotlight (“Spotlight”) or their successors associated with sales of

advertising on the Cable System within the City allocated according to this paragraph using total Cable Service subscribers reached by the advertising.

(B) “Gross Revenues” shall not include:

- actual bad debt write-offs, except any portion which is subsequently collected which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total subscriber revenues within the City;
- any taxes and/or fees on services furnished by Grantee imposed by any municipality, state or other governmental unit, provided that Franchise Fees and the FCC regulatory fee shall not be regarded as such a tax or fee;
- fees imposed by any municipality, state or other governmental unit on Grantee including but not limited to Public, Educational and Governmental (PEG) Fees;
- launch fees and marketing co-op fees; and,
- unaffiliated third party advertising sales agency fees which are reflected as a deduction from revenues.

(C) To the extent revenues are received by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a *pro rata* basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the City. The City reserves its right to review and to challenge Grantee’s calculations.

(D) Grantee reserves the right to change the allocation methodologies set forth in this Section 1.29 in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”). Grantee will explain and document the required changes to the City within three (3) months of making such changes, and as part of any audit or review of franchise fee payments, and any such changes shall be subject to 1.29(E) below.

(E) Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles (“GAAP”) as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”). Notwithstanding the forgoing, the City reserves its right to challenge Grantee’s calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the

SEC.

1.30 “Headend” means any facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals, equipment for the Interconnection of the Cable System with adjacent Cable Systems and Interconnection of any networks which are part of the Cable System, and all other related equipment and facilities.

1.31 “Leased Access Channel” means any Channel or portion of a Channel commercially available for video programming by Persons other than Grantee, for a fee or charge.

1.32 “Manager” means the City Manager of the City or designee.

1.33 “Person” means any individual, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.

1.34 “Premium Service” means programming choices (such as movie Channels, pay-per-view programs, or video on demand) offered to Subscribers on a per-Channel, per-program or per-event basis.

1.35 “Residential Subscriber” means any Person who receives Cable Service delivered to Dwelling Units or Multiple Dwelling Units, excluding such Multiple Dwelling Units billed on a bulk-billing basis.

1.36 “Right-of-Way” means each of the following that have been dedicated to the public or the City or are hereafter dedicated to the public or the City and that are maintained under public authority and located within the City: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements, rights-of-way and similar public property and areas. Right-of-way does not include City parkland or open space land or any other property owned or controlled by the City in its proprietary capacity.

1.37 “State” means the State of Colorado.

1.38 “Subscriber” means any Person who or which elects to subscribe to, for any purpose, Cable Service provided by Grantee by means of or in connection with the Cable System and whose premises are physically wired and lawfully Activated to receive Cable Service from Grantee's Cable System, and who is in compliance with Grantee's regular and nondiscriminatory terms and conditions for receipt of service.

1.39 “Subscriber Network” means that portion of the Cable System used primarily by Grantee in the transmission of Cable Services to Residential Subscribers.

1.40 “Telecommunications” means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received (as provided in 47 U.S.C. Section 153(43)).

1.41 “Telecommunications Service” means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used (as provided in 47 U.S.C. Section 153(46)).

1.42 “Tier” means a group of Channels for which a single periodic subscription fee is charged.

1.43 “Two-Way” means that the Cable System is capable of providing both Upstream and Downstream transmissions.

1.44 “Upstream” means carrying a transmission to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

(B) EXHIBITS

The following documents, which are occasionally referred to in this Franchise, are formally incorporated and made a part of this Franchise by this reference:

- 1) *Exhibit A*, entitled Customer Service Standards.
- 2) *Exhibit B*, entitled Report Form.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

(A) The City hereby grants to Grantee a nonexclusive authorization to make reasonable and lawful use of the Rights-of-Way within the City to construct, operate, maintain, reconstruct and rebuild a Cable System for the purpose of providing Cable Service subject to the terms and conditions set forth in this Franchise and in any prior utility or use agreements entered into by Grantee with regard to any individual property. This Franchise shall constitute both a right and an obligation to provide the Cable Services required by, and to fulfill the obligations set forth in, the provisions of this Franchise.

(B) Nothing in this Franchise shall be deemed to waive the lawful requirements of any generally applicable City ordinance existing as of the Effective Date, as defined in subsection 2.3.

(C) Each and every term, provision or condition herein is subject to the provisions of State law, federal law, the Charter of the City, and the ordinances and regulations enacted pursuant thereto. The Charter and Municipal Code of the City, as the same may be amended from time to time, are hereby expressly incorporated into this Franchise as if fully set out herein by this reference. Notwithstanding the foregoing, the City may not unilaterally alter the material rights and obligations of Grantee under this Franchise.

(D) This Franchise shall not be interpreted to prevent the City from imposing additional lawful conditions, including additional compensation conditions for use of the Rights-of-Way, should Grantee provide service other than Cable Service.

(E) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the obligations of this Franchise.

(F) No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City;

(2) Any permit, agreement, or authorization required by the City for Right-of-Way users in connection with operations on or in Rights-of-Way or public property including, by way of example and not limitation, street cut permits; or

(3) Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Franchise including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

(G) This Franchise is intended to convey limited rights and interests only as to those Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide the Grantee with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

(H) This Franchise does not authorize Grantee to provide Telecommunications Service, or to construct, operate or maintain Telecommunications facilities. This Franchise is not a bar to the provision of non-Cable Services, or to the imposition of any lawful conditions on Grantee with respect to Telecommunications, whether similar, different or the same as the conditions specified herein. This Franchise does not relieve Grantee of any obligation it may have to obtain from the City an authorization to provide Telecommunications Services, or to construct, operate or maintain Telecommunications facilities, or relieve Grantee of its obligation to comply with any such authorizations that may be lawfully required.

2.2 Use of Rights-of-Way

(A) Subject to the City's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Rights-of-Way within the City such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the City. Grantee, through this Franchise, is granted extensive and valuable rights to operate its Cable System for profit using the City's Rights-of-Way in compliance with all applicable City construction codes and procedures. As trustee for the public, the City is entitled to fair compensation as provided for in Section 3 of this

Franchise to be paid for these valuable rights throughout the term of the Franchise.

(B) Grantee must follow City established nondiscriminatory requirements for placement of Cable System facilities in Rights-of-Way, including the specific location of facilities in the Rights-of-Way, and must in any event install Cable System facilities in a manner that minimizes interference with the use of the Rights-of-Way by others, including others that may be installing communications facilities. Within limits reasonably related to the City's role in protecting public health, safety and welfare, the City may require that Cable System facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Right-of-Way; may deny access if Grantee is not willing to comply with City's requirements; and may remove, or require removal of, any facility that is not installed by Grantee in compliance with the requirements established by the City, or which is installed without prior City approval of the time, place or manner of installation, and charge Grantee for all the costs associated with removal; and may require Grantee to cooperate with others to minimize adverse impacts on the Rights-of-Way through joint trenching and other arrangements.

2.3 Effective Date and Term of Franchise

This Franchise and the rights, privileges and authority granted hereunder shall take effect on January 1, 2014 (the "Effective Date"), and shall terminate on December 31, 2023 unless terminated sooner as hereinafter provided.

2.4 Franchise Nonexclusive

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements or licenses granted by the City to any Person to use any property, Right-of-Way, right, interest or license for any purpose whatsoever, including the right of the City to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. The City may at any time grant authorization to use the Rights-of-Way for any purpose not incompatible with Grantee's authority under this Franchise and for such additional franchises for Cable Systems as the City deems appropriate.

2.5 Police Powers

Grantee's rights hereunder are subject to the police powers of the City to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all laws and ordinances of general applicability enacted, or hereafter enacted, by the City or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The City shall have the right to adopt, from time to time, such ordinances as may be deemed necessary in the exercise of its police power; provided that such hereinafter enacted ordinances shall be reasonable and not materially modify the terms of this Franchise. Any conflict between the provisions of this Franchise and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

2.6 Competitive Equity

(A) The Grantee acknowledges and agrees that the City reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Cable Services within the City. If the City grants such an additional franchise or other similar lawful authorization containing material terms and conditions that differ from Grantee's material obligations under this Franchise, then the City agrees that the obligations in this Franchise will, pursuant to the process set forth in this Section, be amended to include any material terms or conditions that it imposes upon the new entrant, or provide relief from existing material terms or conditions, so as to insure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: Franchise Fees and Gross Revenues; insurance; System build-out requirements; security instruments; Public, Education and Government Access Channels and support; customer service standards; required reports and related record keeping; competitive equity (or its equivalent); audits; dispute resolution; remedies; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are materially equivalent. Video programming services (as defined in the Cable Act) delivered over wireless broadband networks are specifically exempted from the requirements of this Section.

(B) The modification process of this Franchise as provided for in Section 2.6 (A) shall only be initiated by written notice by the Grantee to the City regarding specified franchise obligations. Grantee's notice shall address the following: (1) identifying the specific terms or conditions in the competitive cable services franchise which are materially different from Grantee's obligations under this Franchise; (2) identifying the Franchise terms and conditions for which Grantee is seeking amendments; (3) providing text for any proposed Franchise amendments to the City, with a written explanation of why the proposed amendments are necessary and consistent.

(C) Upon receipt of Grantee's written notice as provided in Section 2.6 (B), the City and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed Franchise modifications, and that such negotiation will proceed and conclude within a ninety (90) day time period, unless that time period is reduced or extended by mutual agreement of the parties. If the City and Grantee reach agreement on the Franchise modifications pursuant to such negotiations, then the City shall amend this Franchise to include the modifications.

(D) In the alternative to Franchise modification negotiations as provided for in Section 2.6 (C), or if the City and Grantee fail to reach agreement in such negotiations, Grantee may, at its option, elect to replace this Franchise by opting into the franchise or other similar lawful authorization that the City grants to another provider of Cable Services, so as to insure that the regulatory and financial burdens on each entity are equivalent. If Grantee so elects, the City shall immediately commence proceedings to replace this Franchise with the franchise issued to the other Cable Services provider.

(E) Notwithstanding anything contained in this Section 2.6(A) through (D) to the contrary, the City shall not be obligated to amend or replace this Franchise unless the new entrant makes Cable Services available for purchase by Subscribers or customers under its franchise agreement with the City.

(F) Notwithstanding any provision to the contrary, at any time that non-wireless facilities based entity, legally authorized by state or federal law, makes available for purchase by Subscribers or customers, Cable Services or multiple Channels of video programming within the Franchise Area without a franchise or other similar lawful authorization granted by the City, then:

(1) Grantee may negotiate with the City to seek Franchise modifications as per Section 2.6(C) above; or

(a) the term of Grantee's Franchise shall, upon ninety (90) days written notice from Grantee, be shortened so that the Franchise shall be deemed to expire on a date eighteen (18) months from the first day of the month following the date of Grantee's notice; or,

(b) Grantee may assert, at Grantee's option, that this Franchise is rendered "commercially impracticable," and invoke the modification procedures set forth in Section 625 of the Cable Act.

2.7 Familiarity with Franchise

The Grantee acknowledges and warrants by acceptance of the rights, privileges and agreements granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all lawful and reasonable risks of the meaning of the provisions, terms and conditions herein. The Grantee further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise, and finds that the same are commercially practicable at this time, and consistent with all local, State and federal laws and regulations currently in effect, including the Cable Act.

2.8 Effect of Acceptance

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the City's legal right to issue and enforce the Franchise; (2) accepts and agrees to comply with each and every provision of this Franchise subject to Applicable Law; and (3) agrees that the Franchise was granted pursuant to processes and procedures consistent with Applicable Law, and that it will not raise any claim to the contrary.

SECTION 3. FRANCHISE FEE PAYMENT AND FINANCIAL CONTROLS

3.1 Franchise Fee

As compensation for the benefits and privileges granted under this Franchise and in consideration of permission to use the City's Rights-of-Way, Grantee shall continue to pay as a Franchise Fee to the City, throughout the duration of and consistent with this Franchise, an amount equal to 5 percent (5%) of Grantee's Gross Revenues.

3.2 Payments

Grantee's Franchise Fee payments to the City shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than thirty (30) days after said dates.

3.3 Acceptance of Payment and Recomputation

No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the performance of any other obligation of Grantee.

3.4 Quarterly Franchise Fee Reports

Each payment shall be accompanied by a written report to the City, or concurrently sent under separate cover, verified by an authorized representative of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross Revenues of the Cable System.

3.5 Annual Franchise Fee Reports

Grantee shall, within sixty (60) days after the end of each year, furnish to the City a statement stating the total amount of Gross Revenues for the year and all payments, deductions and computations for the period.

3.6 Audits

On an annual basis, upon thirty (30) days prior written notice, the City, including the City's Auditor or his/her authorized representative, shall have the right to conduct an independent audit/review of Grantee's records reasonably related to the administration or enforcement of this Franchise. Pursuant to subsection 1.29, as part of the Franchise Fee audit/review the City shall specifically have the right to review relevant data related to the allocation of revenue to Cable Services in the event Grantee offers Cable Services bundled with non-Cable Services. For purposes of this section, "relevant data" shall include, at a minimum, Grantee's records, produced and maintained in the ordinary course of business, showing the

subscriber counts per package and the revenue allocation per package for each package that was available for City subscribers during the audit period. To the extent that the City does not believe that the relevant data supplied is sufficient for the City to complete its audit/review, the City may require other relevant data. For purposes of this Section 3.6, the “other relevant data” shall generally mean all: (1) billing reports, (2) financial reports (such as General Ledgers) and (3) sample customer bills used by Grantee to determine Gross Revenues for the Franchise Area that would allow the City to recompute the Gross Revenue determination. If the audit/review shows that Franchise Fee payments have been underpaid by five percent (5%) or more (or such other contract underpayment threshold as set forth in a generally applicable and enforceable regulation or policy of the City related to audits), Grantee shall pay the total cost of the audit/review, such cost not to exceed five thousand dollars (\$5,000) for each year of the audit period. The City’s right to audit/review and the Grantee’s obligation to retain records related to this subsection shall expire three (3) years after each Franchise Fee payment has been made to the City.

3.7 Late Payments

In the event any payment due quarterly is not received within thirty (30) days from the end of the calendar quarter, Grantee shall pay interest on the amount due in the amount of one-half percent (1/2%) per month for each month past due in accordance with Westminster City Code section 1.8.2, or as it may be amended in the future.

3.8 Underpayments

If a net Franchise Fee underpayment is discovered as the result of an audit, Grantee shall pay interest in the amount of one-half percent (1/2%) per month for each month past due in accordance with Westminster City Code section 1.8.2, or as it may be amended in the future, calculated from the date each portion of the underpayment was originally due until the date Grantee remits the underpayment to the City.

3.9 Alternative Compensation

In the event the obligation of Grantee to compensate the City through Franchise Fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall pay to the City compensation equivalent to the compensation paid to the City by other similarly situated users of the City's Rights-of-Way for Grantee's use of the City's Rights-of-Way, provided that in no event shall such payments exceed the equivalent of five percent (5%) of Grantee's Gross Revenues (subject to the other provisions contained in this Franchise), to the extent consistent with Applicable Law.

3.10 Maximum Legal Compensation

The parties acknowledge that, at present, applicable federal law limits the City to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that at any time during the duration of this Franchise, the City is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then this Franchise may be

amended unilaterally by the City to provide that such excess amount shall be added to the Franchise Fee payments to be paid by Grantee to the City hereunder, provided that Grantee has received at least ninety (90) days prior written notice from the City of such amendment, so long as all cable operators in the City are paying the same Franchise Fee amount.

3.11 Additional Commitments Not Franchise Fee Payments

No term or condition in this Franchise, including the funding required by Section 9, shall in any way modify or affect Grantee's obligation to pay Franchise Fees. Although the total sum of Franchise Fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's Gross Revenues in any twelve (12) month period, Grantee agrees that the additional commitments herein are not Franchise Fees as defined under any federal law, nor are they to be offset or credited against any Franchise Fee payments due to the City, nor do they represent an increase in Franchise Fees.

3.12 Tax Liability

The Franchise Fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the City, the State or the United States including, without limitation, sales, use and other taxes, business license fees or other payments. Payment of the Franchise Fees under this Franchise shall not exempt Grantee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by the City. Any other license fees, taxes or charges shall be of general applicability in nature and shall not be levied against Grantee solely because of its status as a Cable Operator, or against Subscribers, solely because of their status as such.

3.13 Financial Records

Grantee agrees to meet with a representative of the City upon request to review Grantee's methodology of record-keeping, financial reporting, the computing of Franchise Fee obligations and other procedures, the understanding of which the City deems necessary for reviewing reports and records.

3.14 Payment on Termination

If this Franchise terminates for any reason, the Grantee shall file with the City within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The City reserves the right to satisfy any remaining financial obligations of the Grantee to the City by utilizing the funds available in the letter of credit or other security provided by the Grantee.

SECTION 4. ADMINISTRATION AND REGULATION

4.1 Authority

(A) The City shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under Federal, State and local law, to any agent including, but not limited to, the CCUA, in its sole discretion.

(B) Nothing in this Franchise shall limit nor expand the City's right of eminent domain under State law.

4.2 Rates and Charges

All of Grantee's rates and charges related to or regarding Cable Services shall be subject to regulation by the City to the full extent authorized by applicable federal, State and local laws.

4.3 Rate Discrimination

All of Grantee's rates and charges shall be published (in the form of a publicly-available rate card) and be non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with Applicable Law, with identical rates and charges for all Subscribers receiving identical Cable Services, without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability or geographic location within the City. Grantee shall offer the same Cable Services to all Residential Subscribers at identical rates to the extent required by Applicable Law and to Multiple Dwelling Unit Subscribers to the extent authorized by FCC rules or applicable Federal law. Grantee shall permit Subscribers to make any lawful in-residence connections the Subscriber chooses without additional charge nor penalizing the Subscriber therefor. However, if any in-home connection requires service from Grantee due to signal quality, signal leakage or other factors, caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the Subscriber may be charged reasonable service charges by Grantee. Nothing herein shall be construed to prohibit:

(A) The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns; or,

(B) The offering of reasonable discounts to senior citizens or economically disadvantaged citizens; or,

(C) The offering of rate discounts for Cable Service; or,

(D) The Grantee from establishing different and nondiscriminatory rates and charges and classes of service for Commercial Subscribers, as allowable by federal law and regulations.

4.4 Filing of Rates and Charges

(A) Throughout the term of this Franchise, Grantee shall maintain on file with the City a complete schedule of applicable rates and charges for Cable Services provided under this Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.

(B) Upon request of the City, Grantee shall provide a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Grantee. The schedule shall include a description of the price, terms, and conditions established by Grantee for Leased Access Channels.

4.5 Cross Subsidization

Grantee shall comply with all Applicable Laws regarding rates for Cable Services and all Applicable Laws covering issues of cross subsidization.

4.6 Reserved Authority

Both Grantee and the City reserve all rights they may have under the Cable Act and any other relevant provisions of federal, State, or local law.

4.7 Time Limits Strictly Construed

Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a breach of this Franchise, and sufficient grounds for the City to invoke any relevant remedy in accordance with Sections 13.1 and 13.2 of this Franchise.

4.8 Franchise Amendment Procedure

Either party may at any time seek an amendment of this Franchise by so notifying the other party in writing. Within thirty (30) business days of receipt of notice, the City and Grantee shall meet to discuss the proposed amendment(s). If the parties reach a mutual agreement upon the suggested amendment(s), such amendment(s) shall be submitted to the City Council for its approval. If so approved by the City Council and the Grantee, then such amendment(s) shall be deemed part of this Franchise. If mutual agreement is not reached, there shall be no amendment.

4.9 Performance Evaluations

(A) The City may hold performance evaluation sessions upon ninety (90) days written notice, provided that such evaluation sessions shall be held no more frequently than once every two (2) years. All such evaluation sessions shall be conducted by the City.

(B) Special evaluation sessions may be held at any time by the City during the term of this Franchise, upon ninety (90) days written notice to Grantee.

(C) All regular evaluation sessions shall be open to the public and announced at least two (2) weeks in advance in any manner within the discretion of the City. Grantee shall also include with or on the Subscriber billing statements for the billing period immediately preceding the commencement of the session, written notification of the date, time, and place of the regular performance evaluation session, and any special evaluation session as required by the City, provided Grantee receives appropriate advance notice.

(D) Topics which may be discussed at any evaluation session may include, but are not limited to, Cable Service rate structures; Franchise Fee payments; liquidated damages; free or discounted Cable Services; application of new technologies; Cable System performance; Cable Services provided; programming offered; Subscriber complaints; privacy; amendments to this Franchise; judicial and FCC rulings; line extension policies; and the City or Grantee's rules; provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise.

(E) During evaluations under this subsection, Grantee shall fully cooperate with the City and shall provide such information and documents as the City may reasonably require to perform the evaluation.

4.10 Late Fees

(A) For purposes of this subsection, any assessment, charge, cost, fee or sum, however characterized, that the Grantee imposes upon a Subscriber solely for late payment of a bill is a late fee and shall be applied in accordance with the City's Customer Service Standards, as the same may be amended from time to time by the City Council acting by ordinance or resolution, or as the same may be superseded by legislation or final court order.

(B) Nothing in this subsection shall be deemed to create, limit or otherwise affect the ability of the Grantee, if any, to impose other assessments, charges, fees or sums other than those permitted by this subsection, for the Grantee's other services or activities it performs in compliance with Applicable Law, including FCC law, rule or regulation.

(C) The Grantee's late fee and disconnection policies and practices shall be nondiscriminatory and such policies and practices, and any fees imposed pursuant to this subsection, shall apply equally in all parts of the City without regard to the neighborhood or income level of the Subscriber.

4.11 Force Majeure

In the event Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond the control of Grantee, Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is satisfactory to the City. Those conditions which

are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, work stoppages or labor disputes, power outages, telephone network outages, and severe or unusual weather conditions which have a direct and substantial impact on the Grantee's ability to provide Cable Services in the City and which was not caused and could not have been avoided by the Grantee which used its best efforts in its operations to avoid such results.

If Grantee believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Franchise, Grantee shall provide documentation as reasonably required by the City to substantiate the Grantee's claim. If Grantee has not yet cured the deficiency, Grantee shall also provide the City with its proposed plan for remediation, including the timing for such cure.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Indemnification

(A) General Indemnification. Grantee shall indemnify, defend and hold the City, its officers, officials, boards, commissions, agents and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses, arising from any casualty or accident to Person or property, including, without limitation, copyright infringement, defamation, and all other damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, or any other act done under this Franchise, by or for Grantee, its agents, or its employees, or by reason of any neglect or omission of Grantee. Grantee shall consult and cooperate with the City while conducting its defense of the City.

(B) Indemnification for Relocation. Grantee shall indemnify the City for any damages, claims, additional costs or reasonable expenses assessed against, or payable by, the City arising out of, or resulting from, directly or indirectly, Grantee's failure to remove, adjust or relocate any of its facilities in the Rights-of-Way in a timely manner in accordance with any relocation required by the City.

(C) Additional Circumstances. Grantee shall also indemnify, defend and hold the City harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses in any way arising out of:

(1) The lawful actions of the City in granting this Franchise to the extent such actions are consistent with this Franchise and Applicable Law.

(2) Damages arising out of any failure by Grantee to secure consents from the owners, authorized distributors, or licensees/licensors of programs to be delivered by the Cable System, whether or not any act or omission complained of is authorized, allowed or prohibited by this Franchise.

(D) Procedures and Defense. If a claim or action arises, the City or any other indemnified party shall promptly tender the defense of the claim to Grantee, which defense shall be at Grantee's expense. The City may participate in the defense of a claim, but if Grantee provides a defense at Grantee's expense then Grantee shall not be liable for any attorneys' fees, expenses or other costs that City may incur if it chooses to participate in the defense of a claim, unless and until separate representation as described below in Paragraph 5.1(F) is required. In that event the provisions of Paragraph 5.1(F) shall govern Grantee's responsibility for City's/County's/Town's attorney's fees, expenses or other costs. In any event, Grantee may not agree to any settlement of claims affecting the City without the City's approval.

(E) Non-waiver. The fact that Grantee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Grantee's duty of defense and indemnification under this subsection.

(F) Expenses. If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest between the City and the counsel selected by Grantee to represent the City, Grantee shall pay, from the date such separate representation is required forward, all reasonable expenses incurred by the City in defending itself with regard to any action, suit or proceeding indemnified by Grantee. Provided, however, that in the event that such separate representation is or becomes necessary, and City desires to hire counsel or any other outside experts or consultants and desires Grantee to pay those expenses, then City shall be required to obtain Grantee's consent to the engagement of such counsel, experts or consultants, such consent not to be unreasonably withheld. The City's expenses shall include all reasonable out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by the City Attorney or his/her assistants or any employees of the City or its agents but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Grantee.

5.2 Insurance

(A) Grantee shall maintain in full force and effect at its own cost and expense each of the following policies of insurance:

(1) Commercial General Liability insurance with limits of no less than one million dollars (\$1,000,000.00) per occurrence and one million dollars (\$1,000,000.00) general aggregate. Coverage shall be at least as broad as that provided by ISO CG 00 01 1/96, as amended, or its equivalent and include severability of interests. Such insurance shall name the City, its officers, officials and employees as additional insureds per ISO CG 2026, as amended, or its equivalent. There shall be a waiver of subrogation and rights of recovery against the City, its officers, officials and employees. Coverage shall apply as to claims between insureds on the policy, if applicable.

(2) Commercial Automobile Liability insurance with minimum combined single limits of one million dollars (\$1,000,000.00) each occurrence with respect to each of Grantee's owned, hired and non-owned vehicles assigned to or used in the operation of the Cable System in the City. The policy shall contain a severability of interests

provision.

(B) The insurance shall not be canceled or materially changed so as to be out of compliance with these requirements without thirty (30) days' written notice first provided to the City, via certified mail, and ten (10) days' notice for nonpayment of premium. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this subsection within the term of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, for the duration of this Franchise and, in the case of the Commercial General Liability, for at least one (1) year after expiration of this Franchise.

5.3 Deductibles / Certificate of Insurance

Any deductible of the policies shall not in any way limit Grantee's liability to the City.

(A) Endorsements.

(1) All policies shall contain, or shall be endorsed so that:

(a) The City, its officers, officials, boards, commissions, employees and agents are to be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by, or on behalf of, Grantee under this Franchise or Applicable Law, or in the construction, operation or repair, or ownership of the Cable System;

(b) Grantee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, boards, commissions, employees and agents. Any insurance or self-insurance maintained by the City, its officers, officials, boards, commissions, employees and agents shall be in excess of the Grantee's insurance and shall not contribute to it; and

(c) Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

(B) Acceptability of Insurers. The insurance obtained by Grantee shall be placed with insurers with a Best's rating of no less than "A VII."

(C) Verification of Coverage. The Grantee shall furnish the City with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices.

(D) Self-Insurance In the alternative to providing a certificate of insurance to the City certifying insurance coverage as required above, Grantee may provide self-insurance in the same amount and level of protection for Grantee and City, its officers, agents and employees as otherwise required under this Section. The adequacy of self-insurance shall be subject to the periodic review and approval of the City.

5.4 Letter of Credit

(A) If there is a claim by the City of an uncured breach by Grantee of a material provision of this Franchise or pattern of repeated violations of any provision(s) of this Franchise, then the City may require and Grantee shall establish and provide within thirty (30) days from receiving notice from the City, to the City as security for the faithful performance by Grantee of all of the provisions of this Franchise, a letter of credit from a financial institution satisfactory to the City in the amount of fifty thousand dollars (\$50,000).

(B) In the event that Grantee establishes a letter of credit pursuant to the procedures of this Section, then the letter of credit shall be maintained at fifty thousand dollars (\$50,000) until the allegations of the uncured breach have been resolved.

(C) As an alternative to the provision of a Letter of Credit to the City as set forth in Subsections 5.4 (A) and (B) above, if the City is a member of CCUA, and if Grantee provides a Letter of Credit to CCUA in an amount agreed to between Grantee and CCUA for the benefit of its members, in order to collectively address claims reference in 5.4 (A), Grantee shall not be required to provide a separate Letter of Credit to the City.

(D) After completion of the procedures set forth in Section 13.1 or other applicable provisions of this Franchise, the letter of credit may be drawn upon by the City for purposes including, but not limited to, the following:

(1) Failure of Grantee to pay the City sums due under the terms of this Franchise;

(2) Reimbursement of costs borne by the City to correct Franchise violations not corrected by Grantee;

(3) Monetary remedies or damages assessed against Grantee due to default or breach of Franchise requirements; and,

(4) Failure to comply with the Customer Service Standards of the City, as the same may be amended from time to time by the City Council acting by ordinance or resolution.

(E) The City shall give Grantee written notice of any withdrawal under this subsection upon such withdrawal. Within seven (7) days following receipt of such notice, Grantee shall restore the letter of credit to the amount required under this Franchise.

(F) Grantee shall have the right to appeal to the City Council for reimbursement in the event Grantee believes that the letter of credit was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes the letter of credit has not been properly drawn upon in accordance with this Franchise. Any funds the City erroneously or wrongfully withdraws from the letter of credit shall be returned to Grantee with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal.

SECTION 6. CUSTOMER SERVICE

6.1 Customer Service Standards

Grantee shall comply with Customer Service Standards of the City, as the same may be amended from time to time by the City Council in its sole discretion, acting by ordinance. Any requirement in Customer Service Standards for a “local” telephone number may be met by the provision of a toll-free number. The Customer Services Standards in effect as of the Effective Date of this Franchise are attached as Exhibit A. Grantee reserves the right to challenge any customer service ordinance which it believes is inconsistent with its contractual rights under this Franchise.

6.2 Subscriber Privacy

Grantee shall fully comply with any provisions regarding the privacy rights of Subscribers contained in federal, State, or local law.

6.3 Subscriber Contracts

Grantee shall not enter into a contract with any Subscriber that is in any way inconsistent with the terms of this Franchise, or any Exhibit hereto, or the requirements of any applicable Customer Service Standard. Upon request, Grantee will provide to the City a sample of the Subscriber contract or service agreement then in use.

6.4 Advance Notice to City

The Grantee shall use reasonable efforts to furnish information provided to Subscribers or the media in the normal course of business to the City in advance.

6.5 Identification of Local Franchise Authority on Subscriber Bills

Within sixty (60) days after written request from the City, Grantee shall place the City’s phone number and/or website URL on its Subscriber bills, to identify where a Subscriber may call to address escalated complaints.

SECTION 7. REPORTS AND RECORDS

7.1 Open Records

Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the City. The City, including the City's Auditor or his/her authorized representative, shall have access to, and the right to inspect, any books and records of Grantee, its parent corporations and Affiliates which are reasonably related to the administration or enforcement of the terms of this Franchise. Grantee shall not deny the City access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, Affiliate or a third party. The City may, in writing, request copies of any such records or books and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One (1) copy of all reports and records required under this or any other subsection shall be furnished to the City, at the sole expense of Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) days, that the City inspect them at Grantee's local offices. If any books or records of Grantee are not kept in a local office and not made available in copies to the City upon written request as set forth above, and if the City determines that an examination of such records is necessary or appropriate for the performance of any of the City's duties, administration or enforcement of this Franchise, then all reasonable travel and related expenses incurred in making such examination shall be paid by Grantee.

7.2 Confidentiality

The City agrees to treat as confidential any books or records that constitute proprietary or confidential information under federal or State law, to the extent Grantee makes the City aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under State or federal law. If the City believes it must release any such confidential books and records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If the City receives a demand from any Person for disclosure of any information designated by Grantee as confidential, the City shall, so far as consistent with Applicable Law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, the City agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee's books and records marked confidential as set forth above to any Person. Grantee shall reimburse the City for all reasonable costs and attorneys fees incurred in any legal proceedings pursued under this Section.

7.3 Records Required

(A) Grantee shall at all times maintain, and shall furnish to the City upon 30 days written request and subject to Applicable Law:

(1) A complete set of maps showing the exact location of all Cable System equipment and facilities in the Right-of-Way, but excluding detail on proprietary electronics contained therein and Subscriber drops. As-built maps including proprietary electronics shall be available at Grantee's offices for inspection by the City's authorized representative(s) or agent(s) and made available to such during the course of technical inspections as reasonably conducted by the City. These maps shall be certified as accurate by an appropriate representative of the Grantee;

(2) A copy of all FCC filings on behalf of Grantee, its parent corporations or Affiliates which relate to the operation of the Cable System in the City;

(3) Current Subscriber Records and information;

(4) A log of Cable Services added or dropped, Channel changes, number of Subscribers added or terminated, all construction activity, and total homes passed for the previous twelve (12) months; and

(5) A list of Cable Services, rates and Channel line-ups.

(B) Subject to subsection 7.2, all information furnished to the City is public information, and shall be treated as such, except for information involving the privacy rights of individual Subscribers.

7.4 Annual Reports

By March 15 of each calendar year of this Franchise Agreement, Grantee shall submit to the City's Information Technology director a written or electronic report, in a form acceptable to the City, which shall include, but not necessarily be limited to, the following information for the City:

(A) A Gross Revenue statement, as required by subsection 3.5 of this Franchise;

(B) A summary of the previous year's activities in the development of the Cable System, including, but not limited to, Cable Services begun or discontinued during the reporting year, and the number of Subscribers for each class of Cable Service (*i.e.*, Basic, Digital Starter, and Premium);

(C) The number of homes passed, beginning and ending plant miles, any services added or dropped, and any technological changes occurring in the Cable System;

(D) A statement of planned construction, if any, for the next year; and,

(E) A copy of the most recent annual report Grantee filed with the SEC or other governing body.

7.5 Copies of Federal and State Reports

Within thirty (30) days of a written request, Grantee shall submit to the City copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its parent corporation(s), to any federal, State or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Grantee's Cable System within the City. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency.

7.6 Complaint File and Reports

(A) Grantee shall keep an accurate and comprehensive file of any complaints regarding the Cable System, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints. These files shall remain available for viewing to the City during normal business hours at Grantee's local business office.

(B) Within thirty (30) days of a written request, Grantee shall provide the City a quarterly executive summary in the form attached hereto as Exhibit B, which shall include the following information from the preceding quarter:

- (1) A summary of service calls, identifying the number and nature of the requests and their disposition;
- (2) A log of all service interruptions;
- (3) A summary of customer complaints referred by the City to Grantee; and,
- (4) Such other information as reasonably requested by the City.

The parties agree that the City's request for these summary reports shall remain effective and need only be made once. Such a request shall require the Grantee to continue to provide the reports quarterly, until further written notice from the City to the contrary.

7.7 Failure to Report

The failure or neglect of Grantee to file any of the reports or filings required under this Franchise or such other reports as the City may reasonably request (not including clerical errors or errors made in good faith), may, at the City's option, be deemed a breach of this Franchise.

7.8 False Statements

Any false or misleading statement or representation in any report required by this Franchise (not including clerical errors or errors made in good faith) may be deemed a material breach of this Franchise and may subject Grantee to all remedies, legal or equitable, which are available to the City under this Franchise or otherwise.

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories

Grantee shall provide or enable the provision of at least the following initial broad categories of programming to the extent such categories are reasonably available:

- (A) Educational programming;
- (B) Colorado news, weather & information;
- (C) Sports;
- (D) General entertainment (including movies);
- (E) Children/family-oriented;
- (F) Arts, culture and performing arts;
- (G) Foreign language;
- (H) Science/documentary;
- (I) National news, weather and information; and,
- (J) Public, Educational and Government Access, to the extent required by this Franchise.

8.2 Deletion or Reduction of Broad Programming Categories

(A) Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without the prior written consent of the City.

(B) In the event of a modification proceeding under federal law, the mix and quality of Cable Services provided by Grantee on the Effective Date of this Franchise shall be deemed the mix and quality of Cable Services required under this Franchise throughout its term.

8.3 Obscenity

Grantee shall not transmit, or permit to be transmitted over any Channel subject to its editorial control, any programming which is obscene under, or violates any provision of, Applicable Law relating to obscenity, and is not protected by the Constitution of the United States. Grantee shall be deemed to have transmitted or permitted a transmission of obscene programming only if a court of competent jurisdiction has found that any of Grantee's officers or employees or agents have permitted programming which is obscene under, or violative of, any provision of Applicable Law relating to obscenity, and is otherwise not protected by the

Constitution of the United States, to be transmitted over any Channel subject to Grantee's editorial control. Grantee shall comply with all relevant provisions of federal law relating to obscenity.

8.4 Parental Control Device

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, traps or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter. Any device offered shall be at a rate, if any, in compliance with Applicable Law.

8.5 Continuity of Service Mandatory

(A) It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are honored. The Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances. For the purposes of this subsection, "uninterrupted" does not include short-term outages of the Cable System for maintenance or testing.

(B) In the event of a change of grantee, or in the event a new Cable Operator acquires the Cable System in accordance with this Franchise, Grantee shall cooperate with the City, new franchisee or Cable Operator in maintaining continuity of Cable Service to all Subscribers. During any transition period, Grantee shall be entitled to the revenues for any period during which it operates the Cable System, and shall be entitled to reasonable costs for its services when it no longer operates the Cable System.

(C) In the event Grantee fails to operate the Cable System for four (4) consecutive days without prior written approval of the City Manager, or without just cause, the City may, at its option, operate the Cable System itself or designate another Cable Operator until such time as Grantee restores service under conditions acceptable to the City or a permanent Cable Operator is selected. If the City is required to fulfill this obligation for Grantee, Grantee shall reimburse the City for all reasonable costs or damages that are the result of Grantee's failure to perform.

8.6 Services for the Disabled

Grantee shall comply with the Americans with Disabilities Act and any amendments thereto.

SECTION 9. ACCESS

9.1 Designated Access Providers

(A) The City shall have the sole and exclusive responsibility for identifying the Designated Access Providers, including itself for Access purposes, to control and manage the use of any or all Access Facilities provided by Grantee under this Franchise. As used in this Section,

such “Access Facilities” includes the Channels, services, facilities, equipment, technical components and/or financial support provided under this Franchise, which is used or useable by and for Public Access, Educational Access, and Government Access (“PEG” or “PEG Access”).

(B) Grantee shall cooperate with City in City’s efforts to provide Access programming, but will not be responsible or liable for any damages resulting from a claim in connection with the programming placed on the Access Channels by the Designated Access Provider.

9.2 Channel Capacity and Use

(A) Grantee shall make available to City four (4) Downstream Channels for PEG use as provided for in this Section.

(B) Grantee shall have the right to temporarily use any Channel, or portion thereof, which is allocated under this Section for Public, Educational, or Governmental Access use, within sixty (60) days after a written request for such use is submitted to City, if such Channel is not "fully utilized" as defined herein. A Channel shall be considered fully utilized if substantially unduplicated programming is delivered over it more than an average of 38 hours per week over a six (6) month period. Programming that is repeated on an Access Channel up to two times per day shall be considered “unduplicated programming.” Character-generated programming shall be included for purposes of this subsection, but may be counted towards the total average hours only with respect to two (2) Channels provided to City. If a Channel allocated for Public, Educational, or Governmental Access use will be used by Grantee in accordance with the terms of this subsection, the institution to which the Channel has been allocated shall have the right to require the return of the Channel or portion thereof. City shall request return of such Channel space by delivering written notice to Grantee stating that the institution is prepared to fully utilize the Channel, or portion thereof, in accordance with this subsection. In such event, the Channel or portion thereof shall be returned to such institution within sixty (60) days after receipt by Grantee of such written notice.

(C) Standard Definition (“SD”) Digital Access Channels.

(1) Grantee shall initially provide one (1) Activated Downstream Channels for PEG Access use in a standard definition (“SD”) digital format in Grantee’s Basic Service (“SD Access Channel”). Within one hundred twenty (120) days written notice after the City requests additional Access Channel capacity for City or Designated Access Provider use, Grantee shall provide one (1) additional SD Access Channel. Grantee shall carry all components of the SD Access Channel Signals provided by a Designated Access Provider including, but not limited to, closed captioning, stereo audio and other elements associated with the Programming. A Designated Access Provider shall be responsible for providing the SD Access Channel Signal in an SD format to the demarcation point at the designated point of origination for the SD Access Channel. Grantee shall transport and distribute the SD Access Channel signal on its Cable System and shall not unreasonably discriminate against SD Access Channels with respect to accessibility, functionality and to the application of any applicable Federal Communications Commission Rules &

Regulations, including without limitation Subpart K Channel signal standards.

(2) With respect to signal quality, Grantee shall not be required to carry a SD Access Channel in a higher quality format than that of the SD Access Channel signal delivered to Grantee, but Grantee shall distribute the SD Access Channel signal without degradation. Upon reasonable written request by a Designated Access Provider, Grantee shall verify signal delivery to Subscribers with the Designated Access Provider, consistent with the requirements of this Section 9.2(C).

(3) Grantee shall be responsible for costs associated with the transmission of SD Access signals on its side of the demarcation point which for the purposes of this Section 9.2 (C)(3), shall mean up to and including the modulator where the City signal is converted into a format to be transmitted over a fiber connection to Grantee. The City or Designated Access Provider shall be responsible for costs associated with SD Access signal transmission on its side of the demarcation point.

(4) SD Access Channels may require Subscribers to buy or lease special equipment, available to all Subscribers, and subscribe to those tiers of Cable Service, upon which SD channels are made available. Grantee is not required to provide free SD equipment to Subscribers, including complimentary government and educational accounts, nor modify its equipment or pricing policies in any manner.

(D) High Definition (“HD”) Digital Access Channels.

(1) Within one hundred twenty (120) days of the City’s written request, Grantee shall activate one (1) HD Access Channel, for which the City may provide Access Channel signals in HD format to the demarcation point at the designated point of origination for the Access Channel. Beginning three (3) years after the Effective Date, and with at least 120 day written notice to Grantee, the City may request, and Grantee shall provide on its Cable System, one (1) additional Activated Downstream Channel for PEG Access use in a High Definition (“HD”) digital format (“HD Access Channel or Channels”). Activation of HD Access Channels shall only occur after the following conditions are satisfied:

(a) The City shall, in its written notice to Grantee as provided for in this Section, confirm that it or its Designated Access Provider has the capabilities to produce, has been producing and will produce programming in an HD format for the newly activated HD Access Channel(s); and,

(b) There will be a minimum of five (5) hours per-day, five days per-week of HD PEG programming available for each HD Access Channel.

(2) The City shall be responsible for providing the HD Access Channel signal in an HD digital format to the demarcation point at the designated point of origination for the HD Access Channel. For purposes of this Franchise, an HD signal refers to a television signal delivering picture resolution of either 720p or 1080i, or such other resolution in this same range that Grantee utilizes for other similar non-sport, non-movie programming channels on the Cable

System, whichever is greater.

(3) Grantee shall transport and distribute the HD Access Channel signal on its Cable System and shall not unreasonably discriminate against HD Access Channels with respect to accessibility, functionality and to the application of any applicable Federal Communications Commission Rules & Regulations, including without limitation Subpart K Channel signal standards. With respect to signal quality, Grantee shall not be required to carry a HD Access Channel in a higher quality format than that of the HD Access Channel signal delivered to Grantee, but Grantee shall distribute the HD Access Channel signal without degradation. Grantee shall carry all components of the HD Access Channel signals provided by the Designated Access Provider including, but not limited to, closed captioning, stereo audio and other elements associated with the Programming. Upon reasonable written request by the City, Grantee shall verify signal delivery to Subscribers with the City, consistent with the requirements of this Section 9.2(D).

(4) HD Access Channels may require Subscribers to buy or lease special equipment, available to all Subscribers, and subscribe to those tiers of Cable Service, upon which HD channels are made available. Grantee is not required to provide free HD equipment to Subscribers, including complimentary government and educational accounts, nor modify its equipment or pricing policies in any manner.

(5) The City or any Designated Access Provider is responsible for acquiring all equipment necessary to produce programming in HD.

(6) Grantee shall cooperate with the City to procure and provide, at City's cost, all necessary transmission equipment from the Designated Access Provider channel origination point, at Grantee's headend and through Grantee's distribution system, in order to deliver the HD Access Channels. The City shall be responsible for the costs of all transmission equipment, including HD modulator and demodulator, and encoder or decoder equipment, and multiplex equipment, required in order for Grantee to receive and distribute the HD Access Channel signal, or for the cost of any resulting upgrades to the video return line. The City and Grantee agree that such expense of acquiring and installing the transmission equipment or upgrades to the video return line qualifies as a capital cost for PEG Facilities within the meaning of the Cable Act 47 U.S.C.A. Section 542(g)(20)(C), and therefore is an appropriate use of revenues derived from those PEG Capital fees provided for in this Franchise.

(E) If requested by the City, Grantee shall simultaneously carry the two (2) HD Access Channels provided for in Section 9.2(D) in high definition format on the Cable System, in addition to simultaneously carrying in standard definition format the SD Access Channels provided pursuant to Subsection 9.2(C).

(F) There shall be no restriction on Grantee's technology used to deploy and deliver SD or HD signals so long as the requirements of the Franchise are otherwise met. Grantee may implement HD carriage of the PEG channel in any manner (including selection of compression, utilization of IP, and other processing characteristics) that produces a signal quality for the consumer that is reasonably comparable and functionally equivalent to similar commercial HD

channels carried on the Cable System. In the event the City believes that Grantee fails to meet this standard, City will notify Grantee of such concern, and Grantee will respond to any complaints in a timely manner.

9.3 Access Channel Assignments

Grantee will use reasonable efforts to minimize the movement of SD and HD Access Channel assignments. Grantee shall also use reasonable efforts to institute common SD and HD Access Channel assignments among the CCUA members served by the same Headend as City for compatible Access programming, for example, assigning all Educational Access Channels programmed by higher education organizations to the same Channel number. In addition, Grantee will make reasonable efforts to locate HD Access Channels provided pursuant to Subsection 9.2(D) in a location on its HD Channel line-up that is easily accessible to Subscribers.

9.4 Relocation of Access Channels

Grantee shall provide City a minimum of sixty (60) days' notice, and use its best efforts to provide one hundred and twenty (120) days notice, prior to the time Public, Educational, and Governmental Access Channel designations are changed.

9.5 Web-Based Video On Demand and Streaming

(A) Within ninety (90) after written request to Grantee, Grantee shall provide at no cost to the City, at 4800 W. 92nd, Westminster, Colorado a business class broadband connection, broadband service and all necessary hardware, to enable the City's delivery of web-based PEG content. If, during the term of this Franchise, the City moves its location and such new location does not have the capacity to connect and receive the broadband service described in this Section 9.5(A), the cost of upgrading the network to enable such service shall be incurred by the City. The broadband connection provided herein shall be used exclusively for web-based on demand Access programming and/or web-based video streaming of Access content. Within ninety (90) days after written request of the City, Grantee shall additionally provide a one time grant of funding, in an amount not to exceed seven thousand five hundred dollars (\$7,500), which the City shall use to acquire and/or for replacement costs for a video on demand server for facilitating the web-based Access programming described in this Section 9.5.

(B) The City's Designated Access Provider(s) may provide web-based video on demand programming on line; provided however, that such Designated Access Provider(s) shall be responsible for its own costs related to a video on demand server, broadband connection and service and any other associated equipment.

(C) For all of the City's and its Designated Access Provider's web-based on demand Access programming facilitated through the broadband connection and service described in this Section 9.5, Grantee shall be permitted to provide its logo which shall be displayed on the main web page for the web-based Access programming, in a manner reasonably similar to the Grantee's logo display found on its Project Open Voice web-based supported programming.

Notwithstanding the foregoing, the size of the City's or Designated Access Provider's logos may be as large as or larger than Grantee's logo, in the City's or Designated Access Provider's sole reasonable discretion.

(D) Any costs incurred by Grantee in facilitating the web-based on demand Access programming described in this Section 9.5 may be recovered from Subscribers by Grantee in accordance with Applicable Law.

9.6 Support for Access Costs

Within ninety (90) days after written request of the City, and throughout the remaining term of this Franchise Agreement, Grantee shall provide up to a maximum of fifty cents (\$.50) per month per Residential Subscriber (the "PEG Contribution") to be used solely for capital costs related to Public, Educational and Governmental Access and the web based on demand Access programming described in Section 9.5, or as may be permitted by Applicable Law. To address inflationary impacts on capital equipment or to evaluate whether the City's PEG Access capital costs have reduced with time, the City and Grantee may meet no more than three times after the Effective Date to discuss whether to increase or to decrease the PEG Contribution. The primary purpose of such meetings will be for the parties to review prior expenditures and future capital plans to determine if the current PEG Contribution is reasonably appropriate to meet future needs. The City and Grantee may suggest to each other, based upon their own assessments of reasonable past practices and future anticipated needs, whether the current level of PEG Contribution is appropriate. If either party believes that the PEG Contribution should be modified in a reasonable amount to address such future needs the parties shall share all relevant information supporting their positions and negotiate in good faith to determine if the PEG Contribution should be increased or decreased, and if so, in what amount. Such discussions regarding potential adjustment to the PEG Contribution will be conducted pursuant to the Franchise amendment procedures in Section 4.8 of this Franchise. Grantee shall make PEG Contribution payments quarterly, following the effective date of this Franchise Agreement for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than thirty (30) days following the end of the quarter. City shall have sole discretion to allocate the expenditure of such payments for any capital costs related to PEG Access. The parties agree that this Franchise shall provide City discretion to utilize Access payments for new internal network connections and enhancements to the City's existing network.

9.7 Access Support Not Franchise Fees

Grantee agrees that capital support for Access Costs arising from or relating to the obligations set forth in this Section shall in no way modify or otherwise affect Grantee's obligations to pay Franchise Fees to City. Grantee agrees that although the sum of Franchise Fees plus the payments set forth in this Section may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, the additional commitments shall not be offset or otherwise credited in any way against any Franchise Fee payments under this Franchise Agreement so long as such support is used for capital Access purposes consistent with this Franchise and federal law.

9.8 Access Channels On Basic Service or Lowest Priced HD Service Tier

All SD Access Channels under this Franchise Agreement shall be included by Grantee, without limitation, as part of Basic Service. All HD Access Channels under this Franchise Agreement shall be included by Grantee, without limitation, as part of the lowest priced tier of HD Cable Service upon which Grantee provides HD programming content.

9.9 Change In Technology

In the event Grantee makes any change in the Cable System and related equipment and Facilities or in Grantee's signal delivery technology, which directly or indirectly affects the signal quality or transmission of Access services or programming, Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment, and full training of City's Access personnel to ensure that the capabilities of Access services are not diminished or adversely affected by such change. If the City implements a new video delivery technology that is currently offered and can be accommodated on the Grantee's local Cable System then the same provisions above shall apply. If the City implements a new video delivery technology that is not currently offered on and/or that cannot be accommodated by the Grantee's local Cable System, then the City shall be responsible for acquiring all necessary equipment, facilities, technical assistance, and training to deliver the signal to the Grantee's headend for distribution to subscribers.

9.10 Technical Quality

Grantee shall maintain all upstream and downstream Access services and Channels on its side of the demarcation point at the same level of technical quality and reliability required by this Franchise Agreement and all other applicable laws, rules and regulations for Residential Subscriber Channels. Grantee shall provide routine maintenance for all transmission equipment on its side of the demarcation point, including modulators, decoders, multiplex equipment, and associated cable and equipment necessary to carry a quality signal to and from City's facilities for the Access Channels provided under this Franchise Agreement, including the business class broadband equipment and services necessary for the video on demand and streaming service described in Section 9.5. Grantee shall also provide, if requested in advance by the City, advice and technical expertise regarding the proper operation and maintenance of transmission equipment on the City's side of the demarcation point. The City shall be responsible for all initial and replacement costs of all HD modulator and demodulator equipment, web-based video on demand servers and web-based video streaming servers. The City shall also be responsible, at its own expense, to replace any of the Grantee's equipment that is damaged by the gross negligence or intentional acts of City staff. The Grantee shall be responsible, at its own expense, to replace any of the Grantee's equipment that is damaged by the gross negligence or intentional acts of Grantee's staff. The City will be responsible for the cost of repairing and/or replacing any HD PEG Access and web-based video on demand transmission equipment that Grantee maintains that is used exclusively for transmission of the City's and/or its Designated Access Providers' HD Access programming.

9.11 Access Cooperation

City may designate any other jurisdiction which has entered into an agreement with Grantee or an Affiliate of Grantee based upon this Franchise Agreement, any CCUA member, the CCUA, or any combination thereof to receive any Access benefit due City hereunder, or to share in the use of Access Facilities hereunder. The purpose of this subsection shall be to allow cooperation in the use of Access and the application of any provision under this Section as City in its sole discretion deems appropriate, and Grantee shall cooperate fully with, and in, any such arrangements by City.

9.12 Return Lines/Access Origination

(A) Grantee shall continuously maintain the return lines previously constructed to the 4800 W. 92nd Avenue, Westminster, Colorado, throughout the Term of the Franchise, in order to enable the distribution of Access programming to Residential Subscribers on the Access Channels; provided however that Grantee's maintenance obligations with respect to this location shall cease if a location is no longer used in the future by the City to originate Access programming.

(B) Grantee shall construct and maintain new Fiber Optic return lines to the Headend from production facilities of new or relocated Designated Access Providers delivering Access programming to Residential Subscribers as requested in writing by the City. All actual construction costs incurred by Grantee from the nearest interconnection point to the Designated Access Provider shall be paid by the City or the Designated Access Provider. New return lines shall be completed within one (1) year from the request of the City or its Designated Access Provider, or as otherwise agreed to by the parties. If an emergency situation necessitates movement of production facilities to a new location, the parties shall work together to complete the new return line as soon as reasonably possible.

SECTION 10. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION

10.1 Right to Construct

Subject to Applicable Law, regulations, rules, resolutions and ordinances of the City and the provisions of this Franchise, Grantee may perform all construction in the Rights-of-Way for any facility needed for the maintenance or extension of Grantee's Cable System.

10.2 Right-of-Way Meetings

Grantee will regularly attend and participate in meetings of the City, of which the Grantee is made aware, regarding Right-of-Way issues that may impact the Cable System.

10.3 Joint Trenching/Boring Meetings

Grantee will regularly attend and participate in planning meetings of the City, of which the Grantee is made aware, to anticipate joint trenching and boring. Whenever it is possible and

reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, licensees, permittees, and franchisees so as to reduce so far as possible the number of Right-of-Way cuts within the City.

10.4 General Standard

All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. All installations of equipment shall be permanent in nature, durable and installed in accordance with good engineering practices.

10.5 Permits Required for Construction

Prior to doing any work in the Right-of Way or other public property, Grantee shall apply for, and obtain, appropriate permits from the City. As part of the permitting process, the City may impose such conditions and regulations as are necessary for the purpose of protecting any structures in such Rights-of-Way, proper restoration of such Rights-of-Way and structures, the protection of the public, and the continuity of pedestrian or vehicular traffic. Such conditions may also include the provision of a construction schedule and maps showing the location of the facilities to be installed in the Right-of-Way. Grantee shall pay all applicable fees for the requisite City permits received by Grantee.

10.6 Emergency Permits

In the event that emergency repairs are necessary, Grantee shall immediately notify the City of the need for such repairs. Grantee may initiate such emergency repairs, and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.

10.7 Compliance with Applicable Codes

(A) City Construction Codes. Grantee shall comply with all applicable City construction codes, including, without limitation, the International Building Code and other building codes, the International Fire Code, the International Mechanical Code, the National Electric Code, the Electronic Industries Association Standard for Physical Location and Protection of Below-Ground Fiber Optic Cable Plant, and zoning codes and regulations.

(B) Tower Specifications. Antenna supporting structures (towers) shall be designed for the proper loading as specified by the Electronics Industries Association (EIA), as those specifications may be amended from time to time. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable federal, State, and local codes or regulations.

(C) Safety Codes. Grantee shall comply with all federal, State and City safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by Applicable Law during construction, operation and repair of its Cable System. By way of

illustration and not limitation, Grantee shall comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

10.8 GIS Mapping

Grantee shall comply with any generally applicable ordinances, rules and regulations of the City regarding geographic information mapping systems for users of the Rights-of-Way.

10.9 Minimal Interference

Work in the Right-of-Way, on other public property, near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the Rights-of-Way by, or under, the City's authority. The Grantee's Cable System shall be located, erected and maintained so as not to endanger or interfere with the lives of Persons, or to interfere with new improvements the City may deem proper to make or to unnecessarily hinder or obstruct the free use of the Rights-of-Way or other public property, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation or removal thereof, and shall not obstruct or impede traffic. In the event of such interference, the City may require the removal or relocation of Grantee's lines, cables, equipment and other appurtenances from the property in question at Grantee's expense.

10.10 Prevent Injury/Safety

Grantee shall provide and use any equipment and facilities necessary to control and carry Grantee's signals so as to prevent injury to the City's property or property belonging to any Person. Grantee, at its own expense, shall repair, renew, change and improve its facilities to keep them in good repair, and safe and presentable condition. All excavations made by Grantee in the Rights-of-Way shall be properly safeguarded for the prevention of accidents by the placement of adequate barriers, fences or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights.

10.11 Hazardous Substances

(A) Grantee shall comply with any and all Applicable Laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's Cable System in the Rights-of-Way.

(B) Upon reasonable notice to Grantee, the City may inspect Grantee's facilities in the Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Franchise, Grantee shall also remove all residue of hazardous substances related thereto.

(C) Grantee agrees to indemnify the City against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the City arising out of a release of hazardous substances caused by Grantee's Cable System.

10.12 Locates

Prior to doing any work in the Right-of-Way, Grantee shall give appropriate notices to the City and to the notification association established in C.R.S. Section 9-1.5-105, as such may be amended from time to time.

Within forty-eight (48) hours after any City bureau or franchisee, licensee or permittee notifies Grantee of a proposed Right-of-Way excavation, Grantee shall, at Grantee's expense:

(A) Mark on the surface all of its located underground facilities within the area of the proposed excavation;

(B) Notify the excavator of any unlocated underground facilities in the area of the proposed excavation; or

(C) Notify the excavator that Grantee does not have any underground facilities in the vicinity of the proposed excavation.

10.13 Notice to Private Property Owners

Grantee shall give notice to private property owners of work on or adjacent to private property in accordance with the City's Customer Service Standards, as the same may be amended from time to time by the City Council acting by Ordinance or resolution.

10.14 Underground Construction and Use of Poles

(A) When required by general ordinances, resolutions, regulations or rules of the City or applicable State or federal law, Grantee's Cable System shall be placed underground at Grantee's expense unless funding is generally available for such relocation to all users of the Rights-of-Way. Placing facilities underground does not preclude the use of ground-mounted appurtenances.

(B) Where electric, telephone, and other above-ground utilities are installed underground at the time of Cable System construction, or when all such wiring is subsequently placed underground, all Cable System lines shall also be placed underground with other wireline service at no expense to the City or Subscribers unless funding is generally available for such relocation to all users of the Rights-of-Way. Related Cable System equipment, such as pedestals, must be placed in accordance with the City's applicable code requirements and rules. In areas where either electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

(C) The Grantee shall utilize existing poles and conduit wherever possible.

(D) In the event Grantee cannot obtain the necessary poles and related facilities pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for Grantee to make all needed excavations in the Rights-of-Way for the purpose of placing, erecting, laying, maintaining, repairing, and removing poles, supports for wires and conductors, and any other facility needed for the maintenance or extension of Grantee's Cable System. All poles of Grantee shall be located as designated by the proper City authorities.

(E) This Franchise does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the City or any other Person. Copies of agreements for the use of poles, conduits or other utility facilities must be provided upon request by the City.

(F) The Grantee and the City recognize that situations may occur in the future where the City may desire to place its own cable or conduit for Fiber Optic cable in trenches or bores opened by the Grantee. The Grantee agrees to cooperate with the City in any construction by the Grantee that involves trenching or boring, provided that the City has first notified the Grantee in some manner that it is interested in sharing the trenches or bores in the area where the Grantee's construction is occurring. The Grantee shall allow the City to lay its cable, conduit and Fiber Optic cable in the Grantee's trenches and bores, provided the City shares in the cost of the trenching and boring on the same terms and conditions as the Grantee at that time shares the total cost of trenches and bores. The City shall be responsible for maintaining its respective cable, conduit and Fiber Optic cable buried in the Grantee's trenches and bores under this paragraph.

10.15 Undergrounding of Multiple Dwelling Unit Drops

In cases of single site Multiple Dwelling Units, Grantee shall minimize the number of individual aerial drop cables by installing multiple drop cables underground between the pole and Multiple Dwelling Unit where determined to be technologically feasible in agreement with the owners and/or owner's association of the Multiple Dwelling Units.

10.16 Burial Standards

(A) Depths. Unless otherwise required by law, Grantee, and its contractors, shall comply with the following burial depth standards. In no event shall Grantee be required to bury its cable deeper than electric or gas facilities, or existing telephone facilities in the same portion of the Right-of-Way, so long as those facilities have been buried in accordance with Applicable Law:

Underground cable drops from the curb shall be buried at a minimum depth of twelve (12) inches, unless a sprinkler system or other construction concerns preclude it, in which case, underground cable drops shall be buried at a depth of at least six (6) inches.

Feeder lines shall be buried at a minimum depth of eighteen (18) inches.

Trunk lines shall be buried at a minimum depth of thirty-six (36) inches.

Fiber Optic cable shall be buried at a minimum depth of thirty-six (36) inches.

In the event of a conflict between this subsection and the provisions of any customer service standard, this subsection shall control.

(B) Timeliness. Cable drops installed by Grantee to residences shall be buried according to these standards within one calendar week of initial installation, or at a time mutually-agreed upon between the Grantee and the Subscriber. When freezing surface conditions prevent Grantee from achieving such timetable, Grantee shall apprise the Subscriber of the circumstances and the revised schedule for burial, and shall provide the Subscriber with Grantee's telephone number and instructions as to how and when to call Grantee to request burial of the line if the revised schedule is not met.

10.17 Cable Drop Bonding

Grantee shall ensure that all cable drops are properly bonded at the home, consistent with applicable code requirements.

10.18 Prewiring

Any ordinance or resolution of the City which requires prewiring of subdivisions or other developments for electrical and telephone service shall be construed to include wiring for Cable Systems.

10.19 Repair and Restoration of Property

(A) The Grantee shall protect public and private property from damage. If damage occurs, the Grantee shall promptly notify the property owner within twenty-four (24) hours in writing.

(B) Whenever Grantee disturbs or damages any Right-of-Way, other public property or any private property, Grantee shall promptly restore the Right-of-Way or property to at least its prior condition, normal wear and tear excepted, at its own expense.

(C) Rights-of-Way and Other Public Property. Grantee shall warrant any restoration work performed by or for Grantee in the Right-of-Way or on other public property in accordance with Applicable Law. If restoration is not satisfactorily performed by the Grantee within a reasonable time, the City may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the City.

(D) Private Property. Upon completion of the work which caused any disturbance or damage, Grantee shall promptly commence restoration of private property, and will use best efforts to complete the restoration within seventy-two (72) hours, considering the nature of the work that must be performed. Grantee shall also perform such restoration in accordance with the City's Customer Service Standards, as the same may be amended from time to time by the City Council acting by ordinance or resolution.

10.20 Use of Conduits by the City

The City may install or affix and maintain wires and equipment owned by the City for City purposes in or upon any and all of Grantee's ducts, conduits or equipment in the Rights-of-Way and other public places if such placement does not interfere with Grantee's use of its facilities, without charge to the City, to the extent space therein or thereon is reasonably available, and pursuant to all applicable ordinances and codes. This right shall not extend to affiliates of Grantee who have facilities in the right-of-way for the provision of non-cable services. For the purposes of this subsection, "City purposes" includes, but is not limited to, the use of the structures and installations for City fire, police, traffic, water, telephone, and/or signal systems, but not for Cable Service or transmission to third parties of telecommunications or information services in competition with Grantee. Grantee shall not deduct the value of such use of its facilities from its Franchise Fee payments or from other fees payable to the City.

10.21 Common Users

(A) For the purposes of this subsection:

(1) "Attachment" means any wire, optical fiber or other cable, and any related device, apparatus or auxiliary equipment, for the purpose of voice, video or data transmission.

(2) "Conduit" or "Conduit Facility" means any structure, or section thereof, containing one or more Ducts, conduits, manholes, handhole or other such facilities in Grantee's Cable System.

(3) "Duct" means a single enclosed raceway for cables, Fiber Optics or other wires.

(4) "Licensee" means any Person licensed or otherwise permitted by the City to use the Rights-of-Way.

(5) "Surplus Ducts or Conduits" are Conduit Facilities other than those occupied by Grantee or any prior Licensee, or unoccupied Ducts held by Grantee as emergency use spares, or other unoccupied Ducts that Grantee reasonably expects to use within two (2) years from the date of a request for use.

(B) Grantee acknowledges that the Rights-of-Way have a finite capacity for containing Conduits. Therefore, Grantee agrees that whenever the City determines it is impracticable to permit construction of an underground Conduit system by any other Person which may at the time have authority to construct or maintain Conduits or Ducts in the Rights-of-Way, but excluding Persons providing Cable Services in competition with Grantee, the City may require Grantee to afford to such Person the right to use Grantee's Surplus Ducts or Conduits in common with Grantee, pursuant to the terms and conditions of an agreement for use of Surplus Ducts or Conduits entered into by Grantee and the Licensee. Nothing herein shall require Grantee to enter into an agreement with such Person if, in Grantee's reasonable determination, such an agreement could compromise the integrity of the Cable System.

(C) A Licensee occupying part of a Duct shall be deemed to occupy the entire Duct.

(D) Grantee shall give a Licensee a minimum of one hundred twenty (120) days notice of its need to occupy a licensed Conduit and shall propose that the Licensee take the first feasible action as follows:

(1) Pay revised Conduit rent designed to recover the cost of retrofitting the Conduit with multiplexing, Fiber Optics or other space-saving technology sufficient to meet Grantee's space needs;

(2) Pay revised Conduit rent based on the cost of new Conduit constructed to meet Grantee's space needs;

(3) Vacate the needed Ducts or Conduit; or

(4) Construct and maintain sufficient new Conduit to meet Grantee's space needs.

(E) When two or more Licensees occupy a section of Conduit Facility, the last Licensee to occupy the Conduit Facility shall be the first to vacate or construct new Conduit. When Conduit rent is revised because of retrofitting, space-saving technology or construction of new Conduit, all Licensees shall bear the increased cost.

(F) All Attachments shall meet local, State, and federal clearance and other safety requirements, be adequately grounded and anchored, and meet the provisions of contracts executed between Grantee and the Licensee. Grantee may, at its option, correct any attachment deficiencies and charge the Licensee for its costs. Each Licensee shall pay Grantee for any fines, fees, damages or other costs the Licensee's attachments cause Grantee to incur.

(G) In order to enforce the provisions of this subsection with respect to Grantee, the City must demonstrate that it has required that all similarly situated users of the Rights-of-Way to comply with the provisions of this subsection.

10.22 Acquisition of Facilities

Upon Grantee's acquisition of Cable System-related facilities in any City Right-of-Way, or upon the addition to the City of any area in which Grantee owns or operates any such facility, Grantee shall, at the City's request, submit to the City a statement describing all such facilities involved, whether authorized by franchise, permit, license or other prior right, and specifying the location of all such facilities to the extent Grantee has possession of such information. Such Cable System-related facilities shall immediately be subject to the terms of this Franchise.

10.23 Discontinuing Use/Abandonment of Cable System Facilities

Whenever Grantee intends to discontinue using any facility within the Rights-of-Way, Grantee shall submit for the City's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that the City permit it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, the City may require Grantee to remove the facility from the Right-of-Way or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. The City may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a schedule set by the City. Until such time as Grantee removes or modifies the facility as directed by the City, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Right-of-Way, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility. If Grantee abandons its facilities, the City may choose to use such facilities for any purpose whatsoever including, but not limited to, Access purposes.

10.24 Movement of Cable System Facilities For City Purposes

The City shall have the right to require Grantee to relocate, remove, replace, modify or disconnect Grantee's facilities and equipment located in the Rights-of-Way or on any other property of the City for public purposes, in the event of an emergency, or when the public health, safety or welfare requires such change (for example, without limitation, by reason of traffic conditions, public safety, Right-of-Way vacation, Right-of-Way construction, change or establishment of Right-of-Way grade, installation of sewers, drains, gas or water pipes, or any other types of structures or improvements by the City for public purposes). Such work shall be performed at the Grantee's expense. Except during an emergency, the City shall provide reasonable notice to Grantee, not to be less than five (5) business days, and allow Grantee with the opportunity to perform such action. In the event of any capital improvement project exceeding \$500,000 in expenditures by the City which requires the removal, replacement, modification or disconnection of Grantee's facilities or equipment, the City shall provide at least sixty (60) days' written notice to Grantee. Following notice by the City, Grantee shall relocate, remove, replace, modify or disconnect any of its facilities or equipment within any Right-of-Way, or on any other property of the City. If the City requires Grantee to relocate its facilities located within the Rights-of-Way, the City shall make a reasonable effort to provide Grantee

with an alternate location within the Rights-of-Way. If funds are generally made available to users of the Rights-of-Way for such relocation, Grantee shall be entitled to its pro rata share of such funds.

If the Grantee fails to complete this work within the time prescribed and to the City's satisfaction, the City may cause such work to be done and bill the cost of the work to the Grantee, including all costs and expenses incurred by the City due to Grantee's delay. In such event, the City shall not be liable for any damage to any portion of Grantee's Cable System. Within thirty (30) days of receipt of an itemized list of those costs, the Grantee shall pay the City.

10.25 Movement of Cable System Facilities for Other Franchise Holders

If any removal, replacement, modification or disconnection of the Cable System is required to accommodate the construction, operation or repair of the facilities or equipment of another City franchise holder, Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantee may require that the costs associated with the removal or relocation be paid by the benefited party.

10.26 Temporary Changes for Other Permittees

At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder, and Grantee may require a reasonable deposit of the estimated payment in advance.

10.27 Reservation of City Use of Right-of-Way

Nothing in this Franchise shall prevent the City or public utilities owned, maintained or operated by public entities other than the City from constructing sewers; grading, paving, repairing or altering any Right-of-Way; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System.

10.28 Tree Trimming

Grantee may prune or cause to be pruned, using proper pruning practices, any tree in the City's Rights-of-Way which interferes with Grantee's Cable System. Grantee shall comply with any general ordinance or regulations of the City regarding tree trimming. Except in emergencies, Grantee may not prune trees at a point below thirty (30) feet above sidewalk grade until one (1) week written notice has been given to the owner or occupant of the premises abutting the Right-of-Way in or over which the tree is growing. The owner or occupant of the abutting premises may prune such tree at his or her own expense during this one (1) week period. If the owner or

occupant fails to do so, Grantee may prune such tree at its own expense. For purposes of this subsection, emergencies exist when it is necessary to prune to protect the public or Grantee's facilities from imminent danger only.

10.29 Inspection of Construction and Facilities

The City may inspect any of Grantee's facilities, equipment or construction at any time upon at least twenty-four (24) hours notice, or, in case of emergency, upon demand without prior notice. The City shall have the right to charge generally applicable inspection fees therefore. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under Applicable Law, may order Grantee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the City establishes. The City has the right to correct, inspect, administer and repair the unsafe condition if Grantee fails to do so, and to charge Grantee therefore.

10.30 Stop Work

(A) On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City.

(B) The stop work order shall:

- (1) Be in writing;
- (2) Be given to the Person doing the work, or posted on the work site;
- (3) Be sent to Grantee by overnight delivery at the address given herein;
- (4) Indicate the nature of the alleged violation or unsafe condition; and
- (5) Establish conditions under which work may be resumed.

10.31 Work of Contractors and Subcontractors

Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the City's ordinances, regulations and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise and other Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise and other Applicable Law governing the work performed by them.

SECTION 11. CABLE SYSTEM, TECHNICAL STANDARDS AND TESTING

11.1 Subscriber Network

(A) Grantee's Cable System shall be equivalent to or exceed technical characteristics of a traditional HFC 750 MHz Cable System and provide Activated Two-Way capability. The Cable System shall be capable of supporting video and audio. The Cable System shall deliver no less than one hundred ten (110) Channels of digital video programming services to Subscribers, provided that the Grantee reserves the right to use the bandwidth in the future for other uses based on market factors.

(B) Equipment must be installed so that all closed captioning programming received by the Cable System shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards. Equipment must be installed so that all local signals received in stereo or with secondary audio tracks (broadcast and Access) are retransmitted in those same formats.

(C) All construction shall be subject to the City's permitting process.

(D) Grantee and City shall meet, at the City's request, to discuss the progress of the design plan and construction.

(E) Grantee will take prompt corrective action if it finds that any facilities or equipment on the Cable System are not operating as expected, or if it finds that facilities and equipment do not comply with the requirements of this Franchise or Applicable Law.

(F) Grantee's construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular community within the Franchise Area.

11.2 Technology Assessment

(A) The City may notify Grantee on or after five (5) years after the Effective Date, that the City will conduct a technology assessment of Grantee's Cable System. The technology assessment may include, but is not be limited to, determining whether Grantee's Cable System technology and performance are consistent with current technical practices and range and level of services existing in the fifteen (15) largest U.S. cable systems owned and operated by Grantee's Parent Corporation and/or Affiliates pursuant to franchises that have been renewed or extended since the Effective Date.

(B) Grantee shall cooperate with the City to provide necessary non-confidential and proprietary information upon the City's reasonable request as part of the technology assessment.

(C) At the discretion of the City, findings from the technology assessment may be included in any proceeding commenced for the purpose of identifying future cable-related community needs and interests undertaken by the City pursuant to 47 U.S.C. §546.

11.3 Standby Power

Grantee's Cable System Headend shall be capable of providing at least twelve (12) hours of emergency operation. In addition, throughout the term of this Franchise, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than four (4) hours. This outage plan and evidence of requisite implementation resources shall be presented to the City no later than thirty (30) days following receipt of a request.

11.4 Emergency Alert Capability

Grantee shall provide an operating Emergency Alert System ("EAS") throughout the term of this Franchise in compliance with FCC standards. Upon request, the City shall be permitted to participate in and/or witness the EAS testing up to twice a year on a schedule formed in consultation with Grantee. If the test indicates that the EAS is not performing properly, Grantee shall make any necessary adjustment to the EAS, and the EAS shall be retested.

11.5 Technical Performance

The technical performance of the Cable System shall meet or exceed all applicable federal (including, but not limited to, the FCC), State and local technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The City shall have the full authority permitted by Applicable Law to enforce compliance with these technical standards.

11.6 Cable System Performance Testing

(A) Grantee shall, at Grantee's expense, perform the following tests on its Cable System:

- (1) All tests required by the FCC;
- (2) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Franchise; and
- (3) All other tests as otherwise specified in this Franchise.

(B) At a minimum, Grantee's tests shall include:

- (1) Cumulative leakage index testing of any new construction;
- (2) Semi-annual compliance and proof of performance tests in conformance with generally accepted industry guidelines;
- (3) Tests in response to Subscriber complaints;

(4) Periodic monitoring tests, at intervals not to exceed six (6) months, of Subscriber (field) test points, the Headend, and the condition of standby power supplies; and

(5) Cumulative leakage index tests, at least annually, designed to ensure that one hundred percent (100%) of Grantee's Cable System has been ground or air tested for signal leakage in accordance with FCC standards.

(C) Grantee shall maintain written records of all results of its Cable System tests, performed by or for Grantee. Copies of such test results will be provided to the City upon reasonable request.

(D) If the FCC no longer requires proof of performance tests for Grantee's Cable System during the term of this Franchise, Grantee agrees that it shall continue to conduct proof of performance tests on the Cable System in accordance with the standards that were in place on the Effective Date, or any generally applicable standards later adopted, at least once a year, and provide written results of such tests to the City upon request.

(E) The FCC semi-annual testing is conducted in January/February and July/August of each year. If the City contacts Grantee prior to the next test period (*i.e.*, before December 15 and June 15 respectively of each year), Grantee shall provide City with no less than seven (7) days prior written notice of the actual date(s) for FCC compliance testing. If City notifies Grantee by the December 15th and June 15th dates that it wishes to have a representative present during the next test(s), Grantee shall cooperate in scheduling its testing so that the representative can be present. Notwithstanding the above, all technical performance tests may be witnessed by representatives of the City.

(F) Grantee shall be required to promptly take such corrective measures as are necessary to correct any performance deficiencies fully and to prevent their recurrence as far as possible. Grantee's failure to correct deficiencies identified through this testing process shall be a material violation of this Franchise. Sites shall be re-tested following correction.

11.7 Additional Tests

Where there exists other evidence which in the judgment of the City casts doubt upon the reliability or technical quality of Cable Service, the City shall have the right and authority to require Grantee to test, analyze and report on the performance of the Cable System. Grantee shall fully cooperate with the City in performing such testing and shall prepare the results and a report, if requested, within thirty (30) days after testing. Such report shall include the following information:

- (A) the nature of the complaint or problem which precipitated the special tests;
- (B) the Cable System component tested;
- (C) the equipment used and procedures employed in testing;

- (D) the method, if any, in which such complaint or problem was resolved; and
- (E) any other information pertinent to said tests and analysis which may be required.

SECTION 12. SERVICE AVAILABILITY, INTERCONNECTION AND SERVICE TO SCHOOLS AND PUBLIC BUILDINGS

12.1 Service Availability

(A) In General. Except as otherwise provided in herein, Grantee shall provide Cable Service within seven (7) days of a request by any Person within the City. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request. Except as otherwise provided herein, Grantee shall provide such service:

(1) With no line extension charge except as specifically authorized elsewhere in this Franchise Agreement.

(2) At a non-discriminatory installation charge for a standard installation, consisting of a 125 foot drop connecting to an inside wall for Residential Subscribers, with additional charges for non standard installations computed according to a non discriminatory methodology for such installations, adopted by Grantee and provided in writing to the City;

(3) At non discriminatory monthly rates for Residential Subscribers.

(B) Service to Multiple Dwelling Units. Consistent with this Section 12.1, the Grantee shall offer the individual units of a Multiple Dwelling Unit all Cable Services offered to other Dwelling Units in the City and shall individually wire units upon request of the property owner or renter who has been given written authorization by the owner; provided, however, that any such offering is conditioned upon the Grantee having legal access to said unit. The City acknowledges that the Grantee cannot control the dissemination of particular Cable Services beyond the point of demarcation at a Multiple Dwelling Unit.

(C) Customer Charges for Extensions of Service. Grantee agrees to extend its Cable System to all persons living in areas with a residential density of thirty-five (35) residences per mile of Cable System plant. If the residential density is less than thirty-five (35) residences per 5,280 cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and customers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per 5,280 cable-bearing strand feet of its trunk or distribution cable and whose denominator equals thirty-five (35). Customers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential customers be paid in advance.

12.2 Connection of Public Facilities

Grantee shall, at no cost to the City, provide one outlet of Basic Service and Digital Starter Service to all City owned and occupied buildings, schools and public libraries located in areas where Grantee provides Cable Service, so long as these facilities are already served or are located within 150 feet of its Cable System. For purposes of this subsection, "school" means all State-accredited K-12 public and private schools. Such obligation to provide free Cable Service shall not extend to areas of City buildings where the Grantee would normally enter into a commercial contract to provide such Cable Service (e.g., golf courses, airport restaurants and concourses, and recreation center work out facilities). Outlets of Basic and Digital Starter Service provided in accordance with this subsection may be used to distribute Cable Services throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Such outlets may only be used for lawful purposes. The Cable Service provided shall not be distributed beyond the originally installed outlets without authorization from Grantee, which shall not be unreasonably withheld.

SECTION 13. FRANCHISE VIOLATIONS

13.1 Procedure for Remedying Franchise Violations

(A) If the City reasonably believes that Grantee has failed to perform any obligation under this Franchise or has failed to perform in a timely manner, the City shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have thirty (30) days from the receipt of such notice to:

(1) respond to the City, contesting the City's assertion that a default has occurred, and requesting a meeting in accordance with subsection (B), below;

(2) cure the default; or,

(3) notify the City that Grantee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the City in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the City may set a meeting in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.

(B) If Grantee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection (A)(3), or denies the default and requests a meeting in accordance with (A)(1), or the City orders a meeting in accordance with subsection (A)(3), the City shall set a meeting to investigate said issues or the existence of the alleged default. The City shall notify Grantee of the meeting in writing and such meeting shall take place no less than thirty (30) days after Grantee's receipt of notice of the meeting. At the

meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

(C) If, after the meeting, the City determines that a default exists, the City shall order Grantee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable time frame as the City shall determine. In the event Grantee does not cure within such time to the City's reasonable satisfaction, the City may:

- (1) Withdraw an amount from the letter of credit as monetary damages;
- (2) Recommend the revocation of this Franchise pursuant to the procedures in subsection 13.2; or,
- (3) Recommend any other legal or equitable remedy available under this Franchise or any Applicable Law.

(D) The determination as to whether a violation of this Franchise has occurred shall be within the discretion of the City, provided that any such final determination may be subject to appeal to a court of competent jurisdiction under Applicable Law.

13.2 Revocation

(A) In addition to revocation in accordance with other provisions of this Franchise, the City may revoke this Franchise and rescind all rights and privileges associated with this Franchise in the following circumstances, each of which represents a material breach of this Franchise:

- (1) If Grantee fails to perform any material obligation under this Franchise or under any other agreement, ordinance or document regarding the City and Grantee;
- (2) If Grantee willfully fails for more than forty-eight (48) hours to provide continuous and uninterrupted Cable Service;
- (3) If Grantee attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the City or Subscribers; or
- (4) If Grantee becomes insolvent, or if there is an assignment for the benefit of Grantee's creditors;
- (5) If Grantee makes a material misrepresentation of fact in the application for or negotiation of this Franchise.

(B) Following the procedures set forth in subsection 13.1 and prior to forfeiture or termination of the Franchise, the City shall give written notice to the Grantee of its intent to revoke the Franchise and set a date for a revocation proceeding. The notice shall set forth the exact nature of the noncompliance.

(C) Any proceeding under the paragraph above shall be conducted by the City Council and open to the public. Grantee shall be afforded at least forty-five (45) days prior written notice of such proceeding.

(1) At such proceeding, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of such proceeding and the cost shall be shared equally between the parties. The City Council shall hear any Persons interested in the revocation, and shall allow Grantee, in particular, an opportunity to state its position on the matter.

(2) Within ninety (90) days after the hearing, the City Council shall determine whether to revoke the Franchise and declare that the Franchise is revoked and the letter of credit forfeited; or if the breach at issue is capable of being cured by Grantee, direct Grantee to take appropriate remedial action within the time and in the manner and on the terms and conditions that the City Council determines are reasonable under the circumstances. If the City determines that the Franchise is to be revoked, the City shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Grantee. Grantee shall be bound by the City's decision to revoke the Franchise unless it appeals the decision to a court of competent jurisdiction within fifteen (15) days of the date of the decision.

(3) Grantee shall be entitled to such relief as the Court may deem appropriate.

(4) The City Council may at its sole discretion take any lawful action which it deems appropriate to enforce the City's rights under the Franchise in lieu of revocation of the Franchise.

13.3 Procedures in the Event of Termination or Revocation

(A) If this Franchise expires without renewal after completion of all processes available under this Franchise and federal law or is otherwise lawfully terminated or revoked, the City may, subject to Applicable Law:

(1) Allow Grantee to maintain and operate its Cable System on a month-to-month basis or short-term extension of this Franchise for not less than six (6) months, unless a sale of the Cable System can be closed sooner or Grantee demonstrates to the City's satisfaction that it needs additional time to complete the sale; or

(2) Purchase Grantee's Cable System in accordance with the procedures set forth in subsection 13.4, below.

(B) In the event that a sale has not been completed in accordance with subsections (A)(1) and/or (A)(2) above, the City may order the removal of the above-ground Cable System facilities and such underground facilities from the City at Grantee's sole expense within a reasonable period of time as determined by the City. In removing its plant, structures and

equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Rights-of-Way, public places and private property in as good condition as that prevailing prior to Grantee's removal of its equipment without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions and the letter of credit shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefore.

(C) If Grantee fails to complete any removal required by subsection 13.3 (B) to the City's satisfaction, after written notice to Grantee, the City may cause the work to be done and Grantee shall reimburse the City for the costs incurred within thirty (30) days after receipt of an itemized list of the costs, or the City may recover the costs through the letter of credit provided by Grantee.

(D) The City may seek legal and equitable relief to enforce the provisions of this Franchise.

13.4 Purchase of Cable System

(A) If at any time this Franchise is revoked, terminated, or not renewed upon expiration in accordance with the provisions of federal law, the City shall have the option to purchase the Cable System.

(B) The City may, at any time thereafter, offer in writing to purchase Grantee's Cable System. Grantee shall have thirty (30) days from receipt of a written offer from the City within which to accept or reject the offer.

(C) In any case where the City elects to purchase the Cable System, the purchase shall be closed within one hundred twenty (120) days of the date of the City's audit of a current profit and loss statement of Grantee. The City shall pay for the Cable System in cash or certified funds, and Grantee shall deliver appropriate bills of sale and other instruments of conveyance.

(D) For the purposes of this subsection, the price for the Cable System shall be determined as follows:

(1) In the case of the expiration of the Franchise without renewal, at fair market value determined on the basis of Grantee's Cable System valued as a going concern, but with no value allocated to the Franchise itself. In order to obtain the fair market value, this valuation shall be reduced by the amount of any lien, encumbrance, or other obligation of Grantee which the City would assume.

(2) In the case of revocation for cause, the equitable price of Grantee's Cable System.

13.5 Receivership and Foreclosure

(A) At the option of the City, subject to Applicable Law, this Franchise may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

(1) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment; or

(2) The receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise, and have remedied all defaults under the Franchise. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Franchise.

(B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, the City may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise shall be revoked thirty (30) days after service of such notice, unless:

(1) The City has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and

(2) The purchaser has covenanted and agreed with the City to assume and be bound by all of the terms and conditions of this Franchise.

13.6 No Monetary Recourse Against the City

Grantee shall not have any monetary recourse against the City or its officers, officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Franchise or the enforcement thereof, in accordance with the provisions of applicable federal, State and local law. The rights of the City under this Franchise are in addition to, and shall not be read to limit, any immunities the City may enjoy under federal, State or local law.

13.7 Alternative Remedies

No provision of this Franchise shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violations by Grantee, or to seek and obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

13.8 Assessment of Monetary Damages

(A) The City may assess against Grantee monetary damages (i) up to five hundred dollars (\$500.00) per day for general construction delays, violations of PEG obligations or payment obligations, (ii) up to two hundred fifty dollars (\$250.00) per day for any other material breaches, or (iii) up to one hundred dollars (\$100.00) per day for defaults, and withdraw the assessment from the letter of credit or collect the assessment as specified in this Franchise. Damages pursuant to this Section shall accrue for a period not to exceed one hundred twenty (120) days per violation proceeding. To assess any amount from the letter of credit, City shall follow the procedures for withdrawals from the letter of credit set forth in the letter of credit and in this Franchise. Such damages shall accrue beginning thirty (30) days following Grantee's receipt of the notice required by subsection 13.1(A), or such later date if approved by the City in its sole discretion, but may not be assessed until after the procedures in subsection 13.1 have been completed.

(B) The assessment does not constitute a waiver by City of any other right or remedy it may have under the Franchise or Applicable Law, including its right to recover from Grantee any additional damages, losses, costs and expenses that are incurred by City by reason of the breach of this Franchise.

13.9 Effect of Abandonment

If the Grantee abandons its Cable System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the City, at its option, may operate the Cable System; designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the City, or until the Franchise is revoked and a new franchisee is selected by the City; or obtain an injunction requiring the Grantee to continue operations. If the City is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the City or its designee for all reasonable costs, expenses and damages incurred.

13.10 What Constitutes Abandonment

The City shall be entitled to exercise its options in subsection 13.9 if:

(A) The Grantee fails to provide Cable Service in accordance with this Franchise over a substantial portion of the Franchise Area for four (4) consecutive days, unless the City authorizes a longer interruption of service; or

(B) The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Franchise.

SECTION 14. FRANCHISE RENEWAL AND TRANSFER

14.1 Renewal

(A) The City and Grantee agree that any proceedings undertaken by the City that relate to the renewal of the Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or State law.

(B) In addition to the procedures set forth in said Section 626(a), the City agrees to notify Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise term. Notwithstanding anything to the contrary set forth herein, Grantee and City agree that at any time during the term of the then current Franchise, while affording the public adequate notice and opportunity for comment, the City and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise and the City may grant a renewal thereof. Grantee and City consider the terms set forth in this subsection to be consistent with the express provisions of Section 626 of the Cable Act.

14.2 Transfer of Ownership or Control

(A) The Cable System and this Franchise shall not be sold, assigned, transferred, leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger or consolidation; nor shall title thereto, either legal or equitable, or any right, interest or property therein pass to or vest in any Person or entity without the prior written consent of the City, which consent shall be by the City Council/Commission, acting by ordinance/resolution.

(B) The Grantee shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of the Grantee shall make this Franchise subject to cancellation unless and until the City shall have consented in writing thereto.

(C) The parties to the sale or transfer shall make a written request to the City for its approval of a sale or transfer and furnish all information required by law and the City.

(D) In seeking the City's consent to any change in ownership or control, the proposed transferee shall indicate whether it:

(1) Has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;

(2) Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against the proposed transferee by any court of competent jurisdiction;

(3) Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a cable system or a broadband system;

(4) Is financially solvent, by submitting financial data including financial statements that are audited by a certified public accountant who may also be an officer of the transferee, along with any other data that the City may reasonably require; and

(5) Has the financial, legal and technical capability to enable it to maintain and operate the Cable System for the remaining term of the Franchise.

(E) The City shall act by ordinance on the request within one hundred twenty (120) days of the request, provided it has received all information required by this Franchise and/or by Applicable Law. The City and the Grantee may by mutual agreement, at any time, extend the 120 day period. Subject to the foregoing, if the City fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

(F) Within thirty (30) days of any transfer or sale, if approved or deemed granted by the City, Grantee shall file with the City a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee, and the transferee shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to Applicable Law. In the event of a change in control, in which the Grantee is not replaced by another entity, the Grantee will continue to be bound by all of the provisions of the Franchise, subject to Applicable Law, and will not be required to file an additional written acceptance.

(G) In reviewing a request for sale or transfer, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the City in so inquiring. The City may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, in accordance with Applicable Law.

(H) Notwithstanding anything to the contrary in this subsection, the prior approval of the City shall not be required for any sale, assignment or transfer of the Franchise or Cable System to an entity controlling, controlled by or under the same common control as Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the City and must agree in writing to comply with all of the provisions of the Franchise. Further, Grantee may pledge the assets of the Cable System for the purpose of financing without the consent of the City; provided that such pledge of assets shall not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

SECTION 15. SEVERABILITY

If any court determines that any provision hereof is unenforceable, it is the intention of the Parties that this Agreement shall not thereby be terminated but that the court reform this Agreement to the extent required to make it valid and enforceable, to the extent such reformation may be accomplished without materially and adversely affecting intended benefits and burdens of the Parties under this Agreement.

SECTION 16. MISCELLANEOUS PROVISIONS

16.1 Preferential or Discriminatory Practices Prohibited

NO DISCRIMINATION IN EMPLOYMENT. In connection with the performance of work under this Franchise, the Grantee agrees not to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any Person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Grantee further agrees to insert the foregoing provision in all subcontracts hereunder. Throughout the term of this Franchise, Grantee shall fully comply with all equal employment or non-discrimination provisions and requirements of federal, State and local laws, and in particular, FCC rules and regulations relating thereto.

16.2 Notices

Throughout the term of the Franchise, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent overnight delivery postage prepaid to such respective address and such notices shall be effective upon the date of mailing. These addresses may be changed by the City or the Grantee by written notice at any time. At the Effective Date of this Franchise:

Grantee's address shall be:

COMCAST OF COLORADO IX, LLC
8000 E. Iliff Ave.
Denver, CO 80231
Attn: Government Affairs

The City's address shall be:

City of Westminster
4800 West 92nd Ave.
Westminster, CO 80031
Attn: Information Technology Director

With a copy to:

City of Westminster
4800 West 92nd Ave.
Westminster, CO 80031
Attn: City Attorney

16.3 Descriptive Headings

The headings and titles of the Sections and subsections of this Franchise are for reference purposes only, and shall not affect the meaning or interpretation of the text herein.

16.4 Publication Costs to be Borne by Grantee

Grantee shall reimburse the City for all costs incurred in publishing this Franchise, if such publication is required.

16.5 Binding Effect

This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.

16.6 No Joint Venture

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third Persons or the public in any manner which would indicate any such relationship with the other.

16.7 Waiver

The failure of the City at any time to require performance by the Grantee of any provision hereof shall in no way affect the right of the City hereafter to enforce the same. Nor shall the waiver by the City of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

16.8 Reasonableness of Consent or Approval

Whenever under this Franchise “reasonableness” is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards as well as business and economic considerations.

16.9 Entire Agreement

This Franchise and all Exhibits represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral

negotiations between the parties.

16.10 Jurisdiction

Venue for any judicial dispute between the City and Grantee arising under or out of this Franchise shall be in Denver County District Court, Colorado, or in the United States District Court in Denver.

IN WITNESS WHEREOF, this Franchise is signed in the name of the City of Westminster, Colorado this ___ day of _____, 2013.

ATTEST:

CITY OF WESTMINSTER, COLORADO:

City Clerk

Mayor

APPROVED AS TO FORM:

RECOMMENDED AND APPROVED:

City Attorney

City Manager

Accepted and approved this ____ day of _____, 2013.

ATTEST:

COMCAST OF COLORADO IX, LLC

Public Notary

Name/Title: _____

**EXHIBIT A:
CUSTOMER SERVICE STANDARDS**

EXHIBIT B

Report Form

Comcast
Quarterly Executive Summary - Escalated Complaints
Section 7.6 (B) of our Franchise Agreement
Quarter Ending _____, Year
CITY OF WESTMINSTER

<u>Type of Complaint</u>	<u>Number of Calls</u>
Accessibility	0
Billing, Credit and Refunds	0
Courtesy	0
Drop Bury	0
Installation	0
Notices/Easement Issues (Non-Rebuild)	0
Pedestal	0
Problem Resolution	0
Programming	0
Property Damage (Non-Rebuild)	0
Rates	0
Rebuild/Upgrade Damage	0
Rebuild/Upgrade Notices/Easement Issues	0
Reception/Signal Quality	0
Safety	0
Service and Install Appointments	0
Service Interruptions	0
Serviceability	0
<u>TOTAL</u>	0

Compliments

RESOLUTION

RESOLUTION NO. **32**

INTRODUCED BY COUNCILLORS

SERIES OF 2013

A RESOLUTION ADOPTING CUSTOMER SERVICE STANDARDS FOR CABLE OPERATORS

WHEREAS, the City Council finds it desirable to establish customer service standards for cable television operators providing services to the citizens of Westminster;

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

1. That the Customer Service Standards, attached hereto as Exhibit A to this Resolution, are hereby adopted, and shall be publicly available to all persons.
2. That the Customer Service Standards shall be applicable to all franchisees of the City who provide cable television services within the City limits of Westminster.
3. That the City Manager shall determine the manner in which these Customer Service Standards will be made available to the public.

PASSED AND ADOPTED this 25th day of November, 2013.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney

EXHIBIT A

CUSTOMER SERVICE STANDARDS

**City of Westminster, Colorado
Customer Service Standards
(October 30, 2013)**

Introduction

The City of Westminster, Colorado (“City”) has created the following Customer Service Standards (the "Standards") for distribution and adoption by Members. The purpose of the Standards is to establish uniform requirements for the quality of service cable operators are expected to offer their customers in the metropolitan area. The Standards are subject to change from time to time.

The Franchise Authority encourages the Cable Operator to exceed these standards in their day-to-day operations and as such, understands that the Cable Operator may modify their operations in exceeding these standards.

The Standards incorporate the Customer Service Obligations published by the Federal Communications Commission (Section 76.309), April, 1993 and customer service standards of cable television service providers operating in Colorado. Based upon the City’s assessment of the needs of its citizens, property owners and residents, the City adopted, modified and created standards specially tailored to citizens, property owners and residents of the City.

The Standards require the cable operator, in certain circumstances, to post a security fund or letter of credit ensuring Customer Service. The security fund is to be used when the cable company fails to respond to a citizen complaint that the franchising authority determines is valid, and to provide a mechanism by which to impose remedies for noncompliance. It is the sincere hope and intention of the City that the security fund will never need to be drawn upon; however, the City believes that some enforcement measures are necessary.

**CITY OF WESTMINSTER, COLORADO
CUSTOMER SERVICE STANDARDS**

I. POLICY

The Cable Operator should resolve citizen complaints without delay and interference from the Franchising Authority.

Where a given complaint is not addressed by the Cable Operator to the citizen's satisfaction, the Franchising Authority should intervene. In addition, where a pattern of unremedied complaints or noncompliance with the Standards is identified, the Franchising Authority should prescribe a cure and establish a reasonable deadline for implementation of the cure. If the noncompliance is not cured within established deadlines, monetary sanctions should be imposed to encourage compliance and deter future non-compliance.

These Standards are intended to be of general application, and are expected to be met under normal operating conditions; however, the Cable Operator shall be relieved of any obligations hereunder if it is unable to perform due to a region-wide natural emergency or in the event of force majeure affecting a

significant portion of the franchise area. The Cable Operator is free to exceed these Standards to the benefit of its Customers and such shall be considered performance for the purposes of these Standards.

These Standards supercede any contradictory or inconsistent provision in federal, state or local law (Source: 47 U.S.C. § 552(a)(1) and (d)), provided, however, that any provision in federal, state or local law, or in any original franchise agreement or renewal agreement, that imposes a higher obligation or requirement than is imposed by these Standards, shall not be considered contradictory or inconsistent with these Standards. In the event of a conflict between these Standards and a Franchise Agreement, the Franchise Agreement shall control.

These Standards apply to the provision of any Cable Service, provided by a Cable Operator over a Cable System, within the City of Westminster, Colorado.

II. DEFINITIONS

When used in these Customer Service Standards (the "Standards"), the following words, phrases, and terms shall have the meanings given below.

"Adoption" shall mean the process necessary to formally enact the Standards within the Franchising Authority's jurisdiction under applicable ordinances and laws.

"Affiliate" shall mean any person or entity that is owned or controlled by, or under common ownership or control with, a Cable Operator, and provides any Cable Service or Other Service.

"Applicable Law" means, with respect to these standards and any Cable Operator's privacy policies, any statute, ordinance, judicial decision, executive order or regulation having the force and effect of law, that determines the legal standing of a case or issue.

"Cable Operator" shall mean any person or group of persons (A) who provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System. Source: 47 U.S.C. § 522(5).

"Cable Service" shall mean (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Source: 47 U.S.C. § 522(6). For purposes of this definition, "video programming" is programming provided by, or generally considered comparable to programming provided by a television broadcast station. Source: 47 U.S.C. § 522(20). "Other programming service" is information that a Cable Operator makes available to all subscribers generally. Source: 47 U.S.C. § 522(14).

"Cable System" shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the televisions signals of one or more television broadcast stations, or (B) a facility that serves subscribers without using any public right of way. Source: 47 U.S.C. § 522(7).

"City" shall mean the City of Westminster, Colorado.

"Colorado Communications and Utilities Alliance" or "City" shall mean an association comprised primarily of local governmental subdivisions of the State of Colorado, or any successor entity. The City may, on behalf of its citizens, property owners and residents, be delegated the authority to review, investigate or otherwise take some related role in the administration and/or enforcement of any functions under these Standards.

"Contractor" shall mean a person or entity that agrees by contract to furnish materials or perform services for another at a specified consideration.

"Customer" shall mean any person who receives any Cable Service from a Cable Operator.

"Customer Service Representative" (or "CSR") shall mean any person employed with or under contract or subcontract to a Cable Operator to assist, or provide service to, customers, whether by telephone, writing service or installation orders, answering customers' questions in person, receiving and processing payments, or performing any other customer service-related tasks.

"Escalated complaint" shall mean a complaint that is referred to a Cable Operator by the Franchising Authority.

"Franchising Authority" shall mean the City.

"Necessary" shall mean required or indispensable.

"Non-cable-related purpose" shall mean any purpose that is not necessary to render or conduct a legitimate business activity related to a Cable Service or Other Service provided by a Cable Operator to a Customer. Market research, telemarketing, and other marketing of services or products that are not related to a Cable Service or Other Service provided by a Cable Operator to a Customer shall be considered Non-cable-related purposes.

"Normal business hours" shall mean those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include at least some evening hours one night per week, and include some weekend hours. Source: 47 C.F.R. § 76.309.

"Normal operating conditions" shall mean those service conditions which are within the control of a Cable Operator. Conditions which are not within the control of a Cable Operator include, but are not necessarily limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Conditions which are ordinarily within the control of a Cable Operator include, but are not necessarily limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods and maintenance or upgrade to the Cable System.

"Other Service(s)" shall mean any wire or radio communications service provided using any of the facilities of a Cable Operator that are used in the provision of Cable Service.

"Personally Identifiable Information" shall mean specific information about an identified Customer, including, but not be limited to, a Customer's (a) login information for the use of Cable Service and management of a Customer's Cable Service account, (b) extent of viewing of video programming or

Other Services, (c) shopping choices, (d) interests and opinions, (e) energy uses, (f) medical information, (g) banking data or information, or (h) any other personal or private information.

"Personally Identifiable Information" shall not mean any aggregate information about Customers which does not identify particular persons, or information gathered by a Cable Operator necessary to install, repair or service equipment or Cable System facilities at a Customer's premises.

"Service interruption" or "interruption" shall mean (i) the loss or substantial impairment of picture and/or sound on one or more cable television channels.

"Service outage" or "outage" shall mean a loss or substantial impairment in reception on all channels.

"Subcontractor" shall mean a person or entity that enters into a contract to perform part or all of the obligations of another's contract.

"Writing" or "written" as the term applies to notification shall include electronic communications.

Any terms not specifically defined in these Standards shall be given their ordinary meaning, or where otherwise defined in applicable federal law, such terms shall be interpreted consistent with those definitions.

III. CUSTOMER SERVICE

A. Courtesy

Cable Operator employees, contractors and subcontractors shall be courteous, knowledgeable and helpful and shall provide effective and satisfactory service in all contacts with customers.

B. Accessibility

1. A Cable Operator shall provide customer service centers/business offices ("Service Centers") which are conveniently located, and which are open during Normal Business Hours. Service Centers shall be fully staffed with Customer Service Representatives offering the following services to Customers who come to the Service Center: bill payment, equipment exchange, processing of change of service requests, and response to Customer inquiries and request.

Unless otherwise requested by the City, a Cable Operator shall post a sign at each Service Center, visible from the outside of the Service Center, advising Customers of its hours of operation and of the telephone number at which to contact the Cable Operator if the Service Center is not open at the times posted.

The Cable Operator shall use commercially reasonable efforts to implement and promote "self-help" tools and technology, in order to respond to the growing demand of Customers who wish to interact with the Cable Operator on the Customer's own terms and timeline and at their own convenience, without having to travel to a Service Center. Without limitation, examples of self-help tools or technology may include self-installation kits to Customers upon request; pre-paid mailers for the return of equipment upon Customer request; an automated phone option for Customer bill payments; and equipment exchanges at a Customer's residence in the event of damaged equipment. A Cable Operator shall

provide free exchanges of faulty equipment at the customer's address if the equipment has not been damaged in any manner due to the fault or negligence of the customer.

2. A Cable Operator shall maintain local telephone access lines that shall be available twenty-four (24) hours a day, seven (7) days a week for service/repair requests and billing/service inquiries.

3. A Cable Operator shall have dispatchers and technicians on call twenty-four (24) hours a day, seven (7) days a week, including legal holidays.

4. If a customer service telephone call is answered with a recorded message providing the customer with various menu options to address the customer's concern, the recorded message must provide the customer the option to connect to and speak with a CSR within sixty (60) seconds of the commencement of the recording. During Normal Business Hours, a Cable Operator shall retain sufficient customer service representatives and telephone line capacity to ensure that telephone calls to technical service/repair and billing/service inquiry lines are answered by a customer service representative within thirty (30) seconds or less from the time a customer chooses a menu option to speak directly with a CSR or chooses a menu option that pursuant to the automated voice message, leads to a direct connection with a CSR. Under normal operating conditions, this thirty (30) second telephone answer time requirement standard shall be met no less than ninety (90) percent of the time measured quarterly.

5. Under normal operating conditions, a customer shall not receive a busy signal more than three percent (3%) of the time. This standard shall be met ninety (90) percent or more of the time, measured quarterly.

C. Responsiveness

1. Guaranteed Seven-Day Residential Installation

a. A Cable Operator shall complete all standard residential installations or modifications to service requested by customers within seven (7) business days after the order is placed, unless a later date for installation is requested. "Standard" residential installations are those located up to one hundred twenty five (125) feet from the existing distribution system. If the customer requests a nonstandard residential installation, or the Cable Operator determines that a nonstandard residential installation is required, the Cable Operator shall provide the customer in advance with a total installation cost estimate and an estimated date of completion.

b. All underground cable drops to the home shall be buried at a depth of no less than twelve inches (12"), or such other depth as may be required by the Franchise Agreement or local code provisions, or if there are no applicable Franchise or code requirements, at such other depths as may be agreed to by the parties if other construction concerns preclude the twelve inch requirement, and within no more than one calendar week from the initial installation, or at a time mutually agreed upon between the Cable Operator and the customer.

2. Residential Installation and Service Appointments

a. The "appointment window" alternatives for specific installations, service calls, and/or other installation activities will be either a specific time, or at a maximum, a four (4) hour time block between the hours of 8:00 a.m. and 6:00 p.m., six (6) days per week. A Cable Operator may schedule service

calls and other installation activities outside of the above days and hours for the express convenience of customers. For purposes of this subsection “appointment window” means the period of time in which the representative of the Cable Operator must arrive at the customer’s location.

b. A Cable Operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment, unless the customer’s issue has otherwise been resolved.

c. If a Cable Operator is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the Cable Operator shall take reasonable efforts to contact the customer promptly, but in no event later than the end of the appointment window. The appointment will be rescheduled, as necessary at a time that is convenient to the customer, within Normal Business Hours or as may be otherwise agreed to between the customer and Cable Operator.

d. A Cable Operator shall be deemed to have responded to a request for service under the provisions of this section when a technician arrives within the agreed upon time, and, if the customer is absent when the technician arrives, the technician leaves written notification of arrival and return time, and a copy of that notification is kept by the Cable Operator. In such circumstances, the Cable Operator shall contact the customer within forty-eight (48) hours.

3. Residential Service Interruptions

a. In the event of system outages resulting from Cable Operator equipment failure, the Cable Operator shall correct such failure within 2 hours after the 3rd customer call is received.

b. All other service interruptions resulting from Cable Operator equipment failure shall be corrected by the Cable Operator by the end of the next calendar day.

c. Records of Complaints.

i. A Cable Operator shall keep an accurate and comprehensive file of any complaints regarding the cable system or its operation of the cable system, in a manner consistent with the privacy rights of customers, and the Cable Operator's actions in response to those complaints. These files shall remain available for viewing by the Franchising Authority during normal business hours at the Cable Operator’s business office, and shall be retained by the Cable Operator for a period of at least three (3) years.

ii. Upon written request a Cable Operator shall provide the Franchising Authority an executive summary quarterly, which shall include information concerning customer complaints referred by the Franchising Authority to the Grantee and any other requirements of a Franchise Agreement but no personally identifiable information. These summaries shall be provided within fifteen (15) days after the end of each quarter. Once a request is made, it need not be repeated and quarterly executive summaries shall be provided by the Cable Operator until notified in writing by the Franchising Authority that such summaries are no longer required.

iii. Upon written request a summary of service requests, identifying the number and nature of the requests and their disposition, shall also be completed by the Cable Operator for each quarter and submitted to the Franchising Authority by the fifteenth (15th) day of the month

after each calendar quarter. Once a request is made, it need not be repeated and quarterly summary of service requests shall be provided by the Cable Operator until notified in writing by the Franchising Authority that such summaries are no longer required. Complaints shall be broken out by the nature of the complaint and the type of Cable service subject to the complaint.

d. Records of Service Interruptions and Outages. A Cable Operator shall maintain records of all outages and reported service interruptions. Such records shall indicate the type of cable service interrupted, including the reasons for the interruptions. A log of all service interruptions shall be maintained and provided to the Franchising Authority quarterly, upon written request, within fifteen (15) days after the end of each quarter. Such records shall be submitted to the Franchising Authority with the records identified in Section 3.c.ii above if so requested in writing, and shall be retained by the Cable Operator for a period of three (3) years.

e. All service outages and interruptions for any cause beyond the control of the Cable Operator shall be corrected within thirty-six (36) hours, after the conditions beyond its control have been corrected.

4. TV Reception

a. A Cable Operator shall provide clear television reception that meets or exceeds technical standards established by the United States Federal Communications Commission (the "FCC"). A Cable Operator shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions shall be preceded by notice and shall occur during periods of minimum use of the system, preferably between midnight and six a.m. (6:00 a.m.).

b. If a customer experiences poor video or audio reception attributable to a Cable Operator's equipment, the Cable Operator shall:

- i. Assess the problem within one (1) day of notification;
- ii. Communicate with the customer regarding the nature of the problem and the expected time for repair;
- iii. Complete the repair within two (2) days of assessing the problem unless circumstances exist that reasonably require additional time.

c. If an appointment is necessary to address any video or audio reception problem, the customer may choose a block of time described in Section III.C.2.a. At the customer's request, the Cable Operator shall repair the problem at a later time convenient to the customer, during Normal Business Hours or at such other time as may be agreed to by the customer and Cable Operator. A Cable Operator shall maintain periodic communications with a customer during the time period in which problem ascertainment and repair are ongoing, so that the customer is advised of the status of the Cable Operator's efforts to address the problem.

5. Problem Resolution

A Cable Operator's customer service representatives shall have the authority to provide credit for interrupted service, to waive fees, to schedule service appointments and to change billing cycles, where

appropriate. Any difficulties that cannot be resolved by the customer service representative shall be referred to the appropriate supervisor who shall contact the customer within four (4) hours and resolve the problem within forty eight (48) hours or within such other time frame as is acceptable to the customer and the Cable Operator.

6. Billing, Credits, and Refunds

a. In addition to other options for payment of a customer's service bill, a Cable Operator shall make available a telephone payment option where a customer without account irregularities can enter payment information through an automated system, without the necessity of speaking to a CSR.

b. A Cable Operator shall allow at least thirty (30) days from the beginning date of the applicable service period for payment of a customer's service bill for that period. If a customer's service bill is not paid within that period of time the Cable Operator may apply an administrative fee to the customer's account. The administrative fee must reflect the average costs incurred by the Cable Operator in attempting to collect the past due payment in accordance with applicable law. If the customer's service bill is not paid within forty-five (45) days of the beginning date of the applicable service period, the Cable Operator may perform a "soft" disconnect of the customer's service. If a customer's service bill is not paid within fifty-two (52) days of the beginning date of the applicable service period, the Cable Operator may disconnect the customer's service, provided it has provided two (2) weeks notice to the customer that such disconnection may result.

c. The Cable Operator shall issue a credit or refund to a customer within 30 days after determining the customer's entitlement to a credit or refund.

d. Whenever the Cable Operator offers any promotional or specially priced service(s) its promotional materials shall clearly identify and explain the specific terms of the promotion, including but not limited to manner in which any payment credit will be applied, required minimum equipment rental cost and whether the subscriber would be responsible for the regular, ongoing monthly cost following the end of the promotional period.

7. Treatment of Property

To the extent that a Franchise Agreement does not contain the following procedures for treatment of property, Operator shall comply with the procedures set forth in this Section.

a. A Cable Operator shall keep tree trimming to a minimum; trees and shrubs or other landscaping that are damaged by a Cable Operator, any employee or agent of a Cable Operator during installation or construction shall be restored to their prior condition or replaced within seven (7) days, unless seasonal conditions require a longer time, in which case such restoration or replacement shall be made within seven (7) days after conditions permit. Trees and shrubs on private property shall not be removed without the prior permission of the owner or legal tenant of the property on which they are located. This provision shall be in addition to, and shall not supersede, any requirement in any franchise agreement.

b. A Cable Operator shall, at its own cost and expense, and in a manner approved by the property owner and the Franchising Authority, restore any private property to as good condition as before the work causing such disturbance was initiated. A Cable Operator shall repair, replace or compensate a

property owner for any damage resulting from the Cable Operator's installation, construction, service or repair activities. If compensation is requested by the customer for damage caused by any Cable Operator activity, the Cable Operator shall reimburse the property owner one hundred (100) percent of the actual cost of the damage.

c. Except in the case of an emergency involving public safety or service interruption to a large number of customers, a Cable Operator shall give reasonable notice to property owners or legal tenants prior to entering upon private premises, and the notice shall specify the work to be performed; provided that in the case of construction operations such notice shall be delivered or provided at least twenty-four (24) hours prior to entry, unless such notice is waived by the customer. For purposes of this subsection, "reasonable notice" shall be considered:

- i. For pedestal installation or similar major construction, seven (7) days.
- ii. For routine maintenance, such as adding or dropping service, tree trimming and the like, reasonable notice given the circumstances. Unless a Franchise Agreement has a different requirement, reasonable notice shall require, at a minimum, prior notice to a property owner or tenant, before entry is made onto that person's property.
- iii. For emergency work a Cable Operator shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made. Door hangars must describe the issue and provide contact information where the property owner or tenant can receive more information about the emergency work.

Nothing herein shall be construed as authorizing access or entry to private property, or any other property, where such right to access or entry is not otherwise provided by law.

d. Cable Operator personnel shall clean all areas surrounding any work site and ensure that all cable materials have been disposed of properly.

D. Services for Customers with Disabilities

1. For any customer with a disability, a Cable Operator shall deliver and pick up equipment at customers' homes at no charge unless the malfunction was caused by the actions of the customer. In the case of malfunctioning equipment, the technician shall provide replacement equipment, hook it up and ensure that it is working properly, and shall return the defective equipment to the Cable Operator.
2. A Cable Operator shall provide either TTY, TDD, TYY, VRS service or other similar service that are in compliance with the Americans With Disabilities Act and other applicable law, with trained operators who can provide every type of assistance rendered by the Cable Operator's customer service representatives for any hearing-impaired customer at no charge.
3. A Cable Operator shall provide free use of a remote control unit to mobility-impaired (if disabled, in accordance with Section III.D.4) customers.
4. Any customer with a disability may request the special services described above by providing a Cable Operator with a letter from the customer's physician stating the need, or by making the request to the

Cable Operator's installer or service technician, where the need for the special services can be visually confirmed.

E. Cable Services Information

1. At any time a customer or prospective customer may request, a Cable Operator shall provide the following information, in clear, concise written form, easily accessible and located on Cable Operator's website (and in Spanish, when requested by the customer):

- a. Products and services offered by the Cable Operator, including its channel lineup;
- b. The Cable Operator's complete range of service options and the prices for these services;
- c. The Cable Operator's billing, collection and disconnection policies;
- d. Privacy rights of customers;
- e. All applicable complaint procedures, including complaint forms and the telephone numbers and mailing addresses of the Cable Operator, and the FCC;
- f. Use and availability of parental control/lock out device;
- g. Special services for customers with disabilities;
- h. Days, times of operation, and locations of the service centers;

2. At a Customer's request, a Cable Operator shall make available either a complete copy of these Standards and any other applicable customer service standards, or a summary of these Standards, in a format to be approved by City and the Franchising Authority, which shall include at a minimum, the URL address of a website containing these Standards in their entirety; provided however, that if the City or Franchising Authority does not maintain a website with a complete copy of these Standards, a Cable Operator shall be under no obligation to do so;

If acceptable to a customer, Cable Operator may fulfill customer requests for any of the information listed in this Section by making the requested information available electronically, such as on a website or by electronic mail.

3. Upon written request, a Cable Operator shall meet annually with the Franchising Authority to review the format of the Cable Operator's bills to customers. Whenever the Cable Operator makes substantial changes to its billing format, it will contact the Franchising Authority at least thirty (30) days prior to the time such changes are to be effective, in order to inform the Franchising Authority of such changes.

4. Copies of notices provided to the customer in accordance with subsection 5 below shall be filed (by fax or email acceptable) concurrently with the Franchising Authority and the City.

5. A Cable Operator shall provide customers with written notification of any change in rates for nondiscretionary cable services, and for service tier changes that result in a deletion of programming from a customer's service tier, at least thirty (30) days before the effective date of change. For purposes

of this section, “nondiscretionary” means the subscribed tier and any other Cable Services that a customer has subscribed to, at the time the change in rates are announced by the Cable Operator.

6. All officers, agents, and employees of the Cable Operator or its contractors or subcontractors who are in personal contact with customers and/or when working on public property, shall wear on their outer clothing identification cards bearing their name and photograph and identifying them as representatives of the Cable Operator. The Cable Operator shall account for all identification cards at all times. Every vehicle of the Cable Operator shall be clearly visually identified to the public as working for the Cable Operator. Whenever a Cable Operator work crew is in personal contact with customers or public employees, a supervisor must be able to communicate clearly with the customer or public employee. Every vehicle of a subcontractor or contractor shall be labeled with the name of the contractor and further identified as contracting or subcontracting for the Cable Operator.

7. Each CSR, technician or employee of the Cable Operator in each contact with a customer shall state the estimated cost of the service, repair, or installation orally prior to delivery of the service or before any work is performed, and shall provide the customer with an oral statement of the total charges before terminating the telephone call or before leaving the location at which the work was performed. A written estimate of the charges shall be provided to the customer before the actual work is performed.

F. Customer Privacy

1. Cable Customer Privacy. In addition to complying with the requirements in this subsection, a Cable Operator shall fully comply with all obligations under 47 U.S.C. Section 551.

2. Collection and Use of Personally Identifiable Information.

a. A Cable Operator shall not use the Cable System to collect, monitor or observe Personally Identifiable Information without the prior affirmative written or electronic consent of the Customer unless, and only to the extent that such information is: (i) used to detect unauthorized reception of cable communications, or (ii) necessary to render a Cable Service or Other Service provided by the Cable Operator to the Customer and as otherwise authorized by applicable law.

b. A Cable Operator shall take such actions as are necessary using then-current industry standard practices to prevent any Affiliate from using the facilities of the Cable Operator in any manner, including, but not limited to, sending data or other signals through such facilities, to the extent such use will permit an Affiliate unauthorized access to Personally Identifiable Information on equipment of a Customer (regardless of whether such equipment is owned or leased by the Customer or provided by a Cable Operator) or on any of the facilities of the Cable Operator that are used in the provision of Cable Service. This subsection F.2.b shall not be interpreted to prohibit an Affiliate from obtaining access to Personally Identifiable Information to the extent otherwise permitted by this subsection F.

c. A Cable Operator shall take such actions as are necessary using then-current industry standard practices to prevent a person or entity (other than an Affiliate) from using the facilities of the Cable Operator in any manner, including, but not limited to, sending data or other signals through such facilities, to the extent such use will permit such person or entity unauthorized access to Personally Identifiable Information on equipment of a Customer (regardless of whether such equipment is owned or leased by the Customer or provided by a Cable Operator) or on any of the facilities of the Cable Operator that are used in the provision of Cable Service.

3. Disclosure of Personally Identifiable Information. A Cable Operator shall not disclose Personally Identifiable Information without the prior affirmative written or electronic consent of the Customer, unless otherwise authorized by applicable law.

a. A minimum of thirty (30) days prior to making any disclosure of Personally Identifiable Information of any Customer for any Non-Cable related purpose as provided in this subsection F.3.a, where such Customer has not previously been provided the notice and choice provided for in subsection III.F.9, the Cable Operator shall notify each Customer (that the Cable Operator intends to disclose information about) of the Customer's right to prohibit the disclosure of such information for Non-cable related purposes. The notice to Customers may reference the Customer to his or her options to state a preference for disclosure or non-disclosure of certain information, as provided in subsection III.F.10.

b. A Cable Operator may disclose Personally Identifiable Information only to the extent that it is necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other Service provided by the Cable Operator to the Customer.

c. To the extent authorized by applicable law, a Cable Operator may disclose Personally Identifiable Information pursuant to a subpoena, court order, warrant or other valid legal process authorizing such disclosure.

4. Access to Information. Any Personally Identifiable Information collected and maintained by a Cable Operator shall be made available for Customer examination within thirty (30) days of receiving a request by a Customer to examine such information about himself or herself at the local offices of the Cable Operator or other convenient place within the City designated by the Cable Operator, or electronically, such as over a website. Upon a reasonable showing by the Customer that such Personally Identifiable Information is inaccurate, a Cable Operator shall correct such information.

5. Privacy Notice to Customers

a. A Cable Operator shall annually mail or provide a separate, written or electronic copy of the privacy statement to Customers consistent with 47 U.S.C. Section 551(a)(1), and shall provide a Customer a copy of such statement at the time the Cable Operator enters into an agreement with the Customer to provide Cable Service. The written notice shall be in a clear and conspicuous format, which at a minimum, shall be in a comparable font size to other general information provided to Customers about their account as it appears on either paper or electronic Customer communications.

b. In or accompanying the statement required by subsection F.5.a, a Cable Operator shall state substantially the following message regarding the disclosure of Customer information: "Unless a Customer affirmatively consents electronically or in writing to the disclosure of personally identifiable information, any disclosure of personally identifiable information for purposes other than to the extent necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other Service, is limited to:

- i. Disclosure pursuant to valid legal process authorized by applicable law.
- ii. Disclosure of the name and address of a Customer subscribing to any general programming tiers of service and other categories of Cable Services provided by the Cable

Operator that do not directly or indirectly disclose: (A) A Customer's extent of viewing of a Cable Service or Other Service provided by the Cable Operator; (B) The extent of any other use by a Customer of a Cable Service; (C) The nature of any transactions made by a Customer over the Cable System; or (D) The nature of programming or websites that a Customer subscribes to or views (i.e., a Cable Operator may only disclose the fact that a person subscribes to a general tier of service, or a package of channels with the same type of programming), provided that with respect to the nature of websites subscribed to or viewed, these are limited to websites accessed by a Customer in connection with programming available from their account for Cable Services.”

The notice shall also inform the Customers of their right to prohibit the disclosure of their names and addresses in accordance with subsection F.3.a. If a Customer exercises his or her right to prohibit the disclosure of name and address as provided in subsection F.3.a or this subsection, such prohibition against disclosure shall remain in effect, unless and until the Customer subsequently changes their disclosure preferences as described in subsection F.9 below.

6. Privacy Reporting Requirements. The Cable Operator shall include in its regular periodic reports to the Franchising Authority required by its Franchise Agreement information summarizing:

a. The type of Personally Identifiable Information that was actually collected or disclosed by Cable Operator during the reporting period;

b. For each type of Personally Identifiable Information collected or disclosed, a statement from an authorized representative of the Cable Operator certifying that the Personally Identifiable Information collected or disclosed was: (A) collected or disclosed to the extent Necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other Service provided by the Cable Operator; (B) used to the extent Necessary to detect unauthorized reception of cable communications; (C) disclosed pursuant to valid legal process authorized by applicable law; or (D) a disclosure of Personally Identifiable Information of particular subscribers, but only to the extent affirmatively consented to by such subscribers in writing or electronically, or as otherwise authorized by applicable law.

c. The standard industrial classification (SIC) codes or comparable identifiers pertaining to any entities to whom such Personally Identifiable Information was disclosed, except that a Cable Operator need not provide the name of any court or governmental entity to which such disclosure was made pursuant to valid legal process authorized by applicable law;

d. The general measures that have been taken to prevent the unauthorized access to Personally Identifiable Information by a person other than the Customer or the Cable Operator. A Cable Operator shall meet with Franchising Authority if requested to discuss technology used to prohibit unauthorized access to Personally Identifiable Information by any means.

7. Nothing in this subsection III.F shall be construed to prevent the Franchising Authority from obtaining Personally Identifiable Information to the extent not prohibited by Section 631 of the Communications Act, 47 U.S.C. Section 551 and applicable laws.

8. Destruction of Personally Identifiable Information. A Cable Operator shall destroy any Personally Identifiable Information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsection 4

of this subsection III.F, pursuant to a court order or other valid legal process, or pursuant to applicable law.

9. Notice and Choice for Customers. The Cable Operator shall at all times make available to Customers one or more methods for Customers to use to prohibit or limit disclosures, or permit or release disclosures, as provided for in this subsection III.F. These methods may include, for example, online website “preference center” features, automated toll-free telephone systems, live toll-free telephone interactions with customer service agents, in-person interactions with customer service personnel, regular mail methods such as a postage paid, self-addressed post card, an insert included with the Customer’s monthly bill for Cable Service, the privacy notice specified in subsection III.F.5, or such other comparable methods as may be provided by the Cable Operator. Website “preference center” features shall be easily identifiable and navigable by Customers, and shall be in a comparable size font as other billing information provided to Customers on a Cable Operator’s website. A Customer who provides the Cable Operator with permission to disclose Personally Identifiable Information through any of the methods offered by a Cable Operator shall be provided follow-up notice, no less than annually, of the Customer’s right to prohibit these disclosures and the options for the Customer to express his or her preference regarding disclosures. Such notice shall, at a minimum, be provided by an insert in the Cable Operator’s bill (or other direct mail piece) to the Customer or a notice or message printed on the Cable Operator’s bill to the Customer, and on the Cable Operator’s website when a Customer logs in to view his or her Cable Service account options. The form of such notice shall also be provided on an annual basis to the Franchising Authority. These methods of notification to Customers may also include other comparable methods as submitted by the Cable Operator and approved by the Franchising Authority in its reasonable discretion.

G. Safety

A Cable Operator shall install and locate its facilities, cable system, and equipment in compliance with all federal, state, local, and company safety standards, and in such manner as shall not unduly interfere with or endanger persons or property. Whenever a Cable Operator receives notice that an unsafe condition exists with respect to its equipment, the Cable Operator shall investigate such condition immediately, and shall take such measures as are necessary to remove or eliminate any unsafe condition.

H. Cancellation of New Services

In the event that a new customer requests installation of Cable Service and is unsatisfied with their initial Cable Service, and provided that the customer so notifies the Cable Operator of their dissatisfaction within 30 days of initial installation, then such customer can request disconnection of Cable Service within 30 days of initial installation, and the Cable Operator shall provide a credit to the customer’s account consistent with this Section. The customer will be required to return all equipment in good working order; provided such equipment is returned in such order, then the Cable Operator shall refund the monthly recurring fee for the new customer’s first 30 days of Cable Service and any charges paid for installation. This provision does not apply to existing customers who request upgrades to their Cable Service, to discretionary Cable Service such as PPV or movies purchased and viewed On Demand, or to customer moves and/or transfers of Cable Service. The service credit shall be provided in the next billing cycle.

IV. COMPLAINT PROCEDURE

A. Complaints to a Cable Operator

1. A Cable Operator shall establish written procedures for receiving, acting upon, and resolving customer complaints, and crediting customer accounts and shall have such procedures printed and disseminated at the Cable Operator's sole expense, consistent with Section III.E.1.e of these Standards.
2. Said written procedures shall prescribe a simple manner in which any customer may submit a complaint by telephone or in writing to a Cable Operator that it has violated any provision of these Customer Service Standards, any terms or conditions of the customer's contract with the Cable Operator, or reasonable business practices. If a representative of the Franchising Authority notifies the Cable Operator of a customer complaint that has not previously been made by the customer to the Cable Operator, the complaint shall be deemed to have been made by the customer as of the date of the Franchising Authority's notice to the Cable Operator.
3. At the conclusion of the Cable Operator's investigation of a customer complaint, but in no more than ten (10) calendar days after receiving the complaint, the Cable Operator shall notify the customer of the results of its investigation and its proposed action or credit.
4. A Cable Operator shall also notify the customer of the customer's right to file a complaint with the Franchising Authority in the event the customer is dissatisfied with the Cable Operator's decision, and shall thoroughly explain the necessary procedures for filing such complaint with the Franchising Authority.
5. A Cable Operator shall immediately report all customer Escalated complaints that it does not find valid to the Franchising Authority.
6. A Cable Operator's complaint procedures shall be filed with the Franchising Authority prior to implementation.

B. Complaints to the Franchising Authority

1. Any customer who is dissatisfied with any proposed decision of the Cable Operator or who has not received a decision within the time period set forth below shall be entitled to have the complaint reviewed by the Franchising Authority.
2. The customer may initiate the review either by calling the Franchising Authority or by filing a written complaint together with the Cable Operator's written decision, if any, with the Franchising Authority.
3. The customer shall make such filing and notification within twenty (20) days of receipt of the Cable Operator's decision or, if no decision has been provided, within thirty (30) days after filing the original complaint with the Cable Operator.
4. If the Franchising Authority decides that further evidence is warranted, the Franchising Authority shall require the Cable Operator and the customer to submit, within ten (10) days of notice thereof, a written statement of the facts and arguments in support of their respective positions.

5. The Cable Operator and the customer shall produce any additional evidence, including any reports from the Cable Operator, which the Franchising Authority may deem necessary to an understanding and determination of the complaint.

6. The Franchising Authority shall issue a determination within fifteen (15) days of receiving the customer complaint, or after examining the materials submitted, setting forth its basis for the determination.

7. The Franchising Authority may extend these time limits for reasonable cause and may intercede and attempt to negotiate an informal resolution.

C. Security Fund or Letter of Credit

A Cable operator shall comply with any Franchise Agreement regarding Letters of Credit. If a Franchise Agreement is silent on Letter of Credit the following shall apply:

1. Within thirty (30) days of the written notification to a Cable Operator by the Franchising Authority that an alleged Franchise violation exists, a Cable Operator shall deposit with an escrow agent approved by the Franchising Authority fifty thousand dollars (\$50,000) or, in the sole discretion of the Franchising Authority, such lesser amount as the Franchising Authority deems reasonable to protect subscribers within its jurisdiction. Alternatively, at the Cable Operator's discretion, it may provide to the Franchising Authority an irrevocable letter of credit in the same amount. A letter of credit or cash deposit, with the approval of the Franchising Authority, may be posted jointly for more than one member of the City, and may be administered, and drawn upon, jointly by the City or drawn upon individually by each member; provided however that if such letter of credit or cash deposit is provided to City on behalf of more than one of its members, the letter of credit or cash deposit may, in the sole discretion of City and its effected members, be required in an amount not to exceed one hundred thousand dollars (\$100,000).

The escrowed funds or letter of credit shall constitute the "Security Fund" for ensuring compliance with these Standards for the benefit of the Franchising Authority. The escrowed funds or letter of credit shall be maintained by a Cable Operator at the amount initially required, even if amounts are withdrawn pursuant to any provision of these Standards, until any claims related to the alleged Franchise violation(s) are paid in full.

2. The Franchising Authority may require the Cable Operator to increase the amount of the Security Fund, if it finds that new risk factors exist which necessitate such an increase.

3. The Security Fund shall serve as security for the payment of any penalties, fees, charges or credits as provided for herein and for the performance by a Cable Operator of all its obligations under these Customer Service Standards.

4. The rights reserved to the Franchising Authority with respect to the Security Fund are in addition to all other rights of the Franchising Authority, whether reserved by any applicable franchise agreement or authorized by law, and no action, proceeding or exercise of a right with respect to same shall in any way affect, or diminish, any other right the Franchising Authority may otherwise have.

D. Verification of Compliance

A Cable Operator shall establish its compliance with any or all of the standards required through annual reports that demonstrate said compliance, or as requested by the Franchising Authority.

E. Procedure for Remedying Violations

1. If the Franchising Authority has reason to believe that a Cable Operator has failed to comply with any of these Standards, or has failed to perform in a timely manner, the Franchising Authority may pursue the procedures in its Franchise Agreement to address violations of these Standards in a like manner as other franchise violations are considered.

2. Following the procedures set forth in any Franchise Agreement governing the manner to address alleged Franchise violations, if the Franchising Authority determines in its sole discretion that the noncompliance has been substantiated, in addition to any remedies that may be provided in the Franchise Agreement, the Franchising Authority may:

a. Impose assessments of up to one thousand dollars (\$1,000.00) per day, to be withdrawn from the Security Fund in addition to any franchise fee until the non-compliance is remedied; and/or

b. Order such rebates and credits to affected customers as in its sole discretion it deems reasonable and appropriate for degraded or unsatisfactory services that constituted noncompliance with these Standards; and/or

c. Reverse any decision of the Cable Operator in the matter and/or

d. Grant a specific solution as determined by the Franchising Authority; and/or

e. Except for in emergency situations, withhold licenses and permits for work by the Cable Operator or its subcontractors in accordance with applicable law.

V. MISCELLANEOUS

A. Severability

Should any section, subsection, paragraph, term, or provision of these Standards be determined to be illegal, invalid, or unconstitutional by any court or agency of competent jurisdiction with regard thereto, such determination shall have no effect on the validity of any other section, subsection, paragraph, term, or provision of these Standards, each of the latter of which shall remain in full force and effect.

B. Non-Waiver

Failure to enforce any provision of these Standards shall not operate as a waiver of the obligations or responsibilities of a Cable Operator under said provision, or any other provision of these Standards.



Agenda Memorandum

City Council Meeting
November 25, 2013



SUBJECT: Councillor's Bill No. 51 re 2013 3rd Quarter Budget Supplemental Appropriation

Prepared By: Karen Barlow, Accountant

Recommended City Council Action

Pass Councillor's Bill No. 51 on first reading, providing for a supplemental appropriation of funds to the 2013 budget of the General, Water, General Capital Outlay Replacement (GCORF), and General Capital Improvement (GCIF) Funds.

Summary Statement

- At the end of each quarter, Staff prepares an ordinance to appropriate unanticipated revenues received during the quarter. Preparing quarterly supplemental appropriation requests is done to simplify administrative procedures and reduce paper work.
- General Fund amendments:
 - \$37,914 Grant Proceeds
 - \$17,698 Reimbursements
- Water Fund amendments:
 - \$67,746 Sale of Assets
 - \$25,000 Reimbursements
- General Capital Outlay Replacement Fund amendments:
 - \$4,711 Grant Proceeds
- General Capital Improvement Fund amendments:
 - \$281,502 Cash-in-Lieu
 - \$18,550 Grant Proceeds
 - \$10,000 Contributions

Expenditure Required: \$463,121

Source of Funds: The funding sources for these budgetary adjustments include grant proceeds, reimbursements, sale of assets, cash-in-lieu, and contributions

Policy Issue

Does City Council support amending the appropriations for the 2013 budget of the General, Water, General Capital Outlay Replacement, and General Capital Improvement Funds as outlined?

Alternative

The alternative would be not to amend the 2013 budget appropriations for the General, Water, General Capital Outlay Replacement, and General Capital Improvement Funds and to utilize these funds for other purposes. Staff does not recommend this alternative as the various departments have already incurred expenses and covered them with their current budget or planned projects in anticipation of appropriation of these additional funds.

Background Information

The attached Councillor's Bill is a routine action addressing the need to adjust revenue and expenditure appropriations as a result of activities or events that were not anticipated during the normal budget process.

The Police Department received \$1,687 from the City and County of Denver. This is a full reimbursement for the National Homeland Security Conference attended by the Police Department's Senior Management Analyst. The funds are being appropriated to the department's Career Development account.

The Police Department received \$8,156 from the State of Colorado, Department of Transportation Click It or Ticket Enforcement Program. The grant reimburses for overtime incurred by enforcement officers while working the enforcement programs. The funds are being appropriated to the department's Overtime account.

The Police Department received \$627 from the North Metro Task Force as reimbursement for overtime incurred by the department's Task Force members working Organized Crime Drug Enforcement Task Force (OCDETF) cases. The reimbursement from the Task Force was for overtime incurred from February through May 2013, and it is being appropriated to the department's Overtime account.

The Police Department received \$2,835 from International Crimes Against Children (ICAC) for software license renewals for the department's forensic computers. The funds are being appropriated to the department's Software Maintenance account.

The Police Department received \$7,253 from the North Metro Task Force as reimbursement for overtime incurred by the department's Task Force members working on Federal High Intensity Drug Tracking Area (HIDTA) cases. The reimbursement from the Task Force was for overtime incurred from April through June 2013, and the reimbursement is being appropriated to the department's Overtime account.

The Police Department received \$998 from the Jefferson County Emergency Communications Authority Board (E911). This was reimbursement for training costs of the Intergraph Conference and reimbursement for keyboards which were replaced in the Communications Center. The reimbursement is being appropriated to the department's Career Development account and Supplies account.

The Police Department received \$2,000 from Target Corporation for the Public Safety Grant. This was for the Neighborhood Ice Cream Social event on National Night Out and for K9 Unit equipment, including harnesses and first aid kits for the unit. The funds are being appropriated to the department's Supplies account.

The Police Department received \$10,970 from the State of Colorado Department of Transportation for their participation in the 2013 High Visibility Impaired Driving Enforcement (HVIDE) campaign. The grant reimburses overtime incurred by enforcement officers while working the July 4th and Labor Day enforcement campaigns. The funds are being appropriated to the department's Overtime account.

The Police Department received \$9,242 from the State of Colorado, Department of Transportation. This was reimbursement for overtime incurred by enforcement officers while working the Law Enforcement Assistance Fund program in April through June 2013. The reimbursement is being appropriated to the department's Overtime account.

The Police Department received \$4,178 from the North Metro Task Force as reimbursement for overtime incurred by the department's Task Force members working on Immigration and Customs Enforcement (ICE) cases. The reimbursement from the Task Force was for overtime incurred from June and July 2013, and the reimbursement is being appropriated to the department's Overtime account.

The Police Department received \$1,000 from the Adams County Victims Assistance Fund and \$1,275 from the Jefferson County Victims Assistance Fund for expenses associated with the 2013 Colorado Victim Advocate Association (COVA) Conference. This was attended by Police Department Victim Advocate staff. The reimbursement is being appropriated to the department's Career Development account.

The Public Works and Utilities Department received \$680 in subrogation monies. This was for street signs damaged throughout the City, and the funds are being appropriated to the Signing Materials account.

The Fire Department received \$4,711 from the State of Colorado Forest Service on behalf of the Wildland Team. These funds were received as reimbursement for fire personnel overtime and expenses incurred during the Wildland Team deployment to the Guernsey Fire in 2012. The funds are being appropriated as a transfer to the General Capital Outlay Replacement Fund (GCORF). This transfer from the General Fund in the amount of \$4,711 is being appropriated to the Wildland Truck Replacement CIP in the GCORF, which will assist with future apparatus replacement.

The Public Works and Utilities Department received \$25,000 as a reimbursement from RTD. The City of Westminster is currently working with RTD on a number of aspects of the FasTracks project, including commuter rail improvements adjacent to the City-owned Jim Baker Reservoir (JBR) property. Impacts to the JBR area that result from RTD's project have been negotiated with RTD in the Jim Baker Reservoir Intergovernmental Agreement (IGA), approved by Council in March, 2013. One specific item included in the IGA is reimbursement to the City for the costs of inspecting their construction up to a fee of \$50,000. The City hired Deere & Ault to provide construction inspection services on behalf of the City, and has paid for these services out of a capital improvement project account. The City has received the first payment from RTD in the amount of \$25,000. Staff is requesting that these funds be appropriated to the capital improvements project account from which the Deere & Ault services have been paid, which was the Gravel Lakes-Major Repairs/Replacement project. The remainder of the payment amount will be paid to the City upon final acceptance of the FasTracks improvements at the JBR property.

The Public Works and Utilities Department received \$67,746 from RTD for the sale of property. This is the result of an item in the City's IGA with RTD that refers to the purchase by RTD of property at the JBR site. RTD's project required acquisition of a small piece of land along the southern portion of the JBR property, as well as easements for construction, operations and maintenance. The City and RTD negotiated a price of \$3.50/square foot for the land, for a total of \$67,746 to be paid to the City. The City has reserved an easement to maintain certain facilities associated with the reservoir. Staff is requesting that the funds from this land sale be used for engineering services related to RTD's work at the JBR property in order to ensure the continued safety of the JBR dam embankment and slurry wall. The City negotiated construction inspection services as mentioned above and these services will be reimbursed by RTD. Staff believes that it would be prudent to budget for funding should additional engineering services be required at the site to protect the City's interests. Staff is requesting that the \$67,746 be appropriated to the Gravel Lakes-Major Repairs/Replacement project.

The Community Development department received a cash-in-lieu payment of \$281,502 from Jerry Tepper per the Public Improvements Agreement for the design and construction improvements to Sheridan Boulevard abutting the Shoenberg Farm Commercial property. The funds are being appropriated to the Shoenberg Farm-Site Improvements project.

The Community Development department has been awarded a Certified Local Government (CLG) Grant Award of \$18,550 from the Colorado Historical Society. This grant will be used for the design and manufacture of five interpretive signs for the Charles and Julie Semper farm. These funds are being appropriated to the project Community Development Grants-Historical/CLG.

The Parks, Recreation, and Libraries department received a \$10,000 contribution from Kaiser Permanente for the Jessica Ridgeway Memorial Park. These funds are to be used only for maintenance activities for the park. These funds are being appropriated to the Jessica Ridgeway Park Maintenance project.

These appropriations will amend General Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Federal Grants	1000.40610.0000	\$35,618	\$8,135	\$43,753
State Grants	1000.40620.0000	78,142	27,779	105,921
Other Grants	1000.40650.0057	0	2,000	2,000
Reimbursements	1000.43080.0000	142,298	<u>17,698</u>	159,996
Total Change to Revenues			<u>\$55,612</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfers Capital Replacement	10010900.79800.0450	\$14,480	\$4,711	\$19,191
Career Dev	10020050.61800.0000	5,475	1,687	7,162
Salaries OT-Investigation Section	10020300.60400.0344	213,593	12,058	225,651
Career Development-Investigation Section	10020300.61800.0344	15,500	2,275	17,775
Career Dev-Comm Sect	10020300.61800.0345	10,400	698	11,098
Maint/Repair Equip-Inv Section	10020300.66100.0344	7,000	2,835	9,835
Supplies-Prof Svcs	10020300.70200.0341	8,069	1,000	9,069
Supplies-Comm Section	10020300.70200.0345	6,995	300	7,295
Salaries OT-Traffic	10020500.60400.0348	83,662	28,368	112,030
Supplies-Patrol Section	10020500.70200.0349	13,500	1,000	14,500
Signing Materials	10035450.72600.0000	54,222	680	54,902
Total Change to Expenses			<u>\$55,612</u>	

These appropriations will amend Water Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Sale of Assets	2000.43040.0000	\$0	\$67,746	\$67,746
Reimbursements	2000.43080.0000	0	<u>25,000</u>	25,000
Total Change to Revenues			<u>\$92,746</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Gravel Lakes-Maj Repairs/Replacement	81120035813.80400.8888	\$20,334	\$92,746	\$113,080
Total Change to Expenses			<u>\$92,746</u>	

These appropriations will amend General Capital Outlay Replacement Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
TRF General Fund	4500.45000.0100	\$14,480	<u>\$4,711</u>	\$19,191
Total Change to Revenues			<u>\$4,711</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Wildland Truck Replacement	81145010911.80400.8888	\$115,176	<u>\$4,711</u>	\$119,887
Total Change to Expenses			<u>\$4,711</u>	

These appropriations will amend General Capital Improvement Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Cash in lieu-Fut Cap Proj	7500.40210.0751	\$2,440,000	\$281,502	\$2,721,502
State Grants	7500.40620.0000	169,704	18,550	188,254
Contributions	7501.43100.0000	215,530	<u>10,000</u>	225,530
Total Change to Revenues			<u>\$310,052</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
CD-Grants (Historical/CLG)	80675030428.80400.8888	\$0	\$18,550	\$18,550
Shoenberg Farm-Site Improvements	81375030075.80400.8888	0	281,502	281,502
Jessica Ridgeway Park Maintenance	81375050074.80400.8888	0	<u>10,000</u>	10,000
Total Change to Expenses			<u>\$310,052</u>	

These adjustments will bring the City’s accounting records up-to-date to reflect the various detailed transactions.

The proposed action supports the City Council’s strategic goals of Strong, Balanced Local Economy, Financially Sustainable City Government Providing Exceptional Services, Safe and Healthy Community, Vibrant Neighborhoods in One Livable Community and Beautiful and Environmentally Sensitive City.

Respectfully submitted,

J. Brent McFall
 City Manager
 Attachment – Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **51**

SERIES OF 2013

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AMENDING THE 2013 BUDGETS OF THE GENERAL, WATER,
GENERAL CAPITAL OUTLAY REPLACEMENT, AND GENERAL CAPITAL
IMPROVEMENT FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION
FROM THE 2013 ESTIMATED REVENUES IN THE FUNDS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2013 appropriation for the General, Water, General Capital Outlay Replacement, and General Capital Improvement Funds initially appropriated by Ordinance No. 3655 is hereby increased in aggregate by \$463,121. This appropriation is due to the receipt of funds from grant proceeds, reimbursements, sale of assets, cash-in-lieu, and contributions.

Section 2. The \$463,121 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item dated November 25, 2013 (a copy of which may be obtained from the City Clerk) amending City fund budgets as follows:

General Fund	\$55,612
Water Fund	92,746
General Capital Outlay Replacement Fund	4,711
General Capital Improvement Fund	<u>310,052</u>
Total	<u>\$463,121</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 25th day of November, 2013.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 9th day of December, 2013.

ATTEST:

Mayor

City Clerk