



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. Digital Cities Survey 2013 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. 2014 Traffic Signal and Street Light Maintenance Contract
 - B. Special Legal Services for Retirement Plan Review
 - C. City/WEDA IGA to Reimburse Costs in North Huron URA & Westminster Center Reinvestment Plan Area
 - D. Municipal Court Security Services Contract
 - E. Purchase of Eight Patrol Vehicles from State Bid
 - F. Purchase of Three Police Motorcycles
 - G. Purchase of Utilities Tank-Trailer from City Bid
 - H. 2014 Dell Server and Computer Replacement Purchases
 - I. Second Reading of Councillor's Bill No. 50 Regarding Comcast Franchise Agreement Renewal
 - J. Second Reading of Councillor's Bill No. 51 Authorizing 2013 3rd Quarter Budget Supplemental Appropriation

9. Appointments and Resignations

10. Public Hearings and Other New Business

- A. Public Meeting on 2014 Proposed CDBG and HOME Projects and 2014 Action Plan
- B. Approve Allocation of 2014 CDBG and HOME Funds
- C. Councillor's Bill No. 52 Decreasing Water Tap Fee
- D. Councillor's Bill No. 53 re Housekeeping Amendments in Titles XIII and XVI, W.M.C.
- E. Resolution No. 32 Adopting the 2014 Legislative Policy Statement

11. Old Business and Passage of Ordinances on Second Reading

- A. Selection and Swearing-in of New City Councillor

12. Miscellaneous Business and Executive Session

- A. City Council - Discussion of Strategy and Progress on Negotiations Related to the Westminster Urban Center Redevelopment and the Possible Sale, Acquisition, Trade or Exchange of Property Interests, Including Future Leases, and Provide Instructions to the Authority's Negotiators as Authorized by Sections 24-6-402(4)(a) and (e) (WEDA)

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 25, 2013, AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

Mayor Atchison led the Council, Staff, and audience in the Pledge of Allegiance.

ROLL CALL

Mayor Herb Atchison, Mayor Pro Tem Faith Winter and Councillors Bruce Baker, Bob Briggs, Alberto Garcia, and Emma Pinter 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 Briggs moved, seconded by Mayor Pro Tem Winter, to approve the minutes of the regular meeting of November 11, 2013, as presented. The motion carried unanimously.

CITY MANAGER'S REPORT

Mr. McFall reported that the Council would conduct a post-meeting briefing in the Council Board Room after adjournment of this meeting. Presentations would include the proposed 2014 Legislative Policy Statement, a feasibility study for Connecting Urban Refuges to the Denver Greenway Trail Network, and the previously adopted 2014 Water Tap Fee Increase. The post-meeting briefing was open to the public.

CITY COUNCIL COMMENTS

Mayor Pro Tem Winter invited the public to a reception in honor of the former Mayor and City Councillors on December 4 from 5:30 to 7:30 p.m. at the MAC and to the Holiday Lighting Ceremony at City Hall on December 7 also from 5:30 to 7:30 p.m.

Councillor Briggs reminded everyone of the Westminster Historical Society's Hometown Christmas on December 5 at 6:30 p.m. This yearly event would feature the lighting of the community Christmas tree and all were welcome to attend.

INFORMATION TECHNOLOGY AWARD FOR EXCEPTIONAL INTERNAL CUSTOMER SERVICE

Don Ingle, Vice Chairman of the Colorado Government Association of Information Technology (CGAIT), presented CGAIT's 2013 Award for Exceptional Internal Customer Service to Councillor Briggs, David Punttenney, Information Technology Director, and Randy Land, Web Software Engineer. The award recognized the exceptional service provided through a training program titled, "Information Technology Forums – Experts Helping Experts."

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: accept the October 2013 Financial Report; 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; authorize the City Manager to raise the contract limit from \$50,000 to \$70,000, only to be used if necessary, 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; authorize the City Manager to purchase waterworks materials and water pipe from the low bidders, 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 existing supplies from Dana Kepner not to exceed \$92,000, for Ferguson not to exceed \$55,000, and HD Supply not to exceed \$142,000 for a total of \$289,000; and authorize a \$166,519.20

payment 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.

Mayor Pro Tem Winter moved, seconded by Councillor Briggs, to approve the consent agenda as presented. The motion carried with all Council members voting in favor.

PUBLIC HEARING ON PROPOSED COMCAST FRANCHISE AGREEMENT

At 7:11 p.m., Mayor Atchison opened a public hearing to consider granting a ten-year franchise agreement to Comcast of Colorado IX, LLC for cable television service within the City. There was no formal presentation, and Mr. McFall reported that Staff was present to answer any questions. Councillors had no questions. The Mayor opened the hearing for public comment, of which there was none. He closed the hearing at 7:12 p.m.

COUNCILLOR'S BILL NO. 50 AUTHORIZING CABLE TV FRANCHISE AGREEMENT WITH COMCAST

It was moved by Councillor Briggs, seconded by Councillor Baker, to pass on first reading Councillor's Bill No. 50 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. On roll call vote, the motion passed unanimously.

RESOLUTION NO. 32 ADOPTING CUSTOMER SERVICE STANDARDS FOR CABLE OPERATORS

Councillor Briggs moved to adopt Resolution No. 32 adopting Customer Service Standards for cable operators. Councillor Garcia second the motion, and it passed unanimously on roll call vote.

COUNCILLOR'S BILL NO. 51 - 3RD QUARTER 2013 BUDGET SUPPLEMENTAL APPROPRIATION

Upon a motion by Councillor Briggs, seconded by Mayor Pro Tem Winter, the Council voted unanimously on roll call vote to pass on first reading Councillor's Bill No. 51 providing for a supplemental appropriation of funds to the 2013 budget of the General, Water, General Capital Outlay Replacement, and General Capital Improvement Funds.

ADJOURNMENT

There was no further business to come before the City Council, and Mayor Atchison adjourned the meeting at 7:15 p.m.

ATTEST:

Mayor

City Clerk

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE SPECIAL CITY COUNCIL MEETING
HELD ON TUESDAY, NOVEMBER 26, 2013, AT 6:00 P.M.

ROLL CALL

Mayor Herb Atchison, Mayor Pro Tem Faith Winter and Councillors Bruce Baker, Bob Briggs, Alberto Garcia, and Emma Pinter were present. City Clerk Linda Yeager also attended.

COUNCIL INTERVIEWS OF APPLICANTS FOR VACANCY ON CITY COUNCIL

At 6 p.m., the Council began conducting 20-minute scheduled interviews of half the applicants interested in filling the vacancy on City Council that was created by Mayor Atchison's election to the office of Mayor. Those who were interviewed were: Merlene Stanley, Charles Bustos, Kathleen Dodaro, A. J. Elserougi, David DeMott, David Aragoni, and Deborah Teter.

ADJOURNMENT

There was no further business to come before the City Council, and Mayor Atchison adjourned the meeting at 8:46 p.m.

ATTEST:

Mayor

City Clerk

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE SPECIAL CITY COUNCIL MEETING
HELD ON TUESDAY, DECEMBER 2, 2013, AT 6:45 P.M.

ROLL CALL

Mayor Herb Atchison, Mayor Pro Tem Faith Winter and Councillors Bruce Baker, Bob Briggs, Alberto Garcia, and Emma Pinter were present. City Clerk Linda Yeager also attended.

COUNCIL INTERVIEWS OF APPLICANTS FOR VACANCY ON CITY COUNCIL

At 6:45 p.m., the Council began conducting 20-minute scheduled interviews of the remaining seven applicants interested in filling the vacancy on City Council that was created by Mayor Atchison's election to the office of Mayor. Those who were interviewed were: Donald Ciancio, Mark Moreno, Anita L. Seitz, Suzanne Ramirez, Michael S. Melvin, Jonathan Herrmann, and Brian Harms. Candidates were all informed that selection would occur at the December 9 regular City Council meeting and the person selected would be sworn into office immediately after the selection process concluded.

ADJOURNMENT

There was no further business to come before the City Council, and Mayor Atchison adjourned the meeting at 9:43 p.m.

ATTEST:

City Clerk

Mayor



Agenda Item 6 A

Agenda Memorandum

City Council Meeting
December 9, 2013



SUBJECT: Digital Cities Survey 2013 Award

Prepared By: David Puntteney, Information Technology Director

Recommended City Council Action

Councillor Pinter to present the Digital Cities Survey 2013 Award to the Information Technology Department in recognition of the success that the City of Westminster has achieved in the use of information technology.

Summary Statement

- Council is asked to present the Center for Digital Government's "Digital Cities Survey" award that recognizes the success the City of Westminster has achieved - via the use of technology - in operating efficiencies, realizing strategic objectives, innovative and creative solutions, effective collaboration and transparency measures.
- This award was accepted by Bob Briggs and David Puntteney during a special recognition and award presentation at the National League of Cities Conference in Seattle, Washington on November 15.
- Information Technology Director David Puntteney, Software Engineer Manager Art Rea, Information Systems Manager Scott Rope, and Senior Telecommunication Administrator Dan Hord will be in attendance at the meeting to accept the award.

Expenditure Required: \$0

Source of Funds: N/A

SUBJECT: Digital Cities Survey 2013 Winner

Policy Issue

None identified

Alternative

None identified

Background Information

The Center for Digital Government, a national research and advisory institute on information technology policies and best practices in state and local government, conducts an annual comprehensive nationwide Digital Cities Survey to evaluate results achieved by cities - via the use of technology - in operating efficiencies, realizing strategic objectives, innovative or creative solutions or approaches, effective collaboration and transparency measures. Participation in the program has increased each year and competition is growing. Cities are categorized and ranked by population.

The Center for Digital Government evaluated Westminster and other participating cities from across the nation in the areas of Information Technology strategic planning, hardware and software technologies, citizen engagement, green initiatives, city services offered through web sites, use of mobile technology and policies, technology use in public safety, geographic information system capabilities, voice and data networks and more. Staff is very pleased to report that the City of Westminster was awarded a 4th place ranking in the population category of 75,000 – 125,000. This is the eleventh year Westminster has achieved a top ten ranking. Westminster received the highest ranking of any Colorado city in all population categories this year. Winners are posted on the Center for Digital Government's website (www.centerdigitalgov.com).

The Center for Digital Government hosted an award reception for winners during the NLC Convention in Seattle on November 15, 2013.

This award addresses two Strategic Plan goals: Financially Sustainable City Government Providing Exceptional Services and Safe and Healthy Community.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 8 A

Agenda Memorandum

City Council Meeting
December 9, 2013



SUBJECT: 2014 Traffic Signal and Street Light Maintenance Contract

Prepared By: Greg Olson, Transportation Systems Coordinator

Recommended City Council Action

Authorize the City Manager to execute a contract with W.L. Contractors, Inc. in the amount of \$251,956 for traffic signal and street light maintenance for calendar year 2014 with an option for a one-year renewal.

Summary Statement

- The City utilizes the services of a private contractor to perform maintenance of the City's traffic signals. The current contract expires on December 31, 2013.
- New for 2014 is the incorporation of the maintenance of City-owned street lights as a component of the traffic signal maintenance contract to address new street light installations scheduled for completion during 2014. Prior to this year, all street light maintenance was performed by Xcel Energy.
- Two proposals were received on October 31, 2013 for the contract of traffic signal and street light maintenance in 2014. The supply of firms engaged in this type of business within the Denver-metropolitan area is very limited; Staff is aware of only one other qualified, local firm, and that company chose not to submit a proposal. City Council action is requested to award the 2014 traffic signal and street light maintenance contract to W.L. Contractors, Inc. based upon the superior quality of this company's proposal.
- The contract amount is within the amount budgeted in the 2014 operating budget of the Department of Community Development for traffic signal and street light maintenance activities.

Expenditure Required: \$251,956

Source of Funds: 2014 General Fund - Community Development Operating Budget

Policy Issue

Should the City continue the practice of outsourcing traffic signal maintenance to a private contractor?

Alternative

An alternative to the recommended action is to not enlist the full-time services of a private contractor. This alternative would require the City to hire a minimum of one full-time employee and invest in the equipment necessary to perform basic traffic signal maintenance. The part-time services of a contractor would still be required to provide assistance for major emergency repairs and share with the after-hours maintenance responsibility of the 24 hours/7 days a week operational requirements. Staff continues to annually investigate the feasibility of performing in-house traffic signal maintenance. A cursory analysis this year indicates there may be a cost savings based upon personnel and equipment fees submitted by the contractors during the proposal process. Staff will conduct a service level analysis during 2014 as part of the preparation of the 2015/2016 budget and return to City Council with a recommendation.

Background Information

The City utilizes the services of a contractor to perform maintenance on City traffic signals at 102 intersections and nine pedestrian crossings (total of 111 installations). Starting in 2014, the City will also incorporate the maintenance of City-owned street lights into the traffic signal maintenance contract. Earlier this year, the City Council directed staff to pursue City ownership of street lighting installed in new development areas and within the limits of new capital improvement projects. There are several commercial, residential and capital projects scheduled for completion in 2014 that will include approximately 100 new City owned street lights. In 2015, the completion of projects such as the U.S. 36 Managed Lanes improvements will add another approximately 100 street lights to the City’s inventory. City Staff anticipates that street light maintenance costs will be minimal for 2014 with most newly constructed street light fixtures warranted by the installation contractor. In accordance with Council’s wishes, City staff has directed that all new City owned street light fixtures utilize LED lamps to maximize energy efficiency and to accommodate lower overall maintenance costs.

In years past, traffic signal maintenance contractors were solicited using the standard bidding procedure with the qualified contractor submitting the lowest bid receiving the contract award. Due to the inherent safety impacts and increasingly complicated technical aspects of the City’s traffic signals and communications network, it became apparent that a selection process that emphasizes quality of service via a Request for Proposal (RFP) format is appropriate. The RFP process, initiated in 2009, requires the contractor to explain in detail exactly how their company would provide the requested services in addition to defining the costs for those services. For the 2014 Traffic Signal and Street Light Maintenance contract, an RFP review panel was utilized comprised of City staff and an engineering representative from a neighboring agency. The review panel independently evaluated the proposals and calculated a total score for each contractor. The contractor’s proposal receiving the highest score is being submitted to City Council for approval. The results of the panel’s review of the submitted proposals are as follows:

Contractor	Fee Schedule	Panel Score
W. L. Contractors, Inc.	\$251,956	111
Sturgeon Electric, Inc.	\$256,035	93

The 2013 traffic signal maintenance contract, which was renewed with WL Contractors, Inc. in December 2012, expires on December 31, 2013. For 2014, the proposal receiving the highest panel score of 111 points was submitted by W.L. Contractors, Inc. This company has satisfactorily performed the City’s traffic signal maintenance since 2009. City Staff is confident that W.L. Contractors will

continue to provide the high level of service that the City expects for traffic signal and street light maintenance activities in 2014. Coincidentally, W.L. Contractors also proposed the lower of the two fee schedules for this work.

The 2014 Traffic Signal and Street Light Maintenance contract is based upon a conservative, estimated annual amount of labor, equipment hours and materials for the performance of all traffic signal maintenance functions. There are two general categories of work activities that provide the basis for the estimated hours of equipment and labor unit prices in the traffic signal maintenance contract: annual preventive (routine) maintenance and additional traffic signal (occasional) maintenance.

The RFP required the contractors to submit their proposed fee schedule for the year 2014 with the option to renew for one additional year at the City's sole discretion. A 2015 contract renewal would only be exercised if the contractor's performance warrants it, the City Council has appropriated adequate funding, and the City has determined that continuing to contract for this service is the most cost-effective choice..

This authorization for 2014 Traffic Signal and Street Light Maintenance meets Council's Strategic Plan goals of a Safe and Secure Community and Financially Sustainable City Government by providing a safe well-maintained transportation infrastructure.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 8 B

Agenda Memorandum

City Council Meeting
December 9, 2013



SUBJECT: Special Legal Services for Retirement Plan Review

Prepared By: Kim McDaniel, Retirement Administrator

Recommended City Council Action

Authorize the City Manager to increase the contract with Brownstein Hyatt Farber Schreck, LLP for special legal services in connection with the preparation of legal documents for the City's pension plans and other retirement plan related legal issues that may arise.

Summary Statement

- Periodically, Congress passes legislation that affects tax-qualified retirement plans. Any employers that maintain a tax-qualified retirement plan must have it restated to comply with legislative and regulatory changes.
- On July 22, 2013 City Council authorized the City Manager to enter into a contract with the firm of Brownstein Hyatt Farber Schreck, LLP to provide special legal counsel for the pension plans in an amount not to exceed \$20,000. This firm has served as special legal counsel previously to the City when pension plan documents needed to be amended and submitted to the IRS for determination letter and provided the lowest of three quotes.
- Staff worked with Brownstein Hyatt Farber Schreck, LLP in preparing the pension plan documents for restatement to the IRS. City Council approved recommended amendments to the plan documents on October 28, 2013 and November 11, 2013.
- As part of the plan document review, questions surrounding the Retirement Medical Savings Account (RMSA) produced additional hours of research and therefore, the legal fees with Brownstein Hyatt Farber Schreck, LLP is approaching the \$20,000 approved by City Council on July 22, 2013.
- While this increase in expenditure authorization does not require Council approval, City Charter Section 4.13(f) requires Council approval of all special legal counsel.

Expenditure Required: Not to exceed \$20,000

Source of Funds: 2013 and 2014 Pension Budget and/or General Fund Central Charges Pension Account

Policy Issue

Should the City increase the contract with Brownstein Hyatt Farber Schreck, LLP to prepare and submit legal documents to the IRS to amend the pension plan documents to comply with laws passed and other retirement plan related issues that may arise?

Alternatives

1. Not continue outside legal counsel and proceed without the benefit of special legal services. This alternative is not recommended as it is important that the City complete the restatement to the IRS in order to avoid plan disqualification.
2. Seek other legal assistance in lieu of working with Brownstein Hyatt Farber Schreck, LLP. Brownstein is a widely recognized expert on the topic of pension and staff is very confident in recommending them for the completion of the restatement to the IRS. In addition, staff obtained three quotes and Brownstein Hyatt Farber Schreck, LLP was the lowest bid. The increase is a result of additional questions not anticipated in the original bid.

Background information

The IRS code is often changed and updated following the passage of new laws by Congress. The IRS requires pension plans to update their plan documents in accordance with the legal changes related to pension plans and submit applications to the IRS for approval of the required amendments to the plan documents. Further, the IRS requires pension plans to submit plan amendments by a certain time. Those plans that do not submit proper amendments within the required time can potentially lose their status as “tax-qualified” meaning that contributions to the plan would become taxable. The plan restatements must be submitted to the IRS by January 31, 2013.

On July 22, 2013, City Council authorized the City Manager to sign a contract with Brownstein Hyatt Farber Schreck, LLP. The firm of Brownstein Hyatt Farber Schreck, LLP has extensive experience with pension law and working with the IRS. Brownstein reviewed the pension plan documents and recommended necessary amendments. As part of the review, questions surrounding the Retirement Medical Savings Account (RMSA) produced additional hours of research and discussions with the IRS and City legal counsel. Due to this additional research, Staff is approaching the \$20,000 approved by City Council on July 22, 2013 with Brownstein Hyatt Farber Schreck, LLP.

Plan amendments were approved by City Council on October 28, 2013 and November 11, 2013. In order to complete the restatement process with the IRS, as well as be available for other questions that may occur, Staff is requesting another \$20,000 with Brownstein Hyatt Farber Schreck, LLP. The additional funds will allow Brownstein Hyatt Farber Schreck, LLP to complete and submit the necessary IRS documents and provide for additional legal consultation regarding various legal issues that may arise for the retirement plans next year.

It is extremely important the tax-qualified status of the City’s retirement plan be maintained. If our plans were to become “disqualified”, there are significant adverse tax consequences to all participants, as well as to the plan sponsor.

The City’s Pension Plans are an attractive employee benefit that directly impacts the ability to meet the City’s Strategic Goal of a Financially Sustainable City Government Providing Exceptional Services. The review of the City’s Pension Plans by legal counsel who specialize in pension law provides an opportunity to maintain quality retirement plans for employees.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
December 9, 2013



SUBJECT: City of Westminster/Westminster Economic Development Authority Intergovernmental Cooperation Agreements for the Reimbursement of Costs Incurred by the City in the North Huron Urban Renewal Area and the Westminster Center Reinvestment Plan Area

Prepared By: Robert Byerhof, Treasury Manager
Karen Creager, Special Districts' Accountant
Fred Kellam, Senior Financial Analyst

Recommended City Council Action

Authorize the City Manager to execute two Intergovernmental Cooperation Agreements between the City of Westminster and the Westminster Economic Development Authority in substantially the same form as attached providing payment to the City by WEDA for reimbursement of costs incurred by the City associated with maintenance of improvements and other contractual obligations in the North Huron Urban Renewal Area and the Westminster Center Reinvestment Plan Area.

Summary Statement

- North Huron is one of seven Urban Renewal Area's (URA's) under the Westminster Economic Development Authority (WEDA) umbrella. The North Huron Urban Renewal Plan (Plan) was approved by City Council on January 26, 2004.
- Westminster Center Urban Reinvestment Plan (WURP) is another URA under the WEDA umbrella. The WURP Plan was approved by City Council on April 13, 2009.
- Both Plans provide for WEDA to undertake certain actions that would make the URA more attractive for private investment and eliminate blight. Such actions may include street and traffic improvements, streetscape improvements, storm water and other drainage improvements, landscaping, parks and recreation facilities, utility improvements and public arts projects, (collectively, "the Improvements"). Additionally, the WURP Plan provided for property acquisition, relocation assistance and site preparation that are also included as "the Improvements."
- The City and WEDA both contributed funds towards constructing the Improvements in the URAs.
- The development and redevelopment in the URAs will continue to cause the City to incur additional costs that may be chargeable to WEDA.
- The ICAs detail City and WEDA obligations regarding the covenants set forth for the reimbursement of costs from WEDA's North Huron URA and WURP to the City for the maintenance of improvements or other contractual obligations located within the URAs.
- It is permissible to use tax increment revenue to reimburse the City for current and future maintenance or other contractual obligation costs associated with the URAs.
- Pursuant to article XIV of the Colorado Constitution, and Title 29, Article 1, Part 2, C.R.S., the City and WEDA are authorized to cooperate and contract with one another to provide any function, service, or facility lawfully authorized to each governmental entity.

Expenditure Required: \$0
Source of Funds: N/A

Policy Issue

Should City Council approve two Intergovernmental Cooperation Agreements with the Westminster Economic Development Authority (WEDA) providing for WEDA to reimburse the City for costs for maintenance and other contractual obligations costs associated with the North Huron URA and WURP, provided all other superior covenants and superior obligations have been met?

Alternative

Do not authorize the execution of the proposed ICAs between the City and WEDA. This alternative is not recommended. The costs borne by the City for maintenance of improvements associated with the URAs and other contractual obligations are expenses that are a proper and legal use of URA project funds, tax increment revenues and interest earnings. The reimbursement will be available to fund additional City projects.

Background Information

Pursuant to article XIV of the Colorado Constitution, and Title 29, Article 1, Part 2, C.R.S., the City and WEDA are authorized to cooperate and contract with one another to provide any function, service, or facility lawfully authorized to each governmental entity. Accordingly, WEDA desires to enter into an ICA with the City to reimburse costs incurred by the City relative to these URAs.

The ICAs accomplish several things:

- Recognizes that the City approved the North Huron Urban Renewal Plan that included as one of its primary objectives providing an efficient system of street, roads and other transportation facilities necessary to support urban development in the URA.
- Recognizes that the City approved the Westminster Center Urban Reinvestment Plan that included as one of its primary objectives acquiring property, site preparation and public improvements to support urban development in the URA.
- Recognizes that both Plans provided for WEDA to undertake certain actions that would make the URA more attractive for private investment and eliminate blight. Such actions may include street and traffic improvements, streetscape improvements, storm water and other drainage improvements, landscaping, parks and recreation facilities, utility improvements and public arts projects.
- Recognizes that the City incurs costs for maintenance and other contractual obligations associated with improvements located within the North Huron URA and WURP.
- Recognizes that reimbursement of City incurred costs will be subordinate to any current or future bonded indebtedness (Superior Obligations), including but not limited to tax increment notes, tax increment bonds, economic development agreements, and all other forms of contractual indebtedness or obligation of whatsoever nature that is any way secured, collateralized, or backed by revenues of WEDA.
- As necessary, the City and WEDA shall negotiate in good faith the amount due from WEDA under this Agreement, based on the costs incurred or expected to be incurred by the City, and the funds available to WEDA after first meeting all Superior Obligations of WEDA.

This recommended action supports the strategic objectives of a Strong, Balanced Local Economy; Financially Sustainable City Government Providing Exceptional Services and Vibrant Neighborhoods in One Livable Community. It does so by establishing two ICAs for reimbursement by WEDA of costs incurred by the City in the North Huron URA and WURP, which assist the City in maintaining public improvements and keeping the development areas attractive.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment 1 – Intergovernmental Cooperation Agreement for North Huron
Attachment 2 – Intergovernmental Cooperation Agreement for WURP

**INTERGOVERNMENTAL COOPERATION AGREEMENT BETWEEN THE
WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY AND
THE CITY OF WESTMINSTER FOR THE REIMBURSEMENT OF COSTS INCURRED BY
THE CITY IN THE NORTH HURON URBAN RENEWAL AREA**

This Intergovernmental Cooperation Agreement (“Agreement”), is made and entered into this _____ day of _____, 2013, by and between the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY** (“WEDA”), a Colorado urban renewal authority, and the **CITY OF WESTMINSTER** (“City”), a Colorado home-rule municipality (collectively “Parties”).

WHEREAS, the City is a Colorado home-rule municipality with all the powers and authority granted pursuant to Article XX of the Colorado Constitution and its City Charter; and

WHEREAS, WEDA is a Colorado urban renewal authority, with all the powers and authority granted pursuant to Title 31, Article 25, Part 1, C.R.S. (“Colorado Urban Renewal Law”); and

WHEREAS, pursuant to article XIV of the Colorado Constitution, and Title 29, Article 1, Part 2, C.R.S., the City and WEDA are authorized to cooperate and contract with one another to provide any function, service, or facility lawfully authorized to each governmental entity; and

WHEREAS, pursuant to Section 31-25-105, C.R.S., WEDA has the authority to undertake urban renewal projects and to make and execute any and all contracts that it may deem necessary or convenient to the exercise of its powers; to arrange for the furnishing or repair by any public body of services, privileges, works, streets, roads, public utilities, or educational or other facilities, for or in connection with an urban renewal project; and to make such appropriations and expenditures of its funds as it deems necessary to carry out the purposes of the Colorado Urban Renewal Law; and

WHEREAS, pursuant to Section 31-25-112 of the Colorado Urban Renewal Law, the City is specifically authorized to do all things necessary to aid and cooperate with WEDA in connection with the planning or undertaking of any urban renewal plans, projects, programs, works, operations, or activities of WEDA, to enter into agreements with WEDA respecting such actions to be taken by the City, to cause public buildings and public facilities, including parks, playgrounds, and recreational and community facilities to be furnished within an urban renewal area and to appropriate funds and make such expenditures of its funds to aid and cooperate with WEDA in undertaking its urban renewal projects and carrying out its plans; and

WHEREAS, the City has heretofore approved the North Huron Urban Renewal Plan (“Plan”), on January 26, 2004 that includes as one of its primary objectives providing an efficient system of streets, roads and other transportation facilities necessary to support urban development within the North Huron Urban Renewal Area (“URA”), as described in said Plan; and

WHEREAS, Section 4.5 of the Plan provides that WEDA may undertake certain actions that would make the North Huron URA more attractive for private investment, which actions may include street and traffic improvements, streetscape improvements, storm water and other drainage improvements, landscaping, parks and recreation facilities, utility improvements and public art projects (collectively referred to as “Improvements”); and

WHEREAS, pursuant to the Plan, WEDA has collected and currently collects sales tax and property tax incremental revenues, which revenue is deposited by WEDA in a special fund to be utilized pursuant to Section 31-25-107(9)(a)(II), Colorado Revised Statutes; and

WHEREAS, the respective governing bodies of the City and WEDA hereby find and declare that the maintenance of improvements within the URA and the execution of certain contractual agreements will further the urban renewal goals and objectives of WEDA; and

WHEREAS, the Parties desire to enter into this Agreement to provide for the reimbursement of such costs incurred by the City; and

NOW, THEREFORE, in consideration of the foregoing, and the promises and covenants set forth below, the Parties hereby agree as follows:

1. **Maintenance of Improvements.** The City has agreed to maintain said Improvements in accordance with the same standards of maintenance as the City follows for other improvements within the City. WEDA agrees to reimburse the City a portion of the City's costs related to the current and future maintenance of said Improvements, as set forth in paragraph 4B below.

2. **Other Contractual Obligations.** WEDA hereby agrees to reimburse the City amounts paid by the City for current and future contractual obligations associated with the URA.

3. **Funding.** WEDA's obligations under this paragraph 1 and 2 shall be paid from current or future project funds, incremental revenues and interest earnings available to WEDA after first satisfying WEDA's Superior Obligations, as herein defined below.

4. **Conditions to WEDA's Payment Obligations.** WEDA's obligations pursuant to Section 1 and 2 of this Agreement are subject to the following conditions:

A. WEDA's obligations pursuant to this Agreement are subordinate to WEDA's obligations for repayment of any current or future bonded indebtedness ("Superior Obligations"). The term "bonded indebtedness" includes all form of indebtedness of WEDA, including but not limited to tax increment notes, tax increment bonds, economic development agreements, and all other forms of contractual indebtedness or obligation of whatsoever nature that is in any way secured, collateralized, or backed by revenues of WEDA.

B. The City and WEDA shall negotiate in good faith any amounts due from WEDA under this Agreement, based on the costs incurred or expected to be incurred by the City, and the funding available to WEDA after first meeting all Superior Obligations of WEDA. The City and WEDA agree that the obligations of WEDA under this Agreement shall be deemed subordinate to all other obligations of WEDA, past or future, except to the extent that any future obligation incurred by WEDA is expressly made subordinate to WEDA's obligations under this Agreement, provided, however, it is WEDA's intent to apply any revenues not needed to meet its Superior Obligations to funding its obligations under this Agreement.

C. The City will bill WEDA at least annually for WEDA's share of the maintenance and other contractual obligation costs. WEDA will pay amounts billed in no more than 30 days from the date of the invoice.

D. It is the intent of the parties that WEDA's obligations pursuant to this Agreement shall be deemed and construed as an indebtedness of WEDA within the meaning of § 31-25-107(9)(a)(II), C.R.S.

5. **Cooperation.** The Parties covenant with each other that in any action or challenge of the Plan or this Agreement, regarding the legality, validity or enforceability of any provision thereof,

the Parties will work cooperatively and in good faith to defend and uphold each and every such provision.

6. **Effective Date; Term.** The City and WEDA agree that it is their intent to implement this Agreement retroactively to January 1, 2013. Unless sooner terminated by mutual consent of the Parties, this Agreement shall remain in full force and effect until the tax allocation provisions of the Urban Renewal Plan and the Act terminate.

7. **General Provisions.**

A. **Governing Body.** This Agreement shall be governed by, and construed in accordance with, the laws of the state of Colorado.

B. **Amendments and Waivers.** No amendment or waiver of any provision of this Agreement, nor consent to any departure herefrom, in any event shall be effective unless the same shall be in writing and signed by the Parties hereto, and then such waiver of consent shall be effective only in the specific instance and for the specific purpose for which given.

C. **Conflicts.** To the extent any term or provision of this Agreement conflicts with any other term or condition of any previous agreement between the City and WEDA, this Agreement shall control.

D. **Headings.** Paragraph headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

E. **Severability.** If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

F. **Third Parties.** The City and WEDA expressly disclaim any intent to create any third-party beneficiary rights or benefits pursuant to this Agreement. Neither the City nor WEDA shall be obligated or liable under the terms of this Agreement to any person or entity not a party hereto.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto and duly authorized as of the date first above written.

**WESTMINSTER ECONOMIC
DEVELOPMENT AUTHORITY**

CITY OF WESTMINSTER

By: _____
J. Brent McFall
Executive Director

By: _____
J. Brent McFall
City Manager

ATTEST:

Secretary for WEDA

Approved as to Form:

Martin R. McCullough
Attorney for WEDA

ATTEST:

Linda Yeager, City Clerk

Approved as to Form:

Martin R. McCullough
City Attorney

**INTERGOVERNMENTAL COOPERATION AGREEMENT BETWEEN THE
WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY AND
THE CITY OF WESTMINSTER FOR THE REIMBURSEMENT OF COSTS INCURRED BY
THE CITY IN THE WESTMINSTER CENTER URBAN REINVESTMENT PLAN AREA**

This Intergovernmental Cooperation Agreement (“Agreement”), is made and entered into this _____ day of _____, 2013, by and between the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY** (“WEDA”), a Colorado urban renewal authority, and the **CITY OF WESTMINSTER** (“City”), a Colorado home-rule municipality (collectively “Parties”).

WHEREAS, the City is a Colorado home-rule municipality with all the powers and authority granted pursuant to Article XX of the Colorado Constitution and its City Charter; and

WHEREAS, WEDA is a Colorado urban renewal authority, with all the powers and authority granted pursuant to Title 31, Article 25, Part 1, C.R.S. (“Colorado Urban Renewal Law”); and

WHEREAS, pursuant to article XIV of the Colorado Constitution, and Title 29, Article 1, Part 2, C.R.S., the City and WEDA are authorized to cooperate and contract with one another to provide any function, service, or facility lawfully authorized to each governmental entity; and

WHEREAS, pursuant to Section 31-25-105, C.R.S., WEDA has the authority to undertake urban renewal projects and to make and execute any and all contracts that it may deem necessary or convenient to the exercise of its powers; to arrange for the furnishing or repair by any public body of services, privileges, works, streets, roads, public utilities, or educational or other facilities, for or in connection with an urban renewal project; and to make such appropriations and expenditures of its funds as it deems necessary to carry out the purposes of the Colorado Urban Renewal Law; and

WHEREAS, pursuant to Section 31-25-112 of the Colorado Urban Renewal Law, the City is specifically authorized to do all things necessary to aid and cooperate with WEDA in connection with the planning or undertaking of any urban renewal plans, projects, programs, works, operations, or activities of WEDA, to enter into agreements with WEDA respecting such actions to be taken by the City, to cause public buildings and public facilities, including parks, playgrounds, and recreational and community facilities to be furnished within an urban renewal area and to appropriate funds and make such expenditures of its funds to aid and cooperate with WEDA in undertaking its urban renewal projects and carrying out its plans; and

WHEREAS, the City has heretofore approved the Westminster Center Urban Reinvestment Plan (“Plan”), on April 13, 2009 which is intended to achieve the goals for the area previously outlined in the Westminster Comprehensive Land Use Plan through a project or projects that will create a new Westminster Center within the Westminster Center Urban Reinvestment Plan (“WURP”) Area as described in said Plan; and

WHEREAS, Section 4.5 of the Plan provides that WEDA may undertake certain actions that would make WURP more attractive for private investment, which actions may include street and traffic improvements, streetscape improvements, landscaping, parks and recreation facilities, utility improvements and public art projects (collectively referred to as “Improvements”); and

WHEREAS, pursuant to the Plan, WEDA has collected and currently collects sales tax and property tax incremental revenues, which revenue is deposited by WEDA in a special fund to be utilized pursuant to Section 31-25-107(9)(a)(II), Colorado Revised Statutes; and

WHEREAS, the respective governing bodies of the City and WEDA hereby find and declare that the maintenance of improvements within the URA and the execution of certain contractual agreements will further the urban renewal goals and objectives of WEDA; and

WHEREAS, the Parties desire to enter into this Agreement to provide for the reimbursement of such costs incurred by the City; and

NOW, THEREFORE, in consideration of the foregoing, and the promises and covenants set forth below, the Parties hereby agree as follows:

1. **Maintenance of Improvements.** The City has agreed to maintain said Improvements in accordance with the same standards of maintenance as the City follows for other improvements within the City. WEDA agrees to reimburse the City a portion of the City's costs related to the current and future maintenance of said Improvements, as set forth in paragraph 4B below.

2. **Other Contractual Obligations.** WEDA hereby agrees to reimburse the City amounts paid by the City for current and future contractual obligations associated with the URA.

3. **Funding.** WEDA's obligations under this paragraph 1 and 2 shall be paid from current or future project funds, incremental revenues and interest earnings available to WEDA after first satisfying WEDA's Superior Obligations, as herein defined below.

4. **Conditions to WEDA's Payment Obligations.** WEDA's obligations pursuant to Section 1 and 2 of this Agreement are subject to the following conditions:

A. WEDA's obligations pursuant to this Agreement are subordinate to WEDA's obligations for repayment of any current or future bonded indebtedness ("Superior Obligations"). The term "bonded indebtedness" includes all form of indebtedness of WEDA, including but not limited to tax increment notes, tax increment bonds, economic development agreements, and all other forms of contractual indebtedness or obligation of whatsoever nature that is in any way secured, collateralized, or backed by revenues of WEDA.

B. The City and WEDA shall negotiate in good faith any amounts due from WEDA under this Agreement, based on the costs incurred or expected to be incurred by the City, and the funding available to WEDA after first meeting all Superior Obligations of WEDA. The City and WEDA agree that the obligations of WEDA under this Agreement shall be deemed subordinate to all other obligations of WEDA, past or future, except to the extent that any future obligation incurred by WEDA is expressly made subordinate to WEDA's obligations under this Agreement, provided, however, it is WEDA's intent to apply any revenues not needed to meet its Superior Obligations to funding its obligations under this Agreement.

C. The City will bill WEDA at least annually for WEDA's share of the maintenance and other contractual obligation costs. WEDA will pay amounts billed in no more than 30 days from the date of the invoice.

D. It is the intent of the parties that WEDA's obligations pursuant to this Agreement shall be deemed and construed as an indebtedness of WEDA within the meaning of § 31-25-107(9)(a)(II), C.R.S.

5. **Cooperation.** The Parties covenant with each other that in any action or challenge of the Plan or this Agreement, regarding the legality, validity or enforceability of any provision thereof,

the Parties will work cooperatively and in good faith to defend and uphold each and every such provision.

6. **Effective Date; Term.** The City and WEDA agree that it is their intent to implement this Agreement retroactively to January 1, 2013. Unless sooner terminated by mutual consent of the Parties, this Agreement shall remain in full force and effect until the tax allocation provisions of the Urban Renewal Plan and the Act terminate.

7. **General Provisions.**

A. **Governing Body.** This Agreement shall be governed by, and construed in accordance with, the laws of the state of Colorado.

B. **Amendments and Waivers.** No amendment or waiver of any provision of this Agreement, nor consent to any departure herefrom, in any event shall be effective unless the same shall be in writing and signed by the Parties hereto, and then such waiver of consent shall be effective only in the specific instance and for the specific purpose for which given.

C. **Conflicts.** To the extent any term or provision of this Agreement conflicts with any other term or condition of any previous agreement between the City and WEDA, this Agreement shall control.

D. **Headings.** Paragraph headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

E. **Severability.** If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

F. **Third Parties.** The City and WEDA expressly disclaim any intent to create any third-party beneficiary rights or benefits pursuant to this Agreement. Neither the City nor WEDA shall be obligated or liable under the terms of this Agreement to any person or entity not a party hereto.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto and duly authorized as of the date first above written.

**WESTMINSTER ECONOMIC
DEVELOPMENT AUTHORITY**

CITY OF WESTMINSTER

By: _____
J. Brent McFall
Executive Director

By: _____
J. Brent McFall
City Manager

ATTEST:

ATTEST:

Secretary for WEDA

Linda Yeager, City Clerk

Approved as to Form:

Approved as to Form:

Martin R. McCullough
Attorney for WEDA

Martin R. McCullough
City Attorney



Agenda Item 8 D

Agenda Memorandum

City Council Meeting
December 9, 2013



SUBJECT: Municipal Court Security Services Contract

Prepared By: Carol J. Barnhardt, Municipal Court Administrator

Recommended City Council Action

Authorize the City Manager to exercise the final one-year renewal option in the contract for Municipal Court Security Services to G4S Secure Solutions (USA), Inc. in an amount not to exceed \$86,900.

Summary Statement

- Since 1998, the Municipal Court has utilized the services of G4S Secure Solutions (USA), Inc., (formerly known as The Wackenhut Corporation) to screen the public entering the Court building for weapons and to provide a variety of other security-related services in the building.
- In 2009, Request for Proposals were developed and sent to five companies. An oral board interviewed the bidders and determined that The Wackenhut Corporation (now known as G4S Secure Solutions (USA), Inc.) had the requisite qualifications to perform the high level of security services required at the Municipal Court.
- On January 11, 2010, City Council awarded a one-year contract with a four year annual renewal provision for Court security services to the Wackenhut Corporation.
- In October 2013, the Court Administrator met with the regional General Manager of G4S Secure Solutions and both parties agreed to the rates as provided for under paragraph IV. COMPANY'S FEE section of the contract with the City, which resulted in a slight increase of \$700 to the annual contract amount.
- Services will be bid out again in 2014.
- Adequate funds are appropriated within the 2014 Municipal Court Budget. This is a one-year contract.

Expenditure Required: Not to exceed \$86,900

Source of Funds: 2014 General Fund – Municipal Court Budget

Policy Issue

Should City Council renew the agreement with G4S Secure Solutions (USA), Inc., (formerly known as The Wackenhut Corporation) for Municipal Court security services?

Alternative

Do not approve the renewal for security services. Staff does not recommend this option. Staff thoroughly evaluated proposals and companies in 2009 and awarded a one year contract that is renewable for up to four additional years to The Wackenhut Corporation (now known as G4S Secure Solutions (USA), Inc.). G4S Secure Solutions continues to provide a high level of security services at the Municipal Court.

Background Information

Safety and security are of the utmost importance for the Municipal Court staff and its customers. Judges and staff, jurors, witnesses, citizens, and vendors entering the Court facility should feel safe and secure. The Court's most effective security screening is provided at the entry to the building. The Court has over 48,000 customers per year entering the facility. With so many people walking through the doors, providing a secure environment means using adequate technology along with well-trained security personnel. The high quality of service that the Court, its staff, and citizens are accustomed to should be a primary factor of consideration. Under the terms of the security services agreement, the G4S Secure Solutions (USA), Inc., is required to provide 80 security guard hours weekly for screening all visitors to the building and assisting Police Department Court Marshalls with prisoner supervision and courtroom security.

The original agreement with The Wackenhut Corporation, approved by City Council January 11, 2010, provided for a one-year agreement for security services that is renewable for four (4) one-year renewals. The 2014 year will be the fifth year of the total five years authorized by Council in 2010.

In 2011, The Wackenhut Corporation formally amended its name to G4S Secure Solutions (USA), Inc. (G4S). In October 2013, the Municipal Court Administrator met with regional General Manager from G4S and both parties agreed to the revised service rates as provided for under paragraph IV. COMPANY'S FEE of the attached service contract. The maximum billable to the City under this Agreement will not exceed \$86,900.

The only changes to this agreement are the changes to *Section IV. Company's Fee* wherein the hourly rate for Security Guard 2 with more than one (1) year of service will be paid at the rate of \$21.23, and the maximum billable amount not to exceed \$86,900; and *Section V. Commencement & Completion of Services*, changing the date to reflect December 31, 2014.

This Staff recommendation supports the Strategic Plan Goals of Safe and Healthy Community by ensuring that Staff and citizens are safe while at the Court facility and that the City utilizes the services of this well-equipped organization with quality personnel. The Strategic Plan Goal of Financially Sustainable City Government Providing Exceptional Services is also supported as this revised contract ensures services are provided within budgeted funds appropriated.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Contract with G4S Secure Solutions

AMENDMENT TO THE
AGREEMENT TO FURNISH SECURITY SERVICES
FOR THE MUNICIPAL COURT BUILDING
BETWEEN THE CITY OF WESTMINSTER AND G4S SECURE SOLUTIONS (USA), INC.
DATED JANUARY 1, 2013

The City of Westminster (hereinafter referred to as "City") and G4S Secure Solutions (USA), Inc., (hereinafter referred to as the "Company") agree to amend the Agreement described above as follows:

1. Section IV of the Agreement, "COMPANY'S FEE," shall be amended as shown below with new language appearing in underline and deleted language appearing in ~~strike~~through:

The City shall pay the Company on an hourly basis for its services pursuant to this Agreement. For security guards with one (1) year or less of service to the City, Company shall be paid \$20.52 per hour per officer. As an incentive to continuity of service, but subject to the provisions of Section V., below, a higher hourly rate for security guards with more than one (1) year of service to the City shall be determined by mutual agreement of the City and Company prior to each anniversary date of this Agreement. The Court Administrator and the General Manager for G4S have agreed that for the year ~~2013~~2014, Security Guard 1 with less than one year service will be paid at the rate of \$20.52 per hour; and Security Guard 2 with more than one year will be paid at the rate of ~~\$20.86~~ \$21.23 per hour. The City shall not be responsible for any additional costs that the Company may incur as a result of any overtime necessary to fulfill Company's obligations under this Agreement. The maximum amount billable under this Agreement shall not exceed ~~Eighty Six Thousand Two Hundred Dollars (\$86,200)~~ Eighty Six Thousand Nine Hundred Dollars (\$86,900). The Company shall submit invoices to the City for services rendered during the preceding month, such invoices to be in such form and detail as shall reasonably be required by the City. Reimbursable expenses shall be itemized. The City agrees to pay the Company within thirty (30) days of receipt of properly documented invoices.

2. Section V of the Agreement, "COMMENCEMENT & COMPLETION OF SERVICES," shall be amended as shown below for this final year of this Agreement. New language appears in underline and deleted language appears in ~~strike~~through:

The Company understands and agrees that time is an essential requirement of this Agreement. The Services shall be completed as soon as good practice and due diligence will permit. The term of this Agreement shall continue through December 31, ~~2013~~ 2014, unless terminated sooner pursuant to Section VI, below. ~~This Agreement may be renewed by the City on a yearly basis not to exceed a total of one (1) additional renewals. Compensation for any renewal period shall be determined by mutual agreement.~~

3. All other terms and conditions of the Agreement shall remain in effect.

This Amendment is dated the _____ day of _____, 20__.

G4S SECURE SOLUTIONS (USA), INC.

CITY OF WESTMINSTER

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Address:

Address:

1395 University Blvd.

4800 West 92nd Avenue

Jupiter, FL 33458

Westminster, Colorado 80031

ATTEST:

ATTEST:

Title: _____

City Clerk

APPROVED AS TO LEGAL FORM

By: _____
City Attorney

I certify that either an appropriation has been made by the City Council or that sufficient funds have otherwise been made available for the payment of this Construction Contract.

City Manager

Account No. _____



Agenda Memorandum

City Council Meeting
December 9, 2013



SUBJECT: Purchase of Eight Patrol Vehicles from State Bid

Prepared By: Jeffery H. Bowman, Fleet Manager

Recommended City Council Action

Based on the results of the State of Colorado bid, award the purchase for eight Police Department patrol vehicles to Lakewood Fordland in the amount of \$218,929.

Summary Statement

Eight Police Department patrol vehicles were previously approved and are within the amount authorized by City Council in the 2014 Public Safety Tax General Capital Outlay Replacement Fund budget. Key information on these purchases is outlined below:

- Traditionally, the Police Department has used the Ford Crown Victoria as its model patrol vehicle. In 2011, this vehicle was discontinued from production.
- The 2014 vehicle replacement funding for patrol cars includes eight 2014 Ford Interceptor all-wheel drive cars, plus additional emergency equipment, and four 2010 Ford Crown Victoria patrol car rebuilds.
- City Council is requested to award the purchases for eight police patrol vehicles, based on the State bid award IFB-CM-00001-14 (Bid-A 5), to Lakewood Fordland.
- Another council agenda memo will be presented to Council early in 2014 to authorize the emergency equipment installation using a Colorado State bid award to Av-Tech Electronics Inc.
- City Council previously approved \$380,000 in the 2014 Public Safety Tax General Capital Outlay Replacement Fund (GCORF) budget, of which eight cars budgeted are to be Ford Interceptors.

Expenditure Required: \$218,929

Source of Funds: Public Safety Tax General Capital Outlay Replacement Fund

Policy Issue

Should the City proceed with the purchase of eight Police Department patrol vehicles for 2014 using the State of Colorado Bid?

Alternatives

1. Reject the State of Colorado bids and instruct Staff to re-bid these patrol vehicles. This alternative is not recommended because the State bid reflects a lowered price based on the purchasing power of many political subdivisions in Colorado.
2. Do not purchase some or all of the proposed patrol vehicles in 2014. This alternative is not recommended because all of the vehicles being replaced have a maintenance history that makes it impractical to keep them in regular service. Beginning in 2013, the Police Department extended the replacement cycle of patrol vehicles an additional 10,000 miles, out to 110,000 miles.

Background Information

As part of the 2014 budget, City Council approved the purchase of eight Police Department replacement patrol vehicles and the rebuild of four Crown Victoria patrol cars. The standard for Westminster Police, the Ford Crown Victoria, was discontinued from manufacturing in 2011. Ford now produces a new Interceptor, based on a Taurus chassis that is all-wheel drive and is equipped with a 3.7 liter V-6 engine at a cost of \$27,241 per vehicle, plus maintenance and parts manuals, bringing the total cost for eight vehicles to \$218,929.

Because the emergency equipment including; lighting, control console, push bumper, prisoner cage and seat and ready buckle straps are unique to the Interceptor, the equipment cannot be transferred from the outgoing Crown Victoria. A separate emergency equipment request will be brought to Council with a separate agenda memo in early 2014. The estimated cost to outfit each Ford Interceptor with emergency equipment through Av-Tech Electronics, using the Colorado State Award is \$9,000 per car. The remaining four vehicles budgeted in 2014 are to be Ford Crown Victoria complete rebuilds, estimated at \$22,000 per car, requiring a third council action.

As the Ford Crown Victoria is replaced by the Ford Interceptor, Staff plans to continue tracking operating costs of the Ford Interceptor along with the Crown Victoria rebuilt cars and use the information gathered to determine the best patrol vehicle “mix” for the future. The actual patrol units to be replaced by this purchase, as outlined below, will be determined based on criteria that takes into account patrol vehicle age, maintenance costs, utilization and cost per mile to operate. Replaced patrol units are held over for rebuild, or sent to auction; none are kept in the fleet in other capacities to maintain the 52 marked patrol units fleet.

This recommended purchase meets Council’s Strategic Plan goals of Safe and Healthy Community and Financially Sustainable City Government Providing Exceptional Services by ensuring Police vehicles are dependable, maintained cost effectively and purchased at the lowest price possible.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 8 F

Agenda Memorandum

City Council Meeting
December 9, 2013



SUBJECT: Purchase of 3 Police Motorcycles

Prepared By: Jeffery H. Bowman, Fleet Manager

Recommended City Council Action

Award the purchase for three 2014 Harley-Davidson police motorcycles to the low bidder, Sun Harley-Davidson, in the amount of \$58,080.

Summary Statement

City Council action is requested to award three 2014 police motorcycle purchases, based on the City of Westminster bid, to Sun Harley-Davidson. These motorcycles were previously budgeted and are within the amount authorized by City Council in the 2014 PST General Capital Outlay Replacement Fund budget as outlined below:

- The City of Westminster Police Department uses the Harley-Davidson FLHP Police Road King as its standard police motorcycle.
- Maintaining a standardized motorcycle fleet minimizes all costs, including training required by Fleet Mechanics
- Police motorcycle operator training is consistent when performed on one motorcycle type.
- City Council action is requested to award three 2014 police motorcycle purchases, to replace three 2008 models that are currently used as training motorcycles.
- The City of Westminster solicited six Harley-Davidson dealerships across Colorado, and based on the results of bid F 10-23-0-2013, Sun Harley-Davidson was low bid.
- City Council previously approved \$78,750 in the 2014 General Capital Outlay Replacement Fund (GCORF) budget to purchase and light three police motorcycles.

Expenditure Required: \$58,080

Source of Funds: Public Safety Tax General Capital Outlay Replacement Fund

Policy Issue

Should the City proceed with the purchase of three 2014 police motorcycles from the low bidder, Sun Harley-Davidson?

Alternatives

1. Reject the Westminster bid and instruct Staff to re-bid these police motorcycles. This alternative is not recommended because the City of Westminster bid F 10-23-0-2013 was sent directly to six Harley-Davidson dealers throughout Colorado.

2. Do not purchase some or all of the proposed replacement motorcycles in 2014. This alternative is not recommended because all of the 2008 police motorcycles have a maintenance history that makes it impractical to keep them in regular service.

Background Information

As part of the 2014 Budget, City Council funded the purchase of three replacement police motorcycles. The standard motorcycle for Westminster Police Department is the Harley-Davidson FLHP Police Road King. There are currently 12 motorcycles in active status and three of the oldest models are used as trainers. Upon receipt of the 2014 Harley-Davidson FLHP Police Road King Models, the 2008 training motorcycles will be sold at auction and three 2009 models will be stripped and placed into the training pool. Rotating the oldest FLHP motorcycles into the training pool greatly reduces the cost of upkeep, because cosmetic damage inflicted during training does not affect the value when the trainers are sold at auction. This rotation process maintains 12 reliable Harley-Davidson FLHP Police Road King Models as front line motorcycles, provides standardized motorcycles for training, and minimizes training requirements for Fleet Mechanics.

Below is the bid tabulation for City of Westminster Bid F 10-23-0-2013:

VENDOR	Grand Junction Harley-Davidson	Sun Harley-Davidson	Avalanche Harley-Davidson	High Country Harley-Davidson	Mile High Harley-Davidson	Rocky Mountain Harley Davidson
Base Price per Bike	\$18,044.90	\$17,800.00				
Delivery Time	ASAP	3/01/14				
Siren Package	Inc.	Inc.				
Heated Grips	Option (No Price)	Inc.				
Tach	Inc.	Inc.				
Fuel Tuner w/Air Cleaner	\$542.45 \$232.45	\$520.00				
Tourpack System #54180-10	\$1955.95	\$1040.00				
TOTAL PRICE w/options	\$20,775.75	\$19,360.00	No-Bid	No-Bid	No-Bid	No-Bid

Although four of the companies who were sent bid packages chose not to bid, staff believes the bid from Sun Harley Davidson is a good, competitive bid. This recommended purchase meets Council's Strategic Plan goals of Safe and Healthy Community and Financially Sustainable City Government Providing Exceptional Services by keeping a highly dependable fleet of police motorcycles on the street and obtaining the best possible price for these vehicles.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
December 9, 2013



SUBJECT: Purchase of Utilities Tank-Trailer from City of Westminster Bid

Prepared By: Jeffery H. Bowman, Fleet Manager

Recommended City Council Action

Award the purchase for one stainless steel, insulated, deep-drop, tank-trailer for the amount of \$74,798 to Kersten Trailer Sales Inc.

Summary Statement

- City Council action is requested to award the purchase of one stainless steel, insulated, deep-drop, tank-trailer based on the City of Westminster bid by Kersten Trailer Sales. The replacement is a 2006 Brenner tank-trailer. The replacement cost, including contingency, is within the amount authorized by City Council in the 2014 Utility Operations budget.

Expenditure Required: \$74,798

Source of Funds: Utility Fund – Utilities Operations Budget

Policy Issue

Should the City approve the use of the City of Westminster bid for the purchase of one stainless steel, insulated, deep-drop, tank-trailer outlined in this agenda memorandum?

Alternative

Reject the City of Westminster bid and instruct Staff to re-bid this trailer. This alternative is not recommended because this formal bid was mailed directly to three vendors that specialize in the construction of tank-trailers.

Background Information

As part of the 2014 Utility Replacement Fund budget, City Council approved the purchase of one insulated, deep-drop, tank-trailer for Public Works and Utilities. The trailer identified for replacement is Unit 9231, a 2006 Brenner tank-trailer. Design and structural issues have warranted the replacement. The material being transported has a corrosive nature to the aluminum trailer currently in use. A special tank liner had been applied, but with limited success. In 2011, another Big Dry Creek Waste Water Treatment Plant (BDC WWTP) lined, aluminum trailer tank failed due to corrosion. Stainless steel trailers are now purchased to replace the aluminum trailers in use. Further, the bottom discharge design of trailer number 9231 has been modified in the Fleet Maintenance shops to structurally improve resilience, during travel over rough dirt roads. The new stainless tank-trailer is designed to be top or bottom loaded and is lined with five inches of fiberglass insulation between the inner and outer tank surface. The insulation keeps the material from freezing during transport. All BDC WWTP tank trailers can be unloaded via gravity, or as more commonly used, vacuum. The new trailer has a deep drop center to decrease unload time when no vacuum is available, but is built to withstand vacuum during unloading in the field. Vacuum is the only option when unloading in the field. The replacement tank-trailer has a safety feature that allows the driver to open a top vent while standing on the ground, rather than climbing to the top of the trailer for every delivery in the field. This feature is especially important because the drivers are often working alone and not climbing to open a vent reduces the risk of falling. To further enhance operator safety, a full length catwalk along the tank side has been added that includes a guardrail. The tank-trailer meets all Department of Transportation requirements, which is important as the transport of material includes traveling on Interstate 70.

City of Westminster formal bid RFB F 4 -30 -0 -2013 was mailed directly to the following vendors:

Kersten Trailer Sales (Polar Trailers)
8999 E 96th Ave, Henderson, CO 80640

Paragon Trailers (Mac & Brenner Trailers)
Paragon Trailer Center LLC
PO Box 200277 2111 US Hwy 411 NE Cartersville, Georgia 30120

Walker Trailers
Walker Transport
625 W State St, New Lisbon, WI 53950-1014

After researching the company product advances and safety improvements, it was decided the bid received from Kersten Trailer Sales was competitive and met the City's needs. On August 5, 2013, a purchase order was issued to Kersten Trailer Sales to replace Unit 9291; a 2013 replacement tank-trailer. Because only four months has passed since the 2013 purchase order was issued, and because the 2013 bid was competitively bid, staff approached Kersten Trailer Sales and asked if they would honor the 2013 pricing for the 2014 trailer replacement. Kersten Trailer Sales agreed to hold the pricing.

SUBJECT: Purchase of Utilities Tank-Trailer from City of Westminster Bid Page 3

The replacement of this trailer supports Council's Strategic Plan goal of Financially Sustainable City Government Providing Exceptional Services by maintaining a cost effective, dependable fleet of vehicles and trailers.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
December 9, 2014



SUBJECT: 2014 Dell Server and Computer Replacement Purchases

Prepared By: David Puntteney, Information Technology Director
Scott Rope, Information Systems Manager

Recommended City Council Action

Find that the Western States Contracting Alliance (WSCA) pricing meets City Charter bidding requirements and authorize Staff to proceed with 2014 calendar year purchases of laptop and desktop PCs, storage hardware, computer servers, printers and software through Dell Computer Corporation in an amount not to exceed \$211,652.

Summary Statement

- The City uses 43 physical and 100 virtual computer servers to support software applications and provide services for all departments.
- Servers and laptops are replaced on a four-year replacement schedule and desktop computers are replaced on a five-year replacement schedule in order to provide a high level of reliability, availability and performance.
- Maintenance contracts for servers more than four years old are expensive.
- City Council authorized adequate funds in the 2014 Utility Fund, Information Technology Department operating budget, to purchase replacement servers and software.
- City Council authorized adequate funds in the appropriate 2014 Utility Fund and General Fund department's operating budgets for the purchase of departmental PCs.
- The City purchases hardware through Dell Computer below the Western States Contracting Alliance (WSCA) contract prices, therefore meeting the City Charter bidding requirements. The prices under this joint purchasing contract are well below what the City could achieve purchasing on its own.
- No desktop computers are scheduled for replacement in 2014.
- The City is scheduled to replace 30 laptops that will reach four years of age in 2014.
- The City is scheduled to replace seven servers in 2014.
- Technology purchases and services including software maintenance, disk storage, monitors, RAM and related supplies are also purchased through Dell at or below the Western States Contracting Alliance (WSCA) contract prices and are included in the total projected 2014 amount.
- Decommissioned desktop and laptop computers are donated to the 7:10 Rotary Club for the Computers for Kids program.
- Several decommissioned computer servers will be relocated to the City's computer disaster recovery facility to serve as short-term recovery computers in the event of a disaster at the primary computer facility located at City Hall.

Expenditure Required: \$211,652

Source of Funds: General and Utility Fund Departmental Operating Accounts and Utility Fund, Information Technology Department Operating Budget

Policy Issue

Should the City continue to replace aged computer servers, laptop computers and peripheral equipment and software to ensure high availability, performance and capacity to support software applications and users?

Alternative

Forgo the 2014 replacement of computer hardware, software and servers. This alternative is not recommended for the following reasons:

- Continued maintenance on older servers is expensive. The City purchases new servers that include a four-year maintenance agreement.
- Application software upgrades frequently require more processing speed and memory. Attempting to upgrade older servers to meet the demands of new applications is many times impossible and not cost effective, especially when combined with the cost of maintaining older computer technology.
- The expected performance and reliability of servers more than four years old is unacceptable for the City's critical applications.
- Older desktop and laptop computers lack the processing power needed to adequately support newer applications.

Background Information

The City uses 1115 personal computers, laptops and iPads throughout all departments, representing an investment of approximately \$850,000. These computers provide access to essential software and services needed for City operations.

In 2001, the City established a PC replacement schedule of three years or four years, depending on the type of applications and performance requirements on each PC. In 2005, with the improved reliability and speed of new computers, Information Technology eliminated the three-year replacement schedule, and moved all computers to a four-year replacement cycle. In 2008, IT Staff evaluated the potential savings and risk associated with extending the desktop computer replacement schedule from four years to five years.

Since 2008, staff has found the modified replacement schedule to be very successful and has realized approximately \$198,000 (an average of \$33,000 per year) in savings. In 2014, the City will purchase up to 30 spare desktop PCs to replace desktop computers that may fail between their fourth and fifth year of use. Additionally, 30 laptops are scheduled for replacement in 2014. In most years the Information Technology department typically purchases 250 desktops but due to the migration to Microsoft Office 2013 the computers scheduled to be replaced in 2014 were completed in 2013. Microsoft Office 2013 requires Microsoft Windows 7 operating system and could not operate under Windows XP thus the need to upgrade the computers early. In 2015 the City is scheduled to replace 265 desktops and 40 laptops.

In 2006, the Information Technology Department conducted a comprehensive study of "virtualization" technology to determine how such technology could improve computer server availability and reliability while reducing the total number of servers required. Virtualization is the process of configuring an individual server to function as multiple virtual servers, thereby allowing multiple applications to be run on the same server. The study concluded that virtualization would result in a long-term cost benefit to the City by reducing the required number of servers. In 2007, staff began the virtualization project and has successfully eliminated 39 servers, reducing the total number of servers from 82 to 43. Without virtualization, the City would be replacing on average 12-15 servers per year. Instead, only seven servers require replacement in 2014. As a result of virtualization, the City has reduced the replacement budget and realized an average annual net savings of \$40,000 in server replacement costs.

The City's servers support applications such as Computer Aided Dispatch, Public Safety Records Management, Enterprise Resource Management, Court, Geographic Information Systems, Internet, Intranet, Utility Maintenance Management, Utility Billing, Office tools and many others. These servers are critical to departments to provide internal and external customer service and to conduct critical City operations. The City has established a four-year replacement for computer servers. Several decommissioned servers will be relocated to the City's computer disaster recovery facility to provide short term, more limited use in the event of a disaster at City Hall that would restrict access to or availability of production servers. New servers include a four-year maintenance agreement, so the City does not incur additional hardware maintenance expense during the full production life of the servers.

The City has standardized on Dell computer systems, which have some of the highest customer satisfaction and quality ratings in the industry. The City is very pleased with the overall performance of Dell equipment and the support provided to the City.

Cooperative purchasing is a powerful, proven tool to save taxpayer money by creating access to the best value possible and reducing administrative overhead. WSCA (the Western States Contracting Alliance) and NASPO (the National Association of State Procurement Officials) use a competitive, lead-state procurement model to capture the best value for common government requirements, including personal computers and peripherals. The City purchases Dell hardware, software and peripheral equipment at or below the WSCA prices, thereby meeting City purchasing requirements and minimizing costs. Contract prices are up to 52% below retail, depending on product purchased under the WSCA contracts. Using this approach for purchasing also saves time and money that would normally be associated with RFP development, advertising, evaluating proposals, and contract management.

This proposal supports City Council's Strategic Plan goals of Financially Sustainable City Government Providing Exceptional Services by investing in technology to increase productivity and efficiency.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
December 9, 2013



SUBJECT: Second Reading of Councillor's Bill No. 50 regarding Comcast Franchise Agreement Renewal

Prepared By: David Puntenney, Information Technology Director

Recommended City Council Action

Pass Councillor's Bill No. 50 on second 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.

Summary Statement

- City Council conducted a public hearing on November 25, 2013.
- The new franchise agreement enhances the definition of gross revenues to maximize City revenues allowable under the 5% franchise fee.
- Provisions for Public, Educational and Government (PEG) channels were included to meet current and future needs for the City and community.
- The new franchise agreement provides the City with a one-time grant for hardware and a business class broadband circuit to provide for on demand web streaming.
- Franchise language was updated to address competitive equity issues.
- City Council approved resolution No. 32 adopting customer service standards for cable operators on November 25, 2013.
- This Councillor's Bill was passed on first reading November 25, 2013.

Expenditure Required: \$0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Ordinance

BY AUTHORITY

ORDINANCE NO. **3709**

COUNCILLOR'S BILL NO. **50**

SERIES OF 2013

INTRODUCED BY COUNCILLORS
Briggs - Baker

**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



Agenda Memorandum

City Council Meeting
December 9, 2013



SUBJECT: Second Reading of 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 second 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

- City Council action is requested to adopt the attached Councillor’s Bill on second reading, authorizing a supplemental appropriation to the 2013 Budget of the General, Water, General Capital Outlay Replacement, and General Capital Improvement Funds.
 - General Fund amendments total: \$ 55,612
 - Water Fund amendments total: \$ 92,746
 - General Capital Outlay Replacement Fund amendments total: \$ 4,711
 - General Capital Improvement Fund amendments total: \$ 310,052
- This Councillor’s Bill was approved on first reading on November 25, 2013.

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.

Respectfully submitted,

J. Brent McFall
City Manager
Attachment – Ordinance

BY AUTHORITY

ORDINANCE NO. **3710**

COUNCILLOR'S BILL NO. **51**

SERIES OF 2013

INTRODUCED BY COUNCILLORS
Briggs - Winter

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 10 D 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



Agenda Item 10 A-B

City Council Meeting
December 9, 2013



SUBJECT: Public Meeting on the 2014 Proposed Community Development Block Grant (CDBG) and HOME Projects and 2014 Action Plan

PREPARED BY: Heather Ruddy, Community Development Program Planner

Recommended City Council Action:

1. Hold a public meeting on the 2014 Proposed Community Development Block Grant (CDBG) and HOME projects and 2014 Action Plan and receive citizen comments.
2. Approve the allocation of Community Development Block Grant (CDBG) and Home Investment Partnership Act (HOME) funds as set forth in this agenda memorandum for 2014 and authorize staff to submit the 2014 Action Plan to HUD incorporating such allocations.

Summary Statement

- The City of Westminster receives an annual allocation of CDBG funds from the U.S. Department of Housing and Urban Development (HUD) to be used towards programs and projects benefiting low to moderate-income populations and areas. It is estimated that the City will receive approximately \$532,732 in 2014 CDBG funding. The following CDBG projects are recommended to be funded in 2014:
 1. CDBG Administration – Approximately \$106,546 or 20 percent of CDBG program
 2. Minor Home Repair Program – \$75,000 (this amount reflects the additional funding, \$25,000, for this program directed by City Council)
 3. Rodeo Market Park Phase II Community Garden – \$150,000
 4. Bradburn Boulevard Stump Removal and Tree Replacement Program - \$25,000
 5. Bradburn Boulevard Decorative Lighting Installation - \$176,186
- The City receives an annual allocation of federal HOME funds through Adams County to be used on affordable housing projects and programs. For the past three years, the City has directed these funds towards affordable housing development. It is estimated that the City could receive approximately \$186,839 in 2014. Staff is recommending that the 2014 HOME funds be allocated as follows:

Adams County Fund Administration - \$18,684 or 10% of HOME program
 Affordable Housing Development Fund - \$168,155

Expenditure Required: \$532,732 (CDBG)
 \$186,839 (HOME)

Source of Funds: HUD CDBG and HOME Programs

Policy Issue

Should the City allocate the CDBG and HOME funds to the recommended programs and projects?

Alternatives

1. The Council may choose to not accept the funds. Staff recommends that such an alternative not be considered as the CDBG and HOME funds have provided benefits to Westminster residents and needed funds for capital projects and other critical programs.
2. Council may choose to allocate the funds in a different manner. Staff believes the allocations identified in this agenda memorandum will serve Westminster residents by meeting a number of priority needs in the community. Plus, the recommend allocation reflect the direction provided to staff at the November 18 Study Session.

Background Information

CDBG Program

The City of Westminster receives an annual allocation of Community Development Block Grant (CDBG) funds from the U.S. Department of Housing and Urban Development (HUD). In 2013, the City received \$591,925 in CDBG funding.

HUD has yet to indicate the actual amount the City will receive and will not do so until late spring, 2014. The federal Budget Control Act of 2011 requires an additional “sequester” reduction to many federal programs in 2014, however the amount of the reduction is unknown at this time. A conservative estimate of a 10 percent reduction would decrease the City’s CDBG budget to approximately \$532,732.

The CDBG funds are to be used for projects and programs that benefit the City’s low to moderate-income populations and address blight conditions. Eligible project activities may include economic development/redevelopment, certain public facility and infrastructure improvements, and affordable housing activities.

Department of Community Development staff worked with staff from other City departments as well as solicited input from South Westminster residents through the Progressive Homeowners Association (HOA) community organization, serving South Westminster to develop a list of potential CDBG projects to be implemented in 2014. Approximately 12 homeowners provided input to the Progressive HOA regarding potential CDBG projects, which included:

- Large-item trash pickup
- Crabapple Tree Restoration on Bradburn Boulevard from 72nd Avenue to 80th Avenue
- Undergrounding of overhead utility lines
- Solar powered speed monitoring signs
- Funding for homeowners in need for arbor work including the removal of dead or dying trees

Staff evaluated the projects suggested by the Progressive HOA and assessed the feasibility of each. Per HUD regulations the large-item pickup and arbor work on private property would not be eligible to be funded through the CDBG grant. The undergrounding of overhead utility lines may be eligible for funding under the City’s current utility undergrounding program funded by Xcel Energy. Staff concurs with the Progressive HOA and recommends funding a tree replacement program in the public right-of-

way along Bradburn Boulevard. The speed monitoring sign project is under consideration for future year funding, but is not recommended at this time.

Based upon staff's analysis, the top candidates recommended for 2014 CDBG funding are:

1. CDBG Administration - \$106,546 or 20 percent of CDBG program

Description: HUD allows grantees to utilize up to 20 percent of the CDBG funding for administration and planning expenses. This funding pays the salary of the full-time CDBG Technician and the part-time Community Development Program Planner. The balance of administrative funds is used towards training, supplies, and consultants as necessary. This level of funding is necessary due to the complexity involved in administering the federal CDBG program. The administration amount may be less than \$106,546 if the actual CDBG award is less than \$532,732.

2. Minor Home Repair Program - \$75,000

Description: Continue funding of the Minor Home Repair Program. The City Council created the Emergency and Minor Home Repair Program in 2010 to help qualified, low-income homeowners make badly-needed repairs that will improve their in-home safety and mobility. Through the program, up to \$5,000 in eligible minor and emergency home repairs can be made free of charge to income qualified households located within Westminster. At the November 18, 2013 City Council Study Session, the City Council directed Staff to increase the Minor Home Repair Program budget from \$50,000 to \$75,000.

3. Rodeo Market Park Phase II Community Garden - \$150,000

Description: Continue improvements to the area north of the Rodeo Market Community Arts Center located on 73rd Avenue, west of Osceola Street with land acquisition and improvements for the development of a community garden.

4. Bradburn Boulevard Stump Removal and Tree Replacement Program - \$25,000

Description: Stump removal and tree replacement in the public right-of-way along Bradburn Boulevard and the 7200 block of Newton Street.

5. Bradburn Boulevard Decorative Lighting Installation - \$176,186

Description: Decorative lighting installation along Bradburn Boulevard in the general three block area of 73rd to 76th depending on cost. The street light fixture design would match that used for street lights along Lowell Boulevard and 73rd Avenue.

The total budget for the recommended projects is estimated and funding of each project may differ when the actual CDBG allocation is known. Staff will present to the City Council for consideration and approval an ordinance formally appropriating the funds upon official notification of the actual CDBG allocation from HUD.

Home Investment Partnerships (HOME) Program

HOME funds are distributed to eligible communities to assist in the development and provision of housing to low-income households and targeted populations (e.g. seniors, persons having disabilities, homeless, etc.). The City of Westminster alone does not meet the minimum population requirements to receive the funds directly from HUD as an entitlement jurisdiction. However, by having joined the HUD-authorized Adams County HOME Program Consortium, the City receives an allocation of about \$200,000 annually, which provides funding for eligible affordable housing projects. Although the 2014 HOME budget is not known at this time, it is estimated that the 2014 federal sequester reduction will decrease the City's share to approximately \$186,839.

In past years, the City has divided the grant proceeds between major home rehabilitation for low-income homeowners and down-payment assistance for eligible homebuyers. Ten percent of the grant, as allowed per HUD regulations, is kept by Adams County for program administration. There has been limited demand for the down-payment assistance funded by HOME money given availability of such funding from other organizations, including the Colorado Housing and Finance Authority (CHFA), Community Resources and Housing Development Corporation (CRHDC), which is headquartered in Westminster, and Adams County Housing Authority (ACHA). As a result, it is recommended that the City not use HOME funds to offer down-payment assistance in 2014.

Up until 2012, the City applied \$50,000 of its annual HOME allocation towards the Adams County administered major home rehabilitation program. However, City Council chose to suspend funding for this program given only two to three homeowners would benefit from the allocation, with an average cost of over \$19,000 per home. With future affordable housing developments in the planning stages, such as Adams County Housing Authority's redevelopment interest in the Westminster Station Transit Oriented Development (TOD) area, Council has since directed the annual proceeds to a development fund. Accordingly, staff recommends that the 2014 HOME allocation also be directed towards future affordable housing projects, with the exception of the 10 percent set-aside for HOME administration, which is retained by Adams County. Following is the proposed allocation of HOME funds in 2014.

Adams County Administration	\$18,684 or 10% of HOME program
Affordable Housing Development Fund	\$168,155

2014 Action Plan

The proposed CDBG and HOME projects were presented to City Council at a Study Session on November 18, 2013 where Council directed staff to incorporate these projects into the 2014 Action Plan. Staff presented these proposed CDBG and HOME project recommendations at a citizen public meeting held at the Westminster Grange Hall on November 26, 2013 to obtain input. Twelve South Westminster residents attended the meeting. Several residents reiterated their concerns regarding the need for large-item trash pick-up in the community. Although such a service would be of benefit to the area it is not an eligible expense under CDBG guidelines. Those attending the public meeting did not express any concerns with the proposed projects for 2014. The 2014 Action Plan, to be submitted to HUD by January 15, 2014, will incorporate the CDBG and HOME projects as approved by City Council. Staff recommends City Council authorize the submittal of the 2014 Action Plan to HUD.

The proposed allocation of CDBG and HOME funds and the 2014 Action Plan meet two City Strategic Plan goals: Financially Sustainable City Government Providing Exceptional Services, and Vibrant Neighborhoods in One Livable Community.

Respectfully submitted,

J. Brent McFall
City Manager

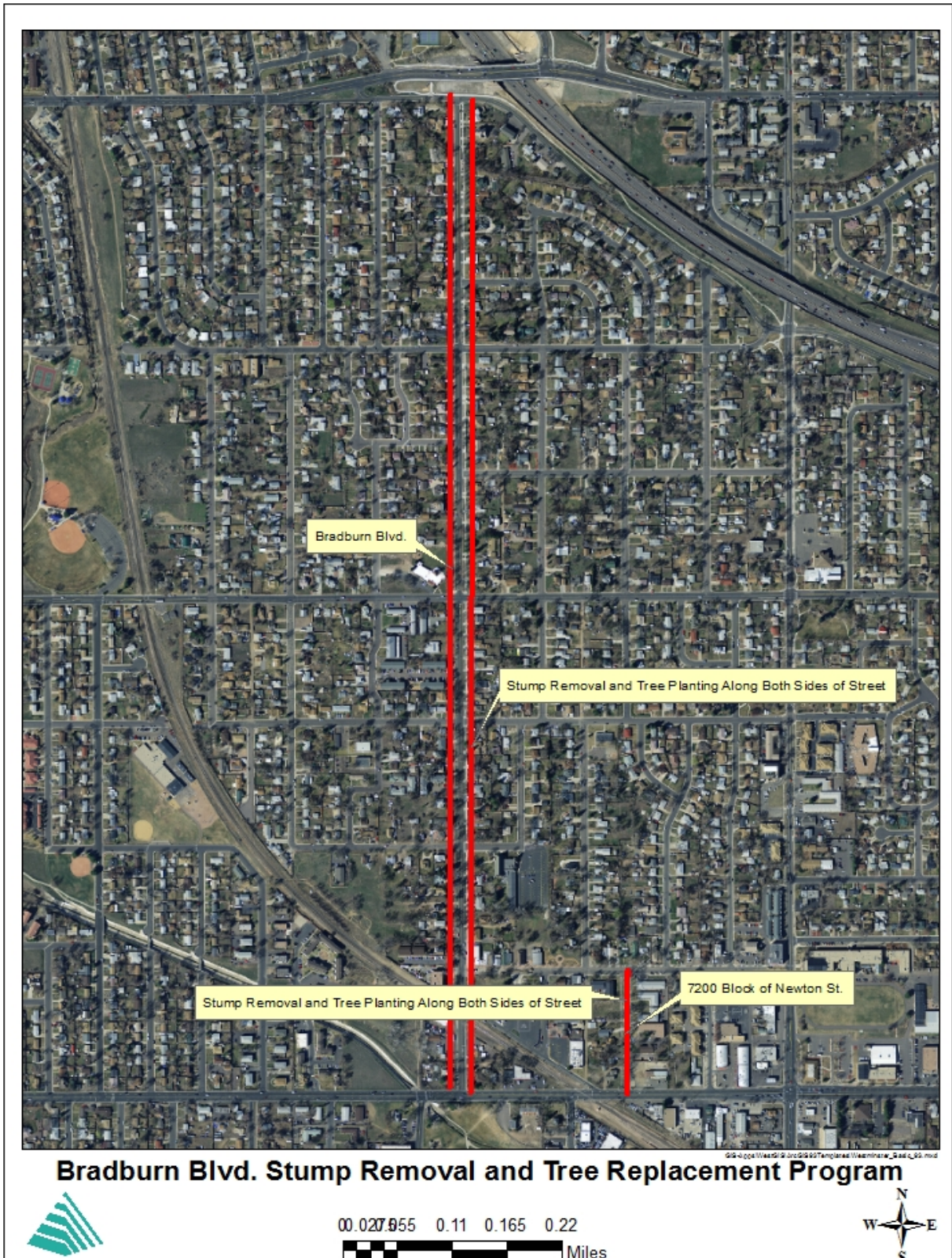
Attachments:

- Attachment 1 – Rodeo Market Park Phase II Community Garden
- Attachment 2 – Bradburn Boulevard Stump Removal and Tree Replacement Program
- Attachment 3 – Bradburn Boulevard Decorative Lighting Installation

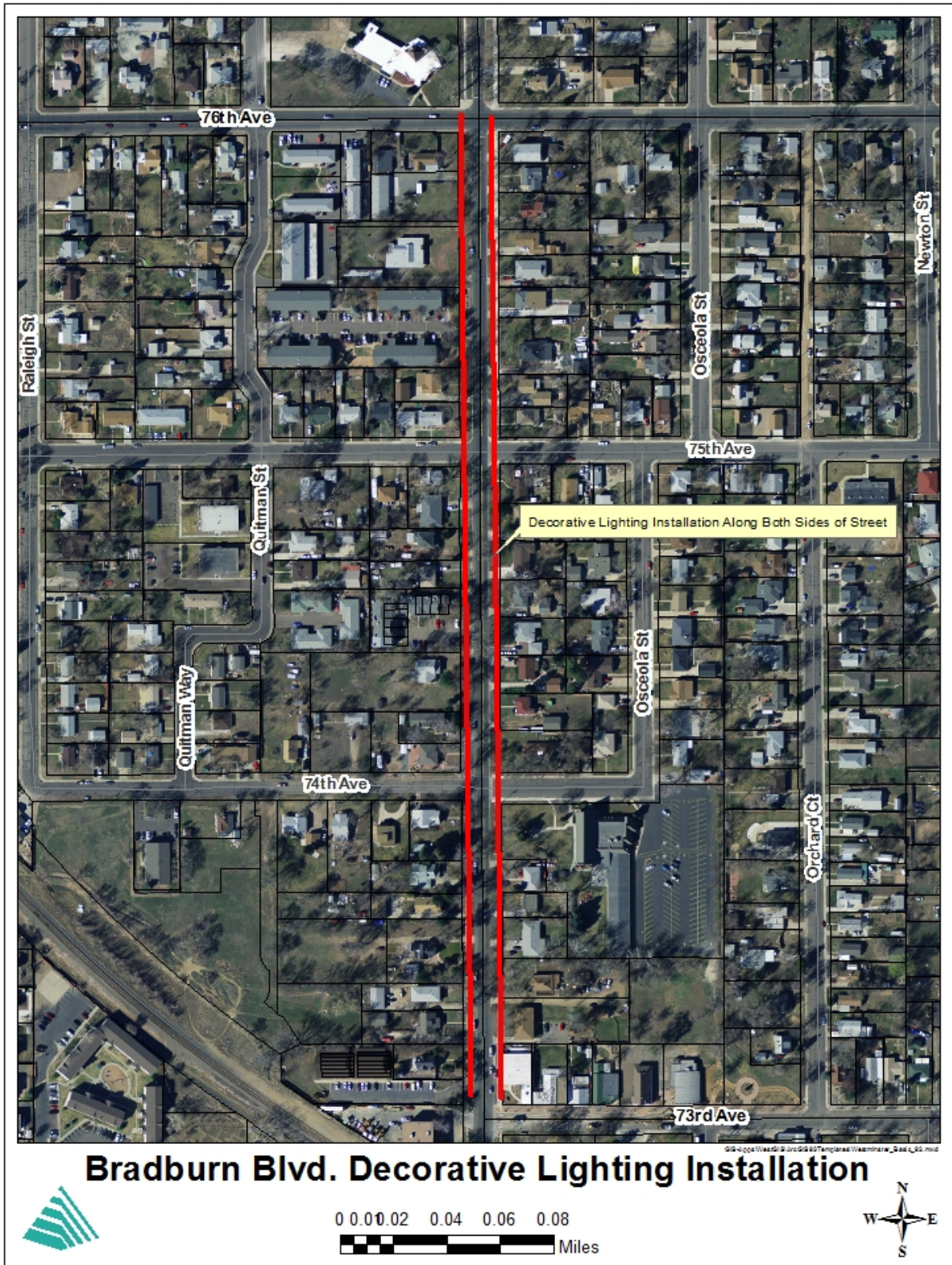
ATTACHMENT 1



ATTACHMENT 2



ATTACHMENT 3





Agenda Memorandum

City Council Meeting
December 9, 2013



SUBJECT: Councillor's Bill No. 52 re Water Tap Fee Decrease and Options for Related Utility Enterprise Budget Adjustment

Prepared By: Christine Anderson Gray, Management Analyst
Stu Feinglas, Water Resources Analyst

Recommended City Council Action

Pass Councillor's Bill No. 52 on first reading, authorizing a decrease to the water tap fee to \$20,836 effective January 1, 2014.

Summary Statement

- Water tap fees are charged to new utility customers to connect to the City's water system, and are based on the current value and size of the utility system.
- The water tap fee structure is composed of several components that together reflect the equitable portion of the water system impacted by new customers.
- Periodically the City increases the water tap fee charged to new utility tap customers to address the system's infrastructure and water resources critical needs.
- In 2012, Council adopted a water tap fee increase for a single family equivalent service commitment from \$16,325 to \$22,986 and delayed the effective date to January 1, 2014, to allow sufficient time for the development community to adjust to the change. This water tap fee reflected the cost recoveries necessary to meet the capital needs of the water system (including anticipated costs of water purchases) and to ensure that costs are equitably distributed between current and future users of the system.
- Council adopted the 2014 budget in October based on water tap fee revenues set at \$22,986.
- After further review, Council has since instructed Staff to prepare an ordinance for Council consideration that will reduce the adopted water tap fee to \$20,836, effective January 1, 2014.
- Staff will monitor the impacts of the reduced water tap fee revenue on the 2014 budget and will report back to Council regarding potential budget adjustments.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should Council authorize a reduction in the water tap fee to \$20,836 effective January 1, 2014?

Alternatives

1. Council could choose not to change the water tap fee, in which case the 2012 adopted water tap fee of \$22,986 would become effective on January 1, 2014, with no related impacts on the approved 2014 Enterprise Utility Fund budget.
2. Council could direct Staff to reduce the water tap fee to \$20,836, and prepare immediate revisions to the approved 2014 Enterprise Utility Fund budget in some, or all, of the following areas to recover approximately \$746,000 in projected tap fee revenue reduction:
 - a. Draw from the Capital Projects Reserve;
 - b. Reduce the approved 2014 Capital Improvement Program; or
 - c. Raise the user fees paid by customers.

This alternative is not recommended at this time because of the nature of the tap fee revenue projections and the possibility that those projections may be impacted by a reduction in the tap fees, such that any adjustments in any of the above three areas of the budget may be premature.

3. Council could direct Staff to reduce the water tap fee to \$20,836, and monitor the impacts on the approved 2014 Enterprise Utility Fund budget, and bring back to Council any corresponding adjustments in the budget as part of the next budget cycle. This option is recommended as it will allow the market to adjust to the reduced tap fees in 2014 and allow staff to analyze those impacts prior to recommending any other adjustments to the Enterprise Utility Fund budget.

Background Information

Tap fees are charges that new connections to the City's water and wastewater system pay in order to recover an equitable share of system capacity that has been developed to service growth. The City sets separate tap fees for connecting to the water system and the wastewater system. Past and current customers have invested to develop the water system sized to meet build-out demands. As new customers connect to the system, they pay for the portion of the developed system they will use. In this way, current customers benefit from lower system costs (water rates) and increased reliability, while new customers pay their equitable share.

The water tap fee includes three components:

1. The Infrastructure or Treated Water Investment Fee is set to recover an equitable portion of the City's infrastructure required to meet the demand of the new customer. The infrastructure includes all components of the utility system required to divert, treat and distribute water to customers. Infrastructure tap fees are calculated based on fixture count and resulting meter size, which is the best determination of projected peak demand on the infrastructure system. The current cost of the infrastructure component for a typical single family water tap fee is \$8,987.
2. The Water Resources Fee is set to recover the value of the City's water supplies developed to meet the demand of the new customer. Water resources are calculated in terms of Service Commitments (SC). One SC is equal to 140,000 gallons of annual use, which is the projected use of one new single-family home. For those other than single-family homes, multiples of service commitments are purchased based on a projected volume of use. The current cost of the water resources component for a single family water tap fee is \$7,338.
3. The Connection Fee is the portion set to recover the cost of calibration and installing the water meter. The current cost of a single family water tap Connection fee is \$321.

The total current cost of a single family water tap fee is \$16,646.

Periodically the City increases the cost of the infrastructure portion of the water tap fee to ensure that new users are paying an equitable portion of the overall costs to maintain and improve the water system. A recent study determined that the infrastructure portion of the water tap fee should be increased from \$8,987 to \$10,086 to address the water system’s replacement cost. This is based on the value of the improvements made to the system and the increase in the replacement costs for the rest of the system since the infrastructure fee was previously set.

The water resources portion of the tap fee is based on the current market value of the water resources owned by the City. Recent water purchases are used as a basis for determining the current market value. Water purchases are valued in terms of the cost per acre foot (AF) of reliable annual water delivery. Currently, Westminster’s tap fee is based on a water value of \$17,000 per AF. Since this value was established, the market for water rights in the region has become even more competitive. While Front Range water purchases since 2009 have ranged from a low of \$22,000 per AF up to \$50,000 per AF, recent purchases in the Clear Creek/Standley Lake market have ranged from \$22,000 per AF to \$30,000 per AF. Staff is therefore recommending using a value of \$25,000 per AF (the middle of the Clear Creek/Standley Lake range) for the tap fee calculation based on these purchases.

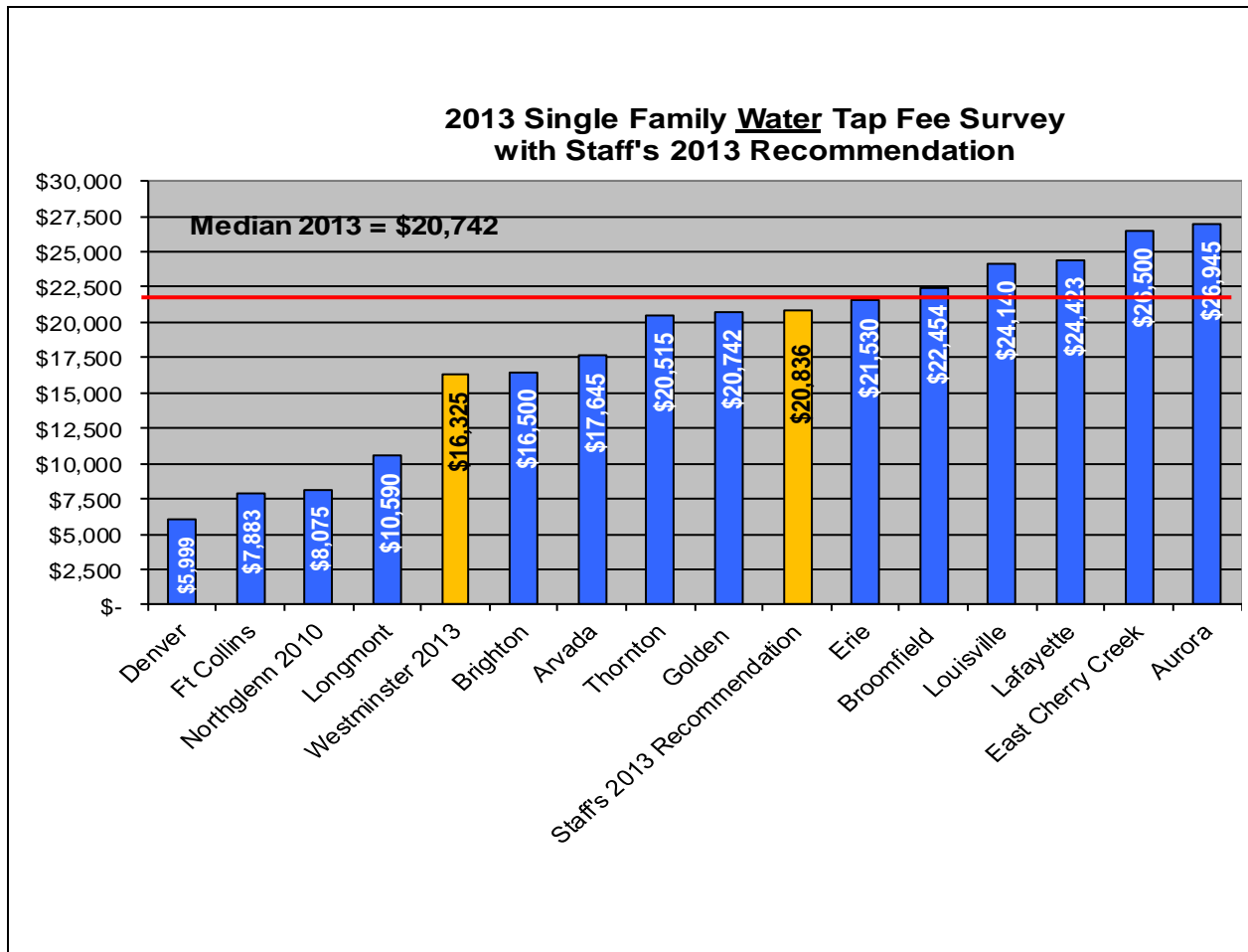
A chart is provided below that compares single family water tap fees at the existing rate to water tap fees fully implementing the infrastructure cost increase and at \$25,000 per AF for the market value of the water resources component:

Single Family Water Tap Fee Comparisons		
<u>Water Tap Fees</u>	<u>2013 Current Tap Fee</u>	<u>New 2014 Tap Fee Recommendation</u>
Infrastructure component:	\$8,987	\$10,086
Water Resources component:	\$7,338	\$10,750
Total Water Tap Fee: Not including connection fees	\$16,325	\$20,836

Note that irrigation tap fees are tied directly to the single family tap fee. Irrigation tap fees are charged per square foot of the landscape and the landscape type.

Irrigation Tap Fee by Landscape Type Comparisons		
<u>Water Tap Fees</u>	<u>2013 Current Tap Fee</u>	<u>New 2014 Tap Fee Recommendation</u>
High Water Use Areas	\$1.61	\$2.05
Medium Water Use Areas	\$0.80	\$1.02
Low Water Use Areas	\$0.40	\$0.51

Westminster’s current single family tap fee is below the median for surrounding communities. Below is a chart illustrating the City’s current tap fee and the tap fee recommended by Staff in 2013 for comparison with other neighboring entities.



In 2012, Council adopted a water tap fee which increased the water tap fee for a single family equivalent service commitment from \$16,325 to \$22,986. Council also delayed the effective date to January 1, 2014, to allow the development community sufficient time to adjust to the price change. After further review, Council has since directed Staff to prepare an ordinance for Council consideration that will reduce that adopted water tap fee from \$22,986 to \$20,836, effective January 1, 2014.

Note that per City Code the water tap fee would continue to increase by the Denver Metro area's Consumer Price Index on an annual basis beginning in 2014.

Staff is recommending that any impacts to the 2014 budget that result from the reduced water tap fee be monitored and reported back to City Council. If actual water tap fee revenues fall short of the adopted 2014 revenues, Staff may make recommendations as part of the next budget cycle for shortfalls in revenue to be recovered from the Capital Project Reserve, the Capital Improvement Program, and/or user fees paid by customers at that time.

This recommendation supports the City Council strategic goal of Financially Sustainable City Government Providing Exceptional Services by ensuring that the City's water system infrastructure is maintained as a high quality water system.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Water Tap Fee Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **52**

SERIES OF 20__

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING SECTION 8-7-3 OF THE WESTMINSTER MUNICIPAL CODE CONCERNING WATER TAP FEES AND CREDITS

WHEREAS, the City of Westminster operates a water and wastewater enterprise utility; and

WHEREAS, the City Charter requires that the utility be self-supporting; and

WHEREAS, the City wishes to equitably distribute costs throughout user classes.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 8-7-3, subsection (A) W.M.C., is hereby AMENDED to read as follows:

8-7-3: WATER TAP FEES AND CREDITS:

(A) FEE CALCULATION:

(1) An applicant for a water tap shall pay the fees set forth hereinafter, the total of which shall be known as the Water Tap Fee, or those portions that are applicable to the type of tap required by this Chapter. The Water Tap Fee or portions thereof are due and payable upon issuance of the water tap utility permit unless earlier paid as provided in Section 8-7-2(C). The Water Tap Fee may consist of the following individual fees.

(a) Water resources fee, being the share of the cost to provide adequate raw water supply to be utilized by the tap;

(b) Treated water investment fee, being the share of the utility system related to treating and distributing water to be utilized by the tap;

(c) Meter connection fee, being the actual cost for installation of a meter with electronic remote readout device, when applicable; inspection of the tap, service line and meter pit installation; meter testing, when applicable; account and billing activation and other administrative procedures; and

(d) When applicable, a fire connection fee, being that charge associated with a tap providing fire protection.

(2) Water taps, water tap lines, and meters for the same service shall normally be the same size. If otherwise approved and/or required by the City, the tap and meter may be of different sizes in which case the fee for the meter size shall be paid. Water taps cannot be issued prior to building and/or tap entitlement approval. Any exceptions must be approved by the City Manager, i.e., conversion from well to the City water system, pursuant to Section 8-7-15.

(3) The base water tap fees are as follows*:

Water Resources Fee	\$7,338.00 <u>\$10,750</u>
Treated Water Investment Fee	\$8,987.00 <u>\$10,086</u>
Meter Connection Fee	This connection is based on installed meter size and assessed on a per meter basis.
Fire Connection Fee	\$182.00

* On April 1st of each year, the Water Tap Fee and its individual components shall be automatically increased in accordance with the Consumer Price Index (CPI) for the previous calendar year as established for the Denver metropolitan area. The meter connection fee may also be adjusted separately at any time, when necessary, to reflect the full cost of said connection to the City.

Section 2. Section 8-7-3, subsection (D) W.M.C., is hereby AMENDED to read as follows:

(D) IRRIGATION WATER TAPS: The following regulations apply to taps for irrigation:

- (1) Separate irrigation taps and meters shall be required for:
- (a) all residential developments other than a development whose land area consists entirely of single-family detached lots; and
 - (b) all non-residential developments having any irrigated landscaped areas.

(2) Irrigation tap fees are required based on the area and type of landscaping. Landscape types are defined as either high water, moderate water or low-water as determined by the Community Development Department.

(3) An irrigation water tap shall be used only for irrigation purposes. Each irrigation water tap shall be assigned a service address and billing account in the name of the property owner or manager.

(4) The irrigation tap fee consists of the meter connection fee plus the following square footage fees based upon landscape type:

- (a) ~~\$1.61~~\$2.05 per square foot for high water landscaping requiring an annual application of more than ten (10) gallons of water per square foot;
- (b) ~~\$0.80~~\$1.02 per square foot for moderate water landscaping requiring an annual application of three (3) to ten (10) gallons of water per square foot;
- (c) ~~\$0.40~~\$0.51 per square foot for low water landscaping requiring an annual application of less than three (3) gallons per square foot.

Section 3: The 2012 Ordinance No. 3636 shall be repealed in its entirety.

Section 4: This ordinance shall take effect on January 1, 2014. 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 9th day of December, 2013.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23rd day of December, 2013.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office



Agenda Memorandum

City Council Meeting
December 9, 2013



SUBJECT: Councillor's Bill No. 53 re Housekeeping Amendments to Specific Chapter Sections in Title XIII, Parks and Recreation, and XVI, Utilities and Franchises, of the Westminster Municipal Code

Prepared By: Linda Yeager, City Clerk

Recommended City Council Action

Pass Councillor's Bill No. 53 on first reading adopting housekeeping amendments to sections within Chapters 2 and 3, Title XIII, Parks and Recreation, and sections of Chapters 1 and 3, Title XVI, Utilities and Franchises, of the Westminster Municipal Code.

Summary Statement

- As City Council is aware, the Westminster Municipal Code (W.M.C. or Code) is a codification of general ordinances of the City and serves as a major resource to Staff, citizens, and businesses both in print and electronically.
- Staff attempts to keep the Code current by regularly seeking Council approval of necessary amendments. Council has requested Staff to review and update the Code on a regular basis to maintain accuracy and ensure it is as free of errors as possible. In general, state, federal and city codes benefit from regular housekeeping measures such as those being proposed at this time for Westminster.
- Staff considers these proposed amendments to be primarily housekeeping in nature, but beyond the scope of authority granted to the City Clerk in Section 1-1-5, W.M.C., to correct errors of punctuation, capitalization, formatting, grammar and spelling, and internal references.
- Staff believes these amendments will improve the overall quality of the Code.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the City make general housekeeping and administrative amendments to the Westminster Municipal Code as proposed?

Alternatives

1. Direct Staff to leave the current Code provisions in place and do not advance the recommendations through the formal ordinance adoption process. Staff does not recommend this alternative because the proposed amendments will result in standardized formatting with the rest of the Code, updated provisions, and numerous minor corrections to Titles.
2. Direct Staff to make only certain changes to the Code, while excluding others. Although this approach would help address some issues in the Code, Staff does not recommend this alternative because it may not address all of the concerns with the current Code and, as this is the last of six ordinances in this series making housekeeping only changes, it would cause these last few Titles to be inconsistently formatted with the previous twelve titles.

Background Information

In response to Council's request to regularly review and maintain the City Code, in January 2012, the City Clerk's Office began a comprehensive review of each Code provision for typographical, grammatical, cross-reference and other errors, and outdated or inaccurate information, while applying standard formatting conventions. Although the Westminster Municipal Code contains a section on "Rules for Construction," standard formatting conventions were only recently established by Staff. The attached ordinance is the sixth and last of its kind and contains those amendments identified within Titles XIII and XVI, including the deletion or correction of outdated information that is beyond the scope of authority granted to the City Clerk.

The changes proposed focus on modifying text for consistency of interpretation and reflection of current conditions; updating terminology; reorganizing for clarity of intent; and deleting definitions no longer used.

Revisions to the Municipal Code support all five of the City's Strategic Plan goals. In concert with the Charter, the Municipal Code serves as a foundation for the City's operations and incorrect or out-of-date information could potentially have a significant impact on the community. This final ordinance represents the conclusion of this 2-year project.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **53**

SERIES OF 2013

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING SECTIONS 13-2-1, 13-3-4, 13-3-5, 16-1-2, 16-1-3, and 16-3-5 OF THE WESTMINSTER MUNICIPAL CODE AS HOUSEKEEPING MEASURES THROUGH NOVEMBER 2013

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 13-2-1, W.M.C., is hereby AMENDED to read as follows:

13-2-1: PURPOSE AND INTENT: (3455) The City's parks, community buildings and recreation facilities shall be made available for the exclusive use of persons and groups ~~who have been issued subject to the issuance of a use permit by the Director and paid the applicable fees therefor subject to payment of fees therefor as provided.~~ No use of any park, building or recreational facilities for pre-advertised assemblies or groups consisting of twenty-five (25) or more persons may be made without the issuance of a permit therefor. All applications for exclusive use of any park, building or recreation facility must be signed or co-signed by some person at least twenty-one (21) years of age who shall agree to be responsible for payment for any damage occurring during said exclusive use. No exclusive use permit will be granted if, prior to the time the application was filed, the City has scheduled a City-sponsored event at the same time and place as the activity proposed in the application.

No exclusive use permit shall be granted for use of a park or other facility for any activity involving more than one hundred (100) participants during any of the time between one (1) hour before sunset and one (1) hour after sunrise, unless the park or facility has the appropriate program lighting, and the desired park is large enough to accommodate the anticipated number of participants. Special requests, such as for Easter sunrise services, will be considered on an individual basis by the Director.

Section 2. Section 13-3-4, subsections (A) and (B), W.M.C., are hereby AMENDED to read as follows:

13-3-4: REMOVAL OR TREATMENT OF INFECTED OR INFESTED TREES: (792 1634 1680 1889)

(A) The Department of Parks, Recreation and Libraries has discovered the existence of Dutch Elm and Emerald Ash Borer disease in trees at various locations within the City of Westminster, and such trees must be treated or disposed of immediately to prevent the spread of that disease to uninfected trees. The Director of Parks, Recreation and Libraries or his authorized representatives are empowered to inspect any trees, shrubs, vines, hedges, plants, logs or branches existing or growing upon any property within the City. The Director or his authorized representatives shall from time to time conduct surveys to determine if any destructive or communicable disease or other pestilence exists that may be detrimental or endanger the good health and well-being of trees or other plant life in the City.

(B) Upon discovery of any destructive or communicable disease or other pestilence that endangers the growth, health, life, or wellbeing of other trees or plants, or that is capable of causing an epidemic spread of communicable disease or insect infestation, such as Dutch Elm and Emerald Ash Borer disease, the Director of Parks, Recreation and Libraries or his authorized representatives shall at once notify in writing the owner, occupant or agent of the premises whereon the same are located, or the owner, occupant or agent of the premises abutting on public property whereon the same are located, of the condition thereof, and direct such owner, agent or occupant to eradicate, remove, or otherwise control such condition within a reasonable time to be specified in said written notice.

Section 3. Section 13-3-5, W.M.C., is hereby AMENDED to read as follows:

13-3-5: COMPLIANCE REQUIRED; UNLAWFUL ACTS: (792 1889 A1889) ~~It shall be unlawful:~~

(A) ~~It shall be unlawful f~~For the owner, occupant or agent of any premises to fail or refuse to comply with the requirements set forth in any notice issued under any Section of this Chapter within the time specified in said notice, or to fail or refuse to comply with any rule or regulation promulgated by the Director of Parks, Recreation and Libraries under the authority granted in this Chapter.

(B) ~~It shall be unlawful t~~To plant or place upon any public right-of-way or other public place in the City any trees, shrubs or other plants, other than as prescribed in rules and regulations promulgated by the Director of Parks, Recreation and Libraries.

~~(C) Because the Department of Parks, Recreation and Libraries has discovered the existence of Dutch Elm disease in trees at various locations within the City of Westminster, and such trees must be treated or disposed of immediately to prevent the spread of that disease to uninfected trees.~~

Section 4. Specific definitions within Section 16-1-2, W.M.C., are hereby AMENDED to read as follows:

16-1-2: DEFINITIONS: (1879 3370) For the purpose of this Title XVI, the following words and phrases shall have the meaning given in this Section. When not inconsistent with the context, words used in the present tense include future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined in this Section shall be given their common and ordinary meaning.

~~“Cable Television Service or System” shall be as defined in Chapter 3 of this Title.~~

~~“Public Places” shall mean alleys, viaducts, bridges, roads, lanes, parks, drainageways, rights-of-way and public easements in the City.~~

Section 5. Section 16-1-3, subsection (B)(4), W.M.C., is hereby AMENDED to read as follows:

16-1-3: OBLIGATIONS REGARDING FACILITIES: (1879 3370)

(B) LOCATION OF FACILITIES:

(1) The installation, maintenance, renovation and replacement of any facilities in public streets and other public places by the public utility shall be subject to approval of location by the City.

(2) Public utility facilities shall not interfere with street and traffic facilities, water facilities, sanitary or storm sewer facilities or the use of public streets, and public places by the public or the City.

(3) Public utility facilities shall be installed and maintained so as to minimize interference with other property, trees and other improvements and natural features.

(4) A public utility shall not, pursuant to this ordinance, place any of its facilities on, over, under or within any City park, City greenbelt or open space, or designated park property owned by the City, unless the City grants a revocable permit therefor.

Section 6. Section 16-3-5, subsection (A), W.M.C., is hereby AMENDED to read as follows:

16-3-5: FINANCIAL QUALIFICATIONS: (3370)

(A) Unless Securities and Exchange Commission (“SEC”) Forms 10K and 10Q are available on the Electronic Data-Gathering, Analysis, and Retrieval system (“EDGAR”) database, Applicants with existing operations shall provide audited financial statements, including statements of income, balance sheets and cash flow statements, together with any notes necessary to the understanding of the financial statements for the last three (3) fiscal years for the Applicant and any Parent Corporation.

Section 7. This ordinance shall take effect upon its passage after second reading.

Section 8. 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 9th day of December, 2013.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23rd day of December, 2013.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney’s Office



Agenda Memorandum

City Council Meeting
December 9, 2013



SUBJECT: Resolution No. 32 re City of Westminster 2014 Legislative Policy Statement

Prepared By: Ben Goldstein, Management Analyst
Steve Smithers, Deputy City Manager

Recommended City Council Action

Adopt Resolution No. 32 establishing the City of Westminster 2014 Legislative Policy Statement.

Summary Statement

- The Legislative Policy Statement identifies general legislative issues of interest to the City of Westminster and articulates the City's policy principles on these issues. Staff uses the Policy Statement as direction when reviewing and analyzing bills that may have an impact on the City's interests.
- Adopting the Legislative Policy Statement will allow Staff and Council to move quickly when legislation is introduced at the Capitol. The ability to act in a timely manner increases the City's overall effectiveness when it comes to influencing legislation that affects municipalities.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should City Council adopt the proposed City of Westminster 2014 Legislative Policy?

Alternatives

1. Do not adopt a City of Westminster 2014 Legislative Policy Statement. This is not recommended, as the adoption of a Legislative Policy Statement is an important component of the City of Westminster's legislative program.
2. Direct Staff to revise the proposed Policy Statement to reflect any additional changes that Council wishes to make.

Background Information

In 2007, City Council adopted the first City of Westminster Legislative Policy Statement. The goal of the Policy Statement is to identify general legislative issues of interest to the City of Westminster along with the City's policy principles on these issues. These issues could have been addressed in the past at the legislature, or they could be issues that are anticipated in the future. Staff's goal for this proposed document is to be broad, yet as inclusive as possible to capture important issues to the City. There were minor edits by staff to the 2014 Legislative Policy Statement as compared to the 2013 version. Additionally, changes were made to the Proposed 2014 Legislative Policy Statement based on direction received from City Council at the November 25th Post Council Meeting.

Staff will utilize the City Council-approved Legislative Policy Statement as a guiding policy when reviewing and analyzing bills introduced in the General Assembly that may have an impact on the City. When significant legislation is identified, Staff will provide City Council with a brief summary of legislation of substance and will recommend official City positions that are consistent with the principles of the adopted Legislative Policy Statement. If Council does not express any concerns with the positions that Staff has recommended on specific bills, Staff will communicate these positions to the City's State Legislators, lobbyist, and CML, and update the City's legislative scorecard posted in The Weekly and on the City's website to communicate the City's positions to the public. If a majority of City Council expresses concerns about a specific position that Staff is presenting, discussion on the item will be scheduled for a subsequent meeting with City Council, and no lobbying on the issue will take place until Council direction is received.

As State legislation can have a significant impact on the City of Westminster and its citizens, the proposed City of Westminster 2014 Legislative Policy Statement supports all five of City Council's Strategic Plan Goals: Strong, Balanced Local Economy; Safe and Healthy Community; Financially Sustainable City Government Providing Exceptional Services; Vibrant Neighborhoods in One Livable Community; and Beautiful and Environmentally Sensitive City.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Resolution
- Proposed Policy Statement

RESOLUTION

RESOLUTION NO. **32**

INTRODUCED BY COUNCILLORS

SERIES OF 2013

**A RESOLUTION ADOPTING THE CITY OF WESTMINSTER
2014 LEGISLATIVE POLICY STATEMENT**

WHEREAS, the City of Westminster follows legislative activity in the Colorado General Assembly very closely in order to identify any potential impacts on the City and its citizens; and

WHEREAS, due to the fast-paced nature of the State legislative process and the ever-changing language of numerous bills of substance, it is critical that the City of Westminster maintains an effective and responsive system for taking and communicating official City positions on relevant legislation; and

WHEREAS, an integral part of this system is the adoption of a City of Westminster 2014 Legislative Policy Statement, which identifies general legislative issues of interest to the City of Westminster along with the City's policy principles on these issues; and

WHEREAS, Staff will utilize the City of Westminster 2014 Legislative Policy Statement as a guiding policy when reviewing and analyzing bills that have an impact on the City's interests; and

WHEREAS, the City of Westminster 2014 Legislative Policy Statement incorporates the City Council's Strategic Plan Goals and Objectives.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER that the attached City of Westminster 2014 Legislative Policy Statement is hereby adopted representing the City of Westminster's policy principles on these issues.

PASSED AND ADOPTED this 9th day of December, 2013.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office



WESTMINSTER

**PROPOSED
CITY OF WESTMINSTER 2014
LEGISLATIVE POLICY STATEMENT**

December 9, 2013

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OVERVIEW

The City of Westminster's Legislative Policy Statement identifies general legislative issues of interest to the City of Westminster along with the City's policy principles on these issues. The following policy statements are necessarily broad and by no means all-inclusive. Staff will utilize the Legislative Policy Statement as a guiding policy when reviewing and analyzing bills that have an impact on the City's interests. The City of Westminster will take Official City Positions on a limited number of significant bills. The City will have discretion in determining which specific bills to take Official City Positions. Official City Positions are not automatically assumed on bills simply that are congruent with the policy statements contained in this document. When significant legislation is identified, Staff will provide City Council with a brief summary of the substance of the legislation and a proposed Official City Position that is consistent with the principles of the Legislative Policy Statement. If Council does not express any concerns with the position, Staff will communicate this position to the City's lobbyist and update the City's legislative page on the website to communicate the City's position to the public. The City will continue to contact legislators regarding Official City Positions on specific bills throughout legislative session.

The City of Westminster welcomes the opportunity to discuss the City's legislative positions with Legislators. In addition to communication on specific bills, this Legislative Policy Statement provides a reference tool for Legislators to use when considering legislation that may impact the City of Westminster. For more information on the City's legislative program, please contact Deputy City Manager Steve Smithers at 303-658-2002 or Management Analyst Ben Goldstein at 303-658-2007.

CITY OF WESTMINSTER STRATEGIC PLAN

Each year, the City of Westminster City Council reviews and recommits the City organization to a five-year Strategic Plan. The 2013-2018 Strategic Plan identifies the City's underlying principles on which decisions are based and includes goals to be achieved through 2018. Each goal is further defined by a set of objectives and short-term actions to be taken to achieve the associated goal. The Strategic Plan reinforces long-term planning for both day-to-day operations and services, and long-term investment projects such as road construction, water distribution and sewer maintenance programs. As a statement of City Council's goals and vision for the City, the Strategic Plan helps Staff successfully plan City projects and budgets to achieve this vision and associated goals. Accordingly, the City of Westminster Legislative Policy Statement is intended to be consistent with and support City Council's Strategic Plan Goals and Objectives.

Therefore, the City of Westminster:

- Supports legislation that is consistent with and supports the achievement of the City's Strategic Plan Goals and Objectives.
- Opposes legislation that runs counter to or prevents the achievement of the City's Strategic Plan Goals and Objectives.

The following is a summary of the five major goals and corresponding objectives that are identified in the City's 2013-2018 Strategic Plan.



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.

HOME RULE AND LOCAL CONTROL

The City of Westminster believes strongly in the principles of home rule authority and local control. Article XX of the Colorado Constitution grants home rule municipalities such as Westminster “the full right of self-government in local and municipal matters.” The City of Westminster believes that home rule authority increases the effectiveness and efficiency of local government services, enhancing the quality of life in the community and the value provided to local taxpayers.

Therefore, the City of Westminster:

- Expects State legislators to uphold and support home rule and Colorado’s tradition of local control.
- Supports legislative efforts to strengthen home rule authority of municipal governments.
- Opposes legislation that attempts to weaken municipal home rule authority and flexibility.
- Opposes legislation that mandates state intervention in matters of local concern, especially when that intervention unnecessarily or adversely affects the City’s ability to manage these matters pursuant to its home rule authority.

STATE AND FEDERAL MANDATES

Programs and regulations mandated by the State or Federal government have the potential to stretch the financial resources of the City of Westminster. If additional costs brought about by these mandated programs or regulations are not paid by the State or Federal government, they can have a direct negative impact on the City budget. This can prevent the City of Westminster from meeting the needs of residents and businesses and achieving the City’s strategic priorities.

Therefore, the City of Westminster:

- Supports the TABOR Constitutional requirement for the Colorado General Assembly to reimburse municipalities for the cost of State mandates and to make this requirement clear in State fiscal notes prepared for the General Assembly.
- Opposes unfunded State and Federal mandates that impose unfair financial burdens on municipalities and their citizens.

GOVERNMENTAL IMMUNITY

The City of Westminster recognizes that the complexity and diversity of City operations and services required to meet the needs of citizens may expose the City, its officers, and employees to liability for damage and injury. The City strongly believes that public officers and employees need to be assured that municipal liability will not impair the lawful and proper provision of necessary services to the public.

Therefore, the City of Westminster:

- Supports legislation that protects the interests of municipalities, their officers, and their employees in the lawful and proper performance of their duties and responsibilities.
- Supports legislation that discourages baseless and frivolous claims and demands made against municipalities, their officers, and their employees.
- Supports the availability of public liability insurance at reasonable costs and the ability of municipalities to reduce these costs through self-insurance.

- Opposes legislation that expands or increases municipal liability, or, conversely, further limits municipal immunity.

SALES AND USE TAX

The City of Westminster levies, administers, and collects its own sales and use taxes under its home rule authority. Sales and use tax revenue is the primary source of funding for City of Westminster services and operations, comprising over 60% of general fund revenues. Appropriate actions at Federal, State and local levels must preserve or enhance this critical local revenue.

Therefore, the City of Westminster:

- Supports legislation that maintains local control over imposition, collection and administration of sales and use taxes.
- Supports legislation that allows state and local governments to require businesses to collect state and local sales and use taxes on remote sales.
- Supports voluntary, cooperative efforts among Colorado municipalities to standardize sales and use tax practices and utilize technology for the convenience of taxpayers, the business community, and municipalities.
- Opposes legislation that preempts local authority to impose and collect sales and use taxes.
- Opposes legislation that grants jurisdictions other than the State, cities, and counties the authority to impose sales or use taxes.

GENERAL FINANCE

The City of Westminster is a full-service community. While sales and use tax revenue comprises the primary funding source for general government services, the City’s wide variety of services are also funded through a balanced array of other taxes, user fees, and other financing sources. Consequently, the City of Westminster is impacted by State and Federal financial policies.

Therefore, the City of Westminster:

- Supports the continuation of existing local government financing methods and the addition of new methods for local government to support the provision of municipal services to citizens.
- Supports equitable sharing with municipalities of existing and future State revenues derived from traditional State-collected, locally shared revenues, such as the cigarette tax, Highway Users Tax Fund, and the lottery.
- Opposes State-granted exemptions or other State actions that erode municipal sales taxes, use taxes, property taxes, and other revenue sources unless the State provides adequate replacement revenues.
- Opposes State-mandated reductions to the current property tax structure without specific revenue replacement provisions.

LAND USE, DEVELOPMENT, AND REVITALIZATION

The City of Westminster works constantly to achieve the Strategic Plan Goals of “Vibrant Neighborhoods in One Livable Community” and “Strong Balanced Local Economy.” The City believes that local control with land use planning contributes greatly to the achievement of this goal and the overall quality of life in the City of Westminster. In addition, two of the City’s Strategic

Plan Objectives are to “develop transit oriented development around commuter rail stations” and “revitalize Westminster Center Urban Reinvestment Area.” In order for redevelopment and revitalization efforts to succeed, the City feels very strongly that appropriate urban renewal tools need to be preserved and strengthened.

Therefore, the City of Westminster:

- Supports legislation that removes barriers to local land use planning and land development regulation.
- Supports appropriate legislation that facilitates the creation of Transit-Oriented Developments (TOD).
- Supports legislation to enable cooperative urban renewal projects between multiple jurisdictions.
- Supports appropriate legislation and funding that encourages and facilitates historic preservation and rehabilitation.
- Opposes legislation that prescribes comprehensive land use and other community planning at the State level.
- Opposes legislation that would inappropriately limit local government authority to impose growth impact fees.
- Opposes legislation that would unreasonably restrict the use of tax increment financing or eminent domain for redevelopment projects.

ECONOMIC DEVELOPMENT

The City of Westminster strives to develop and maintain a “Strong, Balanced Local Economy” per its Strategic Plan. Whether it is maintaining a healthy retail base or retaining and expanding targeted businesses and primary employers, the City recognizes the importance of a healthy economic climate to the overall quality of life.

Therefore, the City of Westminster:

- Supports the development of a statewide economic development strategy that addresses issues of business climate and economic direction at the State level but allows for local control of economic development.
- Supports appropriate State tax policies and incentive programs, including enterprise zones, business incentive agreements, or other legislative initiatives, that encourage business expansion and retention through primary job creation, investment in capital equipment, and employer facility development.
- Supports workforce development, including higher education funding and Science, Technology, Engineering, and Math (STEM) High Schools.

WATER RESOURCES AND TREATMENT

Since the 1950’s, the City of Westminster has invested substantial public funds into the creation and protection of an independent water supply. Westminster has an obligation to provide the highest quality water and wastewater services in a financially sound, reliable, safe, and environmentally respectable manner. The City supports legislative measures to further this goal.

Therefore, the City of Westminster:

- Supports the constitutional doctrine of prior appropriation, the constitutional priority given to domestic water use, the right to purchase and change the use of water rights within the State, and supports legislation and policies to ensure fair treatment of all water rights holders.
- Supports water quality legislation that results in appropriate, cost effective water quality control regulations with measurable water quality benefits.
- Supports legislation that reasonably limits liability exposure of and protects investment in water and wastewater operations.
- Supports legislation and regulations that promote the appropriate and beneficial use of reclaimed water and wastewater biosolids.
- Supports legislation that protects water supplies from the environmental and operational impacts of aquatic nuisance species such as zebra and quagga mussels.
- Supports legislation to proactively reduce wildfire risks.
- Supports continued Federal and State funding for water and wastewater treatment infrastructure to reduce local costs and expedite construction of necessary treatment, distribution, and collection facilities to comply with Federal and State mandates.
- Supports appropriate water conservation efforts and sustainable water resources management practices by all users.
- Supports sufficient appropriations and adequate fee-based revenue so the State may continue administration of its water programs including those federally mandated water and wastewater environmental regulatory programs, such as the Safe Drinking Water and Clean Water Acts delegated to the State to administer, and can fund the protection of critical infrastructure through an equitable distribution of program costs between State general fund monies and user fees.

TRANSPORTATION

The City of Westminster believes that the movement of goods and people is vital to the continued economic success of the State of Colorado and to the maintenance of the high quality of life that Coloradans enjoy. In order to preserve these, the State Legislature must be willing to make significant investments to maintain and improve the State's transportation network including roads, bridges, and other multimodal systems. With the Colorado Department of Transportation's funding challenges, municipal and county governments have taken on greater construction, maintenance, and financial responsibilities. For example, two interchanges on I-25 at 144th Avenue and 136th Avenue were built and paid for entirely by the Cities of Westminster and Thornton. The City of Westminster has demonstrated that it is willing to partner on projects, such as contributing \$500,000 as part of a \$5 million local funding commitment to the North I-25 Managed Lanes project, but is against efforts to pass along additional State roadway construction or maintenance responsibilities to local governments without increased and adequate funds to meet these additional responsibilities.

Therefore, the City of Westminster:

- Supports an appropriate State-wide transportation plan that not only funds repair and maintenance needs, but also commits to network and multi-modal mobility improvements and expansions, including actions that address congestion relief in the Denver metropolitan area.

- Supports legislation to enhance transportation funding equity within the State and Denver Metropolitan Region.
- Supports equitable administration of the Colorado Department of Transportation's (CDOT) Managed Lane Policy. U.S. 36 and North I-25 are gaining capacity improvements under a tolled, HOV3+ approach, and other potential capacity improvement projects should include a toll component.
- Supports legislation and regulatory action that maintains or increases the level of funding provided by the State or passed through the State by the Federal government to transportation activities at the local level.
- Supports State and Federal investments in the U.S. 36 and North I-25 managed lanes projects. This includes CDOT RAMP funding for the extension of the I-25 managed lanes to State Highway 7.
- Supports State and Federal investments in addressing the bi-directional commute challenges on the existing I-25 HOT/HOV lanes.
- Supports appropriate additional funding efforts to complete the Northwest Commuter Rail Project (FasTracks) in a timely manner.
- Supports efforts to pursue a Statewide ballot issue and/or the creation of a Metropolitan Transportation District (MTD) for the Denver Metropolitan area, provided regional equity is adequately achieved for a potential project list and MTD governance structure. Multimodal improvements, including acceleration of the Northwest Commuter Rail Project, would need to be included as eligible items for potential future funding efforts.
- Supports State and Federal assistance and funding for Bus Rapid Transit (BRT) and bikeway improvements on U.S. 36. This includes acquisition of an appropriate BRT vehicle fleet.
- Supports State and Federal funding assistance for the implementation of railroad crossing quiet zones. Supports legislative efforts to modify rulemaking to allow for a more attainable quiet zone crossing designation.
- Supports Transportation Demand Management (TDM) efforts and investments for U.S. 36 and North I-25.
- Opposes any efforts to eliminate the Northwest Commuter Rail project or to pursue other transit investments in the region that would result in pushing completion of Northwest Commuter Rail further down the road.
- Opposes legislation to transfer maintenance responsibility of State-owned roads to municipalities without adequate short and long-term funding to meet these additional responsibilities.

TELECOMMUNICATIONS

The City of Westminster recognizes the importance of telecommunications services to economic development and the quality of life in the City. The City of Westminster supports increased competition in the cable and video market and has taken steps in preparation to work with companies who are interested in providing video service in our community. However, the City's view is that statewide franchising should not override the City's authority to ensure the best possible service to its citizens and to regulate the use of public right-of-way.

Therefore, the City of Westminster:

- Supports the retention of municipal franchising and regulatory authority over cable television systems.
- Supports legislation that preserves municipal control and autonomy over public rights-of-way and other assets, along with the right of local governments to receive fair and reasonable compensation for their use.
- Supports the ability of municipalities to require “reasonable” build-out for potential new video providers per the Federal Communications Commission’s executive order.
- Opposes State or Federal restrictions on municipal franchising, regulatory, and taxing authority over telecommunications systems.

WORKERS’ COMPENSATION

The City of Westminster recognizes that the Colorado Workers’ Compensation Act was developed as a no-fault system established “to assure the quick and efficient delivery of disability and medical benefits to injured workers at a reasonable cost to employers, without the necessity of any litigation, recognizing that the workers’ compensation system in Colorado is based on a mutual renunciation of common law rights and defenses by employers and employees alike.” The City self-insures its Workers’ Compensation program up to a certain limit and then purchases excess commercial insurance coverage to ensure the most cost effective, efficient delivery of these benefits to employees. The City is concerned about any legislation that will erode the ability of an employer to control their claim costs and inhibits an employer’s ability to get competitive quotes from the market for quality insurance coverage.

Therefore, the City of Westminster:

- Supports legislation that maintains the spirit of the Colorado Workers’ Compensation Act, for the protection of both Colorado employers and employees.
- Opposes legislation that creates presumptive eligibility coverage within the law.
- Opposes legislation that increases insurance premium costs to employers.
- Opposes legislation that adds administrative burdens or taxes to self-insurance programs.
- Opposes legislation that promotes litigation.

HUMAN RESOURCES

Employees are the City of Westminster’s most important resource. The City is an equal opportunity employer and works to ensure excellent and fair salaries and benefits for employees, along with growth and development opportunities. Like with most other organizations, the City of Westminster’s budget is continuously pressured by increasing compensation and benefit costs. The City constantly balances fair compensation and benefits with responsible expenditures of tax dollars.

Therefore, the City of Westminster:

- Supports legislation that maintains or reduces the employer and employee Fire and Police Pension Association (FPPA) pension and retiree health insurance costs.
- Opposes any legislation that interferes with a municipality’s ability to determine the terms and conditions of municipal employment.

- Opposes mandated Social Security coverage for public employees, mandated benefit levels or funding standards for municipal employee pension plans, or other unreasonable burdens or restrictions in connection with the administration of municipal employee benefit plans.
- Opposes legislation that reduces current State funding of death and disability benefits for emergency services personnel or legislation that shifts the funding of this State responsibility to local governments.

OPEN SPACE

As stated in the City’s Strategic Plan, Westminster works to maintain and develop a “Beautiful and Environmentally Sensitive City.” Increasing and preserving open space is a high priority in the City of Westminster. As build-out approaches, the City is striving to achieve its goal of maintaining 15% of the City’s land area as open space. Open space, along with trails, contribute greatly to the quality of life in the City of Westminster.

Therefore, the City of Westminster:

- Supports maintaining funding, and adding additional funding where appropriate, to State and Federal land conservation programs that will help to increase the amount of open space within the City, thereby helping to achieve the goal of “Beautiful City.”
- Supports legislation that generally enables and empowers the use of conservation easements.
- Supports legislation that provides further incentives to preserve open space.

ENVIRONMENT

For the City of Westminster, the environment is a priority, as is shown in the City’s programs and services that secure clean air, water, and land. Westminster is one of the most environmentally-friendly cities in the area and has signed the U.S. Conference of Mayors Climate Protection Agreement. The City of Westminster recognizes the importance of working cooperatively with other governmental entities to implement and manage efficient, cost-effective, and scientifically-based environmental control programs. It is the intent of the City to meet or exceed compliance with all applicable environmental laws and regulations. However, the City does not support State or Federal programs that place a severe financial burden on municipalities.

Therefore, the City of Westminster:

- Supports appropriate legislation and regulations that promote pollution prevention.
- Supports legislation and regulations that provide incentives for green building and sustainable design without imposing unfunded mandates.
- Supports energy conservation efforts and appropriate legislation that accelerates the development of clean, economical energy resources and fuel-efficient technologies such as wind and solar energy, waste to energy, fuel cells, and other appropriate and effective technologies.
- Supports reasonable legislation and regulations that increase the fuel efficiency of motor vehicles.
- Supports legislation that limits liability for waste cleanup costs under Federal law where the municipality demonstrates due care and absence of fault in connection with waste disposal at a site and provides an early and fair means of settlement for municipalities named as liable parties at waste cleanup sites.

- Opposes legislation or standards that weaken current air quality standards or regulations.
- Opposes legislation that limits the ability of local government to regulate the activities of private waste or recycling collectors or to provide waste or recycling collection or processing services to citizens.

PUBLIC SAFETY

“Safe and Healthy Community” is one of the goals identified in the City of Westminster’s Strategic Plan. The City works diligently towards keeping citizens safe anywhere in the City. The City of Westminster recognizes the critical importance of maintaining public order, providing a safe environment, and protecting the lives and property of the citizens of Westminster. The role of the Police Department is to enforce the law in a fair and impartial manner, recognizing both the statutory and judicial limitations of police authority and the constitutional rights of all persons. The Westminster Fire Department works to minimize injuries and property losses due to fire, to provide quality emergency medical care and transport services, and to provide other services including fire inspections and emergency preparedness planning. Finally, the City of Westminster’s Municipal Court works to ensure that justice is carried out fairly and effectively.

Therefore, the City of Westminster:

POLICE

- Supports legislation that provides resources and support to victims of domestic violence.
- Supports legislation regarding the Public Safety Spectrum that support nationwide, interoperable, wireless broadband network.
- Supports legislation that protects society against Identity (ID) Theft.
- Opposes legislation that inappropriately transfers immigration and illegal alien enforcement responsibilities from the Federal government to local government and diverts local law enforcement resources from other priorities.
- Opposes legislation that restricts and limits automated license plate reader technology and data retention by law enforcement.

MUNICIPAL COURT

- Opposes legislation that limits the authority of municipalities to enforce their own ordinances in municipal courts.
- Opposes imposition of State surcharges on municipal court fines for the purpose of funding State programs.

FIRE AND EMERGENCY MEDICAL SERVICES

- Supports legislation that assists in the development of interoperable communication systems for public safety.
- Supports legislation to require the installation of appropriate fire protection systems in structures to enhance life safety and property protection.
- Supports legislation that strengthens the City’s ability to prohibit the use and sale of all fireworks, along with legislation that allows counties and fire districts to prohibit and otherwise control fireworks.
- Opposes legislation that restricts the City from adopting local strategies and regulations for safely addressing hazardous materials or legislation that restricts the City’s ability to review and approve the location of facilities that use or store hazardous materials or hazardous waste.



Agenda Memorandum

City Council Meeting
December 9, 2013



SUBJECT: City Council Selection of New Councillor

Prepared By: Linda Yeager

Recommended City Council Action

Select a person to fill the vacancy in the office of City Councillor that was created by the November 11 swearing in of Herb Atchison to the office of Mayor following the November 5, 2013 regular biennial municipal election.

Summary Statement

- In accordance with the Council's Rules and Regulations and as directed by City Council at the post-meeting briefing of November 11, the City Clerk solicited applications to fill a vacancy in the office of City Councillor. Applications were received from November 12 through November 21 at 6 p.m. Fifteen individuals submitted applications; one applicant withdrew her application on November 25.
- City Council interviewed seven applicants on November 26 and seven applicants on December 2.
- To satisfy provisions of the Westminster Municipal Code and the Westminster City Charter, City Council needs to appoint a qualified registered elector of the City to fill this vacancy within thirty (30) days of the vacancy by a majority vote of the remaining members of City Council. The cutoff date for this appointment is December 11, 2013. Said appointee is to hold the office for the balance of the unexpired term, which will end in November 2015 following the next regular biennial municipal election.
- To comply with the aforementioned thirty (30) day time frame, Council asked that selection of a new City Councillor be placed on this agenda. The procedures to select an applicant to fill a vacancy are set forth in Part VII, Section 24 of Council's Rules and Regulations, and are listed in the Background Section of this agenda memorandum.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should City Council fill a vacancy on City Council using the adopted procedure in the Council's Rules and Regulations?

Alternative

By unanimous vote of City Council, the Council could decide to suspend the written ballot method of selecting a new City Councillor; however, a majority vote is necessary to make an appointment.

Background Information

The procedure in Part VII, Section 24 of the Rules and Regulations states:

Vacant positions on the City Council shall be appointed by Council from applicants who have completed the appropriate application form and interview process. Appointments shall be by written ballot unless this method is suspended by unanimous Council vote. A majority vote is necessary to make an appointment. If no single applicant obtains a majority vote after the first ballot, all persons receiving no votes, and the person receiving the smallest number of votes will be removed from nomination. This process will be repeated after each ballot until a majority vote is received by one applicant. After seven (7) ballots with no one person appointed, the Council will consider all candidates again and begin the process of elimination of candidate names after every seven ballots. (Res. 39, 1984, 42, 1995, 84, 1997, 16, 1999)

To accommodate selection by written ballot, preprinted ballots with the names of all qualified applicants will be distributed at the meeting for Council's use.

Municipal Court Judge John Stipech will be in attendance to swear in the person who receives a majority of Council's votes for the office of City Councillor.

The successful appointment of an interested applicant to fill the vacancy position on City Council supports the City Council's Strategic Goal of a Financially Sustainable City Government Providing Exceptional Services by seating the seventh member of City Council in a timely manner so that the business of the City can be conducted with a full complement of the governing body's membership without incurring the cost and delay of a special election.

Respectfully submitted,

J. Brent McFall
City Manager

AGENDA

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY SPECIAL MEETING

MONDAY, December 9, 2013

AT 7:00 P.M.

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (August 26, 2013)
- 3. Public Hearings and New Business**
 - A. ICA Between City/WEDA re Reimbursement of Costs – North Huron URA and WURP
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
MONDAY, AUGUST 26, 2013, AT 7:28 P.M.

ROLL CALL

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

APPROVAL OF MINUTES

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

PARKING LOT ASPHALT REHABILITATION PROJECT AT WURP SITE

Board Member Briggs, based on the recommendation of the Executive Director, moved that the Authority find that the public interest would best be served by authorizing the Executive Director to enter into a negotiated contract with Asphalt Specialties in the amount of \$131,838 for repair and rehabilitation of parking lots identified by the City of Westminster's Street Division's parking lot assessment at the former mall site. The motion was seconded by Kaiser and passed with all members voting yes.

SALE OF HOLLY PARK PARCEL REMOVED FROM THE TABLE

It was moved by Board Member Lindsey, seconded by Kaiser, to remove the Holly Park Parcel Purchase and Sale Agreement from the table. The motion carried unanimously.

HOLLY PARK PARCEL PURCHASE AND SALE AGREEMENT

Board Member Lindsey moved, seconded by Kaiser, to authorize the Executive Director to execute a Purchase and Sale Agreement, in substantially the same form as the agreement attached to the agenda memorandum, with Boulder Creek Communities LLC to sell the Holly Park property for \$650,000 and to complete the public improvements for the development.

Board Member Atchison reported his discomfort with the financial loss the Authority would realize if this offer were accepted.

The motion carried by a 5:1 margin with Board Member Atchison voting no.

ADJOURNMENT

There was no further business for the Authority's consideration, and, following a motion by Kaiser, seconded by Briggs, the Vice Chairperson adjourned the meeting at 7:32 p.m.

Vice Chairperson

ATTEST:

Secretary

WEDA Agenda Item 3 A

Agenda Memorandum

Westminster Economic Development Authority
December 9, 2013



SUBJECT: Westminster Economic Development Authority/City of Westminster Intergovernmental Cooperation Agreements for the Reimbursement of Costs Incurred by the City in the North Huron Urban Renewal Area and the Westminster Center Reinvestment Plan Area

Prepared By: Robert Byerhof, Treasury Manager
Karen Creager, Special Districts' Accountant
Fred Kellam, Senior Financial Analyst

Recommended Board Action

Authorize the Executive Director to execute two Intergovernmental Cooperation Agreements between the City of Westminster and the Westminster Economic Development Authority in substantially the same form as attached providing payment to the City by WEDA for reimbursement of costs incurred by the City associated with maintenance of improvements and other contractual obligations in the North Huron Urban Renewal Area and Westminster Center Urban Reinvestment Plan Area.

Summary Statement

- North Huron is one of seven Urban Renewal Area's (URA's) under the Westminster Economic Development Authority (WEDA) umbrella. The North Huron Urban Renewal Plan (Plan) was approved by City Council on January 26, 2004.
- Westminster Center Urban Reinvestment Plan (WURP) is another URA under the WEDA umbrella. The WURP Urban Renewal Plan (Plan) was approved by City Council on April 13, 2009.
- Both Plans provided for WEDA to undertake certain actions that would make the URA more attractive for private investment, and eliminate blight. Such actions may include street and traffic improvements, streetscape improvements, storm water and other drainage improvements, landscaping, parks and recreation facilities, utility improvements and public arts projects (collectively, "the Improvements"). Additionally, the WURP Plan provided for property acquisition, relocation assistance and site preparation that are also included as "the Improvements."
- The City and WEDA both contributed funds towards constructing the Improvements in the URAs.
- The development and redevelopment in these URAs will continue to cause the City to incur additional costs that may be chargeable to WEDA.
- The ICAs detail City and WEDA obligations regarding the covenants set forth for the reimbursement of costs from WEDA's North Huron URA and WURP to the City for the maintenance of improvements or other contractual obligations associated with the URAs.
- It is permissible to use tax increment revenue to reimburse the City for current and future maintenance or other contractual obligation costs associated with the URAs.
- Pursuant to Article XIV of the Colorado Constitution, and Title 29, Article 1, Part 2, C.R.S., the City and WEDA are authorized to cooperate and contract with one another to provide any function, service, or facility lawfully authorized to each governmental entity.

Expenditure Required: Amounts billed to WEDA by the City

Source of Funds: Project funds, incremental revenues and interest earnings

Policy Issue

Does the WEDA Board of Directors support entering into ICAs with the City of Westminster to provide for the reimbursement of costs for maintenance and other contractual obligations associated with both the North Huron URA and WURP URA provided all other superior covenants and superior obligations have been met?

Alternative

Do not authorize the execution of the proposed ICAs between the City and WEDA. This alternative is not recommended. The costs borne by the City for maintenance of improvements associated with the URAs and other contractual obligations are expenses that are a proper and legal use of URA project funds, tax increment revenues and interest earnings.

Background Information

Pursuant to Article XIV of the Colorado Constitution, and Title 29, Article 1, Part 2, C.R.S., the City and WEDA are authorized to cooperate and contract with one another to provide any function, service, or facility lawfully authorized to each governmental entity. Accordingly, WEDA desires to enter into an ICA with the City to reimburse costs incurred by the City relative to these URAs.

The ICAs accomplish several things:

- Recognize that the City approved the North Huron Urban Renewal Plan that included as one of its primary objectives providing an efficient system of street, roads and other transportation facilities necessary to support urban development in the URA.
- Recognize that the City approved the Westminster Center Urban Reinvestment Plan that included as one of its primary objectives acquiring property, site preparation and public improvements to support urban development in the URA.
- Recognizes that both Plans provided for WEDA to undertake certain actions that would make the URA more attractive for private investment and eliminate blight. Such actions may include street and traffic improvements, streetscape improvements, storm water and other drainage improvements, landscaping, parks and recreation facilities, utility improvements and public arts projects.
- Recognize that the City incurs costs for maintenance and other contractual obligations associated with improvements located within the North Huron URA and WURP.
- Recognize that reimbursement of City incurred costs will be subordinate to any current or future bonded indebtedness (Superior Obligations), including but not limited to tax increment notes, tax increment bonds, economic development agreements, and all other forms of contractual indebtedness or obligation of whatsoever nature that is any way secured, collateralized, or backed by revenues of WEDA.
- As necessary, the City and WEDA shall negotiate in good faith the amount due from WEDA under this Agreement, based on the costs incurred or expected to be incurred by the City, and the funds available to WEDA after first meeting all Superior Obligations of WEDA.

This recommended action supports the strategic objectives of a Strong, Balanced Local Economy; Financially Sustainable City Government Providing Exceptional Services and Vibrant Neighborhoods in One Livable Community. It does so by providing funds to assist the City in maintaining public improvements and keeping the development areas attractive.

Respectfully submitted,

J. Brent McFall
Executive Director

Attachment 1: Intergovernmental Cooperation Agreement for North Huron
Attachment 2: Intergovernmental Cooperation Agreement for WURP

**INTERGOVERNMENTAL COOPERATION AGREEMENT BETWEEN THE
WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY AND
THE CITY OF WESTMINSTER FOR THE REIMBURSEMENT OF COSTS INCURRED BY
THE CITY IN THE NORTH HURON URBAN RENEWAL AREA**

This Intergovernmental Cooperation Agreement (“Agreement”), is made and entered into this _____ day of _____, 2013, by and between the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY** (“WEDA”), a Colorado urban renewal authority, and the **CITY OF WESTMINSTER** (“City”), a Colorado home-rule municipality (collectively “Parties”).

WHEREAS, the City is a Colorado home-rule municipality with all the powers and authority granted pursuant to Article XX of the Colorado Constitution and its City Charter; and

WHEREAS, WEDA is a Colorado urban renewal authority, with all the powers and authority granted pursuant to Title 31, Article 25, Part 1, C.R.S. (“Colorado Urban Renewal Law”); and

WHEREAS, pursuant to article XIV of the Colorado Constitution, and Title 29, Article 1, Part 2, C.R.S., the City and WEDA are authorized to cooperate and contract with one another to provide any function, service, or facility lawfully authorized to each governmental entity; and

WHEREAS, pursuant to Section 31-25-105, C.R.S., WEDA has the authority to undertake urban renewal projects and to make and execute any and all contracts that it may deem necessary or convenient to the exercise of its powers; to arrange for the furnishing or repair by any public body of services, privileges, works, streets, roads, public utilities, or educational or other facilities, for or in connection with an urban renewal project; and to make such appropriations and expenditures of its funds as it deems necessary to carry out the purposes of the Colorado Urban Renewal Law; and

WHEREAS, pursuant to Section 31-25-112 of the Colorado Urban Renewal Law, the City is specifically authorized to do all things necessary to aid and cooperate with WEDA in connection with the planning or undertaking of any urban renewal plans, projects, programs, works, operations, or activities of WEDA, to enter into agreements with WEDA respecting such actions to be taken by the City, to cause public buildings and public facilities, including parks, playgrounds, and recreational and community facilities to be furnished within an urban renewal area and to appropriate funds and make such expenditures of its funds to aid and cooperate with WEDA in undertaking its urban renewal projects and carrying out its plans; and

WHEREAS, the City has heretofore approved the North Huron Urban Renewal Plan (“Plan”), on January 26, 2004 that includes as one of its primary objectives providing an efficient system of streets, roads and other transportation facilities necessary to support urban development within the North Huron Urban Renewal Area (“URA”), as described in said Plan; and

WHEREAS, Section 4.5 of the Plan provides that WEDA may undertake certain actions that would make the North Huron URA more attractive for private investment, which actions may include street and traffic improvements, streetscape improvements, storm water and other drainage improvements, landscaping, parks and recreation facilities, utility improvements and public art projects (collectively referred to as “Improvements”); and

WHEREAS, pursuant to the Plan, WEDA has collected and currently collects sales tax and property tax incremental revenues, which revenue is deposited by WEDA in a special fund to be utilized pursuant to Section 31-25-107(9)(a)(II), Colorado Revised Statutes; and

WHEREAS, the respective governing bodies of the City and WEDA hereby find and declare that the maintenance of improvements within the URA and the execution of certain contractual agreements will further the urban renewal goals and objectives of WEDA; and

WHEREAS, the Parties desire to enter into this Agreement to provide for the reimbursement of such costs incurred by the City; and

NOW, THEREFORE, in consideration of the foregoing, and the promises and covenants set forth below, the Parties hereby agree as follows:

1. **Maintenance of Improvements.** The City has agreed to maintain said Improvements in accordance with the same standards of maintenance as the City follows for other improvements within the City. WEDA agrees to reimburse the City a portion of the City's costs related to the current and future maintenance of said Improvements, as set forth in paragraph 4B below.

2. **Other Contractual Obligations.** WEDA hereby agrees to reimburse the City amounts paid by the City for current and future contractual obligations associated with the URA.

3. **Funding.** WEDA's obligations under this paragraph 1 and 2 shall be paid from current or future project funds, incremental revenues and interest earnings available to WEDA after first satisfying WEDA's Superior Obligations, as herein defined below.

4. **Conditions to WEDA's Payment Obligations.** WEDA's obligations pursuant to Section 1 and 2 of this Agreement are subject to the following conditions:

A. WEDA's obligations pursuant to this Agreement are subordinate to WEDA's obligations for repayment of any current or future bonded indebtedness ("Superior Obligations"). The term "bonded indebtedness" includes all form of indebtedness of WEDA, including but not limited to tax increment notes, tax increment bonds, economic development agreements, and all other forms of contractual indebtedness or obligation of whatsoever nature that is in any way secured, collateralized, or backed by revenues of WEDA.

B. The City and WEDA shall negotiate in good faith any amounts due from WEDA under this Agreement, based on the costs incurred or expected to be incurred by the City, and the funding available to WEDA after first meeting all Superior Obligations of WEDA. The City and WEDA agree that the obligations of WEDA under this Agreement shall be deemed subordinate to all other obligations of WEDA, past or future, except to the extent that any future obligation incurred by WEDA is expressly made subordinate to WEDA's obligations under this Agreement, provided, however, it is WEDA's intent to apply any revenues not needed to meet its Superior Obligations to funding its obligations under this Agreement.

C. The City will bill WEDA at least annually for WEDA's share of the maintenance and other contractual obligation costs. WEDA will pay amounts billed in no more than 30 days from the date of the invoice.

D. It is the intent of the parties that WEDA's obligations pursuant to this Agreement shall be deemed and construed as an indebtedness of WEDA within the meaning of § 31-25-107(9)(a)(II), C.R.S.

5. **Cooperation.** The Parties covenant with each other that in any action or challenge of the Plan or this Agreement, regarding the legality, validity or enforceability of any provision thereof,

the Parties will work cooperatively and in good faith to defend and uphold each and every such provision.

6. **Effective Date; Term.** The City and WEDA agree that it is their intent to implement this Agreement retroactively to January 1, 2013. Unless sooner terminated by mutual consent of the Parties, this Agreement shall remain in full force and effect until the tax allocation provisions of the Urban Renewal Plan and the Act terminate.

7. **General Provisions.**

A. **Governing Body.** This Agreement shall be governed by, and construed in accordance with, the laws of the state of Colorado.

B. **Amendments and Waivers.** No amendment or waiver of any provision of this Agreement, nor consent to any departure herefrom, in any event shall be effective unless the same shall be in writing and signed by the Parties hereto, and then such waiver of consent shall be effective only in the specific instance and for the specific purpose for which given.

C. **Conflicts.** To the extent any term or provision of this Agreement conflicts with any other term or condition of any previous agreement between the City and WEDA, this Agreement shall control.

D. **Headings.** Paragraph headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

E. **Severability.** If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

F. **Third Parties.** The City and WEDA expressly disclaim any intent to create any third-party beneficiary rights or benefits pursuant to this Agreement. Neither the City nor WEDA shall be obligated or liable under the terms of this Agreement to any person or entity not a party hereto.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto and duly authorized as of the date first above written.

**WESTMINSTER ECONOMIC
DEVELOPMENT AUTHORITY**

CITY OF WESTMINSTER

By: _____
J. Brent McFall
Executive Director

By: _____
J. Brent McFall
City Manager

ATTEST:

ATTEST:

Secretary for WEDA

Linda Yeager, City Clerk

Approved as to Form:

Approved as to Form:

Martin R. McCullough
Attorney for WEDA

Martin R. McCullough
City Attorney

**INTERGOVERNMENTAL COOPERATION AGREEMENT BETWEEN THE
WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY AND
THE CITY OF WESTMINSTER FOR THE REIMBURSEMENT OF COSTS INCURRED BY
THE CITY IN THE WESTMINSTER CENTER URBAN REINVESTMENT PLAN AREA**

This Intergovernmental Cooperation Agreement (“Agreement”), is made and entered into this _____ day of _____, 2013, by and between the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY** (“WEDA”), a Colorado urban renewal authority, and the **CITY OF WESTMINSTER** (“City”), a Colorado home-rule municipality (collectively “Parties”).

WHEREAS, the City is a Colorado home-rule municipality with all the powers and authority granted pursuant to Article XX of the Colorado Constitution and its City Charter; and

WHEREAS, WEDA is a Colorado urban renewal authority, with all the powers and authority granted pursuant to Title 31, Article 25, Part 1, C.R.S. (“Colorado Urban Renewal Law”); and

WHEREAS, pursuant to article XIV of the Colorado Constitution, and Title 29, Article 1, Part 2, C.R.S., the City and WEDA are authorized to cooperate and contract with one another to provide any function, service, or facility lawfully authorized to each governmental entity; and

WHEREAS, pursuant to Section 31-25-105, C.R.S., WEDA has the authority to undertake urban renewal projects and to make and execute any and all contracts that it may deem necessary or convenient to the exercise of its powers; to arrange for the furnishing or repair by any public body of services, privileges, works, streets, roads, public utilities, or educational or other facilities, for or in connection with an urban renewal project; and to make such appropriations and expenditures of its funds as it deems necessary to carry out the purposes of the Colorado Urban Renewal Law; and

WHEREAS, pursuant to Section 31-25-112 of the Colorado Urban Renewal Law, the City is specifically authorized to do all things necessary to aid and cooperate with WEDA in connection with the planning or undertaking of any urban renewal plans, projects, programs, works, operations, or activities of WEDA, to enter into agreements with WEDA respecting such actions to be taken by the City, to cause public buildings and public facilities, including parks, playgrounds, and recreational and community facilities to be furnished within an urban renewal area and to appropriate funds and make such expenditures of its funds to aid and cooperate with WEDA in undertaking its urban renewal projects and carrying out its plans; and

WHEREAS, the City has heretofore approved the Westminster Center Urban Reinvestment Plan (“Plan”), on April 13, 2009 which is intended to achieve the goals for the area previously outlined in the Westminster Comprehensive Land Use Plan through a project or projects that will create a new Westminster Center within the Westminster Center Urban Reinvestment Plan (“WURP”) Area as described in said Plan; and

WHEREAS, Section 4.5 of the Plan provides that WEDA may undertake certain actions that would make WURP more attractive for private investment, which actions may include street and traffic improvements, streetscape improvements, landscaping, parks and recreation facilities, utility improvements and public art projects (collectively referred to as “Improvements”); and

WHEREAS, pursuant to the Plan, WEDA has collected and currently collects sales tax and property tax incremental revenues, which revenue is deposited by WEDA in a special fund to be utilized pursuant to Section 31-25-107(9)(a)(II), Colorado Revised Statutes; and

WHEREAS, the respective governing bodies of the City and WEDA hereby find and declare that the maintenance of improvements within the URA and the execution of certain contractual agreements will further the urban renewal goals and objectives of WEDA; and

WHEREAS, the Parties desire to enter into this Agreement to provide for the reimbursement of such costs incurred by the City; and

NOW, THEREFORE, in consideration of the foregoing, and the promises and covenants set forth below, the Parties hereby agree as follows:

1. **Maintenance of Improvements.** The City has agreed to maintain said Improvements in accordance with the same standards of maintenance as the City follows for other improvements within the City. WEDA agrees to reimburse the City a portion of the City's costs related to the current and future maintenance of said Improvements, as set forth in paragraph 4B below.

2. **Other Contractual Obligations.** WEDA hereby agrees to reimburse the City amounts paid by the City for current and future contractual obligations associated with the URA.

3. **Funding.** WEDA's obligations under this paragraph 1 and 2 shall be paid from current or future project funds, incremental revenues and interest earnings available to WEDA after first satisfying WEDA's Superior Obligations, as herein defined below.

4. **Conditions to WEDA's Payment Obligations.** WEDA's obligations pursuant to Section 1 and 2 of this Agreement are subject to the following conditions:

A. WEDA's obligations pursuant to this Agreement are subordinate to WEDA's obligations for repayment of any current or future bonded indebtedness ("Superior Obligations"). The term "bonded indebtedness" includes all form of indebtedness of WEDA, including but not limited to tax increment notes, tax increment bonds, economic development agreements, and all other forms of contractual indebtedness or obligation of whatsoever nature that is any way secured, collateralized, or backed by revenues of WEDA.

B. The City and WEDA shall negotiate in good faith any amounts due from WEDA under this Agreement, based on the costs incurred or expected to be incurred by the City, and the funding available to WEDA after first meeting all Superior Obligations of WEDA. The City and WEDA agree that the obligations of WEDA under this Agreement shall be deemed subordinate to all other obligations of WEDA, past or future, except to the extent that any future obligation incurred by WEDA is expressly made subordinate to WEDA's obligations under this Agreement, provided, however, it is WEDA's intent to apply any revenues not needed to meet its Superior Obligations to funding its obligations under this Agreement.

C. The City will bill WEDA at least annually for WEDA's share of the maintenance and other contractual obligation costs. WEDA will pay amounts billed in no more than 30 days from the date of the invoice.

D. It is the intent of the parties that WEDA's obligations pursuant to this Agreement shall be deemed and construed as an indebtedness of WEDA within the meaning of § 31-25-107(9)(a)(II), C.R.S.

5. **Cooperation.** The Parties covenant with each other that in any action or challenge of the Plan or this Agreement, regarding the legality, validity or enforceability of any provision thereof,

the Parties will work cooperatively and in good faith to defend and uphold each and every such provision.

6. **Effective Date; Term.** The City and WEDA agree that it is their intent to implement this Agreement retroactively to January 1, 2013. Unless sooner terminated by mutual consent of the Parties, this Agreement shall remain in full force and effect until the tax allocation provisions of the Urban Renewal Plan and the Act terminate.

7. **General Provisions.**

A. **Governing Body.** This Agreement shall be governed by, and construed in accordance with, the laws of the state of Colorado.

B. **Amendments and Waivers.** No amendment or waiver of any provision of this Agreement, nor consent to any departure herefrom, in any event shall be effective unless the same shall be in writing and signed by the Parties hereto, and then such waiver of consent shall be effective only in the specific instance and for the specific purpose for which given.

C. **Conflicts.** To the extent any term or provision of this Agreement conflicts with any other term or condition of any previous agreement between the City and WEDA, this Agreement shall control.

D. **Headings.** Paragraph headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

E. **Severability.** If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

F. **Third Parties.** The City and WEDA expressly disclaim any intent to create any third-party beneficiary rights or benefits pursuant to this Agreement. Neither the City nor WEDA shall be obligated or liable under the terms of this Agreement to any person or entity not a party hereto.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto and duly authorized as of the date first above written.

**WESTMINSTER ECONOMIC
DEVELOPMENT AUTHORITY**

CITY OF WESTMINSTER

By: _____
J. Brent McFall
Executive Director

By: _____
J. Brent McFall
City Manager

ATTEST:

ATTEST:

Secretary for WEDA

Linda Yeager, City Clerk

Approved as to Form:

Approved as to Form:

Martin R. McCullough
Attorney for WEDA

Martin R. McCullough
City Attorney