

**CHERRY HILLS VILLAGE
COLORADO**

2450 E. Quincy Avenue
Cherry Hills Village, CO 80113
www.cherryhillsvillage.com

Village Center
Telephone 303-789-2541
FAX 303-761-9386

City Council Agenda
Tuesday, February 4, 2014

6:30 p.m.

1. Call to Order
2. Roll Call of Members
3. Pledge of Allegiance
4. Dialogue with Morris Price, District Director for Congresswoman Diana DeGette
5. Reports from Members of City Boards and Commissions
 - a. Public Art Commission
6. Audience Participation Period (limit 5 minutes per speaker)
7. Consent Agenda
 - a. Approval of Minutes – January 21, 2014
 - b. Intergovernmental Agreement for the Technical Advisory Committee
8. Items Removed From Consent Agenda
9. Unfinished Business
10. New Business
11. Reports
 - a. Mayor
 - b. Members of City Council
 - c. City Manager and Staff
 - d. City Attorney
12. Executive Session pursuant to C.R.S. Sec. 24-6-402(4)(a) for the purpose of discussing matters related to the acquisition of real property and pursuant to C.R.S. Sec. 24-6-402(4)(e) to develop strategy for negotiations and to instruct negotiators relating to possible acquisition of such real property
13. Adjournment

Notice: Agenda is subject to change.
If you will need special assistance in order to attend any of the City's public meetings, please notify the City of Cherry Hills Village at 303-789-2541, 48 hours in advance.

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Art in Public Places Master Plan

I. Introduction

The purpose of the Art in Public Places Master Plan is to further the City of Cherry Hills Village goals with respect to art in public places, by creating a Public Art Commission (PAC), and providing a guide to the City Council, the PAC and the citizens of Cherry Hills Village in location, selecting and maintaining Public Art within the City of Cherry Hills Village. This master plan is intended to provide objective direction to develop art for public places. The placement of art in public places, enriches, stimulates, and enhances the aesthetic experience. Public art illuminates the diversity and history of a community and points to its aspirations for the future. A wealth of art and culture in the public realm will foster educational opportunities and economic development for Cherry Hills Village.

II. Mission Statement

The Cherry Hills Village Public Art Commission is devoted to developing a Public Art collection by selecting, locating, placing and maintaining art in public places, exposing the community to the arts, fostering education programs.

III. Definitions

Deaccession - Deaccessioning is the removal, replacement or rotation of Public Art on the public property regardless of whether the art was originally purchased, commissioned, donated, or loaned.

Public Art - A work of art located on public or private property, which is accessible to the public.

Public Property - Property owned by the City of Cherry Hills Village or private property that has a public easement on it.

Private Property - Property owned by an individual or business.

Public Art Commission (PAC) - The Public Art Commission is made up of up to five (5) members, including a Council representative. All members are appointed by the City of Cherry Hills Village City Council. Members must be residents of Cherry Hills Village. Outside expertise may be consulted as needed (The PAC may not expend any funds without approval from City Council). City Council will consider applicants for their knowledge, experience, interest and involvement in the arts in Cherry Hills Village.

IV. Responsibilities of Public Art Commission

- A. Act as an advisory Commission on the arts to the City Council.
- B. Explore opportunities for Public Art and present an annual report on its work to the City Council.

- C. Make recommendations to the City Council regarding the location, selection and purchase of Public Art and the development and implementation of Public Art programs.
- D. Develop an annual work plan and budget with staff to be approved by City Council.
- E. Adopt, subject to final City Council approval, and administer an art selection process for public and applicable privately owned property.
- F. Facilitate the placement of Public Art.
- G. Implement the Art in Public Places Master Plan.
- H. Promote the City's Public Art program.
- ~~I. Promote the City's Public Art program.~~
- I. Develop an educational role to serve the Public Art Program and community. (Program to be approved by City Council prior to implementation)

V. Annual Prioritization of Public Art Projects

The PAC will identify project priorities on an annual basis allowing for flexibility, creativity and a connection to community values, as they may change over time.

- A. In January of each New Year the PAC shall review the existing budget including commitments from previous years and identify future projects.
- B. Projects identified will then be prioritized based on a majority vote of the Commission.
- C. Project priorities will then be presented to the City Council.
- D. The staff person to the PAC shall compile the projects priorities and maintain a current list for reference.
- E. The projects priorities list may be amended with the majority vote of the PAC.

VI. Site Selection Guidelines

- A. In selecting site locations appropriate for Public Art the following guidelines should be considered.
 - 1. Locations that are easily viewed and accessible to the public.
 - 2. Locations that allow for reflection and provide a break from social activity.
 - 3. Locations that would avoid excessive visual ~~clutter~~distractions.

4. Locations that are enhanced by Public Art (such as, the location is void of visual interest, or the addition of artwork would expand the location's visual experience.)
5. Locations that provide a meaningful context for the art.

VII. Artwork Selection Guideline

- A. To make the selection process more objective, the following guidelines should be followed when selecting a piece of art.
 1. The proposed artwork should be identified as one of the annual project priorities.
 2. The PAC should consider the permanence of the artwork being proposed both physically and conceptually. Permanence includes:
 - a. Maintenance
 - b. Resistance to vandalism
 - c. Safety concerns
 - d. Timelessness
 3. Proposed art should be compatible with the selected site location. Basic elements include:
 - a. Scale
 - b. Materials
 - c. Existing Landscaping/Proposed Landscaping
 - d. Existing Lighting/Proposed Lighting
 4. The proposed artwork must be produced in limited edition by the artist

VIII. Deaccessioning of Public Art

The City recognizes that public art selected and placed is not necessarily going to remain there in perpetuity.

- A. Reasons for deaccessioning of art include:
 1. Damage. The art has been damaged, and is deemed by the PAC and the property owner as not being cost effective to repair.
 2. Safety. The art has become potentially hazardous to the public.
 3. Maintenance. The cost to maintain the artwork has exceeded projected expectations of the property owner and the PAC.
 4. Reconfiguration of land. The property owner desires to change the way they use the property on which the art is located, and the art therefore becomes an obstacle to their plans.
 5. Flexibility and changing tastes. As time passes the community tastes may change; therefore the opportunity will be reserved to deaccession Public Art that is no longer compatible with community values.
- B. Outcomes of deaccessioning. In the event the decision has been made to deaccession an artwork, the piece may be:
 1. Relocated to another public place
 2. Stored indefinitely until another suitable location is found.

3. Returned to the artist or donor if such an arrangement had been agreed upon prior to donation.
4. In the event none of the above occurs, then the piece may be:
 - a. Sold through a public bid process
 - b. Traded for other art
 - c. Destroyed, if artist cannot be contacted

Unless other arrangements were made at the time of placement, proceeds from the sale of deaccessioned art should be returned to the City to further the Public Art program.

IX. Funding

A. Ongoing and Potential Funding Sources

1. City budget line item. The City could provide funding support as budgets allow (Above and beyond the 1/2 % mentioned in #6 below).
2. Grants
3. Partnerships and co-sponsors
4. Private donations
5. Fund raising
6. 1/2 % for Public Art (based on the City's capital improvement budget) \$10,000 ~~maximum~~minimum per year.

X. Marketing/Publicity

Promotion of Public Art.

A. How to Market the Art in Public Places Program

1. Establish consistent marketing, use of logo, mission statement, signage etc
2. Raise Public Awareness of PAC
3. Encourage Community Involvement

XI. Educational Opportunities

The PAC's goal is to increase community awareness, understanding and involvement in the arts by providing educational opportunities.

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Tuesday, January 21, 2014 at 6:30 p.m.
At the Village Center

Mayor Doug Tisdale called the meeting to order at 6:30 p.m.

ROLL CALL

Mayor Doug Tisdale, Councilors Mark Griffin, Russell Stewart, Alex Brown, Scott Roswell, Klasina VanderWerf, and Katy Brown were present on silent roll call. Also present were Deputy City Manager and Public Works Director Jay Goldie, City Attorney Linda Michow, Finance Director Karen Proctor, Community Development Director Rob Zuccaro, Police Chief Michelle Tovrea, Parks, Trails & Recreation Administrator Ryan Berninzoni, Public Works Project and Right-of-Way Manager Ralph Mason, Sergeant Pat Wilson, and City Clerk Laura Smith.

Absent: none

PLEDGE OF ALLEGIANCE

Rachel Leo, Emily Tobler, Maddie Bredehoeft, Marley Bredehoeft, Emma Selner, Erin Flynn, and Annie Tobler of the St. Mary's Varsity Basketball Team led the Council in the pledge of allegiance.

MEMBERS OF CITY BOARDS AND COMMISSIONS

There were no reports.

AUDIENCE PARTICIPATION PERIOD

None

CONSENT AGENDA

Mayor Tisdale noted that an amended copy of Resolution 3, Series 2014 was distributed on the dais for Council's consideration.

Mayor Pro Tem Stewart removed Item 6b from the Consent Agenda.

Mayor Pro Tem Stewart moved, seconded by Councilor Griffin to approve the following items on the Consent Agenda:

- a. Approval of Minutes – January 7, 2014

The motion carried unanimously.

ITEMS REMOVED FROM CONSENT AGENDA**Resolution 3, Series 2014; Appointing Members to the Utility Line Undergrounding Study Committee**

Mayor Pro Tem Stewart asked if any Council members had other nominations for membership on the Committee.

No further nominations were given.

Councilor A. Brown moved, seconded by Mayor Pro Tem Stewart to approve Resolution 3, Series 2014.

The motion passed unanimously.

UNFINISHED BUSINESS**Council Bill 21, Series 2013; A Bill for an Ordinance Amending Chapter 18 of the Municipal Code, Concerning the Adoption by Reference of the National Green Building Standard and Creation of a Building Permit Rebate Program for Compliance with the Standard (public hearing and second and final reading)**

Director Zuccaro presented Council Bill 21, Series 2013 on second and final reading. He explained that the bill would adopt the National Green Building Standards as an option incentive program for new homes in the City and establish a rebate program for 10-25% of building permit fees depending on the level of certification. He noted that the program would have no City oversight, but that homeowners could submit a certificate issued by the National Association of Home Builders Research Center in order to qualify for a rebate. He suggested that Council could re-evaluate the effectiveness of the program after a year or two. He indicated that implementation of this program would complete the last remaining recommendation from the Residential Standards Development Committee. He stated that tonight's public hearing had been noticed in the December 19th and January 2nd issues of the Villager Newspaper as required when adopting a code by reference. He added that staff had contacted the architects and homebuilders who worked in the City but had not received any further comments.

Mayor Tisdale opened the Public Hearing at 6:40 p.m. Hearing no comments the Public Hearing was closed at 6:41 p.m.

Councilor Roswell thanked Director Zuccaro for his work and diligence with the bill.

Councilor VanderWerf expressed her appreciation for the financial analysis of the rebate program in the staff memo and indicated she would be interested to see many residents apply for rebates.

Councilor Griffin clarified that the bill was Council Bill 21, Series 2013.

Councilor Roswell moved, seconded by Councilor A. Brown to approve Council Bill 21, Series 2013 on second and final reading, amending Chapter 18 of the Municipal Code for the purpose of adopting by reference the 2012 National Green Building Standard and offering a building permit rebate for compliance with the Standard for the construction of new homes.

The following votes were recorded:

Katy Brown	yes
Mark Griffin	yes
Russell Stewart	yes
Scott Roswell	yes
Klasina VanderWerf	yes
Alex Brown	yes

Vote on the Council Bill 21-2013: 6 ayes. 0 nays. The motion carried.

Mayor Tisdale congratulated Council and thanked Director Zuccaro.

NEW BUSINESS

Council Bill 1, Series 2014; Authorizing a Supplemental Appropriation for the Replacement of a Fuel Tank for Fiscal Year 2014 (first reading)

Deputy City Manager/Director Goldie presented Council Bill 1, Series 2014 on first reading. He explained that late in 2013 one of the City's underground fuel tanks located just east of the Village Center ruptured. Manager Ralph Mason noticed soon after the rupture occurred and staff immediately involved the State and Seneca to remove nearly all the fuel from underground. He noted that Council Bill 1, Series 2014 approved a supplemental appropriation for a two-chambered above ground tank that would replace the ruptured underground tank. He noted that above ground tanks required more space and were not aesthetically pleasing, but were environmentally safer and a logical option for the City at this time when the future location of the Public Works Department was unknown. He indicated that the above ground fuel tank could remain at the Village Center for use by the Police Department and South Metro Fire Rescue even if the Public Works Department were to move to a different location. He noted that the above ground fuel tank would help the City to have enough fuel on site in case of a prolonged snow event. He indicated that Seneca had presented the lowest bid and that the City was also using this company for remediation of the leaked fuel. He explained that the supplemental appropriation of \$37,100 was for installation of the above ground fuel tank and the power supply.

Councilor A. Brown noted that the ruptured underground tank had held 500 gallons of fuel, and that the proposed above ground tank would hold 2500 gallons. He asked if the City would continue to use the other two underground tanks.

Deputy City Manager/Director Goldie replied that the City would continue to use the other two underground tanks as well as the proposed above ground tank. He noted that staff was considering future needs with this purchase.

Councilor Roswell asked about the warranty on the proposed tank.

Deputy City Manager/Director Goldie indicated he would include that information in the staff memo for second reading of the bill and noted that the City's contract would be included in that agenda as well.

Councilor Roswell asked if the proposed purchase would have any effect on the City's insurance through CIRSA.

Deputy City Manager/Director Goldie replied that Human Resource Analyst Kathryn Barlow was in contact with CIRSA and the City's fees may increase slightly because there would be more fuel on site, but noted that above ground tanks were safer. He indicated that he would clarify this information in the next staff memo. He added Councilor A. Brown had brought to staff's attention that the supplemental appropriation should be to the Capital Fund instead of the General Fund. He explained that account 02-411-3102 for Public Works equipment would be used and that this correction would be made to the bill for second reading.

Mayor Pro Tem Stewart indicated that the addition of the proposed tank may change the property description in the City's insurance. He asked if the City had previously had an above ground tank.

Manager Mason replied it had not.

Mayor Pro Tem Stewart noted that another option for the future of the proposed tank would be to sell it.

Councilor K. Brown asked about the safety of an above ground fuel tank if a vehicle were to run into it.

Deputy City Manager/Director Goldie explained that the proposed tank was virtually indestructible, was double walled with light weight concrete in between the walls, and would not explode from a direct hit by vehicle or airplane. In addition the city will be required to set up concrete barriers around the tank. He noted that the tank was required to be 100 feet from property lines and would be located mostly out of site to neighbors.

Mayor Tisdale asked for clarification of the December 31, 2013 date in Section 1 of the bill.

Deputy City Manager/Director Goldie explained that referenced the approval of the 2014 Budget by Council.

Councilor Griffin asked if a catch basin would be included.

Deputy City Manager/Director Goldie replied that no catch basin was required with the proposed tank.

Councilor Roswell moved, seconded by Councilor VanderWerf to approve on first reading Council Bill 1, Series 2014 for a Supplemental Appropriation in the amount of \$37,095.43 for the purchase of an above ground fuel tank.

The following votes were recorded:

Mark Griffin	yes
Russell Stewart	yes
Scott Roswell	yes
Klasina VanderWerf	yes
Alex Brown	yes
Katy Brown	yes

Vote on the Council Bill 1-2014: 6 ayes. 0 nays. The motion carried.

REPORTS

Members of City Council

Councilor A. Brown had no report.

Councilor VanderWerf reported that the Quincy Farm Visioning Committee had met this morning and would meet a second time this month working to complete their final report, which included a power point presentation. She noted that they planned to present the report to PTRC in March prior to presenting to Council in April. She also reported that she had followed up with Carl Polhemus after the open space discussion at the last meeting, and noted that he was supportive of Council's discussion of this complex issue, but wary of a ballot measure because a failed vote may be interpreted to be anti-open space instead of anti-tax.

Councilor Roswell had no report.

Councilor K. Brown had no report.

Councilor Griffin had no report.

Mayor Pro Tem Stewart had no report.

Mayor's Report

Mayor Tisdale congratulated the Denver Broncos. He indicated that Officer Chuck Parker had been sworn in as the newest member of the Police Department last week, as well as a transition celebration for John Reynolds in the Police Department. He reported that the Metro Mayors Caucus annual retreat had been held in Greenwood Village where polling on a possible state wide ballot issue for a 7/10 of 1% tax increase for transportation and transit had revealed that Colorado residents are not supportive of a tax increase. He noted that the Arapahoe County Commissioners, Mayors and Managers breakfast in Littleton had discussed aging in communities, and he had taken the opportunity to encourage Arapahoe County Commissioner Chair Nancy Doty to consider the City's open space grant request. He indicated that Pino's Pizzeria had celebrated its third anniversary on Sunday. He reported that Council would be meeting with Congresswoman Diana DeGette at Pino's on Friday January 24th at 2:30 p.m., the second time in two years that the Congressman would visit the City in an official capacity. He noted that staff was continuing work on the Public Works Facility Review.

City Manager & Staff

Deputy City Manager/Director Goldie indicated that department monthly reports and unaudited financial statements were included in Council packets.

Underground Fuel Tank Update Report

Deputy City Manager/Director Goldie reported that staff continued to work with the State and Seneca to mediate the fuel spill to the maximum extent possible. He indicated that approximately 485 of the 500 spilled gallons had been removed. He noted that staff was pleased with the timeline that spilled fuel was being removed from the water table. He explained that Seneca had drilled test wells as regulated by the State to remove spilled fuel and monitor presence of fuel. He noted that the State may require additional test wells after they review staff's report. He indicated that staff would continue mitigation until the State was satisfied that the maximum amount of spilled fuel had been removed and the situation was sufficiently mitigated. He explained that because the City was working with the State and following their guidelines, the State would reimburse the City for expenses beyond \$10,000. He noted that this was also the City's deductible through their insurance provider and that staff was evaluating whether reimbursement through the State or through insurance would be best for the City.

Councilor Griffin asked if staff would assess the vulnerability of the two remaining underground tanks.

Deputy City Manager/Director Goldie explained that it was very difficult to evaluate them, but that the State strongly recommended the City remove them as well since they

were the same age as the ruptured tank, approximately 40 years old. He noted that staff would remove the two remaining tanks eventually along with the ruptured tank, which would be filled with concrete. He explained that removing the ruptured tank by itself would disrupt the area surrounding the remaining tanks and so was not recommended.

Mayor Pro Tem Stewart asked if the City could just use the above ground tank.

Deputy City Manager/Director Goldie explained that the above ground tank was not large enough for the City's needs and that the City currently uses 4,000 gallons of diesel and 4,000 gallons of unleaded fuel every 3 weeks between the Police Department, South Metro, and Public Works.

Councilor Roswell asked if the City could purchase two above ground tanks and perhaps receive a discount.

Deputy City Manager/Director Goldie explained that there was not enough space to install two above ground tanks and that a discount was not available.

Mayor Pro Tem Stewart asked if staff would investigate the cause of the rupture.

Deputy City Manager/Director Goldie replied that once the ruptured tank was removed staff could better determine the cause of the rupture. He added that staff recommended removal of all three underground tanks at the same time once the future location of the Public Works Department was determined.

Councilor VanderWerf asked what the warranty had been on the underground tanks.

Deputy City Manager/Director Goldie replied that he could research that information and provide it in the next staff memo.

Councilor Roswell asked if there was a time limitation for the City to investigate the cause of the rupture if any action was to be had.

Mayor Pro Tem Stewart asked if there was an exclusion in the City's insurance.

Deputy City Manager/Director Goldie replied that Analyst Barlow had closely examined the City's policy and staff was in contact with CIRSA to determine the City's eligibility.

Mayor Pro Tem Stewart offered to assist staff if there was a need.

Councilor Roswell asked if the City had any responsibility to work with Federal regulations for the mediation.

Deputy City Manager/Director Goldie replied that he would investigate and report back to Council.

City Attorney

City Attorney Michow had no report.

ADJOURNMENT

Mayor Pro Tem Stewart moved, seconded by Councilor VanderWerf to proceed into Executive Sessions

- a. pursuant to C.R.S. Sec. 24-6-402(4)(f) for the purpose of discussing personnel matters related to the annual review of the City Manager; and
- b. pursuant to C.R.S. Sec. 24-6-402(4)(a) for the purpose of discussing matters related to the acquisition of real property and pursuant to C.R.S. Sec. 24-6-402(4)(e) to develop strategy for negotiations and to instruct negotiators relating to possible acquisition of such real property; and
- c. pursuant to C.R.S. Sec. 24-6-402(4)(b) for the purpose of receiving legal advice on the requirements of the City Charter and City Code regarding expense reimbursement and immediately upon completion of the Executive Sessions to stand adjourned.

The following votes were recorded:

Russell Stewart	yes
Scott Roswell	yes
Klasina VanderWerf	yes
Alex Brown	yes
Katy Brown	yes
Mark Griffin	yes

Vote on Executive Session: 6 ayes. 0 nays. The motion carried.

The regular meeting adjourned at 7:21 p.m.

The executive session adjourned at 9:44 p.m.

Douglas M. Tisdale, Mayor

Laura Smith, City Clerk

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ITEM: 7b

MEMORANDUM

TO: HONORABLE MAYOR TISDALE AND MEMBERS OF THE CITY COUNCIL

FROM: JOHN H. PATTERSON, CITY MANAGER

SUBJECT: RATES AND FEES TECHNICAL ADVISORY COMMITTEE
INTERGOVERNMENTAL AGREEMENT

DATE: FEBRUARY 4, 2014

ISSUE:

Should the Council approve extension of the Rates and Fees Technical Advisory Committee, which provides oversight of the rates, set by the Denver Water Board?

DISCUSSION

Since 2003, the Technical Advisory Committee (TAC) and its participants, which have increased over time, have pursued their common goal regarding Denver Water Board's rates, fees and charges. The Village has been a long time participant in the TAC through an intergovernmental agreement, the most recent of which became effective in 2013.

The dues are also set forth in the IGA for 2014 for all participants. The rate is \$1.00 per customer – there are 845 accounts in Cherry Hills Village.

STAFF RECOMMENDATION

Staff recommends that City Council approve the Rates and Fees Technical Advisory Committee Intergovernmental Agreement.

RECOMMENDED MOTION

“I move to approve the Rates and Fees Technical Advisory Committee Intergovernmental Agreement and authorize the Mayor to sign on the City's behalf.”

ATTACHMENTS

Exhibit A: Intergovernmental Agreement

RATES AND FEES TECHNICAL ADVISORY COMMITTEE
INTERGOVERNMENTAL AGREEMENT

THIS RATES AND FEES TECHNICAL ADVISORY COMMITTEE INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into to be effective as of January 1, 2014 by and among the **BANCROFT-CLOVER WATER AND SANITATION DISTRICT, GRANT WATER AND SANITATION DISTRICT, PLATTE CANYON WATER AND SANITATION DISTRICT, SOUTHWEST METROPOLITAN WATER AND SANITATION DISTRICT, SOUTH-EAST ENGLEWOOD WATER DISTRICT, LAKEHURST WATER AND SANITATION DISTRICT, CHERRY CREEK VALLEY WATER DISTRICT, MEADOWBROOK WATER DISTRICT, WILLOWBROOK WATER AND SANITATION DISTRICT, CITY OF CHERRY HILLS VILLAGE, CITY OF GREENWOOD VILLAGE, WHEAT RIDGE WATER DISTRICT, GREEN MOUNTAIN WATER AND SANITATION DISTRICT, BEAR CREEK WATER AND SANITATION DISTRICT, BOW MAR WATER AND SANITATION DISTRICT, LOCHMOOR WATER AND SANITATION DISTRICT, COLUMBINE WATER AND SANITATION DISTRICT, HIGH VIEW WATER DISTRICT,** and the **SOUTHWEST SUBURBAN DENVER WATER AND SANITATION DISTRICT,** each a Participant and collectively the Participants, to promote the cooperative analysis and monitoring of the rates, fees, tolls and charges imposed from time to time by the City and County of Denver acting by and through its Board of Water Commissioners (“Denver Water”), both inside and outside the City and County of Denver. Acting pursuant to Section 29-1-203, C.R.S., the Participants have determined that it is in their respective best interests to work together to achieve the purposes of this Agreement as set forth below.

RECITALS

WHEREAS, since December 31, 2003 the Participants (whose membership has changed over the years) have established by intergovernmental agreement a Technical Advisory Committee (“TAC”) to pursue their common goals regarding Denver Water’s rates, fees and charges; and

WHEREAS, each of the undersigned Colorado municipalities and special districts have the authority pursuant to Section 29-1-203, C.R.S., to enter into intergovernmental agreements; and

WHEREAS, each Participant is a contract distributor of Denver Water and has determined that it is desirable and in the best interest of its customers to analyze, monitor and provide input with regard to Denver Water’s rates, fees, and charges on an ongoing basis; and

WHEREAS, the Participants collectively intend to engage one or more technical consultants for the purpose of collecting data, monitoring and analyzing Denver Water's rates, fees and charges; and

WHEREAS, the Participants desire to continue the TAC for the purposes set forth below, including but not limited to, on an advisory and ongoing basis, facilitate the administration of the technical consultant contracts the Participants have or may hereafter enter into regarding Denver Water's rates, fees and charges; and

WHEREAS, the undersigned desire to enter into this Agreement for the purpose of setting forth in writing the terms and conditions for continuing the TAC.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the Participants agree as follows:

ARTICLE I. PURPOSE

1.1 **Purpose**. It is the intent of this Agreement to reestablish and reaffirm the TAC through which the Participants have, and in the future may, by association, consultation, and study: (i) enhance their ability to administer the technical consultant contract or contracts which comprise the Project as described in Article 3.1 below, and (ii) improve and enhance their ability to analyze, monitor and provide meaningful input with regard to Denver Water's rates, fees and charges.

ARTICLE II. TECHNICAL ADVISORY COMMITTEE

2.1 **Reaffirmation of Technical Advisory Committee**. There is hereby reestablished and reaffirmed the inter-local advisory committee known as the Rates and Fees Technical Advisory Committee also known as the TAC. The TAC shall be composed of a representative ("Designated Representative") of each of the Participants. To the extent practical, each Participant's Designated Representative shall attend meetings of the TAC in person, unless attendance is not practical, in which case, the Designated Representative may attend TAC meetings by telephone if the meeting location has appropriate facilities for attendance by telephone available. Each Participant may designate an alternate representative to attend TAC meetings when the primary representative is unavailable. To the extent permitted by law, each Participant's primary and alternate representative shall have full power and authority to act on behalf of the Participant for purposes of any matter that may properly come before a TAC meeting.

2.2 **Bylaws**. The TAC may adopt Bylaws for the conduct of its business, which shall be consistent with the provisions of this Agreement and any laws applicable thereto and shall have the power to amend and rescind any such Bylaws. The TAC shall

publish its Bylaws in convenient form and shall file a copy thereof and a copy of any amendments thereto, with such officer of each Participant as such Participant shall designate.

2.3 **Annual Report.** The TAC annually shall make to the governing body of each Participant a report of the activities of the TAC for the preceding year and embodying such recommendations for the upcoming year as may have been adopted by the TAC. Copies of the annual report shall be filed with the governing body of each Participant and with such officer of each Participant as each Participant shall designate.

2.4 **Additional Reports.** The TAC may issue such additional reports as it may deem advisable.

2.5 **Election of Officers.** The Designated Representatives of each Participant shall annually elect from among their number a Chair and Vice-Chair. The Chair shall preside over each meeting of the TAC. In the Chair's absence the Vice-Chair shall serve as the presiding officer.

2.6 **Financial Coordinator.** The Participants shall elect one of the Participants to serve as the Financial Coordinator for the TAC. Upon acceptance of such position, the Financial Coordinator acting through its Designated Representative shall establish a bank account using the Financial Coordinator's EIN and PDPA number into which all of the TAC dues and other funds collected by the Financial Coordinator from TAC Participants shall be deposited in trust and from which the rate consultants, accountant and any other Project costs and expenses of the Participants shall be paid. The Financial Coordinator shall exercise reasonable care in the handling of these funds and shall comply with all requirements imposed by law with respect to the investment and deposit of public funds.

ARTICLE III. TAC FUNCTION AND GOALS

The function and goals of the TAC shall be to:

3.1 **Technical Consultants.** Assist the Participants in collectively engaging on an annual basis and by written contract to which each Participant will be a Party, one or more rate consultants, an accountant, and such other consultants as may be necessary to perform and complete the tasks as described in the scope of work, which annually shall be approved by the Participants and thereafter attached hereto and incorporated herein by this reference (the "Project"); and

3.2 **Foster Cooperation with Denver Water.** Undertake reasonable efforts to foster, maintain, and enhance, where practical, communication and cooperation between Denver Water and its Distributors primarily with regard to the rates, fees and charges

imposed by Denver Water from time to time for water service outside the City and County of Denver; and

3.3 **Technical Expertise.** Provide a permanent high level of technical capability to review and advise each Participant regarding any and all rates, fees and charges that Denver Water develops over time and that pertain to all or a discrete class of Participant customers; and

3.4 **Studies.** Study or cause to be studied, any aspect or area of concern as to Denver Water's rates, fees, tolls, and charges, or the rate methodology that impacts more than one of the Participants and is of general concern to all Participants; and

3.5 **Anticipate Denver Rates.** Estimate the rates and charges for Denver Water's outside City customers into the future based upon Denver Water's rate model changes, cost changes, changes in water use and apprise each Participant when these changes might be contrary to either City and County of Denver charter requirements or impose significant adverse or unfair impacts on Participant customers; and

3.6 **Contract Administration.** Facilitate the administration of the rate consultant and other consultant contract that comprise the Project, including but not limited to developing and making recommendations as to a Project budget, Project scope and Project administration.

ARTICLE IV. FUNDING

4.1 **Budget.** The TAC shall annually prepare, agree upon, and submit to the governing body of each Participant a budget for the ensuing calendar year Project ("Project Budget") itemizing the estimated Project expenditures, revenues and sources thereof no later than October 1st of each year for the next calendar year. The Project Budget for 2014 has been approved by each Participant. The Project Budget for each year thereafter shall include the anticipated costs of the rate consultants, accountant, and any other third party consultants and administrative costs, which the TAC anticipates will be incurred by the Participants during the budget year including, if necessary, the amount needed to establish a reasonable reserve to cover contingencies.

4.2 **Dues.** The dues for calendar year 2014 have been established at the rate of \$1.00 per customer account. Each year the TAC remains in existence it shall establish a Project Budget for the ensuing calendar year, and each Project Budget shall contain a specific recommendation of the amount or amounts of the dues for each Participant to be appropriated each year for Project purposes. The dues will be established by October 1st for the succeeding calendar year. Dues will be based on the number of Participant water customer accounts as of September 1st of each year. The dues for each Participant for each calendar year shall be determined by multiplying the Project Budget for the calendar

year by a fraction, the numerator of which shall be the total number of customer accounts that the Participant has as of September 1st preceding such calendar year and the denominator of which shall be the total number of customer accounts for all TAC Participants as of the same date. For example, the dues for each Participant for calendar year 2014 shall be calculated using the percentages set forth in the table below subject to whatever adjustments, if any, are necessary to accurately reflect each Participants' total number of customer accounts as of November 1, 2013:

<u>Participant Name</u>	<u>No. of Accounts</u>	<u>Percentage</u>
Bancroft-Clover Water and Sanitation District	8,773	11.58
Bear Creek Water and Sanitation District	3,074	4.06
Bow Mar Water and Sanitation District	290	0.38
Cherry Creek Valley Water District	1,966	2.59
City of Cherry Hills Village	854	1.13
City of Greenwood Village	269	0.36
Columbine Water and Sanitation District	612	0.81
Grant Water and Sanitation District	750	0.99
Green Mountain Water and Sanitation District	10,103	13.33
High View Water District	892	1.18
Lakehurst Water and Sanitation District	5,508	7.27
Lochmoor Water and Sanitation District	59	0.08
Meadowbrook Water District	1,299	1.71
Platte Canyon Water and Sanitation District	5,860	7.73
South-East Englewood Water District	11,617	15.33
Southwest Metropolitan Water and Sanitation District	12,500	16.50
Southwest Suburban Denver Water and Sanitation District	2,160	2.85
Wheat Ridge Water District	5,852	7.72
Willowbrook Water and Sanitation District	3,333	4.40
TOTAL	75,771	100%

In the event there are fewer, more or different Participants than shown in the above table, the percentages shall be changed to account for the difference. The percentages shown above shall be adjusted as of December 31st of each year in which this Agreement is in effect.

4.3 **Payment of Dues.** Each Participant shall pay its dues for the calendar year on or before March 1st of each year. No refund shall be given to any Participant that withdraws during the calendar year.

Each Participant's obligation to pay dues for any calendar year is expressly subject to the Participant annually appropriating and budgeting funds for that purpose; provided,

however, that any Participant who fails to budget and appropriate funds by December 15th of any year for its share of the following year's dues shall automatically cease to be a member of the TAC and a Participant hereunder. Any Participant who does not budget and appropriate funds or who intends not to budget and appropriate funds to pay its dues for the following calendar year shall, to the extent possible, notify the other Participants no later than December 1st of the calendar year that precedes the year in which such dues will become payable by the Participant.

Participant dues shall be made payable to the Participant that is the Financial Coordinator. Such Financial Coordinator shall deposit the dues in a bank account established by the Financial Coordinator and such dues shall be held in trust for the benefit of all Participants pursuant to Article 2.6 above.

4.4 **Financial Records.** The TAC shall keep or cause to be kept complete and accurate records of all TAC expenditures and disbursements. Such financial information shall be available to all Participants at all times and published to all Participants on a quarterly or more frequent interval as the Participants shall decide. Each Participant shall have the right to inspect and obtain a copy of all TAC financial records.

ARTICLE V. PROJECT GOVERNANCE

5.1 **Administration of the Project.** The recommendations of the TAC with regard to the administration of the Project, shall upon being approved by 70% of the Participant Designated Representatives pursuant to a formal vote taken in accordance with the provisions of Article 5.3 below become binding upon the rate consultant and, to the extent applicable, all other consultants engaged by the Participants. The rate consultant's contract and any other consultant contract shall contain a provision to the effect that the consultant shall take its directions from the TAC's Designated Representative, and not from any individual Participant or its Designated Representative.

5.2 **Designated Representative.** The TAC Chair, and in his absence, the Vice-Chair shall be the Designated Representative of the TAC to communicate TAC directions to the rate consultant or any other consultant. The directions given by the Designated Representative with regard to the administration of the Project or services to be performed by any rate consultant or other consultant, shall at all times be in accordance with the directions given by the TAC pursuant to the voting procedures set forth in Articles 5.3 and 5.4 below.

5.3 **Voting.** Voting by Participants on Project matters shall be done by the Participants Designated Representatives in accordance with the following provisions:

5.3.1 **Voting on Consultant Contracts, Compensation, and Scope of Work.** Each year the TAC shall review and approve a form of contract, maximum

compensation, and scope of work for the rate and any other consultant necessary to complete the Project for the year. Approval of the form of contract, maximum compensation, and scope of work for each consultant shall require the affirmative vote of 70% of the Participants Designated Representatives. Directions given by the Designated Representative of the TAC to the rate or any other consultant to perform work that is within the consultant's approved scope of work and maximum compensation shall not require a formal vote of the Participants Designated Representatives.

5.3.2 **Voting on Compensation Increases/Additional Services.**

Directions given by the TAC or the TAC's Designated Representative to the rate or any other consultant to perform work that is outside of the consultant's approved scope of work or that cannot be performed within the consultant's approved maximum compensation, shall require the prior affirmative vote of 100% of the Participants.

5.4 **Voting on Non-Financial Matters.** Voting by Participants on Project matters other than those involving the expenditure of Participant funds will be weighted in direct proportion to the number of accounts each Participant has as set forth in Article 4.2 above or as redetermined from time to time in accordance with the terms of this Agreement. Specifically, each Participant shall be entitled to cast that number of votes which is equal to one hundred (100) times a fraction, the numerator of which shall be that Participant's total number of accounts and the denominator of which shall be the total number of accounts of all Participants. The product of that multiplication shall then be rounded to the nearest whole number. For example, Bancroft-Clover, based upon the number of accounts set forth in Article 4.2 above shall be entitled to 12 votes ($100 \times (8,738 / 75,576) = 11.6$) which rounded to the nearest whole number is 12. The Project Coordinator shall keep an accurate record of the total number of votes accorded to each Participant with a redetermination to be made each September 1 and at other convenient times. A redetermination of votes shall also be made at any time a Participant deems an important issue is pending before the TAC and requests the Financial Coordinator in writing to redetermine each Participant's number of votes.

5.5 **Engagement of Consultants and Appointment of Attorney-in-Fact.** It is contemplated by this Agreement that each Participant shall become a party to a contract with the rate and other consultants needed for the performance of the Project, including an accountant. By approval and execution of this Agreement, each Participant hereby designates the Chair of the TAC as its Attorney-in-Fact for the limited purpose of executing on the Participants' behalf the consultant agreements necessary for the Project, which currently consists of rate consultant, MWH Americas, Inc., Geitner Environmental Consulting Group, Inc., and an accountant, Rich Pas, CPA. Each consultant's contract shall have a term of one year, but shall automatically renew for two successive one year terms unless the TAC or the consultant provides the other with a notice of nonrenewal at least 90 days prior to the expiration of the then-existing term; provided, however, that each Participant's annual obligation shall be subject to annual appropriation and

budgeting. Further, each consultant contract entered into by the Participants will be subject to a not to exceed amount and each Participant shall be individually and severally liable for, and only for, its proportionate share of the total contract price. A Participant's proportionate share of the total contract price shall be the total contract price multiplied by Participant's percentage of the total customer accounts of all Participants as of December 31st preceding the date of the contract and calculated in accordance with the methodology set forth in Article 4.2 above. In no event shall the financial obligation of any Participant under the rate or any other consultant contract be more than the Participant's dues for the calendar year, unless expressly approved by the Participant's governing body. The limitations contained herein on each Participant's obligation to fund the Project shall be incorporated into and become a part of every contract entered into by the Participants collectively with the rate or any other consultant.

5.6 **Consultant Work Product.** Each Participant shall have the right to inspect, receive and utilize all reports, data, analysis, recommendations and other products arising from the Project during the period of time the Participant is a signatory to this Agreement and the rate consultant contract.

ARTICLE VI. NEW PARTICIPANTS/WITHDRAWS FROM THE TAC

6.1 **New Participants.** Additional governmental entities may be allowed to join the TAC and become a Participant hereunder upon the written consent of the majority of the TAC Participants. New parties shall sign an addendum agreeing to be bound by all the terms and provisions of this Agreement and upon execution there of shall be deemed to be a new Participant. Upon becoming such, each new Participant shall pay dues for the then calendar year (calculated at the rate per customer account used to establish the dues for the then calendar year) prorated to the date the new Participant signs the addendum. No entity whose name appears as a signatory to this Agreement shall be considered a new Participant for any purposes. The joining of a new Participant to the TAC shall not result in any refund or credit to any existing Participants.

6.2 **Involuntary Termination.** A Participant's membership in the TAC may be involuntarily terminated at anytime and for any reason, but only upon a vote of the TAC Participants at which at least 70% of all member votes entitled to be cast, whether or not present, vote in favor of terminating the Participant's membership in the TAC. Notwithstanding the foregoing, any Participant who fails to pay dues in accordance with the terms of this Agreement shall automatically cease to be a member of the TAC. Any Participant whose membership in the TAC is involuntarily terminated shall be entitled to a refund of that portion, if any, of such Participant's membership dues for the year during which the Participant's membership is terminated, less whatever amount of said dues have already been spent, encumbered or otherwise designated by the TAC for expenditure during the balance of such calendar year.

**ARTICLE VII.
TERM OF AGREEMENT**

7.1 **Term.** Subject to the provisions of 7.2 below, this Agreement shall remain in effect until terminated by mutual agreement of all the Participants; provided, however, that any Participant may withdraw at any time by written notification to the other Participants.

7.2 **No Multi-Fiscal Year Obligation.** Notwithstanding any other provision contained in this Agreement to the contrary, this Agreement shall not be construed or interpreted as creating an indebtedness or multi-year fiscal direct or indirect debt or other multi-year financial obligation whatsoever of any Participant within the meaning of any constitutional or statutory debt limitation provision including, without limitation, Article XI, Sections 1, 2, and 6 of Article X, Section 20 of the Colorado Constitution. This Agreement shall not directly or indirectly obligate any Participant to make any payment beyond the funds legally available to it for the then-current fiscal year. No provision of this Agreement shall be construed to pledge or create a lien on any class or source of monies of any Participant, nor shall any provision of this Agreement restrict or limit the discretion of any Participant in the budgeting and appropriation of its funds. Any Participant that decides not to appropriate funds for an ensuing calendar year shall immediately so notify in writing all of the other Participants.

7.3 **Voluntary Withdrawal.** A Participant may voluntarily withdrawal from the TAC and this Agreement at any time by providing written notice to the other Participants stating the effective date of withdrawal. Any Participant who voluntarily withdraws shall be entitled to a refund of that portion, if any, of such Participant's membership dues for the year during which the Participant withdrew, less whatever amount of said dues have already been spent, encumbered, or otherwise designated by the TAC for expenditure during the balance of such calendar year. As of the effective date of a Participant's withdrawal such Participant shall have no further obligations under this Agreement.

**ARTICLE VIII.
EXECUTION OF AGREEMENT**

8.1 **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original, but all of which taken together shall constitute one in the same Agreement.

8.2 **Effective Date.** This Agreement shall be effective at such time as it is executed by all of the Participants stated above and shall supersede all prior agreements.

IN WITNESS WHEREOF, the undersigned Participant has caused this Agreement to be executed as of the 4th day of February, 2014.

PARTICIPANT:

CITY OF CHERRY HILLS VILLAGE

By: Douglas M. Tisdale
Its: Mayor

Attest:

By: Laura Smith
Its: City Clerk

APPROVED AS TO FORM:

Linda Michow, City Attorney