# CHERRY HILLS VILLAGE
## COLORADO

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

Village Center
Telephone 303-789-2541
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**City Council Agenda**
Tuesday, November 3, 2015

6:00 p.m. – Study Session – Master Plan Implementation Plan

6:30 p.m. – Regular Meeting

1. Call to Order

2. Roll Call of Members

3. Pledge of Allegiance

4. Audience Participation Period (limit 5 minutes per speaker)

5. Consent Agenda
   a. Approval of Minutes – October 20, 2015
   b. Resolution 44, Series 2015; Approving an Intergovernmental Agreement with Arapahoe County for Dispatch Services in 2016
   c. Proclamation 1, Series 2015; Designating the Month of October 2015 as Conflict Resolution Month

6. Items Removed From Consent Agenda

7. Unfinished Business

8. New Business
   a. Contract for Services/Expenditure of Funds for Water Tap Excavation and Water Line Bore Under the High Line Canal at Three Pond Park

9. Reports
   a. Mayor
   b. Members of City Council
   c. Reports from Members of City Boards and Commissions
   d. City Manager and Staff
   e. City Attorney

10. Executive Session pursuant to CRS 24-6-402(4)(b) for the purpose of seeking legal advice concerning the Cooper v. Cherry Hills Village litigation

11. 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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ITEM: STUDY SESSION

## MEMORANDUM

**TO:** HONORABLE MAYOR CHRISTMAN AND MEMBERS OF THE CITY COUNCIL

**FROM:** ROBERT A. ZUCCARO, COMMUNITY DEVELOPMENT DIRECTOR

**SUBJECT:** MASTER PLAN IMPLEMENTATION PLAN STUDY SESSION

**DATE:** NOVEMBER 3, 2015

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**INTRODUCTION:**
At the October 6, 2015 City Council meeting, staff presented a draft Implementation Plan for the 2008 Village Master Plan (see Exhibit A for draft Implementation Plan). Council asked that a study session be scheduled at a future meeting date to review the Implementation Plan prior to a final version being presented for approval.

**BACKGROUND:**
*Consideration of Master Plan Update Project*
In late 2014, staff approached the City Council, Planning and Zoning Commission (P&Z) and Parks, Trails and Recreation Commission (PTRC) to discuss updating the 2008 Village Master Plan. Best practice is to review and update a Master Plan every 5-10 years. The general consensus of Council, the P&Z and PTRC was that a formal update to the Master Plan was not needed. The general consensus was that the overall content, including existing Goals and Strategies, is considered adequate and that the focus should be on creating a formal Implementation Plan.

*Implementation Plan Development*
In June of this year, the P&Z and PTRC held a joint study session to review example implementation plans from other jurisdictions and provide staff direction on development of the Implementation Plan. Based on the feedback received at this study session, staff drafted an Implementation Plan for review. The draft Implementation Plan was presented to the P&Z and PTRC at their August 25, 2015 and September 10, 2015 meetings respectively (see Exhibits B and C for minutes). The attached Implementation Plan submitted for City Council consideration has been reviewed and recommended for approval by the P&Z and PTRC.

*Implementation Plan Purpose and Structure*
The purpose of the Implementation Plan is to outline actionable steps (Implementation Actions) that may be taken to implement each of the Goals and Strategies contained within the Master Plan. Each Implementation Action is prioritized and assigned to a staff member for oversight. Although not stated, many of the Implementation Actions will be done in close coordination with the City Council and/or a City Board or Commission. Not all Village initiatives and policies will be reflected in the Implementation Plan. Only those actions directly related to the already adopted Master Plan Goals and Strategies will be included. The Implementation Plan will also serve as a way to document accomplishments and progress towards implementation of the Master Plan policies.

Each Implementation Action has been assigned a priority and status based on the following categories.

**Priority**
*I - Immediate*: Requires immediate action by lead staff member.
*S - Short Term*: Action should begin within 1 year.
*M - Medium Term*: Action should begin within 1-3 years.
*L - Long Term*: Action may not begin for 3+ years depending on priorities and resources.

**Status**
*O - Ongoing*: Action does not have a specific start and end date and may be done as a course of regular business or as a need arises.
*A - Active Project*: Action is currently being taken to plan for or implement the specific task.
*F - Future Project*: No action is currently being taken to implement the specific task.
*C - Complete*: The project or specific phase of the project is complete.

**REVIEW COMMENTS:**
Staff offered to have the City Council forward review comments or edits they would like to consider prior to the study session. The following is a summary of comments received for consideration:

- Should the subject of public art and the Art Commission's activities be reflected in the Community Character or Open Space, Parks, Trails and Recreation sections of the Master Plan?

No other specific comments were received with regard to the content of the Implementation Plan.

**ATTACHMENTS:**
Exhibit A: Draft Cherry Hills Village Master Plan 2015 Implementation Plan
Exhibit B: August 25, 2015 Planning and Zoning Commission Minutes
Exhibit C: September 10, 2015 Draft Parks, Trails and Recreation Commission Minutes

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Tuesday, October 20, 2015 at 6:30 p.m.
At the Village Center

Mayor Laura Christman called the meeting to order at 6:30 p.m.

## ROLL CALL

Mayor Laura Christman, Councilors Mark Griffin, Earl Hoellen, Mike Gallagher, Klasina VanderWerf, and Katy Brown were present on silent roll call. Also present were Interim 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, Human Resource Analyst Kathryn Ducharme, and City Clerk Laura Smith.

Absent: Mayor Pro Tem Alex Brown

## PLEDGE OF ALLEGIANCE

The Council conducted the pledge of allegiance.

## AUDIENCE PARTICIPATION PERIOD

Senator Linda Newell presented regarding Conflict Resolution Month. She explained that she had initiated Conflict Resolution Month at the State Legislature in 2009 and at that time Colorado was the only state to designate an entire month for conflict resolution. Since then many other municipalities had joined the state in establishing October as their conflict resolution month each year and thanked Cherry Hills Village for joining in that movement. She noted that her experiences with the City had been peaceful. She indicated that this would be her last session in the state senate and invited the Council members to visit her at the capital for a tour.

## CONSENT AGENDA

Councilor Griffin moved, seconded by Councilor VanderWerf to approve the following items on the Consent Agenda:

a. Approval of Minutes – October 6, 2015

The motion passed unanimously.

## ITEMS REMOVED FROM CONSENT AGENDA

None

## UNFINISHED BUSINESS

Council Bill 6, Series 2015; Authorizing a Supplemental Appropriation for City Manager Search Firm Expenses in Fiscal Year 2015 (*second and final reading*)

Director Proctor presented Council Bill 6, Series 2015 on second and final reading. She explained that the supplemental appropriation was for $24,000 in the 2015 budget for executive search firm expenses to assist in hiring a new city manager. She indicated that no changes had been made since first reading.

Councilor VanderWerf moved, seconded by Councilor K. Brown to approve Council Bill 6, Series 2015; A Bill for an Ordinance of the City of Cherry Hills Village Authorizing a Supplemental Appropriation for Executive Search Firm expenses in the amount of $24,000 for Fiscal Year 2015 on final reading.

The following votes were recorded:

| | |
|---|---|
| Gallagher | yes |
| Griffin | yes |
| VanderWerf | yes |
| K. Brown | yes |
| Hoellen | yes |

Vote on the Council Bill 6-2015: 5 ayes. 0 nays. The motion carried.

## NEW BUSINESS

Discussion of Terms of Deborah Butterfield Sculpture Loan Agreement and Authorization to Proceed

Interim City Manager/Director Goldie explained that the Public Art Commission (PAC) was seeing authorization from Council to enter into a loan/sale agreement with Greg Kucera Gallery for the loan and possible sale of a Deborah Butterfield horse sculpture. The PAC has raised closed to $310,500 and the purchase price had been lowered from $425,000 to $395,000. The proposed agreement would allow the sculpture to be on loan to the City until December 31, 2015, at which point the PAC hopes to have raised funds in the amount of the full purchase price. If the PAC was unable to raise the full amount by that time then either party could terminate the agreement or extend it upon mutually agreeable terms. The City's contribution would be limited to covering the delivery and installation costs of the sculpture, estimated to be approximately $1,000-$3,000, along with procurement of insurance and any storage fees. Staff hoped to avoid storage fees by having the sculpture delivered to the City this Friday directly from the Denver Botanic Gardens, to be displayed in front of the Joint Public Safety Facility for the term of the loan. There was some question as to who would be required to pay the transportation costs for the sculpture to be returned to the gallery in Seattle if the PAC

was not able to raise the total funds by the end of the year and the loan agreement was not extended.

Mayor Christman replied that she was unsure who would be responsible for transportation costs back to Seattle if the sale did not occur and that the purpose of tonight's discussion was to determine under what terms Council would authorize herself and City Attorney Michow to execute this agreement.

Councilor Hoellen indicated he supported use of the PAC budget for this project but wanted to understand what other taxpayer monies would ever possibly be spent on this loan and potential ownership.

Mayor Christman noted that the PAC was also seeking approval from Council to spend the remainder of their 2015 budget on the purchase of the sculpture if needed.

Councilor VanderWerf indicated that the PAC's budget was $15,000 for 2015 and they had spent a small portion so far.

Councilor Hoellen agreed that the PAC could use their remaining budget for this purpose. He asked about the change from commissioning a new Deborah Butterfield sculpture to now purchasing one from a gallery.

Councilor VanderWerf explained that since the PAC had first approached Council with this proposal they had learned that Deborah Butterfield sculptures can only be purchased through one of two galleries, rather than directly from the artist. They were valuable pieces and increase in price every year and because of that there was no secondary market and only a few pieces that could be found for sale.

Mayor Christman noted that if the City could approve this loan/sale agreement and have the sculpture in question delivered from the Denver Botanic Gardens they would save the cost of shipping a sculpture from the gallery.

Councilor Hoellen indicated that the agreement should be clear that the price could not be increased after December 31st.

Mayor Christman noted that she was in contact with the gallery owner and had advised him that it would take some time for the City to collect the pledged funds once the sale price was reached and so the payment might be delayed 30-60 days.

Councilor Hoellen asked about the insurance for the sculpture.

Councilor Griffin asked if the sculpture under discussion was the same as in the poster in front of the Joint Public Safety Facility.

Councilor VanderWerf confirmed that it was.

Councilor K. Brown noted that in the past the PAC budget had been used for installation and preparation of other public art pieces. She suggested that the installation costs for this piece would come from the PAC budget or from the funds raised for the sculpture, but questioned how the additional insurance would be paid since that would have to be paid in perpetuity.

HR Analyst Ducharme noted that it was in the City's best interest to have the piece appraised for insurance purposes.

Councilor Gallagher asked if the City or the gallery would carry the insurance during the loan period.

HR Analyst Ducharme replied that the City would carry the coverage.

Councilor Gallagher asked if there was a separate process for insuring this piece.

HR Analyst Ducharme replied that there was due to the high value of the piece.

Councilor Griffin asked about the insurance costs for the *Sundown* piece.

HR Analyst Ducharme replied that *Sundown* was valued at $96,000 but she was not certain of the cost of the premium since it was lumped together with the City's other insurance costs.

Interim City Manager/Director Goldie added that based on the horse sculpture's value of $425,000 the insurance was estimated to cost the City $630 per year.

HR Analyst Ducharme noted that included a $1,000 deductible.

Councilor K. Brown indicated that the PAC should pay the delivery and installation costs from their budget, insurance would be paid by the City, and the agreement should clarify who was responsible for transportation costs back to the gallery if the sale did not occur.

Mayor Christman stated that the City should not be responsible for paying transportation costs back to the gallery if the sale did not occur.

Councilor Griffin expressed frustration with the speculative nature of Council's discussion.

Mayor Christman replied that based on Council's discussion and direction she and City Attorney Michow would negotiate the agreement with the gallery owner. She noted that the piece would be installed at the City and would be insured by Friday and hoped to have a final agreement by then as well. She added that if the City could not settle on terms with the gallery owner then the loan would not proceed.

Councilor Hoellen indicated that use of the PAC budget for this project was acceptable but no funds beyond the PAC budget should be used.

Mayor Christman clarified that the insurance costs would not come from the PAC budget, unless the sale did not occur in which case further discussion regarding the insurance costs during the loan period may be warranted.

Councilor Gallagher added that the balance of the PAC's 2015 budget could be used towards the purchase of the piece.

Councilor Griffin asked what had been done in the past with other pieces of public art.

Councilor VanderWerf replied that funds had come from the PAC's budget but she was not certain about staff time and materials.

Interim City Manager/Director Goldie replied that no charges were made across departments so staff time was paid out of the Parks or Public Works Department budgets, but materials such as the concrete pad for the horse sculpture were charged to the PAC budget.

Councilor Griffin indicated that a contingent of City residents did not support spending public funds on public art. He stated that he did not support spending City funds to ship the piece back to the gallery in Seattle if the sale did not occur.

Mayor Christman agreed that point would need to be clarified.

Councilor Griffin indicated he supported the Council empowering the Mayor to negotiate the agreement and that the City would pay for the installation and insurance of the piece but not for any costs of shipping back to the gallery if the sale did not occur.

Councilor Hoellen agreed that cost of installation should come from the PAC budget and the cost of insurance from City funds.

Councilor Griffin added that he supported the PAC using the balance of their budgeted funds for the piece if they wished to do so.

Councilor VanderWerf noted that the PAC would hopefully not need to do so.

Councilor K. Brown asked if City funds had ever been used to acquire a piece of art before.

Mayor Christman replied that City funds had been paid to artists to create pieces before.

Councilor Gallagher asked what would happen to the funds that had been raised if the total purchase price was not reached and the sale did not occur.

Councilor VanderWerf replied that the donations would be returned to the donors unless they wanted their donations to stay in the Art Donation Fund.

Councilor Hoellen asked if the donors were aware that their donations might be returned to them.

Councilor VanderWerf replied that information was clearly stated on the donation form.

Councilor Griffin asked if the City would install spot lights to illuminate the sculpture at night and that doing so might be an added deterrent to vandalism.

Interim City Manager/Director Goldie replied that it was under discussion.

Councilor VanderWerf moved, seconded by Councilor Griffin to authorize the Mayor to execute an agreement with Greg Kucera Gallery, Inc. for the loan and possible purchase of a Deborah Butterfield horse sculpture based on terms outlined in the City Attorney's memorandum dated October 20, 2015 and as instructed by Council at the October 20, 2015 Council meeting.

The motion passed 5 to 0.

Councilor K. Brown asked ~~when~~ how soon the sculpture ~~would~~ might be installed.

Mayor Christman replied it ~~would~~ might be installed ~~on~~ as early as Friday. She indicated her appreciation for staff's work on this project and their flexibility with its last-minute nature.

Councilor Griffin asked how the sculpture would be affixed.

Interim City Manager/Director Goldie replied that it would be drilled and bolted to the concrete pad in multiple places.

## REPORTS

### Mayor's Report

Mayor Christman reported that Congresswoman Diana DeGette had asked the mayors of municipalities surrounding the City if they support the City having its own zip code and they had indicated their support.

Councilor Griffin noted that having a unique zip code would allow residents to qualify for jumbo loans which they were not able to do currently.

### Members of City Council

Councilor Hoellen reported that he had participated in a webinar with Director Proctor and Accounting Clerk Sager for another financial software named EZTransparency but had not been impressed.

Councilor K. Brown reported that she had attended her first meeting of the CML (Colorado Municipal League) Policy Committee last Friday to represent the City. She explained that each municipality had a vote regarding CML's stance on the various issues being considered. She noted that everyone had generally been in agreement and many of the issues would not affect the City, but she explained several that might have an impact. The City of Durango proposed that CML sponsor legislation to remove the exemption for charter schools from local planning and zoning regulations because many schools were located in inappropriate places that required above average public funds to provide necessary services.

Councilor Griffin asked why the legislation would focus on charter schools.

Councilor K. Brown replied that there was support in removing the exemption for all schools. Another issue was CML's endeavor to simplify and standardize municipal tax definitions and arrange a single point licensing system. The third issue was the ACLU's proposed legislation that would allow them to take action against municipalities if they believed the courts treated defendants too harshly. She noted that CML was not supportive of that legislation. Another issue was that CML expected red light/speed camera legislation to be brought back. The next issue was that there were 30 municipalities who would ask their voters this November to reinstate broadband rights removed by Senate Bill 05-152 and a group was interested in repealing that bill altogether. There was also a debate about road and bridge mill levies, which Counties assess and then remit a portion to municipalities, but some Counties had severely reduced that mill levy in order to redirect funds to other County needs. She noted that Arapahoe County had not been given as an example.

Councilor VanderWerf reported that the next issue of the Village Crier would include a list of donors for the Deborah Butterfield sculpture. She asked Council to let her know if they had any suggestions for other donors.

Councilor Griffin reported that the Board of Adjustment and Appeals had met last month and approved the variance application.

Councilor Gallagher reported that the study session between the Planning and Zoning Commission (P&Z) and the Parks, Trails and Recreation Commission (PTRC) to discuss the draft fence ordinance had been postponed until Thursday. He noted that Bill Lucas had chaired his final PTRC meeting and was now on the P&Z. Robert Eber was now chair of PTRC and John Kokish was vice chair.

**Members of City Boards and Commissions**

None

**City Manager & Staff**

Interim City Manager/Director Goldie noted that monthly departmental reports and unaudited financial statements were available in Council packets.

Traffic Study Discussion

Interim City Manager/Director Goldie reported that in July the City had accepted proposals for qualifications (RFQ) from traffic consultants to perform a comprehensive traffic analysis within the City. Mayor Pro Tem Alex Brown and staff interviewed three firms and eventually chose FHU to submit a scope of work and cost proposal for the project. The scope of work reflected the requirements outlined in the original RFQ document as well as the information requested as part of the interview process. The cost for the study came in much higher than was budgeted. Staff has worked with FHU to modify the scope of work to reduce the cost of the study, while still providing enough information to the City to consider future planning and design of its roadways. Because of the significance of this issue staff was seeking input from Council on how they would like to proceed prior to staff bringing forward a contract for these services. During the modification process all the cameras on the west side of the City had been removed and staff would work with FHU to balance the camera locations between the two sides of the City to ensure proper data collection.

Mayor Christman asked about the costs of the cameras.

Interim City Manager/Director Goldie replied that the cost was $8,750 per camera location and that staff was considering moving camera location #7 from the east to the west side since data at that location on the east side could be obtained through other methods.

Councilor Hoellen asked what was originally budgeted for the traffic study.

Interim City Manager/Director Goldie replied that $70,000 had been budgeted.

Councilor Hoellen noted that the proposed cost was double that amount. He indicated that the bulk of the cost for FHU were fixed amounts so to reduce the cost of the study would require a reduction in data collection. He indicated that he did not want to skimp on data collection. He asked what policy or infrastructure changes might result from the data and what the purpose of the study was.

Mayor Christman indicated that there was a perception among residents that the majority of traffic was cut-through, but in actuality it was unknown how much traffic in the City was cut-though and how much traffic was speeding. She added that speeding could be addressed but not necessarily cut-through traffic. She noted that she received about one call or email per week about cut-through traffic, and it would be helpful to have data to relay to concerned citizens about this issue.

Councilor Hoellen suggested that the reason Mayor Christman received so many calls about this issue was that residents believed that the City could take measures to reduce cut-through traffic, but he noted that in reality there was very little the City could do.

Mayor Christman noted that some of the cut-through traffic could be City residents. She indicated that it would be helpful to have the information, and without the information Council could not determine the issue.

Councilor Gallagher asked when the City's last traffic study had been conducted.

Interim City Manager/Director Goldie replied that in 2000 the Planning and Zoning Commission had conducted an in-house study at intersections, and staff had done hand studies in the past, but the City had never conducted a traffic study with data collection before.

Councilor Griffin asked when the curve in the road at the Quincy/Clarkson entrance had been added.

Interim City Manager/Director Goldie replied about 25 years ago along with the curve in the road at the Quincy/Happy Canyon entrance.

Councilor VanderWerf indicated she was interested in how neighboring development affected City traffic and noted that it was increasingly difficult for residents to turn left onto Belleview Avenue.

Interim City Manager/Director Goldie noted that City staff had the data from the traffic studies done as part of the Belleview Station development and the Kent Place development.

Councilor Griffin indicated he agreed with Councilor Hoellen and would support the study if there was a productive result but was not in favor of spending money to collect information that would not be useful.

Councilor Hoellen stated that he did not envision Council supporting the addition of traffic lights within the Village, and the perimeters required coordination with CDOT and other municipalities which would be difficult to obtain. He noted that the curves at the Quincy entrances were the type of mitigation measure that he could envision supporting.

Interim City Manager/Director Goldie indicated that he could not give Council a clear picture of the outcomes of the study without data to base them on and that part of the study would be providing recommendations.

Councilor K. Brown agreed with Councilor Hoellen but indicted that many suggestions for traffic calming had been discussed in the past, such as a traffic circle at Colorado

and Quincy, but hard data was needed in order to evaluate those suggestions. She also noted that with the increased development in neighboring areas it might be advantageous for the City to have baseline data to which they could compare future traffic numbers. She questioned the value of such data compared to the cost, but agreed that if the City was going to proceed with this study the proper amount of funds should be invested to ensure that the result was useful.

Mayor Christman noted that the study should not exclude data collection on the west side of the City.

Todd Frisbie of FHU explained that he would be the project manager on the traffic study and agreed that he did not support collecting data without a purpose. He noted that a baseline of data was important in order to answer questions from citizens and to determine what strategies might be possible for mitigation. He noted that in some cases the mitigation would be for congestion at nearby intersections rather than at the point where the issue was found. He indicated that data collection was not done after Thanksgiving because the holiday season resulted in skewed data.

Mayor Christman noted that there were several schools in the City and asked how FHU distinguished between cut-through traffic versus destination traffic.

Mr. Frisbie replied that FHU would collect data near the schools and could work with the school districts.

Councilor Griffin asked about FHU's use of blue tooth technology.

Mr Frisbie replied that new vehicles included blue tooth technology with a unique signal and code and FHU had the equipment to pick up these signals at various locations. They could then evaluate the time it took vehicles to travel between locations and infer information.

Councilor Griffin asked if FHU could determine which vehicles were residents.

Mr. Frisbie replied that only 10-15% of vehicles have blue tooth technology. He noted that FHU had license plate recognition software and in one municipality the police department had been willing to look up a sample of the registrations to determine which were resident vehicles.

Councilor Gallagher noted that some residents might be using City streets to cut-through as well as non-residents.

Mr. Frisbie noted that data collected from license plates and cameras could be used to infer vehicle destinations and therefore infer residency.

Mayor Christman noted that timing of entry could also be useful data to determine residency. She asked if FHU had algorithms to help analyze the data.

Mr. Frisbie replied that they could. He explained that data collected from cameras was recorded in software and the data could then be queried. He noted that data was only collected at peak hours.

Councilor Griffin asked for an example of a solution for cut-through traffic.

Mr. Frisbie replied that the City could discourage travel on the road with stop signs, speed bumps and traffic circles, as well as address congestion at nearby intersections to address the reason drivers take the cut-through route.

Mayor Christman noted that some areas in California have made it painful for drivers to cut-through with reduced speed limits and increased citations. She noted that those solutions also impact residents negatively.

Councilor Hoellen stated that cut-through traffic often results because drivers think they are reaching their destination more quickly if they are at least moving, regardless of the actual travel time.

Councilor Griffin noted that Greenwood Village had implemented many mitigation measures on Holly including speed humps and stop signs.

Mr. Frisbie added that other mitigation measures could be used for speeding such as the speed signs that display the speed of oncoming traffic. He indicated FHU was willing to work with staff and Council on the scope of the project.

Interim City Manager/Director Goldie suggested he would meet with Mayor Pro Tem A. Brown, Chief Tovrea, Director Zuccaro, and Mr. Frisbie to put together a new scope of service based on Council's direction tonight based on data collection that would provide facts to provide to residents and a baseline that would be comparable to future studies.

Councilor Hoellen agreed with Councilor K. Brown that a baseline would be valuable but how valuable was unknown. He indicated that he wanted to know FHU's recommendations because that would impact how much he was willing to pay for the study.

Councilor Griffin noted that he would like to hear Mayor Pro Tem A. Brown's input on the study.

Councilor K. Brown indicated that the City needed data in order to make an informed decision about any mitigation efforts and to explain to residents the basis for those decisions.

Mayor Christman agreed with Councilor Hoellen that the City had minimal leverage with CDOT and could not expect any meaningful mitigation measures would be taken on the state highways, but agreed with Councilor K. Brown that the City needed a baseline in

order to inform current and future discussions and perhaps assist the City with future neighboring development. She expressed concern with the price but noted that the lack of data to inform current discussions with residents was a cost to the City.

Councilor Hoellen questioned what difference the data would make and noted that the City's Police Department was the best in the area.

Mayor Christman replied that some residents wanted certain roads cut off and that data would help inform those discussions. She indicated that the exercise was valuable but questioned the price.

Councilor Hoellen replied that it was not worth spending any money if the study did not result in good data.

Councilor Gallagher agreed that the study had to be relevant. He indicated that the Master Plan identified cut-through traffic as an issue. He noted that the City had cut-through traffic from the beginning and that it was only getting worse and a benchmark was needed. He indicated an important question to ask was if residents' quality of life was changing because of traffic issues.

Councilor Hoellen indicated that the City sought to remain an open community.

Councilor Griffin noted that a discussion of spending this amount of money would not have been possible in 2008-2011.

Mayor Christman directed Interim City Manager/Director Goldie to work with Mayor Pro Tem A. Brown and report back to Council.

Trail Easement Encroachment Discussion

Director Zuccaro reported that over the last few months staff had discovered several instances of historic encroachments into trail easements. He noted that these encroachments were decades old. He noted that the City had recently entered into an agreement with Stanley Construction for a trail inventory and mapping project and as part of that project Stanley would research this issue thoroughly to determine the full extent of the encroachments. Using that information staff would propose a comprehensive plan to address the issue in order to ensure that all of the encroachments were addressed fairly and consistently. He noted that staff had been and would continue to not permit any new encroachments. Staff expected to return to Council with a comprehensive plan in six to nine months.

Councilor VanderWerf noted that the Parks and Trails Committee had done some research on this topic and had found some interesting issues. She added that the accuracy of that research might be questionable. She indicated that some encroachments made those trails difficult to reclaim and that possibly some agreement

could be made with the property owner to remove the incumbrance for a contribution to the City's trail fund.

Mayor Christman indicated that property owners should be aware of easements when they purchase their property, but if the City approved permits for structures built in the trail easement that was a different situation than a property owner planting trees in a trail easement without the City's knowledge.

Director Zuccaro stated that even if the City had issued a permit for a structure in an easement it was unknown what information that permit had been based on. He explained that currently the City required plans based on an accurate survey including easements but that may not have always been the case. He indicated that staff would try to research the circumstances surrounding any permits that had been issued for encroachments.

Councilor Griffin asked about the legal issues surrounding encroachments.

Mayor Christman explained that it was called "adverse possession" and the City could adversely possess an individual's property, an individual could adversely possess another individual's property, but an individual could not adversely possess the City's property. She noted that it became an interesting discussion when considering that the City had a budget for acquiring open space and trails but there were existing trails that the public could not use. She agreed with Director Zuccaro that the extent and circumstances of the encroachments needed to be determined first. She added that public meetings and discussions might be needed as well.

**City Attorney**

City Attorney Michow reported that she and the Mayor were moving forward with proposed drone regulations and planned to bring a draft ordinance to the next Council meeting for consideration.

Mayor Christman indicated her hope to include an article about the new regulations in the December issue of the Village Crier in order to notify residents before the holidays.

City Attorney Michow reported that the City had requested a continuance of the Cooper trial because the City had a pending motion for summary judgement from Arapahoe District Court. Until the judge ruled it would be a waste of taxpayer monies to prepare for the trial when one or more of those issues may be resolved in the summary judgement ruling.

## ADJOURNMENT

The meeting adjourned at 8:17 p.m.

_____
Laura Christman, Mayor

_____
Laura Smith, City Clerk

# CHERRY HILLS VILLAGE
## COLORADO

2450 E. Quincy Avenue
Cherry Hills Village, CO 80113
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Village Center
Telephone 303-789-2541
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ITEM: 5b

## MEMORANDUM

**TO:** HONORABLE MAYOR CHRISTMAN AND MEMBERS OF THE CITY COUNCIL

**FROM:** MICHELLE TOVREA, CHIEF OF POLICE

**SUBJECT:** RESOLUTION 44, SERIES 2015; A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH ARAPAHOE COUNTY FOR DISPATCH SERVICES IN 2016

**DATE:** NOVEMBER 3, 2015

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### ISSUE
Should the City Council approve Resolution 44, Series 2015, approving an intergovernmental agreement with Arapahoe County for dispatch services in 2016 (Exhibit A)?

### DISCUSSION
Arapahoe County has provided dispatch services for the City for decades and has done so by intergovernmental agreement since 2010. The agreement is renewed each year.

### BUDGET IMPACT STATEMENT
The proposed 2016 budget includes funds for dispatch services through Arapahoe County.

### RECOMMENDATION
Staff recommends approval of Resolution 44, Series 2015, approving an intergovernmental agreement with Arapahoe County for dispatch services in 2016.

### RECOMMENDED MOTION
"I move to approve Resolution 44, Series 2015, approving an intergovernmental agreement with Arapahoe County for dispatch services in 2016."

### ATTACHMENT
Exhibit A – Resolution 44, Series 2015

EXHIBIT A

**RESOLUTION NO. 44**
**SERIES 2015**

**INTRODUCED BY:**
**SECONDED BY:**

# A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH ARAPAHOE COUNTY FOR DISPATCH SERVICES IN 2016

**WHEREAS**, C.R.S. Section 30-11-410, as amended, authorizes the governing body of a municipality and the board of county commissioners to contract for the purpose of providing law enforcement services by the Sheriff within the boundaries of the municipality; and

**WHEREAS**, C.R.S. Section 29-1-203 further authorizes governments to cooperate or contract with one another to provide any function, service, or facility; and

**WHEREAS**, Section 13.6 of the Cherry Hills Village Home Rule Charter authorizes the City Council, by resolution or by ordinance, to enter into contracts or agreements with other governmental units for receiving services; and

**WHEREAS**, Arapahoe County ("the County") has provided public safety communications dispatch services ("Dispatch Services") through the Arapahoe County Sheriff's Office to the City for decades and has done so by intergovernmental agreement since 2010; and

**WHEREAS**, the City has requested that the County continue to provide Dispatch Services to the City for 2016; and

**WHEREAS**, the City and the County agree that such intergovernmental cooperation creates efficiencies in operation, resources and cost, and thus furthers the public health, safety and welfare of the residents of the City and County; and

**WHEREAS**, the City and County desire to enter into the attached Agreement for Dispatch Services ("Agreement") in accordance with the terms and conditions set forth therein.

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

Section 1. The City Council hereby approves the attached Agreement for Dispatch Services between the City of Cherry Hills Village and the Board of County Commissioners of the County of Arapahoe in the not to exceed amount of Ninety One Thousand and Six Hundred Sixty Four Dollars ($91,664.00), and authorizes the Mayor to execute said Agreement.

Section 2. This Resolution shall be effective immediately.

Introduced, passed and adopted at the
regular meeting of City Council this _th day
of ____, 2015, by a vote of _ yes _ no.

(SEAL)

_____
Laura Christman, Mayor

ATTEST:

_____
Laura Smith, City Clerk

APPROVED AS TO FORM:

_____
Linda C. Michow, City Attorney

## ATTACHMENT TO RESOLUTION 44, SERIES 2015
## AGREEMENT FOR DISPATCH SERVICES

**AGREEMENT FOR DISPATCH SERVICES**

THIS AGREEMENT is made and entered into by and between the CITY OF CHERRY HILLS VILLAGE, a municipal corporation of the State of Colorado, hereinafter referred to as "City" and THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ARAPAHOE, hereinafter referred to as "County," on behalf of the Arapahoe County Sheriff.

WITNESSETH:

WHEREAS, Section 30-11-410, C.R.S. as amended, authorizes the County to contract with a municipality for the purpose of providing law enforcement services by the Sheriff within the boundaries of the municipality; and

WHEREAS, the City has requested that the County provide public safety communications dispatch services ("Dispatch Services") to the City, which the parties agree are included within the definition of law enforcement services referenced in said Section 30-11-410; and

WHEREAS, the County, in the interest of the health, safety and welfare of the residents of the City, deems it advisable to enter into this Agreement for Dispatch Services ("Agreement"); and

WHEREAS, the County has decided to execute any future agreements on a fiscal year basis.

NOW, THEREFORE, in consideration of the foregoing, it is agreed as follows:

1. The Arapahoe County Sheriff's Office ("Sheriff") shall provide Dispatch Services within the boundaries of the City.

2. The Dispatch Services to be provided by the Sheriff within the boundaries of the City shall be similar to the Dispatch Services provided in other unincorporated and incorporated areas of the County of Arapahoe. For purposes of this Agreement, Dispatch Services shall mean receiving calls for service and dispatching them to appropriate Cherry Hills Village law enforcement personnel, and entering information into the Colorado Crime Information Center (CCIC) to include, but not be limited to, missing persons, stolen and recovered automobiles, and vehicle impound information.

3. The term of the Agreement shall commence as of January 1, 2016 and shall end as of December 31, 2016.

4. For the Dispatch Services provided under this Agreement, the City shall pay to the County $91,664.00, which is the cost for performing Dispatch Services for the City for the term of this Agreement. Payment of said

$91,664.00 shall be made to the County upon execution of this Agreement by the City.

5. The Dispatch Services provided pursuant to this Agreement shall be performed by the communications personnel of the Sheriff. The Sheriff's staff shall be responsible for maintaining all records relating to the services performed.

6. The County is, and shall at all times be deemed to be, an independent contractor. Nothing in this Agreement shall be construed as creating the relationship of employer or employee between the City and the County or any of the County's agents or employees. To the extent this Agreement creates a principal-agent relationship between the County and the City, such relationship confers on the County and its employees the authority to act on the City's behalf only as to matters covered by this Agreement. The County shall retain all authority for rendition of the services covered by this Agreement, including standards of performance, control of personnel (including discipline), and other matters incidental to the performance of the services by the County. Nothing in this Agreement shall make any employee of the City a County employee or any employee of the County a City employee for any purpose, including, but not limited to, withholding of taxes, payment of benefits, worker's compensation, or any other rights or privileges accorded County or City employees by virtue of their employment.

7. Nothing in this Agreement shall be construed as a waiver by either party of the protections afforded them pursuant to the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, C.R.S. ("CGIA") as same may be amended from time to time. Specifically, neither party waives the monetary limitations or any other rights, immunities or protections afforded by the CGIA or otherwise available at law. If any waiver by the City results in a waiver of protections afforded to the County, the City, to the extent allowed by law, shall indemnify and hold harmless the County for such actions. If any waiver by the County results in a waiver of the protections afforded to the City, the County shall, to the extent allowed by law, indemnify and hold harmless the City for such actions. Further, the County shall not be responsible for any claim against the City which arises out of services not performed by the County pursuant to this Agreement.

8. The County does not intend by the Agreement to assume any contractual obligations to anyone other than the City, and the City does not intend by the Agreement to assume any contractual obligation to anyone other than the County. The County and City do not intend that there be any third-party beneficiary to this Agreement.

9. Any assignment, transfer or subcontracting of this Agreement is prohibited, unless written consent is obtained from the other party in writing.

10. This Agreement may not be modified, amended or otherwise altered unless mutually agreed upon in writing by the parties hereto.

11. The City is not responsible for Worker's Compensation claims of Sheriff's employees working under this Agreement.

12. The City agrees to carry Comprehensive General Liability Insurance with a minimum $1,000,000 limit of liability. Arapahoe County and the Sheriff and his employees will be named as additional insureds under this policy. The City shall provide the County with a Certificate reflecting that coverage.

13. The City further agrees to carry Workers Compensation coverage for the City employees as required by Colorado law.

14. Either party may terminate this Agreement, with or without good cause shown, upon 30 days written notice to the other party prior to termination. In the event of termination by the County, no damages, liquidated or otherwise, shall inure to the benefit of the County; however, the County will refund a pro-rated portion of the fee paid pursuant to paragraph 4 above.

15. Unless otherwise agreed in writing, this Agreement and the interpretation thereof shall be governed by the laws of the State of Colorado.

16. Notices to be provided under this Agreement shall be given in writing either by hand delivery, or deposited in the United States mail, with sufficient postage, to the following persons:

Arapahoe County Office
Of the County Attorney
5334 South Prince Street
Littleton, Colorado 80120-1136

City Clerk
City of Cherry Hills Village
2450 East Quincy Avenue
Cherry Hills Village, CO 80113

Arapahoe County Sheriff
Arapahoe County Sheriff's Office
13101 East Broncos Parkway
Centennial, Colorado 80112

Chief of Police
City of Cherry Hills Village
2450 East Quincy Avenue
Cherry Hills Village, CO 80113

17. This Agreement may be executed in counterparts.

EXECUTED this_____ day of _____,

ATTEST:

CITY OF CHERRY HILLS VILLAGE

_____
City Clerk

_____
Mayor

Approved as to form:

_____
City Attorney

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF ARAPAHOE

_____

_____
Chair

ARAPAHOE COUNTY SHERIFF

_____
David C. Walcher, Sheriff

**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

ITEM: 5C

# MEMORANDUM

**TO:** HONORABLE MAYOR CHRISTMAN AND MEMBERS OF THE CITY COUNCIL

**FROM:** LAURA SMITH, CITY CLERK

**SUBJECT:** PROCLAMATION 1, SERIES 2015; A PROCLAMATION DESIGNATING THE MONTH OF OCTOBER 2015 AS CONFLICT RESOLUTION MONTH

**DATE:** NOVEMBER 3, 2015

ISSUE:
Shall City Council designate October 2015 as Conflict Resolution Month (Exhibit A)?

DISCUSSION:
This proclamation has been passed by City Council every year beginning in 2011. The proclamation is supported by Senator Linda Newell and resident Cary Leher, who first brought the issue to staff's attention in 2011.

RECOMMENDED MOTION:
"I move to approve Proclamation 1, Series 2015; A Proclamation of the City Council of the City of Cherry Hills Village designating the month of October 2015 as Conflict Resolution Month."

ATTACHMENTS:
Exhibit A – Proclamation 1, Series 2015

**EXHIBIT A**

PROCLAMATION NO. 01
SERIES OF 2015

INTRODUCED BY:
SECONDED BY:

**A PROCLAMATION
OF THE CITY COUNCIL
OF THE CITY OF CHERRY HILLS VILLAGE
DESIGNATING THE MONTH OF OCTOBER 2015
AS CONFLICT RESOLUTION MONTH**

WHEREAS, conflict resolution encompasses mediation, arbitration, facilitation, collaborative decision-making, restorative processes, and other responses to differences; and

WHEREAS, the conflict resolution processes empower individuals, families, communities, organizations, and businesses to foster communication and devise solutions that are acceptable to the needs and interests of all parties involved; and

WHEREAS, conflict resolution is taught and practiced by citizens in many school systems, universities, and graduate programs throughout Colorado and the world as a way of solving disputes; and

WHEREAS, community-based programs fairly and equitably resolve neighborhood and community conflicts, thereby strengthening local relationships; and

WHEREAS, professional associations of conflict mediators promote peaceful and creative resolutions to disputes,

NOW, THEREFORE, the City Council of the City of Cherry Hills Village proclaims that:

The month of October 2015 be designated as Conflict Resolution Month in the City of Cherry Hills Village.

This Proclamation shall be effective immediately.

Introduced, passed and adopted at the
regular meeting of City Council this __ day
of _____, 2015, by a vote of _ yes and _ no.

(SEAL)

_____
Laura Christman, Mayor

ATTEST:

_____
Laura Smith, City Clerk

APPROVED AS TO FORM:

_____
Linda C. Michow, City Attorney

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

Item: 8a

# MEMORANDUM

**TO:** HONORABLE MAYOR CHRISTMAN AND MEMBERS OF THE CITY COUNCIL

**FROM:** JAY GOLDIE, INTERIM CITY MANAGER/PUBLIC WORKS DIRECTOR & RYAN BERNINZONI, PARKS, TRAILS & RECREATION ADMINISTRATOR

**SUBJECT:** CONTRACT FOR SERVICE/EXPENDITURE OF FUNDS FOR WATER TAP EXCAVATION AND WATER LINE BORE UNDER THE HIGH LINE CANAL AT THREE POND PARK

**DATE:** NOVEMBER 3, 2015

## Issue

Staff is requesting approval of a contract for service between the City of Cherry Hills Village and C&L Water Solutions in the amount of $17,400.00 to install a water tap and underground water line at the High Line Canal and Three Pond Park. All completed work will be for the use of a new irrigation system that was recently installed at Three Pond Park.

## Discussion

In February 2015, City staff applied for an Arapahoe County Open Space grant to assist in funding an irrigation project at Three Pond Park. The proposed project includes: purchasing a new water tap, a new irrigation system that will feed existing and newly planted trees and a water line that will be bored under the High Line Canal. Additionally, the grant proposal included a tree planting plan that identifies 34 newly planted trees that will be established within the Park over the next 5 years (see Exhibit A). This irrigation will not be used to water naturally occurring trees or other vegetation. When necessary staff may utilize the irrigation system to establish new native grasses and vegetation on a temporary basis as restoration and weed removal are conducted.

In May 2015, the City was awarded $25,000.00 from Arapahoe County to move forward with the project. Since that time, City Council has approved the application for a license agreement with Denver Water (July 21st, 2015) as well as the signed/finalized license agreement (September 15th, 2015) to bore irrigation under the High Line Canal.

| Project History |
| --- |
| • **February, 2015** – Staff Applied for Grant to assist in funding project |
| • **May, 2015** – City was awarded $25,000.00 grant to assist with overall project |
| • **July 21st, 2015** - City Council Approved License Agreement application for underground bore |
| • **September 15th, 2015** – City Council Approved License Agreement |
| • **October 8th 2015** – Staff presented future tree planting sites to PTRC. PTRC unanimously agreed to move forward with project |

As of October 7th, 2015 all irrigation (main line and lateral lines for phase I planting) to the park has been installed. Staff is now seeking approval to continue the project and move forward with the final stages. Please see project timeline below.

| **Project Timeline:** |
| --- |
| **October 6-9**: Irrigation mainline and lateral line installation **(COMPLETED)** |
| **November 16-20**: Water tap, bore and back flow installation |
| **Spring 2016**: Phase I of tree planting plan (12 trees total) |

In moving forward with the project, staff solicited proposals from two excavating companies to complete the remaining work. The first quote was from Pinnacle Development, Inc. for ***$22,216.00***. The second quote was from C&L Water Solutions for ***$17,400.00***.

| | |
| --- | --- |
| **Pinnacle Development Inc.** | **$22,216.00** |
| **C&L Water Solutions** | **$17,400.00** |

If approved, C&L Water Solutions will be contracted to excavate the site, tap a new ¾" water line, dig and install a meter pit, bore a 4" conduit and ¾"copper pipe under the High Line Canal and restore the site to its original condition once constructions is complete. The attached contract for service identifies a cost of $17,400.00 that will be paid to C&L Water Solutions (see Exhibit B).

The City attorney has reviewed the contract for service and staff is recommending approval of both the contract for service and expenditure of funds.

All costs associated with project and its completions have been identified and budgeted for in the 2015 Arapahoe County Open Space Fund 14. Under line item: 14-45-9092 (Park Improvements) $10,000.00 was budgeted to account for miscellaneous Parks and Open Space Improvements. Total budget for the project was projected at $35,000.00, actual project costs will total $35,757.32.

**RECOMMENDED MOTION**

"I move to approve the contract for service between the City of Cherry Hills Village and C&L Water Solutions in the amount of $17,400.00 to install a water tap, a directionally bored 4" conduit under the High Line Canal, meter pit and site restoration."

**ATTCHMENTS**

Exhibit A: Tree Planting and Irrigation Plan for Three Pond Park

Exhibit B: Contract for service with C&L Water Solutions

# 3 Pond Park Proposed Tree Planting

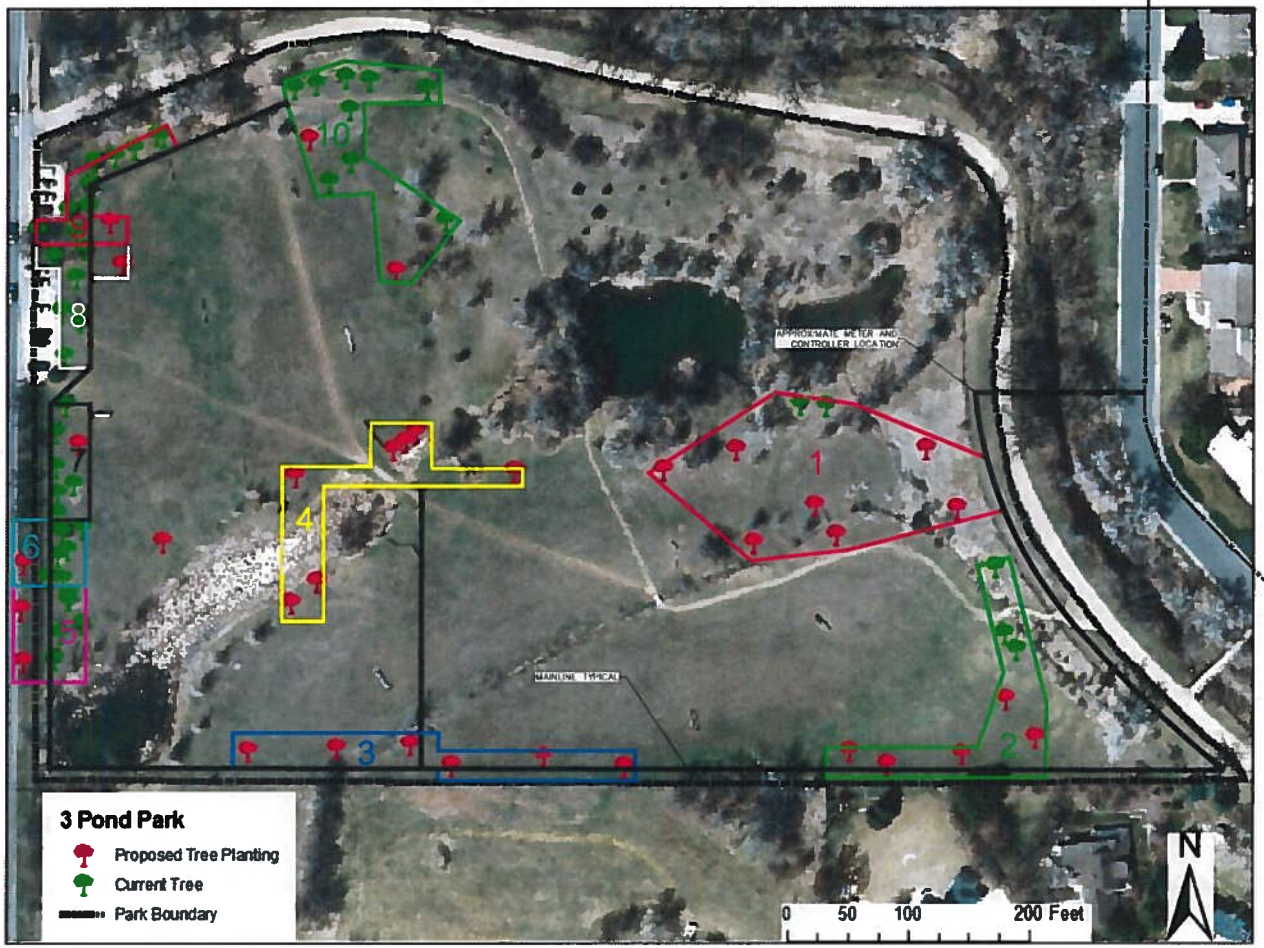


EXHIBIT A

**EXHIBIT B**

# PROFESSIONAL SERVICES AGREEMENT BETWEEN CITY OF CHERRY HILLS VILLAGE AND C&L WATER SOLUTIONS, INC.

**THIS PROFESSIONAL SERVICES AGREEMENT** ("***Agreement***") is made and entered into this 12th day of October, 2015, ("***Effective Date***") by and between the **CITY OF CHERRY HILLS VILLAGE**, a Colorado home rule municipal corporation (the "***City***"), and **C&L WATER SOLUTIONS, Inc., a Colorado corporation** (the "***Contractor***") with a Colorado office at 12249 Mead Way, Littleton, CO 80125, and authorized to do business in Colorado. The City and the Contractor may be collectively referred to as the "***Parties***" and each individually as "***Party***".

## RECITALS AND REPRESENTATIONS

**WHEREAS**, the Contractor represents to the City that the Contractor has the skill, ability, and expertise to perform the services described in this Agreement; and

**WHEREAS**, the City desires to engage the Contractor to provide the services described in this Agreement subject to the terms and conditions of the Agreement.

**NOW, THEREFORE**, in consideration of the terms and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed by and between the Parties as follows:

**1. LINE OF AUTHORITY:** **Ryan Berninzoni**, Parks, Trails and Recreation Administrator, is the City representatives responsible for overseeing and coordinating all contractual obligations (the "***City Authorized Representative***"), and is designated as the City Authorized Representative for the purpose of administering, coordinating, and approving the work performed by the Contractor under this Agreement. For purposes of this Agreement, the Contractor's designated representative is Chrystalla Larson (the ***"Contractor's Authorized Representative")***.

**2. SCOPE OF SERVICES:** Contractor shall perform all services described in **Exhibit A** (the "***Services***") diligently and professionally and in a manner satisfactory to the City Authorized Representative.

Contractor may not perform additional services without written change authorization from the City. To the extent any additional services are performed without such written change authorization, then the Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum meruit or implied contract. Except as expressly provided herein, no agent, employee or representative of the City shall have the authority to enter into any changes or modifications, either directly or implied by a course of action, relating to the terms and scope of this Agreement. If Contractor performs any work beyond the Services described in **Exhibit A**, it does so at its own risk.

**3. COMPENSATION FOR SERVICES:** In consideration for the provision of Services described in **Exhibit A**, the City agrees to compensate the Contractor based on the following:

a. In consideration for the completion of the Services specified herein by Contractor, the City shall pay Contractor a lump sum, not to exceed amount of seventeen thousand four hundred dollars and zero cents ($17,400.00) in accordance with pricing proposal set forth in the Contractor's Proposal, a copy of which is attached and incorporated as part of **Exhibit A**. Except as may be agreed upon by the City and Contractors through written change orders as described in Section 2 above, in no event shall the City be liable for payment under this Agreement in excess of seventeen thousand four hundred dollars and zero cents ($17,400.00).

b. The Contractor shall submit an invoice to the City upon successful completion of the Services in accordance with the terms of this Agreement.

c. Contractor's invoice shall be in a format acceptable to the City, shall be supported by information in such detail as may be required by the City and shall be sufficient to substantiate that the Contractor has performed the Services described in **Exhibit A**. The City may withhold payment for work which is not completed as scheduled, or which is completed unsatisfactorily, until completed satisfactorily and may deny payment for such work upon termination by the Contractors.

**4. TERM:** It is mutually agreed by the Parties that the term of this Agreement shall commence as of the Effective Date and terminate upon successful completion of the Services and in any event on or before December 31, 2015, unless earlier terminated in accordance with the terms and conditions of this Agreement. Any extension of the term of this beyond the current fiscal year shall be contingent upon annual funding being appropriated, budgeted and otherwise made available for such purposes and subject to the City's satisfaction with all services received during the preceding term.

**5. CONFLICT OF INTEREST:** The Contractor agrees that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the Services described herein, and the Contractor further agrees not to hire, pay, or contract for services of any official, officer or employee of the City. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own interests, or the interest of any party with whom the Contractor has a contractual arrangement, in conflict with those of the City.

**6. INDEPENDENT CONTRACTOR:** The Contractor shall perform the Services as an independent Contractor and shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee or other relationship with the City other than as a contracting party and independent Contractor. The City shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Contractor or the Contractor's employees, sub-consultants, Consultants, agents, or representatives, including coverage or benefits related but not limited to: local, state, or federal income or other tax contributions; insurance contributions (e.g., FICA); workers' compensation; disability, injury, or health; professional liability insurance, errors and omissions insurance; or retirement account contributions.

**7. INDEMNIFICATION:** The City cannot and by this Agreement does not agree to indemnify, hold harmless, exonerate or assume the defense of the Contractor or any other person or entity whatsoever. The Contractor shall indemnify and hold harmless the City, its elected officials, officers, directors, agents, and employees from any and all claims, demands, suits, actions or proceedings of any kind or nature whatsoever, in any way resulting from or arising from this Agreement; provided, however, that the Contractor need not indemnify or save harmless the City, its officers, agents and employees from damages resulting from the negligence of City's elected officials, officers, directors, agents, and employees. Contractor's defense, indemnification and insurance obligations shall be to the fullest extent permitted by law and nothing in this Agreement shall be construed as requiring the Contractor to defend in litigation, indemnify or insure the City against liability arising out of the death or bodily injury to person or damage to property caused by the negligence or fault of the City or any third party under the control or supervision of the City.

**8. INSURANCE:** The Contractor shall obtain and maintain the following types and minimum amounts of insurance, which shall remain in full force and effect during the term of this Agreement and for a period of one (1) year after completion of the Services:

| | | |
|---|---|---|
| a. Commercial General Liability | $1,000,000 | each occurrence |
| | $2,000,000 | general aggregate limit |
| | $2,000,000 | products completed operations aggregate limit |
| | $1,000,000 | personal and advertising injury |
| b. Worker's Compensation | $100,000 | per accident |
| | $500,000 | policy limit |
| c. Automobile Liability | $1,000,000 | Combined single limit |

The Contractor's failure to obtain and continuously maintain policies of insurance in accordance with this Section shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Agreement.

**9. NO WAIVER OF GOVERNMENTAL IMMUNITY:** The Parties hereto understand and agree that the City, its elected officials, directors, agents and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., as the same may be amended from time to time, or otherwise available to the City.

**10. ASSIGNMENT:** The Contractor covenants and agrees that it will not assign or transfer its rights hereunder, either in whole or in part without the prior written approval of the City. Any attempt by the Consultant to assign or transfer its rights hereunder shall, at the option of the City Authorized Representative, void the assignment or automatically terminate this Agreement and all rights of the Contractor hereunder.

**11. CITY REVIEW OF RECORDS:** The Contractor agrees that, upon a reasonable request of the City Authorized Representative, at any time during the term of this Agreement or three (3) years thereafter, will make available for inspection and audit upon request by the City Authorized Representative, the City Finance Director, or any of their authorized representatives, those books and records of the Contractor's work performed under this Agreement. Nothing construed herein shall be construed as a requirement that Contractor shall provide its financial records determined to be proprietary by the Consultant. The Contractor shall maintain such records until the expiration of the three (3) years following the end of the term of this Agreement.

**12. OWNERSHIP OF DOCUMENTS:** Working papers, reports and other documents prepared by the Contractor ("Work Product") in connection with this Agreement shall be the property of the City. The Contractor shall provide the City with all Work Product collected or produced by Contractor upon the City's request. The Contractor shall provide the City with copies of any documents produced in association with the Contractor's Services within five (5) business days upon written request of the City.

**13. TERMINATION:** The City shall have the right to terminate this Agreement, with or without cause, by giving written notice to the Contractor of such termination and specifying the effective date thereof, which notice shall be given at least thirty (30) calendar days before the effective date of such termination. In such event, all finished or unfinished Work Product shall be delivered to the City. The

Contractor shall be entitled to receive compensation in accordance with this Agreement for any satisfactory work completed pursuant to the terms of this Agreement prior to the date of notice of termination. Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the Contractor. The Contractor's indemnification obligations hereunder shall survive termination of this Agreement

**14. NOTICES:** Notices concerning termination of this Agreement, notices of alleged or actual violations of the terms or provisions of this Agreement, and all other notices shall be made as follows:

| | |
|---|---|
| To the City: | City of Cherry Hills Village<br>Attn: City Manager<br>2450 East Quincy Avenue<br>Cherry Hills Village, CO 80113 |
| with a copy to: | City Attorney for Cherry Hills Village<br>c/o City of Cherry Hills Village<br>2450 East Quincy Avenue<br>Cherry Hills Village, CO 80113 |
| To the Consultant: | C&L Water Solutions<br>Attn: Chrystalla Larson<br>12249 Mead Way<br>Littleton, CO 80125 |

Said notices shall be delivered personally during normal business hours to the appropriate office above, or by prepaid first class U.S. mail, via facsimile, or other method authorized in writing by the City Authorized Representative and the Contractor Authorized Representative. Mailed notices shall be deemed effective upon receipt or three (3) working days after the date of mailing, whichever is earlier. The Parties may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed or delivered, but such substitutions shall not be effective until actual receipt of written notification.

**15. NONDISCRIMINATION:** In connection with the performance of work under this Agreement, the Consultant agrees not to refuse to hire, discharge, promote or demote, or to 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.

**16. ILLEGAL ALIENS:** Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Contractor shall not contract with a subcontractor that fails to certify that the subcontractor does not knowingly employ or contract with any illegal aliens. By entering into this Agreement, Contractor certifies that it has verified, or attempted to verify, through participation in the basic pilot program that the Consultant does not employ any illegal aliens. If the Contractor is not accepted into the basic pilot program, the Contractor shall apply to participate in the basic pilot program every three months until the Contractor is accepted, or this Agreement had been completed, whichever is earlier. The Contractor is prohibited from using the basic pilot program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed. If the Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall be required to notify the subcontractor and the City within three (3) days that the Contractor has actual knowledge that a

subcontractor is employing or contracting with an illegal alien. The Contractor shall terminate the subcontract if the subcontractor does not stop employing or contracting with the illegal alien within three (3) days of receiving the notice regarding Contractor's actual knowledge. The Contractor shall not terminate the subcontract if, during such three days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Contractor is required to comply with any reasonable request made by the Department of Labor and Employment made in the course of an investigation undertaken to determine compliance with this provision and applicable state law. If the Contractor violates this provision, the City may terminate this Agreement, and the Contractor may be liable for actual and/or consequential damages incurred by the City, notwithstanding any limitation on such damages provided by such Agreement.

**17. GOVERNING LAW; VENUE:** This Agreement shall be deemed to have been made in, and construed in accordance with the laws of the State of Colorado. Venue for any action hereunder shall be in the District Court, County of Arapahoe, State of Colorado. The Consultant expressly waives the right to bring any action in or to remove any action to any other jurisdiction, whether state or federal.

**18. COMPLIANCE WITH ALL LAWS AND REGULATIONS:** Consultant shall exercise the reasonable standard of care that all of the work performed under this Agreement by the Consultant shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Colorado. The Consultant shall exercise the reasonable standard of care to also comply with all applicable ordinances, regulations, and resolutions of the City and shall commit no trespass on any public or private property in the performance of any of the work embraced by this Agreement.

**19. SEVERABLITY:** In the event any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining provisions shall not be affected, provided that the remaining provisions without the invalidated provisions are consistent with the Parties' intent. Should either party fail to enforce a specific term of this Agreement it shall not be a waiver of a subsequent right of enforcement, nor shall it be deemed a modification or alteration of the terms and conditions contained herein.

**20. NO THIRD PARTY BENEFICIARIES:** The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Contractor, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under such Agreement.

**21. HEADINGS; RECITALS:** The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. The Recitals to this Agreement are incorporated herein.

**22. ENTIRE AGREEMENT:** The Parties acknowledge and agree that the provisions contained herein constitute the entire agreement and that all representations made by any elected official, officer, director, agent or employee of the respective parties unless included herein are null and void and of no effect. No alterations, amendments, changes or modifications to this Agreement, except those which are expressly reserved herein to the Mayor, the City Authorized Representative and/or the Contractor Authorized Representative, shall be valid unless they are contained in writing and executed by all the Parties with the same formality as this Agreement.

**23. FORCE MAJEURE:** Neither Party shall be liable for damages, delays, or failure to perform its obligations under this Agreement if performance is made impractical or impossible, or unpredictably and abnormally difficult or costly, as a result of any unforeseen occurrence, including but not limited to fire, flood, acts of God, civil unrest, failure of a third party to cooperate in providing services other than Contractor's subcontractors, or other occurrences beyond the reasonable control of the

party invoking this Force Majeure clause. The Party invoking this Force Majeure clause shall notify the other Party immediately by verbal communication and in writing of the nature and extent of the contingency within five (5) business days after its occurrence or discovery of its occurrence, and shall take reasonable measures to mitigate any impact of the event that triggered the invoking of this Force Majeure clause. If the Force Majeure event shall impact schedule or increase the costs incurred by Consultant, such items shall be handled in accordance with Section 2 and 3.

**24. INCORPORATION OF EXHIBITS:** All exhibits referenced in this Agreement and attached hereto shall be incorporated into this Agreement for all purposes. If there is any conflict between this Agreement and Exhibit A, the terms of this Agreement shall control.

**IN WITNESS WHEREOF**, the City and the Contractor have executed this Professional Services Agreement as of the above date.

**CITY:**
**CITY OF CHERRY HILLS VILLAGE, a Colorado home rule municipal corporation**

**BY:** _____
Laura Christman, Mayor

**DATE:** _____, 2015

APPROVED AS TO FORM:

_____
City Attorney

**CONTRACTOR:**
**C&L WATER SOLUTIONS**
**12249 Mead Way, Littleton, CO 80125,**

**BY:** _____
Chrystalla Larson
Title:

**DATE:** _____, 2015

# EXHIBIT A

# SCOPE OF WORK

12249 Mead Way, Littleton, CO 80125
303.791.2521 phone 303.791.2524 fax

1178 West 17th Street, Marriott-Slaterville, UT 84404
303.791.2521 phone 303.791.2524 fax

EXHIBIT A

# PROPOSAL

**DATE: September 24, 2015**
**CUSTOMER NAME: Cherry Hills Village**
**ATTN: Jay Goldie & Ryan Berninzoni**
**JOB NAME: Irrigation with bore for Three Ponds Park 4100 S. Bellaire St**

| | DESCRIPTION | QUANTITY | UNIT | UNIT PRICE | TOTAL |
|---|---|---|---|---|---|
| 1 | Evcavate and expose the 8" water main in S. Bellaire St Install 3/4" Tap, and copper to the other side of the street. | | | | $7,050.00 |
| 2 | Installing curb stop and box, meter pit with meter and stop and waste ball valve and box Running pig tail to surface for back flow connection point. | | | | $4,930.00 |
| 3 | Install 4" conduit with bore under Highline Canal from the park to the stop and waste pig tail, approximentely 150LF. Pull 3/4" PE 200psi pipe through it into the park. | | | | $5,420.00 |
| 4 | | | | | $0.00 |
| 5 | | | | | $0.00 |
| 6 | | | | | $0.00 |
| 7 | | | | | $0.00 |
| 8 | | | | | $0.00 |
| 9 | | | | | $0.00 |
| 10 | | | | | $0.00 |
| 11 | | | | | $0.00 |
| 12 | | | | | $0.00 |
| 13 | | | | | $0.00 |
| 14 | | | | | $0.00 |

**BID TOTAL** **$17,400.00**

**NOTES:**

We are not responsible for engineering, removal or relocation of existing utilities or structures. We also reserve the right to a rock and/or water clause. In the event that either of these obstacles is encountered, work will cease and further evaluation and negotiation will take place.

**TERMS & CONDITIONS:**

100% due and payable on the 10th of the month following billing date
Price good for 30 days from date of proposal
If C&L Water Solutions, Inc performs the above work, or any part thereof, including change orders, for the undersigned or his agent and litigation ensues for its payment: the undersigned will pay the debt plus all of collection, including interest at a rate of 18% per annum and attorneys fees.

**SIGNATURE:** Chrystalla Larson **DATE:** 09/24/2015
**C & L WATER SOLUTIONS, INC.**

**PRINTED NAME:** _____

**CUSTOMER APPROVAL:** _____ **DATE:** _____

**PRINTED NAME:** _____