

**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, May 3, 2016

6:30 p.m.

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 – April 19, 2016
  - b. Resolution 5, Series 2016; Concerning the Reappointment of a Member to the Board of Adjustment and Appeals
  - c. Resolution 6, Series 2016; Concerning the Reappointment of Members and the Appointment of a New Member to the Parks, Trails and Recreation Commission
6. Items Removed From Consent Agenda
7. Unfinished Business
8. New Business
  - a. Intergovernmental Agreement with the City of Englewood for the Cape Seal Project on South Clarkson Street and Contract Change Order
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 C.R.S. Section 24-6-402(4)(a) for purposes of discussing the purchase, acquisition, or lease of real property for open space and other public purposes
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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Minutes of the  
City Council of the City of Cherry Hills Village, Colorado  
Held on Tuesday, April 19, 2016 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, Alex Brown, Mike Gallagher, Klasina VanderWerf, and Katy Brown were present on roll call. Also present were Interim City Manager and Public Works Director Jay Goldie, City Attorney Linda Michow, Finance Director Karen Proctor, Police Chief Michelle Tovrea, Human Resource Analyst Kathryn Ducharme, and City Clerk Laura Smith.

Absent: none

**PLEDGE OF ALLEGIANCE**

Jack Furman, Colin Armould and Campbell Karofsky from the 6<sup>th</sup> grade basketball and lacrosse teams at St. Mary's Academy led the Council in the pledge of allegiance.

**AUDIENCE PARTICIPATION PERIOD**

None

**CONSENT AGENDA**

Councilor VanderWerf commended staff on a successful audit.

Mayor Pro Tem A. Brown moved, seconded by Councilor Hoellen to approve the following items on the Consent Agenda:

- a. Approval of Minutes – April 1, 2016
- b. Approval of Minutes – April 5, 2016
- c. 2015 Audited Financial Statements
- d. City Manager Agreement Approval and Ratification of Mayor's Signature

The motion passed unanimously.

**ITEMS REMOVED FROM CONSENT AGENDA**

None

**UNFINISHED BUSINESS**

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None

### **NEW BUSINESS**

#### **Contract for Services with PLM Asphalt and Concrete Inc. for the 2016 Asphalt Mill and Overlay Project**

Interim City Manager/Director Goldie explained that these street improvement contracts were more convoluted than normal because the City was working with Englewood on the chip seal of Clarkson Street and with Denver First Church on the paving of Monroe Street.

Mayor Christman asked about the contingency that staff was asking Council to approve.

Interim City Manager/Director Goldie replied that the contingency was under the control of staff to use for change orders, and that the contractors did not control and were not necessarily aware of the contingency.

Councilor Griffin moved, seconded by Councilor VanderWerf to approve the contract for services with PLM Asphalt and Concrete Inc. in the amount of \$61,602.00 plus a 10% contingency for a total maximum expenditure of \$67,762.20 and authorize the expenditure of these funds.

The motion passed unanimously.

#### **Contract for Services with Foothills Paving and Maintenance Inc. for the 2016 Chip Seal and Cape Seal Project**

Councilor Gallagher asked about the chip seal over asphalt.

Interim City Manager/Director Goldie replied that the City normally used a chip seal over asphalt, but that Englewood preferred a slurry seal so the City would use a slurry seal for Clarkson Street. He explained that the City used chip seal because it took less time to dry than slurry seal. He noted the dry time would not be as much of an issue on Clarkson Street as for smaller residential streets because the larger street allowed staff more ability to move traffic and work in sections.

Councilor Gallagher asked about the material that was used on the City's trails.

Interim City Manager/Director Goldie replied that was micro seal.

Mayor Christman asked about the striping of a bike lane on Clarkson Street.

Interim City Manager/Director Goldie replied that Englewood was still working on securing funding from DRCOG for that project.

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Councilor Gallagher asked if the street improvement would even out some of the bumps and undulations in Clarkson Street.

Interim City Manager/Director Goldie replied that staff was working on those issues on the City's side of Clarkson Street separately. He noted that this project would expand some of the shoulders slightly to maintain straight lines.

Councilor VanderWerf expressed pleasure that staff had not simply recommended the lowest bid as that had resulted in difficulties in the past.

Interim City Manager/Director Goldie agreed and noted that staff maintained an open dialogue with A-1 Chipseal. He explained the issue had been aesthetic only and staff continued to work with the contractor to rectify the odd striping.

Councilor Griffin noted that the chip seal was a good product but was rough on kids who fell while riding their bikes in the street.

Interim City Manager/Director Goldie agreed and noted that staff used the ¼" chip to try to minimize those types of issues.

Councilor Gallagher asked about the timeframe for these street improvement projects.

Interim City Manager/Director Goldie replied they would be completed this season.

Mayor Pro Tem A. Brown moved, seconded by Councilor Griffin to approve the contract for services with Foothills Paving and Maintenance Inc. in the amount of \$254,621.36 plus a 10% contingency for a total maximum expenditure of \$280,083.50 and authorize the expenditure of these funds.

The motion passed unanimously.

#### Intergovernmental Agreement with Arapahoe County for a 24 Hour Ballot Drop-Off Box

City Clerk Smith explained that Arapahoe County had offered to install a 24 hour ballot box at the Village Center. The box would be located outside of the Village Center and be secured to concrete. The box would be monitored by 24 hour video surveillance recording system. The County would be responsible for all installation and maintenance of the ballot box and video surveillance system. The County would fund the entire cost for obtaining, installing and maintaining the ballot box and video surveillance system. The County would work with City staff to determine the best location for the ballot box and video surveillance system. The County is required by State Statute to run the video surveillance system from 60 days prior to and 30 days following an election. She noted that currently the City receives ballot boxes from the County for elections run by the County, including coordinated elections with the City. Ballots boxes are kept under City staff observation during business hours, and secured in a locked office after business hours. Additionally staff is required to be present on the Saturday before elections and

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from 7am to 7pm on Election Day in order to receive ballots. The installation of the 24 hour ballot box would remove the requirement for extra staff time on the Saturday before elections and early and late hours on Election Day, as well as increase convenience for Village residents and other Arapahoe County voters by extending the hours during which ballots may be dropped off throughout an election. Staff contacted other municipalities that have 24 hour ballot boxes. The City of Aurora reported that they have had no issues with their box. It is only open during election time and the slot is just big enough for a ballot so they do not often get other things put into the box. The County comes out at least once a day during elections to collect ballots and returns any bills or other mail to the City as necessary. Voters are very appreciative of the box. The City of Englewood and City of Centennial also reported great success and no problems with their 24 hour ballot boxes. If approved, staff will work with the County to install the ballot box and video surveillance system in time for the primary election.

Councilor K. Brown asked about relocating the box in the future if and when a new Village Center was constructed.

Councilor Hoellen agreed that the language was not clear in the Intergovernmental Agreement (IGA).

City Attorney Michow noted that staff had worked with the County on that language and was not concerned.

Councilor K. Brown asked if any of the other 24 hour ballot boxes had experienced issues with "smash and grab".

City Clerk Smith replied she was not aware of any issues.

Councilor Gallagher moved, seconded by Councilor Griffin to approve the Intergovernmental Agreement with Arapahoe County to install a 24 hour ballot box free of charge to the City.

The motion passed unanimously.

#### Chickens and Bees in R-3A, R-4 and R-5 Zone Districts

City Clerk Smith explained that at the March 15, 2016 Council meeting a resident in the R-5 Zone District requested that Council allow hens and bees to be kept in smaller Zone Districts. Currently the City Code identifies Agriculture as a permitted use in the R-1, R-2 and R-3 Zone Districts only. Agriculture is not a permitted use in the R-3A, R-4 and R-5 Zone Districts. The Municipal Code does not currently specifically address roosters or bees. To facilitate Council's discussion, staff researched the municipal codes of various other Denver Metro Area municipalities for regulations regarding chickens and bees and provided that information as exhibits to the staff memo. She noted that Animal Control and Code Enforcement's only concern is that nuisance issues, such as smell, would potentially be more concentrated on smaller lots. She asked if Council wished to direct

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staff and the Planning and Zoning Commission (P&Z) to formulate a draft ordinance that would allow residents in the R-3A, R-4 and R-5 Zone Districts to own chickens and bees, and, if so, did Council wish to provide any further direction to P&Z as to the parameters of a draft ordinance, or leave it to the discretion of P&Z. Possible parameters included inclusion of regulations for ducks, turkeys, roosters, or any other animal in the draft ordinance; the number of fowl or bee hives/colonies that would be allowed, and would this number depend on lot size and/or Zone District; inclusion of a permitting process for the keeping of chickens and/or bees in the draft ordinance. She noted that staff requested Council to consider postponing further work on a draft ordinance until a new Community Development Director had been hired at the City.

Mayor Christman suggested that Council wait until the City was more fully staffed.

Councilor K. Brown indicated that the majority of R-3A, R-4 and R-5 properties were covered by an HOA or covenants and the ones she could find online did not allow chickens or bees. She expressed concern that if the City allowed chickens and bees on these properties then the burden of enforcement transferred to the HOAs, or in the case of Mansfield Heights to the individual residents because Mansfield Heights had restrictive covenants but no HOA. She noted that because of these covenants simply changing the Code would not have the desired effect and may instead have negative consequences. She indicated that if even one HOA changed their rules then a Code change would facilitate those rules.

Mayor Pro Tem A. Brown noted that usually an HOA had to have 100% agreement to change covenants but that not all HOAs or neighborhoods enforced their covenants. He added that waiting for an HOA to change their covenants was unnecessary for any residents in the smaller zone districts who did not have covenants.

Councilor Hoellen questioned if there was even one property in R-3A, R-4 or R-5 that was not prohibited from having chickens and bees by covenants, and if so then Council should consider changing the Code. He indicated that covenants and HOAs were not the responsibility of the Council, although if Council could facilitate then they would consider doing so, but rather the Council was responsible for zoning to benefit as many people as possible in the entire City.

Mayor Christman indicated that there was a question as to whether apiary activities were included in agriculture, and if they were not then there were no restrictions of apiary activities in the City. She noted in that case, regulating bees in the R-3A, R-4 and R-5 Zone Districts would create a new apiary law and would affect all zone districts, not just the smaller lots, and thus would affect residents who already owned bees. She suggested that if the Council asked P&Z to draft an ordinance for chickens and bees that it would be comprehensive for the City and not just for the R-3A, R-4 and R-5 Zone Districts.

Councilor Hoellen questioned if the current City Code regulated apiary activities.

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Mayor Christman replied that there was an argument to be made according to former Community Development Director Rob Zuccaro that bees were not referenced in the City Code and therefore they were neither regulated nor prohibited.

Councilor Hoellen questioned if the City would be legally liable for negligence by not having any regulations.

Mayor Christman added that if Council were to move forward with Code changes the City should discuss the issue with residents that already have bees to try to avoid any adverse effect on them.

Councilor Gallagher agreed that was an important point and that the Village currently had many conscientious and responsible bee owners.

Councilor K. Brown noted that if the City Code did not currently contain anything regarding bees then there was no need to create regulations.

Councilor Gallagher agreed and noted there were no problems with beekeeping in the Village and thus no need for regulations.

Councilor K. Brown noted that she did not feel the need for new bee regulations if there were none currently and indicated she agreed with the Mayor that new chicken regulations would affect residents throughout the City and not just those in the smaller zone districts. She added that the likelihood of a Code amendment resulting in new ownership of chickens in the smaller zone districts was low.

Councilor Hoellen agreed that no regulations were needed for bees and new regulations for chickens should be considered carefully.

Mayor Christman noted that much of the regulations in other cities involved ensuring that the animals were treated well.

Councilor Hoellen noted that the lack of those types of regulations in the City Code were not because the City did not care for the welfare of animals but rather because the community's culture and atmosphere of responsible residents made regulations unnecessary.

Councilor K. Brown noted that chickens were allowed in most of the City. She indicated that the following HOAs/neighborhoods did not allow chickens according to the covenants posted online: Buell, Mansfield Heights, Cherry Hills North, Mayor Pro Tem A. Brown's neighborhood, Bellaire, and Charlou. She added that she was unable to find online documents for Cherry Vale Meadows and Acres. She indicated that if chickens were allowed in these neighborhoods then Council might consider changing the Code.

Mayor Christman indicated she would call the family who had requested a change to the Code to explain the Council's discussion.

## **REPORTS**

### **Mayor's Report**

Mayor Christman reported that she had received a response from the United States Postal Service (USPS) to her request for an application to establish a unique zip code for the City. The response was that there was no application process. She indicated that she would try again. She also reported that she was working with staff and other agencies on the funding and agreements for the Colorado/Hampden underpass.

### **Members of City Council**

Councilor Gallagher reported that the Parks, Trails and Recreation Commission (PTRC) had their first meeting with the John Meade Park consultant, Tina Bishop and it had gone very well. Everyone was excited to be moving forward.

Councilor Griffin reported that the Board of Adjustment and Appeals (BOAA) would be meeting in May. He noted that the City had been named the fourth most boring city in the country. He asked about the new "Do Not Block" signage on the pavement on Hampden at Devonshire Heights.

Interim City Manager/Director Goldie replied that a Devonshire Heights resident had arranged the painting with CDOT.

Mayor Pro Tem A. Brown reported that Congress was working on reauthorizing FAA legislation and there was some controversy about including language that would preempt local ordinances.

Councilor VanderWerf reported that the High Line Canal Working Group would meet tomorrow morning and the Land Preserves would hold its Conservation and Conversation gathering in the evening. She indicated that the Public Art Commission (PAC) would hold a dedication and reception for *Charlo* in mid-June and invitations would be sent to all the donors and City Council. She added that the reception would be held at a resident's home and for that reason the PAC wanted to keep the attendance numbers realistic.

Councilor K. Brown reported that she would attend the DRCOG award ceremony at the DIA Weston Hotel and would use the new light rail line from downtown Denver. She noted that she was working with Interim City Manager/Director Goldie on the traffic issue she had reported on previously. She asked about the plans for announcing the new City Manager.

Mayor Christman replied that he would attend the Council Retreat on May 14<sup>th</sup> and the reception the evening before with Council, Board and Commission members, and

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Directors. She indicated that she would write a press release for the Villager Newspaper and Village Crier.

Councilor K. Brown indicated that a neighbor was frustrated with the noise created by gas powered leaf blowers. She noted that some communities across the country had outlawed these machines because of the constant noise. She indicated that the City Code had some ambiguity regarding contractor activities versus landscape activities and both that and the City's noise ordinance had come up as issues before. She noted that she was not advocating a particular solution, but was reporting that the issue had come up again.

Councilor Hoellen had no report.

Councilor Griffin asked Chief Tovrea about no-texting laws in Colorado and in the Village.

Chief Tovrea replied that Colorado did have a no-texting law and that staff was currently participating in distracted driving training from CIRSA.

### **Members of City Boards and Commissions**

None

### **City Manager & Staff**

Interim City Manager/Director Goldie reported that department monthly reports and unaudited financial statements were available in Council packets. He asked Council for direction on which members of staff should attend the May 14<sup>th</sup> Council Retreat.

Mayor Christman replied that Interim City Manager/Director Goldie should attend the retreat, but that City Attorney Michow and other members of staff did not need to attend.

Councilor Hoellen asked about the traffic light at Quincy and University.

Interim City Manager/Director Goldie explained that issues with the light had on Sunday and City police officers had called CDOT for repairs.

Chief Tovrea added that the light had gone out again yesterday and the City had again contacted CDOT. She noted that the light was currently cycling onto red properly.

### **City Attorney**

City Attorney Michow noted that she would report on pending state legislation at the next meeting.

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**ADJOURNMENT**

The meeting adjourned at 7:44 p.m.

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Laura Christman, Mayor

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Laura Smith, City Clerk

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ITEM: 5b

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**MEMORANDUM**

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

**FROM:** LAURA SMITH, CITY CLERK

**SUBJECT:** RESOLUTION 5, SERIES 2016; CONCERNING REAPPOINTMENT OF A MEMBER TO THE BOARD OF ADJUSTMENT AND APPEALS

**DATE:** MAY 3, 2016

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**ISSUE**

Shall Council approve Resolution 5, Series 2016 to reappoint a member to the Board of Adjustment and Appeals (BOAA)?

**DISCUSSION**

BOAA Member John Love will complete his partial term on May 17, 2016. A recruitment process is not triggered for this member and he has expressed his desire to continue serving. At the March 15, 2016 meeting staff asked Council about reappointment of Mr. Love and received direction to proceed with reappointment.

**RECOMMENDED MOTION**

“I move to approve Resolution 5, Series 2016; reappointing a member to the Board of Adjustment and Appeals.”

**ATTACHMENTS**

Exhibit A: Resolution 5, Series 2016

**RESOLUTION NO. 5  
SERIES 2016**

**INTRODUCED BY:  
SECONDED BY:**

**A RESOLUTION  
OF THE CITY COUNCIL  
OF THE CITY OF CHERRY HILLS VILLAGE  
CONCERNING THE REAPPOINTMENT OF A MEMBER  
TO THE BOARD OF ADJUSTMENT AND APPEALS**

**WHEREAS**, Section 8.2 of the City of Cherry Hills Village City Charter requires that members of the Board of Adjustment and Appeals be appointed by the Council for overlapping terms of three years. Each member shall be a taxpaying elector, and, in addition, shall have resided in the area comprising the City at the time of appointment for at least three years immediately preceding the date of appointment; and

**WHEREAS**, Board member John Love will be ending his first partial term on May 17, 2016; and

**WHEREAS**, City Council has established a policy to hold a recruitment process when board and commission members have completed two, three-year terms;

**WHEREAS**, Board member Love has expressed a desire to be reappointed to a first full term; and

**WHEREAS**, the City Council desires to reappoint Board member Love to a first full term.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE THAT:**

The City Council hereby makes the following appointments to the City of Cherry Hills Village Board of Adjustment and Appeals:

<u>Name</u>	<u>Term Expires</u>
John Love	3 <sup>rd</sup> Tuesday in May 2019

This Resolution shall be effective immediately.

Introduced, passed and adopted at the  
regular meeting of City Council this \_\_\_ day  
of \_\_\_\_\_, 2016, by a vote of \_\_\_ yes and \_\_\_ no.

(SEAL)

\_\_\_\_\_  
Laura Christman, Mayor

ATTEST:

APPROVED AS TO FORM:

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Laura Smith, City Clerk

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Linda C. Michow, City Attorney

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COLORADO

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ITEM: 5c

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MEMORANDUM

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

**FROM:** LAURA SMITH, CITY CLERK

**SUBJECT:** RESOLUTION 6, SERIES 2016; CONCERNING THE REAPPOINTMENT OF MEMBERS AND THE APPOINTMENT OF A NEW MEMBER TO THE PARKS, TRAILS AND RECREATION COMMISSION

**DATE:** MAY 3, 2016

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**ISSUE**

Shall Council approve Resolution 6, Series 2016 to reappoint members and appoint a new member to the Parks, Trails and Recreation Commission (PTRC)?

**DISCUSSION**

PTRC Commissioner Colleen Dougherty resigned on March 2<sup>nd</sup>. The vacancy was posted on the City website and in the Village Crier. Council appointed two members Mayor Pro Tem A. Brown and Councilor Gallagher to conduct interviews. Mayor Pro Tem A. Brown and Councilor Gallagher are recommending appointment of Sarah Kozlowski.

PTRC Members Joshua DiCarlo and Robert Eber will complete their first terms on May 17, 2016. A recruitment process for these members is only triggered if more District representation is needed on PTRC. Both members have expressed a desire to continue serving. At the March 15, 2016 meeting staff asked Council about reappointment of Mr. DiCarlo and Mr. Eber and received direction to proceed with reappointment.

**RECOMMENDED MOTION**

“I move to approve Resolution 6, Series 2016; reappoint members and appoint a new member to the Parks, Trails and Recreation Commission.”

**ATTACHMENTS**

Exhibit A: Resolution 6, Series 2016

**RESOLUTION NO. 6  
SERIES 2016**

**INTRODUCED BY:  
SECONDED BY:**

**A RESOLUTION  
OF THE CITY COUNCIL  
OF THE CITY OF CHERRY HILLS VILLAGE  
CONCERNING THE REAPPOINTMENT OF MEMBERS  
AND THE APPOINTMENT OF A NEW MEMBER  
TO THE PARKS, TRAILS AND RECREATION COMMISSION**

**WHEREAS**, Ordinance 02-12 established the Parks, Trails and Recreation Commission; and

**WHEREAS**, Section 3.1 of the City of Cherry Hills Village City Charter authorizes the City Council to “delegate to board and commissions...such functions, powers and authority of the City as it deems proper and advisable”; and

**WHEREAS**, Section 2-8-30 of the City Municipal Code requires that the Parks, Trails and Recreation Commission shall consist of seven (7) members: one (1) from each Council district; and one member appointed on an at-large basis; provided, however that if the Council is not reasonably able to appoint one member from each Council district the Council may appoint one or more members of the commission on an at-large basis. On the date of appointment, each district member shall be a registered elector of the City for at least three (3) years immediately preceding the date of appointment. Each district member shall be a resident of the district on the date of appointment and throughout his or her term of office; and

**WHEREAS**, Commission member Colleen Dougherty, of District 5, resigned from the Commission prior to the end of her term; and

**WHEREAS**, applications to serve on the Commission were reviewed by Mayor Pro Tem Alex Brown and Councilor Mike Gallagher; and

**WHEREAS**, no applications from residents in District 5 were received; and

**WHEREAS**, Mayor Pro Tem Alex Brown and Councilor Mike Gallagher have recommended that the Council appoint Sarah Kozlowski to complete the vacant position on the Commission; and

**WHEREAS**, Commissioner Dougherty's term would have ended on May 17, 2016 and therefore staff recommends that Sarah Kozlowski be appointed to a full three-year term; and

**WHEREAS**, Commission members Joshua DiCarlo and Robert Eber will be ending their first full terms on May 17, 2016; and

**WHEREAS**, City Council has established a policy to hold a recruitment process when board and commission members have completed two, three-year terms; and

**WHEREAS**, Commission members DiCarlo and Eber have expressed a desire to be reappointed to second terms; and

**WHEREAS**, the City Council desires to reappoint Commissioners DiCarlo and Eber to second terms.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE THAT:**

The City Council hereby makes the following appointments to the City of Cherry Hills Village Parks, Trails and Recreation Commission:

<u>Name</u>	<u>District</u>	<u>Term Expires</u>
Joshua DiCarlo	District 3	3 <sup>rd</sup> Tuesday in May 2019
Sarah Kozlowski	District 4	3 <sup>rd</sup> Tuesday in May 2019
Robert Eber	District 6	3 <sup>rd</sup> Tuesday in May 2019

This Resolution shall be effective immediately.

Introduced, passed and adopted at the regular meeting of City Council this \_\_\_ day of \_\_\_\_\_, 2016, by a vote of \_\_\_ yes and \_\_\_ no.

(SEAL)

\_\_\_\_\_  
Laura Christman, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Laura Smith, City Clerk

\_\_\_\_\_  
Linda C. Michow, City Attorney

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ITEM: 8a

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**MEMORANDUM**

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

**FROM:** JAY GOLDIE, DEPUTY CITY MANAGER/DIRECTOR OF PUBLIC WORKS

**SUBJECT:** IGA WITH THE CITY OF ENGLEWOOD FOR THE CAPE SEAL PROJECT ON SOUTH CLARKSON STREET AND CONTRACT CHANGE ORDER

**DATE:** MAY 3, 2016

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On April 19<sup>th</sup> City Council approved the Contract for Services with Foothills Paving and Maintenance Inc. in the amount of \$280,083.50 for the 2016 Chip Seal CIP program. As mentioned at that time staff has been working with the City Attorney on an IGA with Englewood to have S. Clarkson Street Cape Sealed. The project will be added to the City's contract with Foothills Paving and Maintenance Inc. The cost for the project will be split in half between the two entities. City staff will manage and oversee the project with assistance from Englewood to ensure proper installation and coordination. Each City will be responsible for notifications and traffic control within their respective jurisdictions. The cost for the project is estimated at \$198,396.00. A 5% contingency has been included within the IGA. The total maximum expenditure for the project will be \$208,315.80. The total maximum expenditure for each entity will be \$104,157.90 (Attachment A of the IGA).

**STAFF RECOMMENDATION**

Staff is recommending the approval of the IGA with the City of Englewood for the work to be performed on South Clarkson Street. Additionally staff is recommending the approval of a change order with Foothills Paving and Maintenance Inc. to perform this work under the City's current contract.

**RECOMMENDED MOTIONS**

"I move to approve the IGA with the City of Englewood for the installation of a Cape Seal on South Clarkson Street, with each entity being responsible for 50% of the project costs."

"I move to approve the Change Order with Foothills Paving and Maintenance Inc. in the amount of \$198,396.00, with a maximum expenditure of \$208,315.80 which includes a 5% contingency, of which 50% is to be reimbursed by the City of Englewood as outlined in the approved IGA."

**ATTACHMENTS**

Exhibit A: IGA with the City of Englewood for the 2016 Clarkson Cape Seal Project  
Exhibit B: Change Order for Project 2016-002

**INTERGOVERNMENTAL AGREEMENT  
REGARDING SOUTH CLARKSON STREET PAVEMENT REHABILITATION**

**THIS INTERGOVERNMENTAL AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the **CITY OF CHERRY HILLS VILLAGE**, a home rule municipality of the State of Colorado, hereinafter referred to as “CHV”, and the **CITY OF ENGLEWOOD**, a home rule municipality of the State of Colorado, hereinafter referred to as “ENGLEWOOD” (together, the “Parties”).

**WHEREAS**, pursuant to Colorado Constitution Article XIV, Section 18(2)(a), and Section 29-1-203, C.R.S., the Parties may cooperate or contract with each other to provide any function, service or facility lawfully authorized to each, and any such contract may provide for the sharing of costs, the imposition of taxes, and the incurring of debt; and

**WHEREAS**, each of the Parties is a home-rule municipality pursuant to Article XX, Section 6 of the Colorado Constitution, and are authorized by C.R.S. 29-1-203 to enter into a contract or agreement for the sharing of the costs related to the specific public roadway project identified in this Agreement; and

**WHEREAS**, Article 20, Title 29, C.R.S., clearly articulates and affirmatively expresses a state policy that authorizes political subdivisions of the State of Colorado to cooperate and contract to make the most efficient and effective use of their respective resources; and

**WHEREAS**, CHV is undertaking to perform pavement rehabilitation of portions of South Clarkson Street from approximately E. Jefferson Avenue south to E. Belleview as part of the annual pavement maintenance program of CHV (the “Road Project”); and

**WHEREAS**, specifically, the Road Project will be treated with a cape seal process, an integrated two-step process consisting of a chip seal followed by a slurry seal; and

**WHEREAS**, the Road Project lies within the jurisdiction of both CHV and ENGLEWOOD; and

**WHEREAS**, CHV desires to have **FOOTHILLS PAVING & MAINTENANCE, INC.** (hereinafter referred to as “PAVEMENT CONTRACTOR”) perform the pavement rehabilitation work on the Road Project, through a construction contract with CHV (as a component of CHV Project No. 2016-002); and

**WHEREAS**, CHV and ENGLEWOOD have determined to utilize the services of PAVEMENT CONTRACTOR through the construction contract with CHV to accomplish the pavement rehabilitation on the Road Project, with ENGLEWOOD reimbursing CHV for fifty percent (50%) of all materials and labor, at the applicable construction contract unit prices, as more specifically set forth in **Attachment A** to this Agreement; and

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements, and the premises herein contained, the Parties hereto agree as follows:

**1. TERM:** This Agreement shall commence on the date of mutual execution hereof, and shall continue through December 31, 2016. The Parties acknowledge that due to seasonal sensitivities

associated with the chip seal process, work on the Road Project is expected to occur between May 23, 2016 and September 9, 2016.

**2. RESPONSIBILITIES OF CHV:** CHV shall act as CHV Project Manager. CHV shall be responsible for the following obligations in connection with the construction occurring on the Road Project:

(a) CHV shall contract for and manage the completion of the cape seal process on the Road Project. The contract with PAVEMENT CONTRACTOR, and approvals thereof, shall conform with Colorado law and CHV Municipal Code requirements for public contracts;

(b) CHV shall designate a person (“CHV Project Manager”) responsible for the day-to-day management of the work occurring on the Road Project.

(c) The CHV Project Manager shall coordinate with ENGLEWOOD regarding the construction schedule associated with the Road Project and will provide updates to ENGLEWOOD concerning updates to such construction schedule. The ENGLEWOOD Designated Representative (defined below) will be invited to all preconstruction meetings and coordination meetings with the PAVEMENT CONTRACTOR.

(d) Subject to annual appropriation, CHV shall complete the South Clarkson Street project by the target substantial completion date of September 9, 2016. If the substantial completion date for the work on the Road Project is expected to be extended beyond December 31, 2016, the CHV Project Manager will communicate the same to the ENGLEWOOD Designated Representative and the Parties agree to cooperate in good faith to amend this Agreement to extend the term of this Agreement.

**3. RESPONSIBILITIES OF ENGLEWOOD:** ENGLEWOOD shall be responsible for the following obligations in connection with the Road Project:

(a) ENGLEWOOD shall designate an individual responsible for representing ENGLEWOOD (the “ENGLEWOOD Designated Representative”) who shall coordinate with the CHV Project Manager in order to ensure that notification to ENGLEWOOD residents regarding the project schedule and other project details is consistent with the schedule and project details communicated to CHV residents.

(b) The ENGLEWOOD Designated Representative shall communicate and coordinate with the PAVEMENT CONTRACTOR and the CHV Project Manager regarding the proper form and placement of “no parking” signage and any door hanger notification to be provided to properties abutting the Road Project within the ENGLEWOOD boundaries.

(c) The ENGLEWOOD Designated Representative will work with the CHV Project Manager and the PAVEMENT CONTRACTOR to design and approve all traffic control required for the Road Project for those portions of the Road Project located within the ENGLEWOOD boundaries.

(d) ENGLEWOOD may have an inspector present during the work performed on the Road Project by the PAVEMENT CONTRACTOR, and the Englewood Designated Representative shall communicate directly through the CHV Project Manager to address

concerns and workmanship issues as they arise during completion of the Road Project, and to address any punch list corrections as contemplated by Paragraph 17 of this Agreement below.

**4. STATEMENTS AND PAYMENT:** Upon receipt and approval of partial pay requests from PAVEMENT CONTRACTOR, CHV shall make periodic payments to PAVEMENT CONTRACTOR. Upon payment to PAVEMENT CONTRACTOR, CHV will forward invoices to ENGLEWOOD for **fifty percent (50%)** of the work performed on the Road Project during the applicable pay period(s) and ENGLEWOOD shall reimburse CHV said full amount of all such invoices within thirty (30) days of receipt of billing from CHV. Billing will be based the applicable contract unit price for contract bid items associated with work on the Road Project, and as more specifically set forth in **Attachment A**. All payments by ENGLEWOOD to CHV contemplated in this Agreement have been appropriated or otherwise lawfully authorized by ENGLEWOOD in ENGLEWOOD's 2016 budget.

**5. WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event shall any performance by one party hereunder constitute or be construed to be a waiver by such party of any breach of covenant or condition or any default which may then exist on the part of the other party, and the rendering of any such performance when any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the non-breaching party with respect to such breach or default, and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of the Agreement shall be deemed or taken to be a waiver of any succeeding or other breach.

**6. LIABILITY:** Each party shall be responsible for its own negligence hereunder to the extent provided by law. Neither party shall be deemed to be an agent for the other party.

**7. SUBJECT TO LOCAL LAWS; VENUE:** Each and every term, provision or condition herein is subject to and shall be construed in accordance with the provisions of Colorado law. Venue for any action arising hereunder shall be in Arapahoe County, Colorado.

**8. ASSIGNMENT AND SUBCONTRACTING:** Neither party is obligated or liable under this Agreement to any party other than those specified herein. ENGLEWOOD and CHV understand and agree that they shall not assign or subcontract with respect to any of the rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the other party, which consent or approval may be withheld in the absolute discretion of that other party, and in the event any such assignment or subcontracting shall occur, such action shall not be construed to create any contractual relationship between either of the parties and such assignee or subcontractor, and ENGLEWOOD and CHV shall remain responsible to each other according to the terms of this Agreement.

**9. NO THIRD PARTY BENEFICIARIES:** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to ENGLEWOOD and CHV, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of ENGLEWOOD and CHV that any person other than ENGLEWOOD or CHV receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

**10. STATUS OF PARTIES:** It is understood and agreed by and between the Parties that the status of each of the Parties hereto shall be that of an independent contractor and it is not intended, nor shall it be construed, that either party or any employee, contractor, or consultant of such party is an employee, officer, or agent of the other party for purposes of unemployment compensation, workers' compensation, or for any purpose whatsoever. Nothing herein shall be interpreted or construed as creating a joint venture or partnership between the Parties. Neither of the Parties shall have the right under this Agreement to create any obligation or incur any debt on behalf of CHV or ENGLEWOOD.

**11. EXAMINATION OF RECORDS:** ENGLEWOOD's Finance Director or his or her designee shall, until three (3) years after final payment under this Agreement is made, have access to and the right to examine any of CHV's pertinent books, papers, documents, or other records involving transactions related to the performance of this Agreement, including but not limited to records pertaining to the Road Project on the construction contract with the PAVEMENT CONTRACTOR. The period of access and examination for records relating to: (1) litigation or settlement of claims arising from the performance of this Agreement, or (2) costs and expenses of this Agreement to which the ENGLEWOOD Finance Director or his or designee has secured access to, shall continue until such appeals, litigation, claims, or exceptions are fully and finally resolved.

**12. PARAGRAPH HEADINGS:** The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

**13. SEVERABILITY:** It is understood and agreed by the parties hereto that if any part, term, or provisions of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced *as if* the Agreement did not contain the particular part, term, or provision held to be invalid.

**14. AGREEMENT AS COMPLETE INTEGRATION - AMENDMENTS:** This Agreement is intended as the complete integration of all understandings between the parties, their successors and assigns. No prior or contemporaneous addition, deletion or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent notation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in written amendatory or other Agreement executed by the parties and signed by the signatories of the original Agreement. This Agreement and any amendments shall be binding upon the parties, their successors and assigns.

**15. LEGAL AUTHORITY:**

(a) Each party assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

(b) The person or persons signing and executing this Agreement on behalf of each party, do hereby warrant and guarantee that he/she or they have been fully authorized by CHV or ENGLEWOOD to execute this Agreement on behalf of CHV or ENGLEWOOD and to validly

and legally bind CHV or ENGLEWOOD to all the terms, performances and provisions herein set forth.

**16. COUNTERPARTS OF THIS AGREEMENT:** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

**17. PROJECT MANAGEMENT:** It is mutually agreed between the parties that CHV shall be responsible for management of the project through direction to PAVEMENT CONTRACTOR, approval of traffic control plans, testing, and inspection. It is further agreed that the ENGLEWOOD Designated Representative will work through the CHV Project Manager to provide direction or comments to PAVEMENT CONTRACTOR.

**18. TRAFFIC:** It is mutually agreed that ENGLEWOOD will issue the appropriate permit to PAVEMENT CONTRACTOR for execution of work within ENGLEWOOD's jurisdiction at no cost and will allow PAVEMENT CONTRACTOR to utilize ENGLEWOOD's arterial roadways for transport of material to project site.

**19. COST OVER RUNS FROM ESTIMATE IN AGREEMENT:** If actual costs exceed the Estimated Cost plus 5% Contingency as stated in **Attachment A** due to actual field constructed quantities, the Parties agree to amend this Agreement to reflect the actual cost of ENGLEWOOD's portion of the project and reimburse said amount to CHV. Furthermore, ENGLEWOOD and CHV understand that if the actual project cost exceeds the Estimated Cost plus 5% Contingency per **Attachment A**, CHV will notify ENGLEWOOD and receive authorization before any additional costs are incurred on the Road Project. ENGLEWOOD and CHV are aware, understand, and acknowledge that the construction costs provided in this Agreement are an estimate based on the best available information and that actual construction costs may vary.

**20. GOVERNMENTAL IMMUNITY.** Notwithstanding any other provision herein to the contrary, no term or condition of this Agreement shall be construed or interpreted as a waiver of the monetary limitations on liability or of any of the immunities, rights, benefits, or protections provided to either Party under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended (the "CGIA"). The Parties understand and agree that liability for injuries or damages to persons or property arising out of the alleged negligence or willful and wanton acts of either Party, and their respective officials, officers, and employees, is controlled or limited by the CGIA, and nothing herein shall be construed or interpreted as modifying any liability protection thereunder.

**[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK**

**SIGNATURE PAGES FOLLOW]**

**IN WITNESS WHEREOF**, the Parties have executed this Intergovernmental Agreement Regarding South Clarkson Street Pavement Rehabilitation as of the day and year first above written.

**CITY OF CHERRY HILLS VILLAGE,  
COLORADO**

By: \_\_\_\_\_  
Laura Christman, Mayor

Attest:

Reviewed by:

\_\_\_\_\_  
City Clerk or Deputy City Clerk

\_\_\_\_\_  
Linda C. Michow, City Attorney

**CITY OF ENGLEWOOD, COLORADO**

By: \_\_\_\_\_  
Joe Jefferson, Mayor

Attest:

Reviewed by:

\_\_\_\_\_  
City Clerk or Deputy City Clerk

\_\_\_\_\_  
Dugan S. Comer, Acting City Attorney

**ATTACHMENT A**

Road Project Costs (South Clarkson Street)

<b>2016 Street Rehabilitation Program – CHV Project No. 2016-002</b>			
<b>Item#</b>	<b>Unit</b>	<b>Price</b>	<b>South Clarkson Street (from E. Jefferson Ave. south to E. Bellevue Ave.)</b>
2a. South Clarkson Street cape seal	Sq. Yd.	\$6.00	33,066 Sq. Yd.
Estimated Total Cost			\$198,396.00
Five percent (5%) Contingency			\$9,919.80
Estimated Total Cost Plus Contingency			\$208,315.80

Englewood share of Road Project costs (NTE): \$104,157.90

CHV share of Road Project costs (NTE): \$104,157.90

 CITY OF CHERRY HILLS VILLAGE	<h2>CHANGE ORDER</h2>	
City Project No.: <b>2016-002</b>	Project Name: <b>2016 Chip Seal and Cape Seal Project</b>	Change Order No.: <b># 1</b>
To (Contractor): <b>Foothills Paving and Maintenance Inc.</b>		City Contract No.: <b>2016-002</b>
Description of Original Contract Work: <b>2016 Chip Seal and Cape Seal Installation</b>		Date: <b>05-03-2016</b>

It is hereby mutually agreed that when this Change Order has been signed by the contracting parties, the following described changes shall be executed by the Contractor without changing the terms of the Contract, except as herein stipulated and agreed.

**Installation of 33,066 square yards of cape seal on South Clarkson Street**

Contractor agrees to furnish all Materials and labor and to perform all Work required to complete the above described changes in accordance with the requirements for similar Work covered by the Contract, except as otherwise stipulated herein, for the following considerations:

<i>CHANGE TO CONTRACT SUM</i>	AMOUNT / DATED / AVG
Original CONTRACT SUM	\$254,621.36
Current CONTRACT SUM adjusted by Change Orders <u>0</u> thru <u>0</u>	\$254,621.36
The CONTRACT SUM due to this Change Order will be (Increased) by	\$198,396.00
The new CONTRACT SUM including this Change Order will be	\$453,017.36
<i>CHANGE TO CONTRACT TIME</i>	
Current CONTRACT Completion	120 Days
CONTRACT TIME will be (Unchanged) by this number of Calendar days	No Change
The DATE for completion of all WORK (Amended Contract Time) will be	120 Days

**RECOMMENDED FOR ACCEPTANCE:**

PROJECT MANAGER

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

**ACCEPTED:**

CONTRACTOR:

CITY OF CHERRY HILLS VILLAGE:

\_\_\_\_\_

BY: \_\_\_\_\_

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_