



# CITY OF COLORADO SPRINGS

## CITY COUNCIL AGENDA

**MEETING DATE: FEBRUARY 25, 2014**

**TIME: 1:00 P.M.**

### INVOCATION AND PLEDGE OF ALLEGIANCE

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**CITY COUNCIL WILL RECESS FROM 5:30 P.M. UNTIL 6:30 P.M. FOR DINNER**

**City Council meetings are broadcast live on Channel 18 the 2<sup>nd</sup> and 4<sup>th</sup> Tuesdays of each month, beginning at 1:00 p.m.**

**For the agenda item number call: 385-5170**

City Hall • Council Chambers • 107 North Nevada Avenue  
Mailing Address: Post Office Box 1575 • Colorado Springs, Colorado 80901-1575

## CITY OF COLORADO SPRINGS

**To:** Members of City Council  
**From:** President Keith King  
**Subject:** Agenda for the City Council Meeting of February 25, 2014 – 1:00 P.M., Council Chambers, City Hall, 107 North Nevada Avenue.

1. Call to Order.
2. Invocation and Pledge of Allegiance.
3. Changes to Agenda/Postponements.
4. Councilmember Comments.

### **CONSENT CALENDAR**

5. These items will be acted upon as a whole, unless a specific item is called for discussion by a Councilmember or a citizen wishing to address the City Council. **(Any items called up for separate consideration shall be acted upon following the Mayor's Business.)**

### **SECOND PRESENTATION:**

- A-1. CPC ZC 13-00132: (Quasi-Judicial Matter) Ordinance No. 14-12 amending the zoning map of the City of Colorado Springs relating to 1.1 acres located on the southeast corner of Academy Boulevard and Dominion Way addressed as 6385 North Academy Boulevard, from OC (Office Complex) to PBC (Planned Business Center). [second presentation] **(Item No. 5-A-6A – C.C. Meeting – February 11, 2014)**

Recommendation: Pass ordinance on final presentation.

### **FIRST PRESENTATION:**

- B-1. Approval of the Minutes of the regular Council Meeting of February 11, 2014 and the Special Called Session of February 3, 2014.
- B-2. Appointments to various Boards and Commissions. See attached list.
- B-3. A resolution supporting a Paths to Parks Trail Grant application to Great Outdoors Colorado for the Legacy Loop Trail and Park Development Project. (Parks, Recreation and Cultural Services – Karen Palus)

See attached memorandum from the Director of Parks, Recreation and Cultural Services and copy of proposed resolution.

- B-4. A resolution setting the Electric Cost Adjustment effective March 1, 2014. (Utilities – Jerry Forte)

See attached memorandum from the Utilities Chief Executive Officer and copy of proposed resolution.

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- B-5. A resolution setting the Gas Cost Adjustment effective March 1, 2014. (Utilities – Jerry Forte)

See attached memorandum from the Utilities Chief Executive Officer and copy of proposed resolution.

- B-6. A resolution appointing Tyler Allison and Brett Gracely to the Homestake Steering Committee and the Board of Directors of the Aurora-Colorado Springs Joint Water Authority. (Utilities – Jerry Forte)

See attached memorandum from the Utilities Chief Executive Officer and copy of proposed resolution.

- B-7. A resolution approving the First Revised Water Transmission Service Contract among the Aurora – Colorado Springs Joint Water Authority and the City of Aurora, Colorado and the City of Colorado Springs, Colorado. (Utilities – Jerry Forte)

See attached memorandum from the Utilities Chief Executive Officer and copy of proposed resolution.

- B-8. A resolution approving a Memorandum of Understanding among Colorado Springs Utilities, the City of Colorado Springs, El Paso County, the El Paso – Teller County 911 Authority, the City of Fountain, and the Pikes Peak Regional Building Department to acquire digital orthorectified imagery in 2014. (Utilities – Jerry Forte)

See attached memorandum from the Utilities Chief Executive Officer and copy of proposed resolution.

- B-9. A resolution granting permission to close consensual transaction for the acquisition of property for Southern Delivery System project improvements. (Utilities – Jerry Forte)

See attached memorandum from the Utilities Chief Executive Officer and copy of proposed resolution.

- B-10. A resolution directing the Chief Executive Officer of Colorado Springs Utilities to execute an amendment to the Groundwater Capacity Lease Agreement with Security Water District. (Utilities – Jerry Forte)

See attached memorandum from the Utilities Chief Executive Officer and copy of proposed resolution.

- B-11. AR V 14-00008: Request by Colorado Springs School District 11 for the vacation of the 20-foot wide alley that extends from Polk Street on the north to Tyler Street on the south located between Cascade Avenue and Tejon Street. A portion of Lincoln Elementary School is constructed over the alley right-of-way consisting of 0.18 acre and is zoned R-1 6000 (Single-Family). (Planning & Development – Peter Wysocki)

See attached memorandum from the Planning and Development Director, and Senior Planner, and copy of proposed ordinance.

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6. Recognitions.

See attached copy of proposed resolution.

7. Citizen Discussion.

8. Mayor's Business.

**ITEMS CALLED OFF CONSENT CALENDAR**

**UTILITIES BUSINESS**

9. An ordinance amending Sections 1303 (Definitions), 1306 (Stage I Shortage); 1307 (Stage II Shortage); 1310 (Duration of Water Use Restrictions); 1311 (Alternative Water Management Plans); and 1313 (Special Contract Service) of Part 13 (Water Shortage) of Article 4 (Water Code) of Chapter 12 (Utilities) of the Code of the City of Colorado Springs 2001, as amended, pertaining to water shortage. (Utilities – Jerry Forte)

See attached memorandum from the Utilities Chief Executive Officer and copy of proposed ordinance.

**UNFINISHED BUSINESS**

10. **Marijuana Ordinances**

- 10A. Ordinance No. 14-13 amending Sections 301 (Definitions) and 302 (Facility Security Plans) of Part 3 (Facility Security) of Article 2 (City Properties) of Chapter 3 (Public Property and Public Works) and Section 108 (City Facility Security; Violation) of Part 1 (General Offenses) of Article 6 (Offenses Affecting Property) of Chapter 9 (Public Offenses) of the Code of the City of Colorado Springs 2001, as amended, pertaining to possession of marijuana at indoor city facilities, and providing penalties for the violation thereof. [second presentation] **(Item No. 15A – C.C. Meeting – February 11, 2014)** [6-3 vote]

See attached ordinance.

- 10B. Ordinance No. 14-14 amending Sections 301 (Definitions) and 302 (Facility Security Plans) of Part 3 (Facility Security) of Article 2 (City Properties) of Chapter 3 (Public Property and Public Works) and Section 108 (City Facility Security; Violation) of Part 1 (General Offenses) of Article 6 (Offenses Affecting Property) of Chapter 9 (Public Offenses) and Section 104 (Right to Trial by Jury; Exceptions) of Part 1 (Trial by Jury) of Article 4 (Jury Provisions) of Chapter 11 (Municipal Court) of the Code of the City of Colorado Springs 2001, as amended, pertaining to possession of marijuana at the Colorado Springs Municipal Airport, and providing penalties for the violation thereof. [second presentation] **(Item No. 15B – C.C. Meeting – February 11, 2014)** [8-1 vote]

See attached ordinance.

## CITY COUNCIL MEETING – FEBRUARY 25, 2014

### NEW BUSINESS

11. A resolution approving amendments to the Rules of the Colorado Springs Civil Service Commission for the Municipal Police and Fire Forces. (Human Resources – Michael Sullivan)

See attached memorandum from the Human Resources Director and Secretary to the Civil Service and copy of proposed resolution.

12. An ordinance approving the election of the Board of Directors of the First and Main Business Improvement District by the eligible electors of the District pursuant to the petition filed under C.R.S. 31-25-1209(1)(d). (Planning & Development – Peter Wysocki) [First Presentation]

See attached memorandum from the Planning and Development Director, and Planning Manager-Comprehensive Planning and copy of proposed ordinance.

13. An ordinance approving the election of the Board of Directors of the First and Main Business Improvement District No. 2 by the eligible electors of the District pursuant to the petition filed under C.R.S. 31-25-1209(1)(d). (Planning & Development – Peter Wysocki) [First Presentation]

See attached memorandum from the Planning and Development Director, and Planning Manager-Comprehensive Planning and copy of proposed ordinance.

14. A resolution approving the Intergovernmental Agreement for the Wind-Up and Liquidation of the El Paso County Emergency Services Agency between the City of Colorado Springs and El Paso County, Colorado. (Interim City Attorney – Wynetta Massey)

See attached memorandum from the Interim City Attorney and copy of proposed resolution.

15. A resolution approving the Fourth Amendment to the Employment Agreement for appointment as Chief Executive Officer. (Utilities Board Personnel Committee – Jan Martin)

16. An ordinance amending Ordinance No. 07-113 pertaining to the Art Commission of the Pikes Peak Region. (City Council Administrator – Eileen Gonzalez)

See attached memorandum from the City Council Administrator and copy of proposed ordinance.

### PUBLIC HEARINGS

17. AR DP 13-00488: (Quasi-Judicial Matter) Public hearing on an appeal by Bruce Wright of Flynn, Wright & Fredman on behalf of 1150 Kelly Johnson, LLC, regarding the Planning Commission's action of January 16, 2014 approving the conditional use for the Majestic Mountain Range project, that allows for a commercial sports and recreational indoor shooting range. The property is zoned PIP-1 (Planned Industrial Park), is located at 1170 Kelly Johnson Boulevard and consists of 1.58 acres. (Planning & Development – Peter Wysocki)

**PLANNING COMMISSION RECOMMENDATION:**

It was moved by Commissioner Shonkwiler, seconded by Commissioner Henninger, to approve the petitioner's request subject to technical modifications listed in the Record-of-Decision. The motion carried 6-1. (Commissioner Markewich opposed and Commissioners Ham and Phillips were absent.)

(Item No. 4 – CPC Meeting – January 16, 2014)

See attached memorandum from the Planning and Development Director, and Senior Planner requesting postponement to March 11, 2014 City Council meeting per Section 7.5.906.B.3.

18. CPC CU 13-00077: (Quasi-Judicial Matter) Public hearing on an appeal by G.W. Flanders, President of GeoTech Corp. and by Angus and Gail Morrison, regarding the Planning Commission's action of January 16, 2014 to approve a conditional use to allow Indoor Sports and Recreation within a PIP-2 HS (Planned Industrial Park with Hillside Overlay) zoned property at 4750 Peace Palace Point. The project is an indoor firing range known as "Whistling Pines West". (Planning & Development – Peter Wysocki)

**PLANNING COMMISSION RECOMMENDATION:**

It was moved by Commissioner Henninger, seconded by Commissioner Shonkwiler, to approve the petitioner's request subject to compliance with the following conditions:

Conditions of Approval:

- Prior to the issuance of the Certificate of Occupancy, noise levels measured in accordance with City Code Section 9.8.013 shall be demonstrated not to exceed 45 dB(A) at the south property lines of the residential platted lots within the Pinecliff Subdivision; and
- City Staff will review and approve a testing regime for measuring the 45 dB(A) analysis.

Motion passed 6-1. (Commissioner Walkowski opposed and Commissioners Ham and Phillips were absent.)

(Item No. 6 – CPC Meeting – January 16, 2014)

See attached memorandum from the Planning and Development Director, and Senior Planner requesting postponement to March 11, 2014 City Council meeting per Section 7.5.906.B.3.

19. Added Item Agenda.
20. Executive Session.

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21. Adjourn.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Keith King". The signature is written in a cursive style with a large initial "K".

Keith King  
City Council President

**COLORADO SPRINGS, COLORADO  
CITY COUNCIL CHAMBERS  
CITY HALL – 107 N. NEVADA AVENUE  
FEBRUARY 11, 2014 – 1:00 P.M.**

Council met in Regular Session.

There were present: President King, President Pro Tem Bennett, Councilmembers Collins, Gaebler, Knight, Martin, Miller, Pico, and Snider. Also present, Chief of Staff Neumann and Interim City Attorney Massey.

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1. **Call to Order.**

City Clerk Johnson called the roll. Eight members present; President Pro Tem Bennett arrived later in the meeting.

2. **Invocation and Pledge of Allegiance.**

Reverend Douglas Brauner, Holy Cross Lutheran Church, led the invocation. Council President King led in the Pledge of Allegiance.

3. **Changes to Agenda/Postponements.**

There were no Agenda changes requested.

4. **Councilmember Comments.**

Councilmember Knight provided an update on the Budget Subcommittee meeting. They are preparing a list of questions they will want answered prior to the budget approval cycle beginning in October 2014 and anticipates bringing those questions to Council for their consideration at a Work Session in March.

Councilmember Miller updated Council on the work he has been doing with the City Attorney's Office and with the Institute of Justice with the goal to restrict use of eminent domain.

**CONSENT CALENDAR**

5. The following items were acted upon by unanimous consent of the members present, with the exception of Item 5-A1, which was called up for separate consideration:

**SECOND PRESENTATION:**

There were no second presentations scheduled.

**FIRST PRESENTATION:**

A-1. See action taken later in the meeting.

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- A-2. Appointments to various Boards and Commissions.
- A-3. The City Clerk reports that on January 15, 2014 there was filed with the Office of the City Clerk a petition for the annexation of Capital Annexation No. 1. She states that she has examined or caused to be examined the above mentioned petition and has determined that the petition is in substantial compliance with Section 31-12-107(1), C.R.S. The City Clerk herewith communicates such to City Council and recommends that the petition be referred to the City Administration for review and recommendation.
- A-4. Request for hearing for consideration of a Resolution modifying the Water Shortage Tariff.
- A-5. Resolution No. 7-14 was presented: “A Resolution approving an agreement to annex and to provide water and wastewater service outside the City limits at 4835 Platinum Drive in Park Vista Estates Addition.”
- A-6. **6385 North Academy Boulevard**

A-6A. CPC ZC 13-00132: (Quasi-Judicial Matter) Ordinance No. 14-12 entitled: “An Ordinance amending the Zoning Map of the City of Colorado Springs relating to 1.1 acres located on the southeast corner of Academy Boulevard and Dominion Way addressed as 6385 North Academy Boulevard from OC (Office Complex) to PBC (Planned Business Center)” was introduced and read.

A-6B. CPC DP 13-00133: (Quasi-Judicial Matter) Request by Top Land Investment LLC on behalf of Legacy Bank for consideration of a Development Plan to change the use from restaurant to retail consisting of 1.1 acres located at the southeast corner of Academy Boulevard and Dominion Way addressed as 6385 North Academy Boulevard.

Motion by Gaebler, second by Snider, that all items on the Consent Calendar, with the exception of Item 5-A1 be passed, adopted, and approved by unanimous consent of the members present.

Ayes: Collins, Gaebler, King, Knight, Martin, Miller, Pico, Snider  
Noes: None  
Absent: Bennett

The motion passed on an 8-0-1 vote with Councilmember Bennett absent.

### 6. **Recognitions.**

There were no recognitions.

### 7. **Citizen Discussion.**

Charles Barber, Raven Martinez, Mark Slaugh, and John Hawk spoke against *City for Champions*.

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Marcia Fields spoke in recognition of Charles Barber's commitment to the well-being of the community and read from the plaque she prepared on his behalf.

### **President Pro Tem Bennett Arrived**

Paul Kleinschmidt spoke regarding the anticipated installation of the Neumann Scrubber System at the Martin Drake power plant and provided a series of questions that he requested CSU answer.

Bill Murray spoke regarding CSURA going into default and into future default if no action taken.

Mark Slaugh spoke in support of the industrial hemp industry for Colorado Springs.

First Presbyterian representative, Chesley Miller, spoke about "*The Year of the City*" and read a blessing for the members of City Council.

### **8. Mayor's Business.**

Chief of Staff Neumann read a letter from Mayor Bach to Council regarding Sister Cities International and the desire to form a relationship with Ancient Olympia Greece as a Sister City to Colorado Springs. In response to the invitation for a Councilmember to work with Mayor Bach, Councilmember Gaebler volunteered to partner in the project.

### **ITEMS CALLED OFF CONSENT CALENDAR**

- A-1. Approval of the Minutes of the Regular Council Meeting of January 28, 2014, and the Special Called Session of January 22, 2014.

City Clerk Johnson described the corrections made to the January 28<sup>th</sup> Minutes soon after the print deadline. The corrected version was posted and available on the City's website as of Friday prior to the Tuesday meeting. There were no corrections made to the Special Called Session of January 22, 2014.

Motion by Bennett, second by Gaebler, to approve the Minutes.

Ayes: Bennett, Collins, Gaebler, King, Knight, Martin, Miller, Pico, Snider  
Noes: None  
Absent: None

The motion passed unanimously on a 9-0 vote.

### **UTILITIES BUSINESS**

9. Ordinance No. 14-10 entitled: "An Ordinance approving a supplemental appropriation for Colorado Springs Utilities for the sole purpose of purchasing corporate memberships by Colorado Springs Utilities for the year ending December 31, 2014" was presented for final passage.

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Discussion ensued among Councilmembers relative to not funding organizations that endorse political candidates.

Motion by Knight, second by Collins, to amend the Ordinance to exclude funding for the Colorado Springs Housing and Building Association, the Pikes Peak Association of Realtors and the Downtown Partnership Association.

Ayes: Collins, Knight, Miller  
Noes: Bennett, Gaebler, King, Martin, Pico, Snider  
Absent: None

The motion failed on a 3-6-0 vote.

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Motion by Gaebler, second by Snider, to amend the Ordinance to exclude funding for the Home Builders Association and Pikes Peak Association of Realtors, and to include funding for the Downtown Partnership.

Ayes: Gaebler, King, Martin, Miller, Pico, Snider  
Noes: Bennett, Collins, Knight  
Absent: None

The motion passed on a 6-3-0 vote.

### **UNFINISHED BUSINESS**

10. CPC CA 13-00119: Ordinance No. 14-8 entitled: "An Ordinance amending Sections 103 (Permitted, Conditional and Accessory Uses) and 105 (Additional Standards for Specific Uses Allowed in Residential Zones) of Part 1 (Residential Districts) and Section 705 (Mixed Use Permitted, Conditional and Accessory Uses) of Part 7 (Mixed Use Zone Districts) of Article 3 (Land Use Zoning Districts) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended, pertaining to human service establishments" was presented for final passage.

Motion by Bennett, second by Snider, that the Ordinance be finally passed.

Ayes: Bennett, Gaebler, King, Knight, Martin, Miller, Pico, Snider  
Noes: Collins  
Absent: None

The motion passed on an 8-1-0 vote.

11. CPC ZC 13-00085: (Quasi-Judicial Matter) Ordinance No. 14-9 entitled: "An Ordinance amending the zoning map of the City of Colorado Springs relating to .48 acre located southeast of South 8<sup>th</sup> Street and Yucca Drive, from R-1 6000 (Single-family Residential) and C-5 (Intermediate Business) to C-5/cr" was presented for final passage.

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Motion by Bennett, second by Gaebler, that the Ordinance be finally passed.

Ayes: Bennett, Gaebler, King, Knight, Martin, Miller, Pico, Snider  
Noes: Collins  
Absent: None

The motion passed on an 8-1-0 vote.

12. CPC PUZ 13-00092: (Quasi-Judicial Matter) Ordinance No. 14-11 entitled: "An Ordinance amending the zoning map of the City of Colorado Springs relating to 2.45 acres located west of the intersection of South 8<sup>th</sup> Street and Yvette Heights from PUD (Planned Unit Development) to PUD (Planned Unit Development to establish the use of single-family residential at 8.16 dwelling units per acre and a maximum building height of 40 feet)" was presented for final passage.

Motion by Bennett , second by Snider, that the Ordinance be finally passed.

Ayes: Bennett, Gaebler, King, Martin, Pico, Snider  
Noes: Collins, Knight, Miller  
Absent: None

The motion passed on a 6-3-0 vote.

13. Resolution No. 8-14 was presented: "A Resolution adopting an amendment to the "City of Colorado Springs Rules and Procedures of City Council" relating to General Procedures for confirmation of Mayoral Appointees."

Michael Sullivan, Human Resource Director, appealed to Council on behalf of the Administration to not pass the Resolution and listed reasons the action impeded the Administration's ability to recruit and hire the best talent.

Councilmember Pico responded that the action codifies the practice and was produced in a collaborative manner while attempting to lay out a consistent process to follow.

Council Administrator Gonzalez stated she had e-mailed to Councilmembers a minor revision made to 7-3 (B) in the Exhibit to the Resolution.

Citizens Raven Martinez and Mark Slaugh spoke in support of the Resolution.

Motion by Knight, second by Pico, that the Resolution to include the amended language be approved.

Ayes: Bennett, King, Knight, Miller, Pico  
Noes: Collins, Gaebler, Martin, Snider  
Absent: None

The motion passed on a 5-4 vote.

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14. Council consideration of the Mayor's disapproval by veto of Ordinance No. 14-6 entitled: "An Ordinance amending Section 303 (Appoint to Acting Capacity) of Part 3 (Powers and Duties of the Mayor) of Article 2 (Officers of the City) of Chapter 1 (Administration, Personnel, and Finance) of the Code of the City of Colorado Springs 2001, as amended, pertaining to the confirmation process for Mayoral appointees."

Motion by Bennett, second by Martin, to postpone indefinitely. After further discussion, Councilmember Bennett, in agreement with Councilmember Martin, withdrew his motion.

Extensive discussion ensued between Council and Interim City Attorney Massey on issues relative to the Ordinance and the consideration of the Mayor's disapproval by veto of the Ordinance.

Motion by Miller, second by Pico, that the Mayor's veto of Ordinance No. 14-6 be over-ridden.

Ayes: Bennett, King, Knight, Miller, Pico  
Noes: Collins, Gaebler, Martin, Snider  
Absent: None

The motion failed on a 5-4 vote.

### NEW BUSINESS

#### 15. Marijuana Ordinances

- 15A. Ordinance No. 14-13 entitled: "An Ordinance amending Sections 301 (Definitions) and 302 (Facility Security Plans) of Part 3 (Facility Security) of Article 2 (City Properties) of Chapter 3 (Public Property and Public Works) and Section 108 (City Facility Security; Violation) of Part 1 (General Offenses) of Article 6 (Offenses Affecting Property) of Chapter 9 (Public Offenses) of the Code of the City of Colorado Springs 2001, as amended, pertaining to possession of marijuana at indoor city facilities, and providing penalties for the violation thereof" was introduced and read.

City Attorney – Corporate Division Chief Haley described the requests from Council relative to penalties that were incorporated in the revised versions presented. She stated there was additional minor format clean-up needed in the enforcement section to align with the Code as amended by Council last year.

Citizens Bob Wiley, Sara Griffin, Mark Slaugh, and Raven Martinez spoke against the Ordinance.

Motion by Bennett, second by Martin, that the Ordinance be passed as introduced.

Ayes: Bennett, Gaebler, King, Knight, Martin, Snider  
Noes: Collins, Miller, Pico  
Absent: None

## CITY COUNCIL MEETING – FEBRUARY 11, 2014

The motion passed on a 6-3 vote.

- 15B. Ordinance No. 14-14 entitled: "An Ordinance amending Sections 301 (Definitions) and 302 (Facility Security Plans) of Part 3 (Facility Security) of Article 2 (City Properties) of Chapter 3 (Public Property and Public Works) and Section 108 (City Facility Security; Violation) of Part 1 (General Offenses) of Article 6 (Offenses Affecting Property) of Chapter 9 (Public Offenses) and Section 104 (Right to Trial by Jury; Exceptions) of Part 1 (Trial by Jury) of Article 4 (Jury Provisions) of Chapter 11 (Municipal Court) of the Code of the City of Colorado Springs 2001, as amended, pertaining to possession of marijuana at the Colorado Springs Municipal Airport, and providing penalties for the violation thereof" was introduced and read.

Ms. Haley stated the Ordinance has been provided in response to the concern about interstate transport of what is still a federally controlled substance.

Councilmember Miller asked when the airport rule will be repealed. Ms. Neumann responded that she will work with Interim Airport Director Gallagher to address the issue.

Motion by Bennett, second by Martin, that the Ordinance be passed as introduced.

Ayes: Bennett, Gaebler, King, Knight, Martin, Miller, Pico, Snider  
Noes: Collins  
Absent: None

The motion passed on an 8-1 vote.

### PUBLIC HEARING

#### 16. Flying Horse Parcel Number 21 Convenience Store

- 16A. CPC CP 12-00085-A1MN13: (Quasi-Judicial Matter) Public hearing on an appeal by Flying Horse residents regarding the Planning Commission action of December 19, 2013 approving the Flying Horse Parcel No. 21 concept plan amendment that will add a right-in, right-out access to the site from North Gate Boulevard. The property is located at the northeast corner of Roller Coaster Road and North Gate Boulevard.
- 16B. CPC DP 13-00118: (Quasi-Judicial Matter) Public hearing on an appeal by Flying Horse residents regarding the Planning Commission action of December 19, 2013 approving the Flying Horse Convenience development plan that illustrates a 3,119 square-foot convenience store with a gas canopy, six gas islands and associated store parking. The property is located at the northeast corner of Roller Coaster Road and North Gate Boulevard.

Ms. Massey requested disclosure of any *ex parte* communications between Council and the applicant, appellant or any member of the public related to this matter. She reminded Council that regardless of prior statements they had heard, their job during this hearing is to listen to the evidence presented in a fair and impartial manner and

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apply the Review Criteria in order to make a decision on the two applications and the appeal.

All Councilmembers acknowledged they had heard citizens' comments, received e-mails, and letters relative to the matter.

Developer, Doug Stimple, objected to the *ex parte* communication by Bev Wenger and requested preservation of his objection for the record.

### **Staff Presentation:**

Meggan Herington, Senior Planner for Land Use Review, described background and underlying details of the appeal for the two items brought before Council today.

Kathleen Krager, Transportation Planning Manager, responded to traffic engineering questions from Council.

### **Appellant Presentation:**

Flying Horse Residents, Mark Henkle and Bev Wenger

### **Applicant Presentation:**

Greg Moran, Senior Development Director for MVG Development and Alicia Rhymer, Senior Real Estate Representative for 7-Eleven, Inc.

### **Appellants:**

Sarah Mersnick, Leslie Dukes, Judy Warren, Charles Warren, Linda LaFrenierre, and Mike Dukes spoke in support of the appeal.

### **Applicant:**

Doug Stimple spoke against the appeal.

### **Applicant's Rebuttal:**

Doug Stimple and Alicia Rhymer spoke to deny the appeal.

Motion by Snider, second by Martin, to deny the appeal and uphold the Planning Commission's decision to approve the Flying Horse Parcel Number 21 Minor Concept Plan Amendment as listed in the Planning Commission Record of Decision.

Ayes: Collins, Gaebler, King, Martin, Pico, Snider  
Noes: Knight, Miller  
Absent: Bennett

The motion passed on a 6-2-1 vote.

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Motion by Snider, second by Martin, to deny the appeal and uphold the Planning Commission's decision to approve the Flying Horse Number 21 Convenience Development Plan subject to compliance with the following conditions of approval and technical modifications as listed in the Planning Commission Record of Decision, plus one additional request that a stoplight is installed at Roller Coaster and North Gate prior to issuance of a Certificate of Occupancy.

Ayes: Collins, Gaebler, King, Martin, Miller, Pico, Snider  
Noes: Knight  
Absent: Bennett

The motion passed on a 7-1-1 vote.

17. **Added Item Agenda.**

There was no added item agenda scheduled.

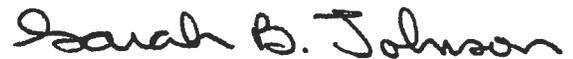
18. **Executive Session.**

There was no Executive Session scheduled.

19. **Adjourn.**

At 5:43 p.m., there being no further business to come before City Council,

COUNCIL ADJOURNED



Sarah B. Johnson  
City Clerk

COLORADO SPRINGS, COLORADO  
COUNCIL CHAMBERS  
CITY HALL, 3<sup>RD</sup> FLOOR  
107 N. NEVADA AVENUE  
FEBRUARY 3, 2014 – 2:00 P.M.

Council met in **Special Session**.

There were present: President King, President Pro Tem Bennett, Councilmembers Collins, Gaebler, Knight, Martin, Miller, Pico, and Snider.

1. **Call to Order.**

City Clerk Johnson called the roll. Nine Councilmembers were present.

2. **Consideration and Possible Adoption of a Resolution pertaining to City Council's priorities regarding the *City for Champions* projects.**

The discussion points of the Special Meeting examined the options, and Council's viewpoints for how the *City for Champions* should move forward. Several members stated a vote of the people would be the preference when seeking additional funding for the projects.

Several Councilmembers indicated they would like to see a joint effort and review to include the County prior to any resolution being drafted. County Commissioner Hisey stated that the Commissioners are in the process of having a third party analysis on the *City for Champions* project and invited City Council to be included.

Councilmember Miller stated he is working on proposed ballot language for *City for Champions*.

Councilmember questions for the City Attorneys' Office included:

- A legal opinion on whether the project would be considered a convention center as defined in the City Charter;
- A legal opinion on Council's Boards and Commissions authority as it relates to *City for Champions*;
- Whether Council would have the authority to sign the IGA when the time came;
- What happens if the URA defaults on any bond issues, does it hurt the city's ratings; and,
- Clarify the use of moral obligation bonds.

3. **Adjourn.**

There being no further business, at 3:51 p.m. Council President King announced,

COUNCIL ADJOURNED



Sarah B. Johnson, City Clerk



CITY OF COLORADO SPRINGS

REGULAR MEETING AGENDA ITEM  
CONSENT

REGULAR MEETING DATE: February 25, 2014

TO: President Keith King and Members of City Council

FROM: Samantha Gunther, Assistant to Council

Subject Title: Appointments to Boards and Commissions

**COLORADO SPRINGS HEALTH FOUNDATION (CSHF)**

Trustees David Lord, Zachary McComsey and BJ Scott have served a one-year term on the Colorado Springs Health Foundation. Initial terms for CSHF Trustees were staggered. These Trustees request reappointment to an additional term of three years with the full support of the Foundation, and with the approval of City Council.

	<u>Appointment</u>	<u>Expiration</u>
David Lord – reappointment	03/12/13	03/12/17
Zachary McComsey – reappointment	03/12/13	03/12/17
BJ Scott – reappointment	03/12/13	03/12/17

**E 9-1-1 Authority Board**

Chief Michael Dalton completed his first term on the E 9-1-1 Authority Board and would like to be reappointed to another three-year term. Board members are allowed to serve a total of two three-year terms. James M. Anderson, CEO, of El Paso – Teller Enhanced 9-1-1 Authority is making the recommendation upon City Council’s approval.

	<u>Appointed</u>	<u>Expiration</u>
Chief Mike Dalton, reappointment	2/25/14	2/25/17

**Human Relations Commission**

Anja Wynne had completed her first term on the Human Relations Commission serving as Vice Chair. She would like to be reappointed to serve another three-year term, with the full support of the board

	<u>Appointed</u>	<u>Expiration</u>
Anja Wynne, reappointment	2/25/14	3/8/17

**Initiative Review Committee**

Tay Jeffords completed his first term on the Initiative Review Committee and would like to serve another three-year term. The City Clerk's office is making the recommendation, with the approval of City Council.

Tay Jeffords, reappointment	<u>Appointed</u> 2/15/14	<u>Expiration</u> 2/23/17
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**Old Colorado City Security and Maintenance District Advisory Board**

John Georgeson has completed his second three-year term on the Old Colorado City Security and Maintenance District Advisory Board and would like to serve another three-year term, with the full support of the board.

John Georgeson, reappointment	<u>Appointed</u> 2/25/14	<u>Expiration</u> 11/21/17
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**Regular Agenda Item**

**Council Meeting Date: February 25, 2014**

**To:** President and Members of City Council

**cc:** Mayor Steve Bach

**Via:** Laura Neumann, Chief of Staff/Chief Administrative Officer

**From:** Karen Palus, Director, Parks, Recreation and Cultural Services

**Subject Title: A RESOLUTION SUPPORTING A PATHS TO PARKS TRAIL GRANT APPLICATION TO GREAT OUTDOORS COLORADO FOR THE LEGACY LOOP TRAIL AND PARK DEVELOPMENT PROJECT**

**Summary:** The Legacy Loop Project is a grant-supported trail and park development project focused on expanding access to outdoor recreation, increasing trail connectivity, and improving park amenities for Colorado Springs' youth and families. This project will improve the safety and multi-use functionality of the Pikes Peak Greenway, create a regionally significant east-west trail connection along the Rock Island trail corridor, and expand park offerings within historic Monument Valley Park. With 155,230 trail users counted on the Pike Peak Greenway at Mesa Road since August 2013, the Legacy Loop project will support downtown revitalization efforts by enhancing one of the most popular recreational amenities in the Pikes Peak Region.

The Legacy Loop Project is inspired by William Jackson Palmer's bold vision of a vibrant, livable city where the essential functions of mobility and access are linked to the restorative and recreational power of parks, open space, and trails. The Legacy Loop project is supported by the Parks Master Plan, the Monument Valley Master Plan, and organizations as diverse as the Greenway Foundation, Kids on Bikes, and the Friends of Monument Valley Park.

This Resolution of Support is for a \$1,000,000 dollar grant application to Great Outdoors Colorado (GOCO). These grant dollars represent one of GOCO's largest recreation grants to date and are essential to completing the Legacy Loop Project. Additional project funds are expected to come from the Greenway Foundation, the TOPS tax, the Conservation Trust Fund, and private donations.

**Previous Council Action:** None.

**Background:** The Legacy Loop Trail and Park Development Project has been referred to in the past as the Emerald Loop or Emerald Necklace. Drawing comparisons to Fredrick Law Olmstead's Boston linear park system, the Legacy Loop plan for a trail and park network looping around Colorado Springs' downtown core is a vision that has been advocated for by the community for many years. This phase of the Legacy Loop Project will build on the existing Pikes Peak Greenway, Shook's Run Trail, and portions of the Rock Island Trail to help create a more accessible, functional, and safer trail and park system in Colorado Springs. By extending the Rock Island Trail and enhancing the Pikes Peak Greenway Trail corridor, the Legacy Loop Project will bring the City much closer to completing the long-sought Legacy Loop Trail.

The Parks, Recreation and Cultural Services Department has a strong history of using grant dollars to help fund projects important to the citizens of Colorado Springs. In 2013 alone the Parks Department received \$2,081,500 dollars in grants from Great Outdoors Colorado for park, trail, and open space projects in our community. This \$1,000,000 grant request for the Legacy Loop Project represents an opportunity to greatly leverage Parks Department funds through GOCO grants and private donations.

**Financial Implications:** This phase of the Legacy Loop Park and Trail Development Project has an estimated cost of approximately \$4,000,000. One million dollars of that cost is expected to come from Great Outdoors Colorado. Private funds and other donations are expected to contribute \$350,000. A future State Trails grant request will contribute another \$350,000. The remaining \$2,300,000 for this project will come from a combination of TOPS, CTF and other Parks Department trails dollars. It is expected that no general funds will be required for this project.

**Board/Commission Recommendation:** None.

**Stakeholder Process:** The Legacy Loop Project has been a focus of multiple high-profile public/stakeholder planning processes over the last several years. These public planning efforts include an Urban Land Institute study for downtown, the Monument Valley Park Master Plan, Imagine Downtown, the Colorado Springs Bicycle Master Plan, the Pikes Peak Regional Transportation Master Plan, the Parks Master Plan, and the Colorado College Visioning Plan. These public planning efforts have confirmed the strong public desire for this project.

**Alternative:** Deny the Resolution of Support for the Great Outdoors Colorado 'Paths to Parks' grant application. Doing so will eliminate a potential \$1,000,000 dollars in funding for the Legacy Loop Project, effectively ending the project.

**Recommendation:** Pass the Resolution of Support.

**Proposed Motion:** Move to approve the resolution supporting a Paths to Parks Trail Grant application to Great Outdoors Colorado for the Legacy Loop Trail and Park Development Project.

**Attachments:**

- Legacy Loop Project Map
- Legacy Loop Project Brief
- A resolution supporting a Paths to Parks Trail Grant application to Great Outdoors Colorado for the Legacy Loop Trail and Park Development Project.

**A RESOLUTION SUPPORTING A PATHS TO PARKS TRAIL GRANT  
APPLICATION TO GREAT OUTDOORS COLORADO FOR THE LEGACY  
LOOP TRAIL AND PARK DEVELOPMENT PROJECT**

WHEREAS, Great Outdoors Colorado ("GOCO") is soliciting grant applications to assist local governments with acquiring, expanding and improving local parks, trails, outdoor recreation and environmental education; and

WHEREAS, the City of Colorado Springs ("City") is requesting funding from GOCO to develop and enhance the Legacy Loop Trail ("Project") for public use; and

WHEREAS, it is unlikely that the development and enhancement of the Legacy Loop Trail would be possible without GOCO financial assistance; and

WHEREAS, the City Council finds that it is in the best interest of the citizens of Colorado Springs and the Pikes Peak region to apply for a Paths to Parks construction grant for the Legacy Loop Trail; and

WHEREAS, GOCO requires that the City Council state its support for the project grant application.

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

Section 1 That City Council strongly supports the application to GOCO for the development and enhancement of the Legacy Loop Trail.

Section 2 That the Mayor of the City of Colorado Springs, or his designee, is hereby authorized to prepare and submit the grant application to GOCO requesting funding for this project.

Section 3 That the City Council acknowledges that the grant application includes matching funds which the City of Colorado Springs shall be responsible to provide if a grant is awarded.

Section 4 That the City Council will appropriate those matching funds and authorize the expenditure of funds necessary to meet the terms and obligations of any Grant awarded by GOCO and accepted by the City.

Section 5 That the Project site is owned by three separate entities and through the execution of an IGA, and through the acquisition of trail corridor land, is and will be wholly managed by the City of Colorado Springs.

Section 6 That the City of Colorado Springs is committed to the long-term maintenance of the Project consistent with the Monument Valley Park Master Plan and Regional Bicycle Master Plan, subject to appropriation of funds by the City.

Section 7 That if this grant is awarded, the City Council hereby authorizes the Director of the Parks, Recreation and Cultural Services Department to sign necessary grant agreements with Great Outdoors Colorado and accept the grant funds.

Section 8 This resolution shall be in full force and effect immediately upon its adoption.

Dated at Colorado Springs, Colorado, this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Keith King, Council President

ATTEST:

\_\_\_\_\_  
Sarah B. Johnson, City Clerk

## Colorado Springs Legacy Loop 'Paths to Parks' Trail and Park Development Proposal

### 1) Briefly describe the project. Describe the larger trail and park network this project is a part of. Describe how this project contributes to local, regional, and statewide trail opportunities.

In 1871 William Jackson Palmer founded Colorado Springs with a bold and far-sighted vision for a city that was singularly inspiring and eminently livable. Nestled at the base of Pikes Peak, amongst sunny plains and towering mountains, General Palmer believed that the natural environment was the most important asset in creating the uplifting family-friendly city of his dreams. Parks, trails, natural areas and the means to access these treasures were the central organizing themes in the design of Palmer's new city. From the bequeath of numerous parkway thoroughfares, Acacia Park, Palmer Park Open Space, North Cheyenne Canon, and Monument Valley Park, General Palmer's legacy has left a powerful imprint of nature on the Colorado Springs of today. His legacy helped to forge a city where the essential functions of mobility and access were linked to restorative and recreational power of parks and open space to create a city that is much-loved by its citizens and was recently ranked number one in *Outside Magazine's* list of Best American Cities.

The Legacy Loop Project is a multi-phase project that aims to build on the legacy of General Palmer by creating a cohesive multiuse trail loop that will improve connectivity, increase accessibility, promote safety, increase recreation, support alternative modes of transportation, and create lasting new recreational opportunities. The Legacy Loop is both a continuation of Palmer's dreams and the creation of a new vision for connectivity and access to those park, recreation, and natural areas that are so integral to the character of Colorado Springs.

The larger Legacy Loop Project (see Context Map) is an exciting, large scale project that will add multiple new trails to complete a green ring of parks and trails around downtown Colorado Springs. This concept paper focuses specifically on Phase 1 of the larger project (see Phase 1 Map). The Legacy Loop Project (Phase 1) has three primary objectives. First the project will **leverage existing park and trail assets** by improving the functionality and connectivity of the Pikes Peak Greenway Trail as it runs through Monument Valley Park in the heart of Colorado Springs. The Pikes Peak Greenway is a multiuse trail is part of the statewide Front Range Trail, a trail with regional and Colorado-wide significance. These improvements will include a new Uintah St underpass, widening and improving a critical portion of the Greenway, two new trail underpasses at Mesa Rd, and a new 100' bridge crossing at Mesa creek. These improvements will significantly improve connectivity for youth and families, cyclists and pedestrians to Monument Creek, Colorado College, downtown Colorado Springs, Monument valley Park, the Pikes Peak Greenway trail and Gossage Youth Sports Complex.

The second major goal of the Legacy Loop project is to **create a regionally significant trail connection** through the acquisition and construction of the long sought-after Rock Island trail spur. The Rock Island Trail is an existing east-west multiuse trail that begins in eastern Colorado Springs and terminates short of the Pikes Peak Greenway. This trail has been recognized nationally by Hilary Clinton as part of the coast to coast Millennium Trail. Acquiring the 'missing gap' and connecting the existing Rock Island trail with the Greenway has been a goal of the City for 20 years. With fruitful right-of-way negotiations underway, the recreational opportunities presented by constructing the remaining 1.25 miles of Rock Island trail and connecting over 25,000 residents along the proposed trail with Monument Valley Park, the Pike Peak Greenway, and downtown Colorado Springs are extraordinarily significant.

The final major goal of this project is to **create new and lasting recreational opportunities** for the citizens of Colorado Springs. This proposal recognizes that the goal of any successful trail project should not simply be to move people from point 'A' to point 'B'. Instead this project sees improved trail connections as an opportunity to build new recreational opportunities, create enticing destinations, and create moments of interest that foster exploration, encourage recreation, and provide access to nature in

ways not previously possible. In this vein, this project will create a new park at the southern end of Monument Valley Park (Michelson Property on map). This park will serve as downtown Colorado Springs' front door as it connects to Monument Creek, the regional multiuse trail network and the west side of town. Additionally, the Legacy Loop project will upgrade an existing obsolete playground in Monument Valley Park with ADA accessible play equipment to encourage recreation. Finally, the project will build a new trailhead, parking lot and event space at Fontanero St and the Pikes Peak Greenway. This trailhead, along with the various trail improvements previously described, will allow for the creation of a 10k Emerald Loop running and biking course. This loop will provide many exciting opportunities for races, fun runs, and community events that will benefit youth and families in our region.

By leveraging the potential of existing trails and parks, building the long-sought Rock Island trail connection, creating a new park and recreational opportunities, this project will significantly improve access, connectivity, and recreational possibilities for citizens of the Pikes Peak region. Youth and families will benefit from a Legacy Loop Trail that is safer, easier to use, more connected to regional trail and park amenities, and that creates a strong foundation for improved access to nature and increased recreational opportunities. In doing so, the Legacy Loop project builds on General Palmer's vision for a livable, thriving city built on the twin pillars of accessibility and the integration of nature into daily life. For additional project details please see the attached maps.

**2) Briefly describe how the project will increase access to existing recreational, open space, and/or environmental opportunities for youth and families. Describe the connections this project will provide between neighborhoods, schools, outdoor recreational areas, natural areas, etc. Why are these connections needed in your community?**

By designing a multi-faceted project scope, the Legacy Loop Trail and Park Development project will significantly improve access to park, trail, and natural areas for multiple user groups. And by improving park and trail amenities within the project area, this proposal moves from simply being a trail building exercise to being a project that creates a comprehensive plan for increasing recreation, improving multimodal transportation, expanding connectivity, and increasing access to nature for Colorado Springs' youth and families.

Monument Valley Park (MVP) is located in the heart of downtown Colorado Springs adjacent to Colorado College and many residential neighborhoods. MVP is home to a public swimming pool complex, a baseball field, multiple tennis courts, beautiful duck ponds, mature cottonwood trees, a demonstration herb and flower garden, and 7.5 miles of existing trails. Within the Monument Valley Park focus area, Legacy Loop Project improvements such as a new trailhead, three new underpasses under busy cross streets, a new park, and widened and paved trails will make recreating in the park and near Monument Creek easier, safer, and more enticing for youth and families. The trail and park improvements within this project will leverage the existing recreational assets of Monument Valley Park by making them more accessible to youth and families and more integrated into the larger fabric of Colorado Springs.

Through the acquisition and construction of the final 1.25 miles of the Rock Island Trail, the Legacy Loop project will provide direct trail connections for Mann Middle School, Wasson High School, and Jefferson Elementary School with the Pikes Peak Greenway and the broader Colorado Springs multiuse trail network. Students and families living in nearby neighborhoods will also see dramatically improved connections to Monument Valley Park, Gossage Youth Sports Complex, Bonforte Park, Patty Jewett Golf Course, America the Beautiful Park (including the new GOCO-funded Environmental Playground), downtown Colorado Springs, and the Monument Creek waterway. Within these many destinations, diverse opportunities for play, exploration, and environmental education abound.

The trail connections and recreation opportunities provided by the Legacy Loop project are significant to the community Colorado Springs on several levels. First, in an age of increasing childhood obesity and a growing recognition of the dangers of 'Nature-Deficit Disorder', fun, safe, and accessible recreational opportunities are seen as one of the most critical factors in the health of our youth. Secondly, by strengthening existing parks and trails and building new parks and trail connections, this project builds the

work of previous generations to develop compelling recreation facilities for families in Colorado Springs. The Legacy Loop project will utilize these existing assets to achieve the maximum recreational value for our citizens at a relatively modest cost to our community. The power of leverage creates a compelling opportunity and speaks to the imperative community need for the Legacy Loop Project.

**3) Estimate the number of users who will benefit from the project. How will the project provide opportunities for underserved populations?**

The Legacy Loop project is rooted in the belief by the Parks Department that easy and abundant access to recreation within Colorado Springs should be universal across every user group. Across all age, income, race, and user types, our goal is to provide top quality recreational amenities to all of our citizens. In fact, a 2013 study by the Trust for Public Land found that on the basis of geographic distribution of parks facilities and ease of recreation access, Colorado Springs ranks 14<sup>th</sup> in the nation. The Legacy Loop project is intended to build on this strong tradition by creating a trail and park system that will improve access, add connectivity, and increase usership among youth, families, and citizens from all backgrounds.

While it may be difficult to fully predict the number of users who will benefit from this project, three points are clear. First, there are 25,861 people living within a half-mile radius of the Legacy Loop project. These community members will benefit greatly from improved access to the wonderful parks and trails in their backyard. Second, we know from a trail counter installed in mid Monument Valley Park that an average of 1,105 people use just the west side spur of the Pikes Peak Greenway each day. Since it's installation on July 17<sup>th</sup> through September 9<sup>th</sup> the counter has recorded 60,771 users-- an anticipated annual user count of over 375,000 people! This high volume reflects the importance as well as the potential of the Legacy Loop for our community.

The final point we know about this project is that the impact of the Legacy Loop will stretch far beyond the current users or the many families living within a half mile of the project. By increasing accessibility, building a critical new east-west trail connection, and adding new park facilities, the Legacy Loop will draw park users from across our region. Cycling will increase, running and walking options will grow, and races and other special events will flourish. The project is located in the heart of Colorado Springs, near schools, neighborhoods, parks, businesses, and cultural institutions (see context map). The social, economic, and recreational impact of a Legacy Loop Project that brings families to nature and parks and trails to the city is immeasurable.

**4) Briefly describe the project's urgency. Why now and what opportunities are lost if the grant isn't awarded?**

The Legacy Loop Trail and Park project represents one of the most timely and urgent recreation projects in all of Colorado Springs. The opportunity to build on General Palmer's legacy of an interconnected series of family-friendly parks and trails is great, but the time to do so may be quite limited. There are three primary reasons this urgency exists; the short-term availability of matching funds, the once in a generation opportunity to purchase the missing Rock Island trail corridor from Union Pacific Railroad, and the great momentum in the community for this project.

Matching funds for this project have been identified from multiple sources. The TOPS sales tax, PPRTA transportation funds, funds from the Greenway Foundation, and a donation from a private property owner will all be used for this project. In each case the money is earmarked for improvements throughout the Legacy Project area. These dollars must be spent in the next three years. However, these funds alone are not enough to complete the Legacy Loop. The support of GOCO is therefore essential for this project to become a reality. This project presents a great opportunity to leverage funds and achieve massive improvements in connectivity and access for Colorado Springs families, but it is an opportunity that may not come again.

The Rock Island corridor acquisition is another rare opportunity that may soon disappear. For nearly 20 years this segment of trail has been identified as a highest priority acquisition for the City. During those 20 years the railroad has been implacable in their unwillingness to sell the 1.25-mile corridor. This has

changed in the last several months. Fruitful discussions are underway and the City has the opportunity to purchase the important trail connection. It is unknown if this opportunity will last and there is a very real risk that the railroad will have a change of mind, eliminating the possibility of this critical east-west trail connection.

Finally there is a huge amount of momentum behind this project throughout the community. Cycling advocates, running organizations, members of the Downtown Partnership, leadership in City government, neighborhood associations, local media, and the Greenway Fund are all extremely excited about this project. As GOCO well knows, the impact of momentum and the power of broad public support are extremely critical elements in the success of a project. Our hope is to build on this wave of momentum to further project fundraising and to ultimately create a successful project that will have lasting impacts for youth and families in our region.

**5) Is the project part of a public planning process? If so describe. Has there been any opposition to the project and if so what has been done to address it?**

The Legacy Loop Project has been a focus of multiple high-profile public planning processes in our community. These studies and public planning efforts have consistently identified the potential of the Legacy Loop to improve connectivity and access, increase safety and promote recreation. These public planning efforts include an Urban Land Institute study for downtown, the Monument Valley Park Master Plan, the current Colorado Springs Bicycle Master Plan, Pikes Peak Regional Transportation Master Plan, Imagine Downtown, and the Colorado College Visioning Plan. Each of these various plans was based on community input and expert recommendations and all have supported the Legacy Loop Project concept. Additionally the Parks Department is currently engaged in creating a new Parks Master Plan and a Regional Bicycle Plan. These public planning efforts will be completed in the next 6-12 months and are anticipated to provide further opportunities for public input on the project.

Across all these various public planning efforts, the Parks Department knows of no opposition to this project. Rather, it seems there is almost universal enthusiasm for the concept of improving trails, completing the Rock Island trail corridor, creating and enhancing parks and fulfilling the Legacy Loop Project vision.

**6) Who has committed to partnering (financially or otherwise) on this project? Who else do you anticipate will be a partner?**

The Parks Department believes one of the best ways to determine the potential of a project is to look at the support that project has throughout the community. It is often the case that the broader and more diverse the base of support for a project, the greater the likelihood that project will be successful. The number and variety of partners stepping up to support this project has been overwhelming and it, perhaps, speaks to the power of connecting community to parks.

Key project supporters include the Greenway Fund, the Downtown Partnership, the Pikes Peak Community Foundation, Colorado Springs Utilities, and an anonymous donor, Colorado College, Kids on Bikes, Livewell Colorado, Friends of Monument Valley Park, the Pikes Peak Roadrunners Association, the Old North End Neighborhood Association, the Mid Shooks Run Neighborhood, and the Colorado Springs Young Professionals.

Many of these partners have supported the project financially. But perhaps more importantly, these partners represent the good will, broad support, and determination of the community to see the Legacy Loop Project through to completion. Moving forward we will continue to reach out to partners for support in raising additional funds for the project as well as spreading awareness so that the Legacy Loop project will be as successful as possible.

**7) Budget:**

**A) What is the estimated project cost?**

Total project cost including 15% contingency is \$4,120,000

**B) What is the estimated GOCO request?**

\$1,000,000

**C) How much cash match from all sources is currently secured? How much is left, and what is the timeline for securing outstanding funds?**

\$2,465,000 is committed from two voter approved, dedicated funding sources- TOPS and PPRTA. Of the remaining \$1,655,000 required, \$1,000,000 is requested from GOCO, \$250,000 is anticipated from the Greenway Fund and \$100,000 is anticipated from a private donor. This leaves a remainder of \$305,000 yet to be secured. It is anticipated that a combination of a State Trail Grant request, potential contributions by the Downtown Partnership, and a public giving campaign will cover the remainder over the course of the next year. If these efforts are not successful, further TOPS and PPRTA may be used to cover the remaining costs. The final alternative would be to reduce the scope of the project to meet our funding capabilities.

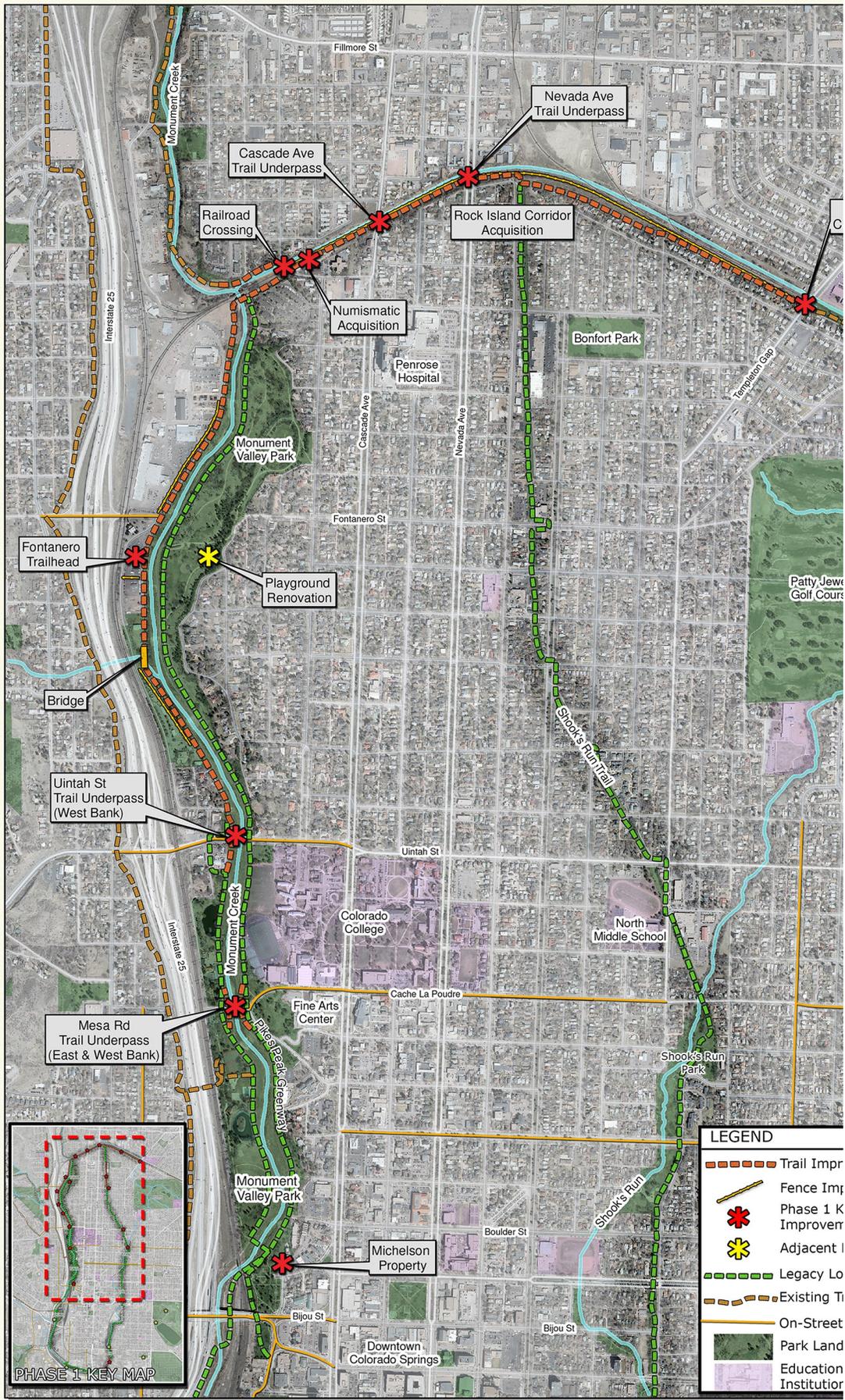
**D) In-kind/Land Donations: Estimate the value of in-kind contributions:**

Further in-kind donations are beginning to be explored with partners and this may be a potential source for significant cost savings in this project.

**General Palmer's Legacy:**

*General Palmer's plan for a park system was bold, far-sighted and comprehensive. He sought to make practical and effective use of every advantage which the position of the City gave it: its open air and sunshine, mountains, and plains; to surround the city with near-by parks, mountain driveways, woodland paths, and trails; to furnish places for healthful out-door exercise, and quiet, restful enjoyment; thus capitalizing, for us these natural resources, otherwise practically unavailable to our people except to the most limited and crude extent.*

Report of the Parks Commission, Colorado Springs, CO , 1908, p. 13.

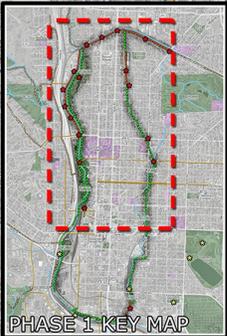


COLORADO SPRINGS

LEGACY LOOP

**LEGEND**

- Trail Impr
- Fence Imp
- Phase 1 K Improv
- Adjacent I
- Legacy Lo
- Existing Tr
- On-Street
- Park Land
- Education Institution





Colorado Springs Utilities  
It's how we're all connected

**MEETING DATE:** February 25, 2014  
**TO:** President and Members of City Council  
**FROM:** Jerry Forte, P.E., Chief Executive Officer  
**RE:** **A RESOLUTION SETTING THE ELECTRIC COST ADJUSTMENT EFFECTIVE MARCH 1, 2014**

**UTILITIES' STRATEGIC GOAL(S) THIS ITEM SUPPORTS:** F1 - Ensure sufficient revenue to meet service and financial requirements, F2 – Keep rates competitive

**SUMMARY:** Colorado Springs Utilities is requesting a change to its Electric Cost Adjustment (ECA) rate. The current ECA credit of \$(0.0010) per kWh was implemented January 1, 2013. Current revenue and cost projections indicate that without a rate adjustment Colorado Springs Utilities could accumulate a under-collected balance of \$11.4 million at the end of fiscal year 2014. To maintain financial stability and moderate price changes for customers, Colorado Springs Utilities recommends an ECA rate change from the current credit of \$(0.0010) per kWh to a proposed rate of \$0.0013 per kWh effective March 1, 2014.

**PREVIOUS COUNCIL ACTION:** On November 27, 2012, by Resolution No. 159-12, City Council resolved to set the ECA at the current rate of \$(0.0010) per kWh effective January 1, 2013.

**BACKGROUND:** Colorado Springs Utilities sought approval for the current ECA rate at the November 27, 2012 City Council meeting. The ECA rate has remained at the approved level since January 1, 2013. Natural gas prices have risen in recent months and current forecast show this trend continuing in the near future requiring an increase in the ECA rate. Projections indicate that without an ECA adjustment the collected balance will be under-collected \$11.4 million by the end of fiscal year 2014. Colorado Springs Utilities staff continues to provide regular updates to the Utilities Board on the collected balance, and will recommend timely changes to the ECA rate as is deemed appropriate.

Colorado Springs Utilities has performed the ECA calculation in conformance with the language in the ECA tariff.

**FINANCIAL IMPLICATIONS:** Implementing the proposed ECA rate will impact the respective customer's bill as follows:

Monthly Electric bill:

Typical residential bill at 600 kWh	=	\$1.38 or 2.0%
Typical commercial bill at 6,000 kWh	=	\$13.80 or 2.8%
Typical industrial bill at 400,000 kWh	=	\$920.00 or 3.0%

**ALTERNATIVES:** Keep the current ECA rate and under-collect electric fuel and purchased power costs.

**BOARD/COMMISSION RECOMMENDATION:** N/A

**STAKEHOLDER PROCESS:** N/A

**RECOMMENDATIONS:** Colorado Springs Utilities recommends the adoption of the attached Resolution.

**PROPOSED MOTION:** Move adoption of the proposed Resolution.

c: Officer Team



# OFFICE OF THE CITY AUDITOR COLORADO SPRINGS, COLORADO

## 14-02 Gas and Electric Cost Adjustment

February 2014

### **Purpose**

The purpose of this audit was to evaluate whether Colorado Springs Utilities prepared the Gas Cost Adjustment (GCA) and the Electric Cost Adjustment (ECA) in accordance with the approved tariffs. The methodology was compared to prior filings for consistency, and calculations were tested for accuracy.

### **Recommendations**

No formal recommendations were made.

### **Summary**

Based on our review of the calculations and related background information, we conclude that the GCA and the ECA were calculated in accordance with the approved tariff.

### **GCA**

- The last GCA adjustment was effective December 1, 2013, resulting in a refund of (\$.1850) per unit
- The over-collected balance at January 31, 2014, was \$2.7 million. Colorado Springs Utilities proposes in this filing to decrease the refund rate from (\$.1850) to (\$.1566) per unit effective March 1, 2014.

### **ECA**

- The last ECA adjustment was effective January 1, 2013 resulting in a refund of (\$.0010) per unit
- The under-collected balance at January 31, 2014, was \$2.9 million. Colorado Springs Utilities proposes in this filing to change the rate from a refund of (\$.0010) to a charge of \$.0013 per unit effective March 1, 2014.

When we compared methodology for consistency, we noted that the assumptions related to revenue were changed to appropriately reflect ELG customers paying a lower fuel amount than other ECA customers. This model correction reduces revenue by approximately \$1 million annually starting in January 2014. I support this change.

Respectfully submitted,

Denny L. Nester, MSM, PCA, CIA, CGFM, CGAP, CFE  
City Auditor

### **Management Response**

No responses were requested from Colorado Springs Utilities

# CITY COUNCIL'S OFFICE OF THE CITY AUDITOR

## **About our Office**

The mission of the Office of the City Auditor is to provide City Council with an independent, objective and comprehensive auditing program for operations of the City. Our auditing program includes:

- Evaluating the adequacy of financial controls, records and operations
- Evaluating the effectiveness and efficiency of organizational operations
- Providing Council, management and employees objective analysis, appraisals, and recommendations for improving systems and activities

The Office of the City Auditor is responsible for auditing the systems used by the City of Colorado Springs and its enterprises, including Colorado Springs Utilities. We perform a variety of audits for these entities, including financial audits, performance audits, contract audits, construction audits, and information system audits. We also perform follow-up on a periodic basis to monitor and ensure management actions have been effectively implemented.

## **Authorization and Organizational Placement**

Our audits are conducted under the authority of Chapter 1, Article 2, Part 7 of the Colorado Springs City Code, and more specifically parts 703, 705 and 706 of the Code. The Office of the City Auditor is structured in a manner to provide organizational independence from the entities it audits. This independence is accomplished by the City Auditor being appointed by and reporting directly to the City Council.

## **Audit Standards**

The audit was conducted in a manner that conforms with the International Standards for the Professional Practice of Internal Auditing, a part of the Professional Practices Framework promulgated by the Institute of Internal Auditors.

The audit included interviews with appropriate personnel and such tests of records and other supporting documentation as deemed necessary in the circumstances. We reviewed the internal control structure and compliance tests. Sufficient competent evidential matter was gathered to support our conclusions.

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION SETTING THE ELECTRIC COST  
ADJUSTMENT EFFECTIVE MARCH 1, 2014**

WHEREAS, through Resolution No. 260-04, dated November 23, 2004, City Council directed that the Electric Cost Adjustment could be determined as frequently as monthly to levelize revenue recovery and minimize the fluctuations associated with less frequent adjustments during periods of price volatility; and

WHEREAS, through Resolution No. 159-12, City Council set the current Electric Cost Adjustment effective November 27, 2012; and

WHEREAS, Colorado Springs Utilities has prepared projections of costs and revenues showing that without a change in the current Electric Cost Adjustment rate electric service costs will be under-collected as of February 28, 2014; and

WHEREAS, Colorado Springs Utilities has shown that an Electric Cost Adjustment rate of \$0.0013/kWh represents the current state of electric system revenue needs; and

WHEREAS, the proposed Electric Cost Adjustment rate shall be effective March 1, 2014.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF  
COLORADO SPRINGS:**

Section 1. That Colorado Springs Utilities Tariff, City Council Volume No. 5, Electric Rate Schedules shall be revised as follows:

Effective March 1, 2014

City Council Vol. No. 5 Sheet No.	Title	Cancels Sheet No.
Ninth Revised Sheet No. 31	Electric Cost Adjustment	Eighth Revised Sheet No. 31

Section 2. The Electric Cost Adjustment rate and the effective date shall be published in the legal section of a newspaper of general circulation in Colorado Springs Utilities' service area within ten (10) days following the date of the passage of this Resolution.

Section 3. The attached tariff sheet is hereby approved and adopted effective March 1, 2014 and shall remain in effect unless changed by subsequent Resolution of the City Council.

Dated at Colorado Springs, Colorado this 25th day of February, 2014.

\_\_\_\_\_  
Keith King, Council President

ATTEST:

\_\_\_\_\_  
Sarah Johnson, City Clerk



**ELECTRIC RATE SCHEDULES**

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**ELECTRIC COST ADJUSTMENT - ECA**

**APPLICABILITY**

Applicable to all rate schedules that are subject to an Electric Cost Adjustment (ECA).

**ELECTRIC COST ADJUSTMENT**

The ECA will be computed, as follows:

The sum of:

- a) the projected cost of purchased power and generation fuel less capacity costs for the future recovery period, divided by
- b) the projected retail kWh sales subject to the ECA for the same period used in a) above.

Plus:

- c) the cumulative under- or over-recovery of purchased power and generation fuel costs less capacity costs used to serve Customers subject to the ECA plus an amount determined by Utilities as a future designated cumulative under- or over-recovery of purchased power and generation fuel costs that coincides with the period determined in d) below, divided by
- d) projected retail kWh sales, subject to the ECA for a period to be determined by Utilities.

Minus:

- e) the base cost of purchased power and generation fuel in the current retail electric rates.

Customers switching to a sales rate subject to the ECA from a non-ECA rate schedule will utilize an ECA calculated only using parts a), b) and e). Similarly, Customers switching to a non-ECA rate from an electric sales rate that was subject to the ECA will pay, or have refunded, amounts represented in part c) above.

**RATE**

**Electric Cost Adjustment Charge (ECA)**

All Per kWh.....\$0.0013

Approval Date: February 25, 2014  
Effective Date: March 1, 2014  
Resolution No. \_\_\_\_\_



**ELECTRIC RATE SCHEDULES**  
**ELECTRIC COST ADJUSTMENT - ECA**

**APPLICABILITY**

Applicable to all rate schedules that are subject to an Electric Cost Adjustment (ECA).

**ELECTRIC COST ADJUSTMENT**

The ECA will be computed, as follows:

The sum of:

- a) the projected cost of purchased power and generation fuel less capacity costs for the future recovery period, divided by
  - b) the projected retail kWh sales subject to the ECA for the same period used in a) above.
- Plus:
- c) the cumulative under- or over-recovery of purchased power and generation fuel costs less capacity costs used to serve Customers subject to the ECA plus an amount determined by Utilities as a future designated cumulative under- or over-recovery of purchased power and generation fuel costs that coincides with the period determined in d) below, divided by
  - d) projected retail kWh sales, subject to the ECA for a period to be determined by Utilities.

Minus:

- e) the base cost of purchased power and generation fuel in the current retail electric rates.

Customers switching to a sales rate subject to the ECA from a non-ECA rate schedule will utilize an ECA calculated only using parts a), b) and e). Similarly, Customers switching to a non-ECA rate from an electric sales rate that was subject to the ECA will pay, or have refunded, amounts represented in part c) above.

**RATE**

**Electric Cost Adjustment Charge (ECA)**

All Per kWh.....~~(\$0.0010)~~\$0.0013

Approval Date: ~~November 27, 2012~~February 25, 2014

Effective Date: ~~January 1, 2013~~March 1, 2014

Resolution No. ~~159-12~~\_\_\_\_\_



# Colorado Springs Utilities

*It's how we're all connected*

**MEETING DATE:** February 25, 2014

**TO:** President and Members of City Council

**FROM:** Jerry Forte, P.E., Chief Executive Officer 

**RE:** **A RESOLUTION SETTING THE GAS COST ADJUSTMENT EFFECTIVE MARCH 1, 2014**

**UTILITIES' STRATEGIC GOAL(S) THIS ITEM SUPPORTS:** F1 - Ensure sufficient revenue to meet service and financial requirements, F2 – Keep rates competitive

**SUMMARY:** Colorado Springs Utilities is requesting a change to its Gas Cost Adjustment (GCA) rate. The current GCA credit of (\$0.1850) per CCF was implemented December 1, 2013. Current revenue and cost projections indicate that without a rate adjustment Colorado Springs Utilities could accumulate an under-collected balance of \$9.2 million by the end of fiscal year 2014. To maintain financial stability and moderate price changes for customers, Colorado Springs Utilities recommends a GCA rate change from the current credit of (\$0.1850) per CCF to a proposed credit of (\$0.1566) per CCF effective March 1, 2014.

**PREVIOUS COUNCIL ACTION:** On November 12, 2013, by Resolution No. 97-13, City Council resolved to set the GCA at the current rate of (\$0.1850) per CCF effective December 1, 2013.

**BACKGROUND:** Colorado Springs Utilities sought approval for the current GCA rate at the November 12, 2013 City Council meeting. Natural Gas prices have risen since the previous GCA adjustment was made, and current forecasts show this trend continuing in the near future. Projections indicate that without a GCA adjustment the collected balance will be under-collected \$9.2 million by the end of fiscal year 2014. Colorado Springs Utilities staff continues to provide regular updates to the Utilities Board on the collected balance, and will recommend timely changes to the GCA rate as is deemed appropriate.

Colorado Springs Utilities has performed the GCA calculation in conformance with the language in the GCA tariff.

**FINANCIAL IMPLICATIONS:** Implementing the proposed GCA rate decrease will impact the residential customer's bill as follows:

<u>Monthly Gas bill:</u>	
Average summer bill at 30 CCFs	= \$0.85 or 2.9%
Average winter bill at 90 CCFs	= \$2.56 or 4.0%
Typical bill at 60 CCFs	= \$1.70 or 3.6%

**ALTERNATIVES:** Keep the current GCA and continue to incur the under-collection.

**BOARD/COMMISSION RECOMMENDATION:** N/A

**STAKEHOLDER PROCESS:** N/A

**RECOMMENDATIONS:** Colorado Springs Utilities recommends the adoption of the attached Resolution.

**PROPOSED MOTION:** Move adoption of the proposed Resolution.

c: Officer Team

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION SETTING THE GAS COST  
ADJUSTMENT EFFECTIVE MARCH 1, 2014**

WHEREAS, through Resolution No. 260-04, dated November 23, 2004, City Council directed that the Gas Cost Adjustment could be determined as frequently as monthly to levelize revenue recovery and minimize the fluctuations associated with less frequent adjustments during periods of price volatility; and

WHEREAS, through Resolution No. 97-13, City Council set the current Gas Cost Adjustment effective November 12, 2013; and

WHEREAS, Colorado Springs Utilities has prepared projections of costs and revenues showing that without a change in the current GCA rate natural gas costs will be under-collected as of February 28, 2014; and

WHEREAS, Colorado Springs Utilities has shown that a Gas Cost Adjustment rate of (\$0.1566)/CCF represents the current state of gas system revenue needs; and

WHEREAS, the proposed Gas Cost Adjustment rate shall be effective March 1, 2014.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF  
COLORADO SPRINGS:**

Section 1. That Colorado Springs Utilities Tariff, City Council Volume No. 5, Natural Gas Rate Schedules shall be revised as follows:

Effective March 1, 2014

City Council Vol. No. 5 Sheet No.	Title	Cancels Sheet No.
Seventh Revised Sheet No. 10a	Gas Cost Adjustment	Sixth Revised Sheet No. 10a

Section 2. The Gas Cost Adjustment rate and the effective date shall be published in the legal section of a newspaper of general circulation in Colorado Springs Utilities' service area within ten (10) days following the date of the passage of this Resolution.

Section 3. The attached tariff sheet is hereby approved and adopted effective March 1, 2014 and shall remain in effect unless changed by subsequent Resolution of the City Council.

Dated at Colorado Springs, Colorado this 25th day of February, 2014.

\_\_\_\_\_  
Keith King, Council President

ATTEST:

\_\_\_\_\_  
Sarah Johnson, City Clerk

<b>NATURAL GAS RATE SCHEDULES</b>
<b>GAS COST ADJUSTMENT (GCA)</b>

**APPLICABILITY**

Applicable to all rate schedules that are subject to a Gas Cost Adjustment (GCA).

**GAS COST ADJUSTMENT**

The GCA will be computed as follows:

The sum of:

- a) the projected cost of natural gas subject to the GCA for the future period, divided by
- b) the projected sales subject to the GCA for the same period used in a) above.  
Plus:
- c) the cumulative under- or over-recovery of natural gas costs subject to the GCA divided by
- d) the projected sales subject to the GCA for a period to be determined by Utilities.  
Minus:
- e) the base cost of gas in the current rates for sales and transportation services.

Customers switching to a sales rate subject to the GCA from a non-GCA rate schedule will utilize a GCA calculated only using parts a), b), and e). Similarly, customers switching to a non-GCA rate from a gas sales rate that was subject to the GCA will pay, or have refunded, amounts represented in part c) above.

**RATE**

**Gas Cost Adjustment Charge (GCA)**

All Per Ccf .....	(\$0.1566)
All Per Mcf .....	(\$1.5660)

Approval Date: February 25, 2014  
Effective Date: March 1, 2014  
Resolution No. \_\_\_\_\_

<b>NATURAL GAS RATE SCHEDULES</b>
<b>GAS COST ADJUSTMENT (GCA)</b>

**APPLICABILITY**

Applicable to all rate schedules that are subject to a Gas Cost Adjustment (GCA).

**GAS COST ADJUSTMENT**

The GCA will be computed as follows:

The sum of:

- a) the projected cost of natural gas subject to the GCA for the future period, divided by
- b) the projected sales subject to the GCA for the same period used in a) above.  
Plus:
- c) the cumulative under- or over-recovery of natural gas costs subject to the GCA divided by
- d) the projected sales subject to the GCA for a period to be determined by Utilities.  
Minus:
- e) the base cost of gas in the current rates for sales and transportation services.

Customers switching to a sales rate subject to the GCA from a non-GCA rate schedule will utilize a GCA calculated only using parts a), b), and e). Similarly, customers switching to a non-GCA rate from a gas sales rate that was subject to the GCA will pay, or have refunded, amounts represented in part c) above.

**RATE**

**Gas Cost Adjustment Charge (GCA)**

All Per Ccf .....	( <del>\$18500</del> <u>1566</u> )
All Per Mcf .....	( <del>\$18500</del> <u>1566</u> )

Approval Date: ~~November 12, 2013~~ February 25, 2014  
Effective Date: ~~December 1, 2013~~ March 1, 2014  
Resolution No. 97-13



## Interoffice Memorandum

**MEETING DATE:** February 25, 2014

**TO:** President and Members of City Council

**FROM:** Jerry Forte, P.E., Chief Executive Officer 

**SUBJECT:** **RESOLUTION APPOINTING TYLER ALLISON AND BRETT GRACELY TO THE HOMESTAKE STEERING COMMITTEE AND THE BOARD OF DIRECTORS OF THE AURORA-COLORADO SPRINGS JOINT WATER AUTHORITY**

**SUMMARY:** Colorado Springs Utilities seeks approval of a resolution appointing Tyler Allison and Brett Gracely to the Homestake Steering Committee and to the Aurora-Colorado Springs Joint Water Authority Board of Directors.

**PREVIOUS COUNCIL ACTION:** N/A

**BACKGROUND:** The City of Colorado Springs and Aurora ("Cities") as partners operate the Homestake Project. The Homestake Project is governed by the Homestake Steering Committee which is made up of three representatives of each City that are appointed by their respective City Councils. Terms for two of those representatives have now expired. The Cities formed the Aurora Colorado Springs Joint Water Authority as a financing vehicle for the extension of the Homestake pipeline from Twin Lakes to the Otero Pumpstation. The Board of Directors of the Aurora-Colorado Springs Joint Water Authority is made of three representatives of each City that are also appointed by their respective City Councils and two non-voting members. Terms for two of those representatives have now expired. Colorado Springs Utilities requests that City Council approve a resolution appointing Tyler Allison and Brett Gracely as Colorado Springs' representatives on the Homestake Steering Committee and the Aurora-Colorado Springs Joint Water Authority Board of Directors. A proposed resolution is attached.

**FINANCIAL IMPLICATIONS:** N/A

**BOARD/COMMISSION RECOMMENDATION:** N/A

**STAKEHOLDER PROCESS:** N/A

**ALTERNATIVES:** Appoint other representatives of the City to the Homestake Steering Committee and the Aurora-Colorado Springs Joint Water Authority Board of Directors.

**RECOMMENDATION:** Move approval of proposed resolution.

**PROPOSED MOTION:** Approval of proposed resolution.

**Attachments:**

- Resolution Appointing Tyler Allison and Brett Gracely to the Homestake Steering Committee and the Board of Directors of the Aurora-Colorado Springs Joint Water Authority

**RESOLUTION APPOINTING TYLER ALLISON  
AND BRETT GRACELY TO THE HOMESTAKE STEERING  
COMMITTEE AND THE BOARD OF DIRECTORS OF THE  
AURORA-COLORADO SPRINGS JOINT WATER AUTHORITY**

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

Section 1. That Tyler Allison is appointed as a member of the Homestake Steering Committee effective January 1, 2014 and as a member of the Board of Directors of the Aurora-Colorado Springs Joint Water Authority for a three year term effective January 15, 2014.

Section 2. That Brett Gracely is appointed as a member of the Homestake Steering Committee effective January 1, 2013 and as a member of the Board of Directors of the Aurora-Colorado Springs Joint Water Authority for a three year term effective January 15, 2013.

DATED at Colorado Springs, Colorado, this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

\_\_\_\_\_  
Keith King, Council President

ATTEST:

\_\_\_\_\_  
Sara B. Johnson, City Clerk



Colorado Springs Utilities  
It's how we're all connected

# Interoffice Memorandum

**MEETING DATE:** February 25, 2014  
**TO:** President and Members of City Council  
**FROM:** Jerry Forte, P.E., Chief Executive Officer

**SUBJECT: A RESOLUTION APPROVING THE FIRST REVISED WATER TRANSMISSION SERVICE CONTRACT AMONG THE AURORA – COLORADO SPRINGS JOINT WATER AUTHORITY AND THE CITY OF AURORA, COLORADO AND THE CITY OF COLORADO SPRINGS, COLORADO**

**SUMMARY:** Colorado Springs Utilities seeks approval of a resolution approving the First Revised Water Transmission Service Contract Among the Aurora-Colorado Springs Joint Water Authority and the City of Aurora, Colorado and the City of Colorado Springs, Colorado.

**PREVIOUS COUNCIL ACTION:** Council approved the establishment of the Joint Water Authority via Ordinance No. 83-54 on March 22, 1983. Council approved the original Water Transmission Service Contract via Ordinance No. 83-106 on May 24, 1983.

**BACKGROUND:** The cities of Aurora and Colorado Springs (“Cities”) have for many years worked cooperatively in developing water resources through the project commonly known as the Homestake Project and have enjoyed economies of scale in bringing water from western Colorado to the water systems of the Cities. By contract executed May 13, 1983 (the “Establishing Contract”), the Cities established a separate governmental entity and subdivision of the State of Colorado known as the Aurora-Colorado Springs Joint Water Authority (“Authority”). The purpose of the Authority was to effect the development of water resources, systems or facilities in whole or in part for the benefit of the Cities and their inhabitants. One specific purpose of the Authority was to finance, construct, operate, and maintain a pipeline (the “Otero Extension Pipeline”) from the outlet of Twin Lakes Dam to the Otero Pumping Station Intake and provide for the transmission of the Cities’ water through the pipeline.

On June 1, 1983, the Cities and the Authority entered into a Water Transmission Service Contract (“Original Transmission Contract”). The Original Transmission Contract set forth the terms under which the Authority would finance, construct, operate and maintain the Otero Extension Pipeline and provide water transmission service to the Cities through the pipeline. The Otero Extension Pipeline has been constructed by the Authority and all bonds associated with it have been paid off. The Authority has been providing water transmission service to the Cities pursuant to the terms of the Original Transmission Contract since construction of the Otero Extension Pipeline was completed.

The Original Transmission Contract expired on December 31, 2013 and the Cities continue to desire to receive water transmission service through the Otero Extension Pipeline from the Authority. The Authority and the Cities have negotiated a First Revised Water Transmission Service Contract (“Revised Transmission Contract”) that sets forth the terms under which the Authority will operate and maintain the Otero Extension Pipeline and provide water transmission service to the Cities in the near future. The term of the Revised Transmission Contract is from the date it is executed through December 31, 2019.

The Revised Transmission Contract is an IGA that needs to be approved by the Colorado Springs City Council and the Aurora City Council. Aurora is in the process of moving the Revised Transmission Contract through its City Council’s approval process and expects to have approval from its City Council

by the end of February 2014. Colorado Springs Utilities will seek City Council's approval of the Revised Transmission Contract by resolution on the consent calendar at the February 25<sup>th</sup> City Council meeting.

**FINANCIAL IMPLICATIONS:** Colorado Springs Utilities currently spends approximately \$13,000.00 on water transmission service from the Authority annually, which should continue under the Revised Transmission Contract.

**BOARD/COMMISSION RECOMMENDATION:** N/A

**STAKEHOLDER PROCESS:** N/A

**ALTERNATIVES:**

- (1) Pass the attached resolution directing Colorado Springs Utilities to enter into the Revised Transmission Contract;
- (2) Not pass the attached resolution directing Colorado Springs Utilities to enter into the Revised Transmission Contract;
- (3) Modify the attached resolution or the Revised Transmission Contract; and
- (4) Refer the matter back to Colorado Springs Utilities for future consideration.

**RECOMMENDATION:** Move for approval of proposed resolution.

**PROPOSED MOTION:** Approval of proposed resolution.

c: Utilities Officer Team

**Attachments:**

- First Revised Water Transmission Service Contract
- Resolution

**RESOLUTION NO. \_\_\_\_-14**

**A RESOLUTION APPROVING THE FIRST REVISED WATER TRANSMISSION SERVICE CONTRACT AMONG THE AURORA – COLORADO SPRINGS JOINT WATER AUTHORITY AND THE CITY OF AURORA, COLORADO AND THE CITY OF COLORADO SPRINGS, COLORADO**

WHEREAS, the cities of Aurora and Colorado Springs (“Cities”) have for many years worked cooperatively in developing water resources through the project commonly known as the Homestake Project and have enjoyed economies of scale in bringing water from western Colorado to the water systems of the Cities, and

WHEREAS, by contract executed May 13, 1983, the Cities established a separate governmental entity and subdivision of the State of Colorado known as the Aurora-Colorado Springs Joint Water Authority (“Authority”), and

WHEREAS, one specific purpose of the Authority was to finance, construct, operate, and maintain a pipeline from the outlet of Twin Lakes Dam to the Otero Pumping Station Intake (“Otero Extension Pipeline”) and provide for the transmission of the Cities’ water through the pipeline, and

WHEREAS, on June 1, 1983, the Cities and the Authority entered into a Water Transmission Service Contract that set forth the terms under which the Authority would finance, construct, operate and maintain the Otero Extension Pipeline and provide water transmission service to the Cities through the pipeline, and

WHEREAS, the Authority has been providing water transmission service to the Cities pursuant to the terms of the Water Transmission Service Contract since construction of the Otero Extension Pipeline was completed, and

WHEREAS, the Water Transmission Service Contract expired on December 31, 2013 and the Cities continue to desire to receive water transmission service through the Otero Extension Pipeline from the Authority, and

WHEREAS, the Authority and the Cities have negotiated a First Revised Water Transmission Service Contract that sets forth the terms under which the Authority will operate

and maintain the Otero Extension Pipeline and provide water transmission service to the Cities in the near future, and

WHEREAS, Colorado Springs Utilities requests that City Council: (1) approve the First Revised Water Transmission Service Contract; and (2) authorize and direct the President of City Council to execute the First Revised Water Transmission Service Contract.

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:**

SECTION 1: The City Council finds and determines that approving the First Revised Water Transmission Service Contract is in the best interest of the City.

SECTION 2: The First Revised Water Transmission Service Contract is hereby approved.

SECTION 3: The President of City Council is authorized and directed to execute the First Revised Water Transmission Service Contract in a form substantially similar to that attached hereto.

SECTION 4: The Executive Director of Colorado Springs Utilities is authorized to administer the First Revised Water Transmission Service Contract.

Dated at Colorado Springs, Colorado, this 25<sup>th</sup> day of February, 2014.

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Keith King, Council President

ATTEST:

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Sarah B. Johnson, City Clerk

**FIRST REVISED WATER TRANSMISSION SERVICE CONTRACT AMONG AURORA – COLORADO SPRINGS JOINT WATER AUTHORITY AND CITY OF AURORA, COLORADO AND CITY OF COLORADO SPRINGS, COLORADO**

This Contract, made and entered into this \_\_\_ day of \_\_\_\_\_, 2014, by and among the Aurora-Colorado Springs Joint Water Authority (the “Authority”), a political subdivision of the State of Colorado, and the City of Aurora, Colorado (“Aurora”), and the City of Colorado Springs, Colorado (“Colorado Springs”), each of which cities is a municipal corporation of the State of Colorado and a home rule city, (such cities being herein collectively called “Cities,” or individually, “City”).

**WITNESSETH**

WHEREAS, Aurora and Colorado Springs have for many years worked cooperatively in developing water resources through the project commonly known as the Homestake Project and have thereby enjoyed economies of scale in bringing water from western Colorado to the water systems of the two Cities; and

WHEREAS, the two Cities, pursuant to Section 29-1-204.2, Colorado Revised Statutes 1973, and to their enabling ordinances, established the Authority by contract executed May 13, 1983 (the “Establishing Contract”), to effect the development of water resources, systems or facilities in whole or in part for the benefit of the Cities and their inhabitants; and

WHEREAS, the Authority has acquired and constructed the Extension Pipeline Project comprising a pipeline (the “Otero Extension Pipeline”) from the outlet of Twin Lakes Dam to the Otero Pumping Station Intake; and

WHEREAS, each City has need for the water to be transmitted by the Extension Pipeline Project for purposes of providing water for all domestic, municipal, industrial, recreational and other beneficial purposes for each City and the inhabitants thereof and to those persons or entities served by the municipal system of each City; and

WHEREAS, each City desires to receive, and the Authority desires to furnish, water transmission service by means of the Authority’s Extension Pipeline Project on the terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the mutual undertakings herein contained, the Authority and each City agree as follows:

**Section 1: Term of Contract.** The term of this Contract shall be from the Effective Date through December 31, 2019.

**Section 2: Definitions.** The terms of this section defined for all purposes of this Contract and of any instrument or document appertaining hereto, except where the context by clear implication otherwise requires, shall have the meanings herein specified:

(a) “Act” shall mean Section 29-1-204.2, Colorado Revised Statutes.

(b) “Annual Project Budget” shall mean, with respect to a Contract Year, the budget of the Authority prepared in accordance with Section 5 hereof for such Contract Year, or, in the case of an amended or supplemental Annual Project Budget, for the remainder of such Contract Year.

(c) “Annual Project Costs” shall mean, with respect to a Contract Year, all costs and expenses of the Authority that are paid or incurred during such Contract Year and are allocable to the Extension Pipeline Project, including, but not limited to, the payment of the Operation and Maintenance Expenses of the Extension Pipeline Project, all costs, charges, and expenses of repairs, replacements and modifications of the Extension Pipeline Project (subject to compliance with the Establishing Contract) and the deposit or payment of any and all amounts that the Authority may now or hereafter become obligated to pay from revenues of the Extension Pipeline Project, by law or contract.

(d) “Authority” shall mean the Aurora-Colorado Springs Joint Water Authority as created and established (pursuant to the Act) by the Establishing Contract executed by and on behalf of each of the Cities.

(e) “Contract Year” shall mean the fiscal year of the Authority; provided, however, the first Contract Year of the Authority shall begin on the Effective Date and shall end on the last day of the fiscal year of the Authority within which this Contract becomes effective.

(f) “Effective Date” shall mean the date on which all the Parties have approved and executed this Agreement.

(g) “Extension Pipeline Project” shall mean the Otero Extension Pipeline constructed by the Authority, which is more particularly described and located as set forth in Exhibit A.

(h) “Operation and Maintenance Expenses” shall mean all expenses incurred in the operation and maintenance of the Extension Pipeline Project and normally recurring expenses incurred by the Authority in the conduct of its activities that are properly allocable to the Extension Pipeline Project under generally accepted accounting principles as applied to governmental units.

(i) "Participation" shall mean for each of the Cities the following proportions:

Aurora: One-Half (1/2)

Colorado Springs: One-Half (1/2)

(j) "Transmission Service Charge" shall be the charge by the Authority for Water Transmission Service through the Extension Pipeline Project, which charge shall be calculated as provided in Section 6 hereof.

(k) "Water Transmission Service" and words of similar import shall mean the Authority's transmission of water through the Extension Pipeline Project, and its maintenance of the Extension Pipeline Project at all times in good and workable condition and available for such transmission. The Parties agree that such transmission and maintenance may in the discretion of the Authority be performed by parties that include, *inter alia*, employees of the Cities and employees of the cooperative project commonly known as the Homestake Project.

**Section 3: Delivery of Water to the Extension Pipeline Project.** Each City agrees that it, and not the Authority, shall be responsible for delivery to the Project of all water to be transmitted through the Extension Pipeline Project.

**Section 4: Water Transmission.** The Authority agrees to furnish Water Transmission Service to each City, and each City agrees to pay, in accordance with its Participation share, for such service.

**Section 5: Annual Project Budget.**

(a) The Authority shall prepare or cause to be prepared an Annual Budget, which shall itemize estimates of Annual Project Costs and all revenues, income or other funds to be applied to such Annual Project Costs for and applicable to such Contract Year. The Authority and each City shall prepare such Annual Budget in a timely fashion that will allow the Cities and the Authority to comply with applicable budget laws.

(b) The Authority, prior to the beginning of such Contract Year, shall adopt an Annual Project Budget for such Contract Year and the Transmission Service Charge for such Contract Year and shall cause copies of such Annual Project Budget and Transmission Service Charge to be promptly delivered to the Cities.

(c) If, at any time or from time to time after the adoption of the Annual Project Budget in accordance with Paragraph (b) of this Section 5, the Authority estimates that the actual Annual Project Costs or revenues for the Contract Year or any part thereof for which such Annual Project Budget applies will be greater or less than the Annual Project Costs or revenues set forth in the Annual Project Budget, then the Authority may prepare an amended or supplemental Annual Project Budget. The

amended or supplemental Annual Project Budget shall be timely adopted by the Authority and promptly transmitted to the Cities.

(d) In the event a budget for the ensuing Contract Year has not been adopted on or before the first day of the Contract Year, ninety percent (90%) of the total amount budgeted for the preceding Contract Year shall be the total amount of the temporary budget for such purposes for the ensuing Contract Year. Such temporary budget shall be effective only until such time as a permanent budget has been finally adopted and approved. The President of the Authority shall be responsible for the allocation for expenditure of the total amount of the temporary budget until a permanent budget is adopted and approved.

**Section 6: Transmission Service Charge.**

(a) The Transmission Service Charge of the Authority to the Cities pursuant to Section 4 hereof shall be adequate (after taking into consideration other moneys received or anticipated to be received) in each Contract Year to pay or make provision for paying all Annual Project Costs.

**Section 7: Billing.** The Authority shall bill each City for its share, based on its Participation, of the Transmission Service Charges on or before the 25<sup>th</sup> day of each month. Payment shall be due within 30 days of billing.

**Section 8: Payments to Constitute Operation Expenses of City System.** Each City's obligation to make payment under this Contract shall constitute, and shall be treated for all purposes by each City, as (to the extent permitted by law and by its contractual obligations to holders of its bonds and other obligations) an operating expense of its municipal system and prior to its obligation to make payments for any bonds or other obligations issued by the City and payable from revenues of its municipal system. The obligation of each City to make payments hereunder shall be limited to revenues derived from such City's operation of its municipal system, but it may make payment from any revenues legally available to the City's municipal system. The term "municipal system" as used in this Contract means, as applied to Aurora, its Utilities Enterprise water system and, as applied to Colorado Springs, its combined Utilities Enterprise for water, sewer, electricity and gas.

**Section 9: City Rate Covenant.** Each City shall establish, maintain and collect reasonable rates and charges for the water service of its municipal system, which shall produce revenues at least sufficient, together with other revenues legally available to such City's municipal system, to enable it to pay the Authority, when due, all amounts payable by such City under this Contract.

**Section 10: Covenants of the Authority and the Cities.**

(a) The Authority shall use reasonable diligence to provide Water Transmission Service hereunder and maintain the Extension Pipeline Project in good condition at all times. If operation of the Extension Pipeline Project shall be interrupted, or become defective by reason of force majeure the Authority shall not be liable therefor or for damages caused thereby.

(b) The Authority shall diligently enforce and take all reasonable steps, actions and proceedings necessary for the enforcement of all terms, covenants and provisions of this Contract.

(c) The Authority covenants and agrees that it will operate, maintain, and manage the Extension Pipeline Project or cause the same to be operated, maintained, and managed in an efficient and economical manner, consistent with sound municipal utility practice and in accordance with standards normally used by municipal utilities owning like properties.

(d) The provisions of this Contract are covenants of the Cities and the Authority for the benefit and protection of the Authority and the Cities. For and in consideration of the payments to be made by the Cities under this Contract, the Authority agrees to use reasonable diligence to provide Water Transmission Service to such Cities under the terms of this Contract, and such payments by the Cities shall be in consideration for the Authority's agreement to provide such Water Transmission Service.

**Section 11: Default.**

If a Party fails or defaults in meeting the terms, conditions and covenants of this contract (including the failure to make any payment due hereunder) and such default continues for a period of 15 days, the non-defaulting party shall give notice (in the manner contemplated by Section 19 of this Contract) to the defaulting party. The defaulting party shall from the date of the mailing of such notice, have a period of 30 days to cure the default. Thereafter, the non-defaulting party shall have all rights and remedies available at law or in equity.

**Section 12: Force Majeure.**

(a) If for any reason of "force majeure" any of the parties hereto shall be rendered unable, wholly or in part, to carry out its obligations under this Contract, other than the obligation of the Cities to make the payments required under the terms of this Contract, then if such party shall give notice and the full particulars of such reasons in writing to the other party within a reasonable time after the occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such "force majeure," shall be suspended during the continuance of the inability then claimed, but for no longer period, and such party shall endeavor to remove or overcome

such inability with all reasonable dispatch. The term “force majeure” as employed herein shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders or actions of any kind of the government of the United States or of the State of Colorado or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints or government and people, civil disturbances, explosions, breakage or accident to dams, machinery, pipelines, or canals or other structures or machinery, on account of any other cause not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulties, and that the above requirement that any “force majeure” shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demand of the opposing parties when such settlement is unfavorable to it in the judgment of the party having the difficulty.

(b) No damage shall be recoverable from the Authority or the Cities by reason of the causes above mentioned.

**Section 13: Insurance.**

(a) The Authority shall maintain, or cause to be maintained in force for the benefit of the Authority, such insurance with respect to the Extension Pipeline Project as shall be reasonably available and as is usually carried by the municipal water utilities constructing and operating water transmission facilities.

**Section 14: Reports.** The Authority will prepare and issue to each City the following reports for each Contract Year: (i) financial and operating statements relating to the Extension Pipeline Project; (ii) status of any construction or maintenance related to the Extension Pipeline Project during construction; and (iii) analysis of operations relating to the Extension Pipeline Project.

**Section 15: Records and Accounts.** The Authority will keep accurate records and accounts of the Extension Pipeline Project and of the transactions relating thereto as well as of the operations of the Authority in accordance with generally accepted accounting principles as applied to governmental units. Within one hundred twenty (120) days after close of each Contract Year, the Authority shall cause such records and accounts and all transactions of the Authority relating to the Extension Pipeline Project with respect to such Contract Year to be subject to an annual audit by an independent certified public accountant. A copy of each such annual audit shall be sent by the Authority to each City.

**Section 16: Access.** Each City shall at all times have reasonable access to examine any and all books and records of the Authority and to examine the Extension Pipeline Project. The Authority and each City will give the other the right to enter the premises of the other at all reasonable times for the purpose of repairing or removing

facilities and performing work incidental to delivery and receipt of Water Transmission Service furnished hereunder.

**Section 17: Governmental Rates, Regulations and Laws.** The Contract shall be subject to all valid rules, regulations and laws applicable thereto, as promulgated by the United States of America, the State of Colorado, or any other governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them, which rules, regulations and laws shall not impair the obligations of contracts including this Contract.

**Section 18: Easements.** Each City agrees that the Authority or its agent shall (when permitted by existing easements) have full access to such easements or over any easements, right-of-way or property held by such City if, and to the extent, required by the Authority for any and all purposes required for the Extension Pipeline Project.

**Section 19: Notices.** Any notice, request, demand or statement provided for in this Contract shall be in writing and shall be considered to have been duly delivered when sent by registered or certified mail (provided that bills sent hereunder may be sent by first class mail), addresses as follows, unless another address has been designated, in writing, by the party entitled to receive same:

- (1) Aurora: Director – Aurora Water  
City of Aurora  
15151 E. Alameda Pkwy, Suite 3600  
Aurora, CO 80012
- With a copy to: Aurora City Attorney  
15151 E. Alameda Pkwy, Suite 5300  
Aurora, CO 80012
- (2) Colorado Springs: Chief Water Services Officer  
Water Division  
P.O. Box 1103  
Colorado Springs, CO 80947
- With a copy to: Colorado Springs City Attorney  
P.O. Box 1103  
Colorado Springs, CO 80947
- (3) Aurora-Colorado Springs Joint  
Water Authority: President  
Aurora-Colorado Springs Joint Water  
Authority  
P.O. Box 1103  
Colorado Springs, CO 80947

**Section 20: Severability.** The parties hereto agree that if any provision, or part of a provision, of this Contract should contravene or be held invalid under the laws of the State of Colorado, such contravention or invalidity shall not invalidate the whole Contract but it shall be construed as though not containing that particular provision, or part thereof, and the rights and obligations of the parties shall be construed and in force accordingly.

**Section 21: Contracts to be Separate.** This instrument embodies two separate contracts between the Authority and each City. To the extent permitted by law, termination of one Contract shall not affect the other.

**Section 22: Counterpart Execution.** This Contract may be executed in counterparts.

**Section 23: Effect of Contract.** This First Revised Water Transmission Service Contract is intended to and shall supersede and replace in full the Water Transmission Service Contract among the Parties entered into as of June 1, 1983.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed in their corporate names and their corporate seals affixed, all by the proper officers duly authorized thereunto.



CITY OF AURORA, COLORADO,  
ACTING BY AND THROUGH ITS  
UTILITY ENTERPRISE

\_\_\_\_\_  
Stephen D. Hogan, Mayor

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Janice Napper, City Clerk

\_\_\_\_\_  
Date

APPROVED AS TO FORM FOR AURORA:

\_\_\_\_\_  
Christine McKenney, Assistant City Attorney

\_\_\_\_\_  
Date

ACS #

STATE OF COLORADO    )  
                                  ) ss  
COUNTY OF ARAPAHOE )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014, by Stephen D. Hogan, Mayor, acting on behalf of the Utility Enterprise of the City of Aurora, Colorado.

Witness my hand and official seal. \_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

(SEAL)

City of Colorado Springs

By: \_\_\_\_\_

Keith King  
President of City Council

\_\_\_\_\_  
STATE OF COLORADO )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014 by Keith King, President of the Colorado Springs City Council.

Witness my hand and official seal

APPROVED AS TO FORM FOR THE CITY OF COLORADO SPRINGS,  
COLORADO,

\_\_\_\_\_  
City Attorney's Office – Utilities Division

\_\_\_\_\_  
Date

## EXHIBIT A

### Aurora-Colorado Springs Joint Water Authority Extension Pipeline Project Description

The Extension Pipeline Project consists of the Otero Extension Pipeline, located in central Colorado south of Leadville, Colorado. The Otero Extension Pipeline commences at the outlet of Twin Lakes Dam, approximately 12 miles south of Leadville adjacent to State Highway 82, and extends east from the Twin Lakes Dam to the vicinity of U.S. Highway 24, then southeast approximately parallel to U.S. Highway 24 to a connection with the Otero Pumping Station Intake Pipeline constructed and operated by the Cities of Aurora and Colorado Springs.



Colorado Springs Utilities  
It's how we're all connected

## Interoffice Memorandum

**MEETING DATE:** February 25, 2014

**TO:** President and Members of City Council

**FROM:** Jerry Forte, P.E., Chief Executive Officer 

**SUBJECT:** **A RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING AMONG COLORADO SPRINGS UTILITIES, THE CITY OF COLORADO SPRINGS, EL PASO COUNTY, THE EL PASO-TELLER 911 AUTHORITY, THE CITY OF FOUNTAIN, AND THE PIKES PEAK REGIONAL BUILDING DEPARTMENT TO ACQUIRE DIGITAL ORTHORECTIFIED IMAGERY IN 2014**

**SUMMARY:** Colorado Springs Utilities will be submitting to City Council for approval on behalf of Utilities and the City of Colorado Springs a new MOU as an Intergovernmental Agreement among Colorado Springs Utilities, the City of Colorado Springs, El Paso County, the El Paso – Teller 911 Authority, the City of Fountain, and the Pikes Peak Regional Building Department for the acquisition of digital orthorectified imagery in 2014. All of these entities except for the City of Fountain and the Pikes Peak Regional Building Department are members of the Pikes Peak Geospatial Alliance, an entity formed by Intergovernmental Agreement in 2004, whose purpose is to acquire geospatial data and digital orthorectified imagery through joint funding arrangements set forth in memoranda of understanding on a project by project basis.

**PREVIOUS COUNCIL ACTION:** On July 23, 2004, through Resolution 134-04, City Council approved the first Pikes Peak Geospatial Alliance (“PPGA”) Intergovernmental Agreement and Memorandum of Understanding (“MOU”) for the acquisition of aerial photography services for geospatial data acquisition. Since that time there have been four separate occasions (i.e., 2005, 2007, 2009, and 2011) where City Council approved additional MOU’s for the acquisition of aerial photography services or geospatial data acquisition.

**BACKGROUND:** In 2004, Colorado Springs Utilities entered into an intergovernmental agreement with four other agencies, the City of Colorado Springs, El Paso County, Teller County, and the El Paso-Teller E-911 Authority to form the PPGA. Since that time, MOUs for aerial photography have been entered into in 2004 (amended in 2005), 2007, 2009, and 2011. The intent of the PPGA is to capture orthorectified imagery every two years to obtain updated maps of the growth in El Paso and Teller counties. This imagery is then used for purposes of compiling geospatial data which is beneficial to the members of PPGA and participants in these projects. This updated information is utilized to update the FIMS database operated by Colorado Springs Utilities and utilized by Utilities and a number of other City departments and operations. These services and data are necessary to ensure that all new development and changes to existing infrastructure are captured accurately and completely. Additionally, this updated information is important for public safety, as it is used by the E-911 system operators to send emergency vehicles to a location and may be used when necessary to shut off utilities to a particular area during a fire to assist in mitigating the situation.

Under the proposed MOU, the agencies participating in this project will share costs based on their interest in the geographic area being photographed by the aerial photographer. The aerial photography services are expected to cost approximately \$127,627.00. It is expected that Colorado Springs Utilities will pay approximately \$24,249.13 of the total cost of the services, or 19% of the total amount. In short, each entity will receive \$127,627.00 worth of services for \$24,249.13. Though it is expected that costs

will not exceed \$127,627.00, if approved, the MOU authorizes total payment for the services of up to \$150,000.00, to include some amount as an additional contingency.

**FINANCIAL IMPLICATIONS:** Under the MOU, the agencies participating in this project will share costs based on their interest in the geographic area being photographed by the aerial photographer. The aerial photography services are expected to cost approximately \$127,627.00. It is expected that Colorado Springs Utilities and the City of Colorado Springs will each pay approximately \$24,249.13 of the total cost of the services, or 19% of the total amount. In short, each entity will receive \$127,627.00 worth of services for \$24,249.13. Though it is expected that costs will not exceed \$127,627.00, if approved, the MOU authorizes total payment for the services of up to \$150,000.00, to include some amount as an additional contingency.

**ALTERNATIVES:**

**Option 1:** Acquire the data through the PPGA alliance, resulting in a significant cost savings to each participating agency. Cost to Utilities and the City would be approximately \$25,000 per entity.

**Option 2:** Colorado Springs Utilities could separately contract for professional digital orthorectified imagery services on its own at a cost of approximately \$127,627.00. Similarly, the City of Colorado Springs could separately contract for professional digital orthorectified imagery services on its own.

**Option 3:** Utilities and the City could opt not to contract for professional digital orthorectified imagery services at all and as a result could not maintain the accuracy of its mapping system.

**RECOMMENDATION:** It is recommended that City Council approve the proposed resolution approving the MOU on behalf of the City of Colorado Springs and Colorado Springs Utilities.

**PROPOSED MOTION:** Move adoption of the proposed Resolution.

**Attachments:**

Resolution No. \_\_\_\_ - 14  
Memorandum of Understanding

RESOLUTION NO. \_\_\_\_-14

**A RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING AMONG COLORADO SPRINGS UTILITIES, THE CITY OF COLORADO SPRINGS, EL PASO COUNTY, THE EL PASO – TELLER COUNTY 911 AUTHORITY, THE CITY OF FOUNTAIN, AND THE PIKES PEAK REGIONAL BUILDING DEPARTMENT TO ACQUIRE DIGITAL ORTHORECTIFIED IMAGERY IN 2014.**

**WHEREAS**, the City of Colorado Springs, Colorado Springs Utilities, El Paso County, Teller County, and the El Paso – Teller 911 Authority entered into an agreement called the Pikes Peak Geospatial Alliance Intergovernmental Agreement, dated June 24, 2014 (“PPGA IGA”) which established the Pikes Peak Geospatial Alliance (“PPGA”); and

**WHEREAS**, the purpose of the PPGA is to acquire geospatial data and technologies for the benefit of its members; and

**WHEREAS**, pursuant to the PPGA IGA, members of the PPGA may enter into a memorandum of understanding to cooperatively acquire geospatial data, which such memorandum of understanding shall provide cost sharing arrangements for the geospatial data acquisition projects between the PPGA members and non-member participants to such projects; and

**WHEREAS**, in accordance with the PPGA IGA, the PPGA has conducted four past projects for acquisition of geospatial data through aerial photography pursuant to memoranda of understanding entered into in the years 2004, 2007, 2009, and 2011; and

**WHEREAS**, participation in the past PPGA memoranda of understanding for the joint acquisition of geospatial data has been beneficial to the City of Colorado Springs and Colorado Springs Utilities and has resulted in reduced costs for the acquisition of such data; and

**WHEREAS**, the City of Colorado Springs, Colorado Springs Utilities, El Paso County, and the El Paso – Teller 911 Authority, as members of the PPGA, along with the City of Fountain and the Pikes Peak Regional Building Department, as non-member participants (collectively, the “Parties”), wish to enter into a memorandum of understanding for the acquisition of geospatial data (the “Project”); and

**WHEREAS**, the City Council of the City of Colorado Springs (“City Council”) has determined that it is in the best interests of the City of Colorado Springs and Colorado Springs Utilities to share the costs of geospatial data acquisition in the manner set forth in the memorandum of understanding attached hereto and incorporated herein (“MOU” or “Memorandum of Understanding”).

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:**

Section 1. The City Council finds that participation in the Project by approval of the Memorandum of Understanding attached hereto and incorporated herein is in the best interests of the citizens of the City of Colorado Springs and ratepayers of Colorado Springs Utilities and further approves the Memorandum of Understanding.

Section 2. The City Council hereby authorizes the President of City Council to execute the Memorandum of Understanding attached to this Resolution on behalf of the City of Colorado Springs and Colorado Springs Utilities.

Dated at Colorado Springs, Colorado, this 25th day of February, 2014.

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Keith King, Council President

ATTEST:

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Sarah b. Johnson, City Clerk

## MEMORANDUM OF UNDERSTANDING

THIS Memorandum of Understanding (“MOU”) is made as of the \_\_\_day of \_\_\_\_\_, 2014, by and between:

- the Colorado Springs Utilities, an enterprise of the City of Colorado Springs, with its principal place of business at 121 S. Tejon Street, Colorado Springs, Colorado 80903 (“Utilities”)
- the City of Colorado Springs, a Colorado home rule city and municipal corporation, with its principal place of business at 30 S. Nevada Avenue, Colorado Springs, Colorado, 80903
- El Paso County, by and through the Board of County Commissioners of El Paso County, Colorado, with its principal place of business at 27 E. Vermijo, Colorado Springs, Colorado, 80903
- the El Paso – Teller County E911 Authority, with its principal place of business at 2350 Airport Road, Colorado Springs, Colorado, 80910
- the City of Fountain, a Colorado home rule city and municipal corporation, with its principal place of business at 116 S. Main Street, Fountain, Colorado, 80817
- Pikes Peak Regional Building Department, with its principal place of business at 2880 International Circle, Colorado Springs, Colorado, 80910

(individually referred to as “Party” or collectively as the “Parties”).

### WITNESSETH:

**WHEREAS**, the City of Colorado Springs, Utilities, El Paso County, Teller County, and El Paso – Teller E911 entered into an agreement called the Pikes Peak Geospatial Alliance Intergovernmental Agreement dated June 24, 2004 (“PPGA IGA”), attached hereto as Exhibit 1, to establish the Pikes Peak Geospatial Alliance (“PPGA”);

**WHEREAS**, the Parties desire to be Participants, as defined in the PPGA IGA, to execute a common Memorandum of Understanding to acquire digital orthorectified imagery for an area encompassing El Paso County and a portion of Teller County (“OP 2014”);

**WHEREAS**, although a Member of the PPGA, Teller County has chosen not to participate in this MOU and is considered a Non-Participating member for the purpose of data related to the OP 2014 project;

**WHEREAS**, although not Members of the PPGA, the City of Fountain and Pikes Peak Regional Building Department have chosen to participate in this MOU and are considered Non-Member Agencies for the purpose of data related to the OP 2014, as defined in the PPGA IGA, Article 5.02-Subsection (b);

**WHEREAS**, the acquisition cost to individual Parties can be substantially reduced by jointly acquiring this data;

**WHEREAS**, the cost to each Party was determined by the PPAG IGA steering committee and the formula takes into account factors such as the size of area of interest, overlapping areas of interest, and desired resolution and accuracy;

**WHEREAS**, each Party has identified funds for the joint acquisition of the digital orthorectified imagery;

**WHEREAS**, with respect to the OP 2014, the Parties wish to establish the funding and contracting procedure, the specification of requirements and deliverables, and the guidelines for ownership and distribution of data;

**WHEREAS**, as applicable, the articles and stipulations of the PPGA IGA shall be adhered to by all Parties;

**WHEREAS**, Utilities entered into a contract for orthorectified imagery with The Sanborn Map Company, Inc., the contractor originally selected through an RFP process in 2011, (“Contractor”) and such contract (“Original Contract”) has been extended or renewed through March 2015 and may be extended or renewed to allow Contractor to complete the services contemplated in this MOU. A copy of the Original Contract with Contractor and all amendments thereto is attached and incorporated herein as Exhibit 2;

**WHEREAS**, each of the Parties shall receive an original copy of the OP 2014 Base Product deliverables indicated on Exhibit 3;

**WHEREAS**, each of the Parties that co-funds or solely funds any optional or peripheral product deliverables indicated on Exhibit 3 shall receive an original of such OP 2014 peripheral product deliverable;

**NOW, THEREFORE**, for and in consideration of the mutual covenants herein contained, the Parties hereby agree as follows:

## **ARTICLE 1: COVENANTS OF THE PARTIES**

The Parties represent, covenant, and warrant as follows:

- 1.1 Each Party is duly authorized to execute and deliver this MOU and further represents, covenants and warrants that all requirements have been met and procedures have been completed in order to ensure the enforceability of this MOU, and each Party has complied with its public procurement requirements, if any, which are necessary to make this MOU enforceable.
- 1.2 Each Party agrees to abide by the articles and stipulations of the PPGA IGA.
- 1.3 Subject to the provisions of this MOU and the PPGA IGA, each Party agrees to recognize and honor in perpetuity the licensing agreements, copyrights, and other proprietary

claims for software, databases, collateral information, and products established or produced by any other Party and the vendors furnishing said items to such Party.

## **ARTICLE 2: PURPOSE**

The purpose of this MOU is to provide joint funding for a contract with Contractor. Contractor is to provide Professional Services for the OP 2014. The anticipated payment to Contractor for the Base Products shall not exceed \$150,000.00. This MOU specifies the project requirements and deliverables and articulates the guidelines for ownership and distribution of those deliverables.

The Parties acknowledge and agree that, notwithstanding any of the provisions in this MOU, the PPGA IGA, or any related documents to the contrary, delivery of specific end product(s) are required under this MOU and the SOW defined in Section 3.2 below, so this MOU does not constitute a public contract requiring the furnishing of labor, time or effort by a contractor or a subcontractor not involving the delivery of a specific end product other than reports that are merely incidental to the required performance. Therefore no explicit certification from the Contractor related to hiring practices is required to comply with C.R.S. §8-17.5-102(1).

## **ARTICLE 3: ORTHORECTIFIED IMAGERY FUNDING AND PARTICIPATION**

- 3.1 The Parties agree that Utilities has been selected by the PPAGA IGA steering committee as lead agency and as such has contracted on behalf of the Parties with Contractor. Such contract shall be referred to herein as "Contract". The Parties further agree that this orthorectified imagery benefits them all, and that each Party's funding share and in-kind contributions will be provided by each Party to Utilities in the amounts or percentages set forth in Exhibit 3 OP 2014 project costs in excess of the limit provided in Article 2 shall be paid by the Parties hereto in proportion to their financial contributions in Exhibit 3, subject to additional appropriations and approval by each Party in advance. Utilities shall use all of these funds to finance the orthorectified imagery in accordance with the terms of the OP 2014. In the event any funds are reimbursed under terms of the Contract, those funds will be distributed to the Parties in proportion to the funding provided by each Party.
- 3.2 Utilities agrees to perform the following duties under this MOU:
  - A. Issue the "Statement of Work with Appendices" ("SOW") approved by the PPGA IGA steering committee to Contractor for the digital orthorectified imagery contractual services in 2014, attached hereto as Exhibit 4 and incorporated herein. Such digital orthorectified imagery contractual services are referred to herein as OP 2014.
  - B. Ensure that Contractor delivers the specific products listed in the Deliverable Products and Acceptance section of the SOW by the approximate dates indicated.

- C. Fully perform its obligations in accordance with standard business practices and such other professional standards as may be appropriate.
  - D. During the term of the Contract, or until the conclusion of any matters on which Contractor works hereunder, whichever shall occur last, Utilities shall take no position contrary to those advocated by the Parties in the contracted matters, nor represent any client whose interests are in conflict with the positions advanced by the Parties in the contracted matters.
  - E. Maintain a complete file of all records, documents, communications, and other written materials, which pertain to the performance of the Contract, including the delivery of services, and shall maintain such records for a period of three years after the date of completion of OP 2014. Each Party shall have the right to audit records at reasonable times and upon reasonable notice.
- 3.3 The Parties to this MOU shall pay Utilities an amount not to exceed that set forth in Article 2 according to the percentages listed on Exhibit 3, attached hereto, upon receipt of invoices from Utilities. Utilities will issue two invoices to each Parties; each such invoice shall be for half of the amount owed. The first such invoice will be issued when the Pilot areas are complete, as indicated in the SOW, and the second such invoice will be issued when the preliminary deliverables (see section 3.5 below) are received. The final amounts shall be determined when the Contract is finalized and shall be based on the same funding proportions as those currently listed on Exhibit 3. Provided however, that the costs for any peripheral or optional deliverable, as so identified on Exhibit 3, are not subject to the limitations in Article 2 and any Party that requests such a peripheral or option deliverable shall pay to Utilities its share of the amount for such deliverable due to the Contractor under the Contract.
- 3.4 The Parties agree that all digital products, as listed in Exhibit 3, that are delivered by the Contractor shall be subject to the terms of the PPGA IGA and the rights and restrictions defined in Articles 5 and 6 of this MOU.
- 3.5 Subject to the terms of the PPGA IGA, for the purpose of OP 2014, each of the (13) thirteen primary orthorectified imagery deliverables (collectively the “Base Product deliverables”) will be made available to the Parties for internal use only after written “preliminary acceptance” of each deliverable. The Parties recognize that until final written acceptance and payment for each imagery deliverable of OP 2014 has been made, the accuracy and quality of the OP 2014 deliverables may be subject to correction and any Party that uses or relies on any such deliverables prior to each acceptance assumes the risk of use of such OP 2014 deliverables. External data distribution may occur only after acceptance and payment for each respective final OP 2014 deliverable. The allocation of risk provisions in this Section also apply to any peripheral or optional deliverables. Procedures for Quality Assurance are included in the SOW.
- 3.6 Final Report. Utilities shall prepare and submit to the Parties a final accounting of all expenses of the OP 2014 at the termination of the project.

## **ARTICLE 4: TERMINATION**

- 4.1 A Party may terminate its participation in this MOU by providing 30-days written notice to the other Parties by certified mail, return receipt requested. If notice is so given, the Party's participation in this MOU shall terminate on the expiration of the thirty days, and the liability of the Party hereunder for the further performance of the terms of this MOU shall thereupon cease, provided the Party shall not be relieved of the duty to perform their obligations under Article 6, Restrictions on Use of the Data, and provided further, that if this MOU is terminated after a Contract has been negotiated by Utilities, all monies obligated by the terminating Party but not yet paid over to Utilities for the performance of the Contract shall be due to Utilities and shall be paid to Utilities within thirty (30) days of the date of termination.
- 4.2 If, through any cause, the Contractor shall fail to fulfill, in a timely and proper manner, the Contractor's obligations under the awarded Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of the awarded contract, any Party to this MOU shall thereupon have the right to terminate that Party's participation in this MOU for cause by giving written notice to the other Parties, and subject to payment of the terminating Party's funding obligations per the above paragraph. In the event of Contract termination, remaining project funds will be reimbursed to the Parties in proportion to the funding provided.
- 4.3 In the event of nonperformance by Contractor, Utilities may pursue any available remedy at law or in equity against Contractor on behalf of the Parties or individually as provided for under the Contract either on its own or as directed by the PPGA steering committee.

## **ARTICLE 5: DATA OWNERSHIP**

- 5.1 The OP 2014 Base Product deliverables will be jointly owned by the Parties. Ownership of peripheral or optional products is defined by those participants that co-fund each peripheral or optional product as specified in Exhibit 3. PPGA project participants shall only receive products they fund. Each Parties decision regarding whether to participate and fund in each optional or peripheral product shall be confirmed in writing. In the event that a Party chooses not to fund an optional product (referenced as a peripheral product on Exhibit 3), the proportionate payment requirements for that non-participating Party shall be zero for such optional product, and the proportionate payment requirements for the remaining participating Parties shall be adjusted accordingly.
- 5.2 Any products delivered in hard-copy format, such as camera calibration reports and other supporting documents, shall be owned by the Parties as specified in Exhibit 3.
- 5.3 All additional, optional products that are included as deliverables and are not otherwise addressed herein shall be discussed with the PPGA steering committee. After each Party, including Non-Member Participants, has had a reasonable opportunity to provide input to

the PPGA steering committee, cost sharing, usage, and ownership of additional products shall be determined by the PPGA steering committee and in accord with the PPGA IGA.

## **ARTICLE 6: RESTRICTIONS ON USE OF THE DATA**

- 6.1 Each Party shall be bound by the data distribution guidelines specified in Article VI of the PPGA IGA.
- 6.2 Each Party shall have the right to use the digital data to prepare presentations such as maps, exhibits, memoranda, reports, etc., on paper, mylar, or other printed media. These hard-copy materials may be distributed to the public as governed by the internal policies held by each Party.
- 6.3 Each Party shall have the right to use the digital data to prepare presentations such as maps, exhibits, memoranda, reports, etc., in electronic document form for distribution to the public via electronic media or via the Internet. These electronic documents may be distributed to the public as governed by the internal policies held by each Party as defined in the PPGA IGA.
- 6.4 Each Party shall have the right to use the digital data for internet map applications. Internet map applications that deliver orthorectified imagery data as map images to the end user may be developed at the discretion of the Parties, subject to the display area restrictions described in Section 6.5. The PPGA steering committee shall be advised of the application and data security architecture of any internet map applications that propose to deliver aerial photography feature data to the end user. The Parties agree to mitigate any data security concern raised by a PPGA steering committee before deploying orthorectified imagery applications that deliver feature data.
- 6.5 The Parties agree that the sublicensing of the digital data for a fee to the general public or to other agencies, organizations, or commercial businesses can only be undertaken by PPGA members and only in accordance with Article 6 of the PPGA IGA. Digital products and their unit prices are defined as follows:
  - 4000 by 4000 foot tile shall be \$50 for 1 foot resolution imagery
  - 4000 by 4000 foot tile shall be \$100 for 6 inch resolution imagery

These price figures are based upon current business strategies and policies. The distribution and fee schedules for peripheral or optional products will be addressed by an amendment to this MOU if necessary. Release of the digital data to external customers (or to a non-participating PPGA member) requires the execution of a License Agreement by the respective issuing agency in a form substantially similar to Exhibit B of the PPGA IGA (“Customer Geospatial Data License Agreement”). Any Party may, in its sole discretion, designate certain portions of the digital orthorectified imagery, not to exceed 1% of project area, as “Confidential” due to security concerns. Security concerns in excess of 1% must be unanimously approved by the PPGA. The Parties shall be prohibited from sub-licensing and releasing confidential digital data.

- 6.6 The Parties agree that the jointly owned Base Product deliverable will be made publicly available free of charge following a period of two (2) years after final acceptance of the entire OP 2014 project or when the PPGA executes final acceptance of a subsequent Orthorectified Imagery Project of the same scope, whichever comes first.

## **ARTICLE 7: CONFIDENTIALITY**

- 7.1 Any confidential and/or proprietary information that any Party discloses to any third party with respect to this MOU shall be designated as confidential and proprietary by the disclosing Party at the time of disclosure. Each Party shall require the recipient to hold such information confidential to the extent provided by law and shall require the recipient not to engage in any use or disclosure of such information unless such use or disclosure is expressly provided for in this MOU. Some of the Parties to this MOU are public entities subject to the provisions of the Colorado Open Records Act (“CORA”). In the event a Party receives a request for such confidential and/or proprietary information from a third party, notice thereof shall promptly be given to the other Parties. Each Party shall take all reasonable steps to prevent any unauthorized possession, use, transfer, or disclosure of such confidential information. Should a Party learn of any such unauthorized possession, use, transfer, or disclosure, it shall promptly notify the other Parties.
- 7.2 The disclosure provisions of Section 7.1 above shall not apply to information that a) a Party had in its possession prior to disclosure by another Party; b) becomes public knowledge through no fault of the recipient; c) a Party lawfully acquires from a third party not under an obligation of confidentiality to the Parties to this MOU; or d) is required to be disclosed by law or court order.

## **ARTICLE 8: ADDITIONAL PROVISIONS**

- 8.1 This MOU is subject to and shall be interpreted under the laws of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs, Colorado, a Colorado Home Rule City. Court Jurisdiction and venue shall exclusively be in the Colorado District Court for El Paso County, Colorado.
- 8.2 Expenditures and Fees of Each Party Deemed Expenditures of that Party: The Parties to this MOU agree that the purpose of this MOU is to jointly accomplish pursuant to C.R.S. Section 29-1-203 activities which could be performed separately by each Party. Accordingly, it is agreed and understood for purposes of the Colorado Constitution, Article X Section 20, and the Colorado Springs City Charter, that any fees contributed or paid, or otherwise provided by any Party to another Party are and remain an expenditure of the contributing, paying, or otherwise providing Party, and are not revenue or expenditures of the receiving Party.
- 8.3 In accord with the Colorado Constitution, Colorado Law, and the Colorado Springs City Charter, performance of a Party’s obligations under this MOU is expressly subject to

appropriation of funds by the governing body of that Party and the availability of those funds for expenditure under this MOU.

- 8.4 Counterparts; Facsimile. This MOU may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be considered one and the same instrument. This MOU may be executed and delivered by facsimile transmission.

**THE PARTIES HERETO HAVE EXECUTED THIS MEMORANDUM OF UNDERSTANDING.**

**CITY OF COLORADO SPRINGS AND  
COLORADO SPRINGS UTILITIES**

**By:** \_\_\_\_\_  
**Name:** Keith King  
**Title:** President of City Council  
**Date:** \_\_\_\_\_

**ATTEST:** \_\_\_\_\_  
City Clerk

**Approved As To Form:**

**By:** \_\_\_\_\_  
City Attorney's Office

**FOR EL PASO COUNTY, COLORADO:**

**By \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2014.**

**Title: Board of County Commissioners Chairman**

**ATTEST: \_\_\_\_\_  
Deputy County Clerk**

**Approved As To Form:**

**By: \_\_\_\_\_**

**County Attorney's Office**

**FOR EL PASO-TELLER COUNTY E911:**

**By \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2014.**

**Title: \_\_\_\_\_**

**ATTEST: \_\_\_\_\_**

**FOR THE CITY OF FOUNTAIN:**

By \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**Title: Mayor**

**ATTEST:** \_\_\_\_\_  
**City Clerk**

**Approved As To Form:**

**By:** \_\_\_\_\_

**City Attorney's Office**

**FOR PIKES PEAK REGIONAL BUILDING DEPARTMENT:**

**By** \_\_\_\_\_ **this** \_\_\_\_\_ **day of** \_\_\_\_\_, **2014.**

**Title:** \_\_\_\_\_

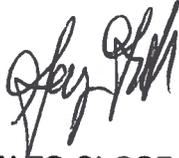
**ATTEST:** \_\_\_\_\_



# Interoffice Memorandum

**MEETING DATE:** February 25, 2014

**TO:** President and Members of City Council

**FROM:** Jerry Forte, P.E., Chief Executive Officer 

**RE:** **A RESOLUTION GRANTING PERMISSION TO CLOSE CONSENSUAL TRANSACTION FOR THE ACQUISITION OF PROPERTY FOR SOUTHERN DELIVERY SYSTEM PROJECT IMPROVEMENTS**

**UTILITIES' STRATEGIC GOAL(S) THIS ITEM SUPPORTS:** 11 - Plan, Build, Rehabilitate, and Maintain Infrastructure.

**SUMMARY:** Southern Delivery System (SDS) staff requests permission to close on consensual acquisition of real property required for the SDS project in El Paso County.

**PREVIOUS COUNCIL ACTION:** Since September 8, 2009, City Council has passed a number of resolutions authorizing the closings of more than 200 property transactions for the SDS project.

**BACKGROUND:** On November 13, 2012, City Council passed Resolution No. 135-12 granting permission to close a consensual transaction to acquire easements from Sundance Investments for the sum of \$3,800.00. This acquisition was based on a design alignment for the Southern Delivery System pipeline. Following this approval, the pipeline design was completed shifting the alignment slightly to the south providing a more direct route utilizing a longer underground tunnel and avoiding surface disturbances on several properties. This property is located immediately to the west of Fountain Creek and easterly of I-25. (The location of the proposed easement is shown on the attached Parcel Figure.) The owner has agreed to convey an additional permanent easement provided that the formerly acquired permanent and temporary easements are released. The compensation agreed to by both the owner and SDS provides an additional payment for the land which may be rendered less useable due to the realignment. The basis for this payment is the appraised value used in the original transaction. (The calculations used are included in the attached Summary of Just Compensation.) SDS will receive a full credit from the funds paid to the owner in the original transaction.

Pursuant to the provisions of the Colorado Constitution and the Colorado Springs City Charter, the City is empowered to acquire real property necessary for Utilities projects. Colorado Springs Utilities requests permission to close the transaction listed on Exhibit A, attached to the resolution. The resolution would authorize Colorado Springs Utilities staff to complete the purchase of this real property.

**FINANCIAL IMPLICATIONS:** This land acquisition is budgeted in the 2014 SDS Project budget.

**BOARD/COMMISSION RECOMMENDATION:** Not Applicable.

**STAKEHOLDER PROCESS:** Staff has been in contact with property owners impacted by the SDS project and will continue to communicate with stakeholders on a frequent basis. In addition, negotiations with property owners were conducted in accord with the Federal Uniform Act, the City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interests and all applicable law.

**ALTERNATIVES:** Acquisition of Permanent Easement could be delayed or discontinued. However, choosing this alternative will likely result in further encroachment, increased project costs and schedule delays.

**RECOMMENDATION:** Move approval of proposed resolution.

**PROPOSED MOTION:** Approval of proposed resolution.

c: Utilities' Officer Team  
City Real Estate Services

**A RESOLUTION GRANTING PERMISSION TO CLOSE CONSENSUAL  
TRANSACTION FOR THE ACQUISITION OF PROPERTY FOR SOUTHERN  
DELIVERY SYSTEM PROJECT IMPROVEMENTS**

**SECTION 1.** City Council finds the acquisition of the property listed in the attached Exhibit A to be necessary for the Southern Delivery System (SDS) project.

**SECTION 2.** The Project Manager and City Real Estate Services (RES) Manager are authorized to close and acquire this property in accord with City of Colorado Springs Procedures Manual for the Acquisition and Disposition of Real Property Interests.

**SECTION 3.** This Resolution shall be in full force and effect immediately upon its adoption.

Dated at Colorado Springs, Colorado this 25th day of February, 2014.

---

Keith King, Council President

ATTEST:

---

Sarah B. Johnson, City Clerk

**Exhibit A**

<b>Assessor's Parcel Number (APN)</b>	<b>Property Owner</b>	<b>Property Address</b>	<b>Permanent Easement Area (AC)</b>	<b>Temporary Easement Area (AC)</b>	<b>Fee Simple</b>	<b>Total Price</b>
57000-00-125	Sundance Investments	Old Pueblo Road, Fountain, CO	0.819 AC	0	0	\$1,200.00



Colorado Springs Utilities  
*It's how we're all connected*

<b>Land and Improvement/Permanent easement</b> 0.819 AC X \$5,500/AC X 75% =	\$	3,378.38
<b>Land/Temporary construction easement</b> N/A	\$	0.00
<b>Land Rental</b> N/A	\$	0.00
<b>Improvements</b> N/A	\$	0.00
<b>Damages or Cost to Cure</b> Remainder Area = 0.389 AC X \$5,500/AC @ 75% =	\$	1,604.63
<hr/>		
<b>Subtotal</b>	\$	4,983.01
<b>GROSS TOTAL</b>	\$	5,000.00 (Rounded)
Less Credit from Previous Easement Compensation	\$ -	3,800.00
<b>TOTAL JUST COMPENSATION</b>	\$	<b>1,200.00</b>

PARCEL DESIGNATION:	5700000125	DATE:	July 15, 2013
OWNER:	Sundance Investments (Owner current as of the date of certification hereon)		

**EXHIBIT A**

That portion of Sections 9 and 10, Township 17 South, Range 65 West of the Sixth Principal Meridian, contained within El Paso County Tax Schedule Number 57000-00-125, except any portion lying within the Denver & Rio Grande Railroad Right-of-Way, County of El Paso, State of Colorado.

(The preceding legal description taken from Title Commitment No. 500-S0283575-370-CSP, Amendment No. 5, prepared by Fidelity National Title Insurance Company, dated October 24, 2012)



Prepared for and on behalf of Colorado Springs Utilities by: Thomas W. Shaughnessy, L.S. 38166, of CRITIGEN, LLC, 2 North Cascade Avenue, Suite 460, Colorado Springs, Colorado, 80903

PARCEL DESIGNATION:	5700000125	DATE:	July 15, 2013
OWNER:	Sundance Investments (Owner current as of the date of certification hereon)		

**EXHIBIT B**

A permanent easement situated in a parcel of land located in the Southwest Quarter of Section 10, Township 17 South, Range 65 West of the Sixth Principal Meridian, County of El Paso, State of Colorado, more particularly described as follows:

**COMMENCING** at a 3-1/4 inch aluminum cap, PLS 10377, representing the Southwest Corner of said Section 10 from which a NGS point JK1353, a stainless steel rod set in concrete, known as "Clevenger", bears South 22°30'26" East a distance of 26,047.77 feet;

Thence North 0°51'21" West a distance of 857.93 feet on the west line of the Southwest Quarter of said Section 10;

Thence North 63°14'20" East a distance of 507.97 feet to the easterly line of the Denver & Rio Grande Railroad right-of-way and to the **POINT OF BEGINNING**;

Thence continue North 63°14'20" East a distance of 350.34 feet to the easterly line of said parcel;

Thence South 40°34'40" East a distance of 103.01 feet on said easterly line;

Thence South 63°14'20" West a distance of 363.10 feet to the easterly line of said railroad right-of-way;

Thence North 33°30'48" West a distance of 100.73 feet on said easterly right-of-way line to the **POINT OF BEGINNING**.

Said easement contains 35,682 square feet or 0.819 acres more or less.

EXHIBIT C SKETCH is attached hereto and is only intended to depict EXHIBIT B – Legal Description. In the event that EXHIBIT B contains an ambiguity, EXHIBIT C may be used to solve said ambiguity.



Prepared for and on behalf of Colorado Springs Utilities by: Thomas W. Shaughnessy, L.S. 38166, of CRITIGEN, LLC, 2 North Cascade Avenue, Suite 460, Colorado Springs, Colorado, 80903

DATE: 15-JULY-2013

DRAWN BY: T SHAUGHNESSY

CHECKED BY: B HANSON

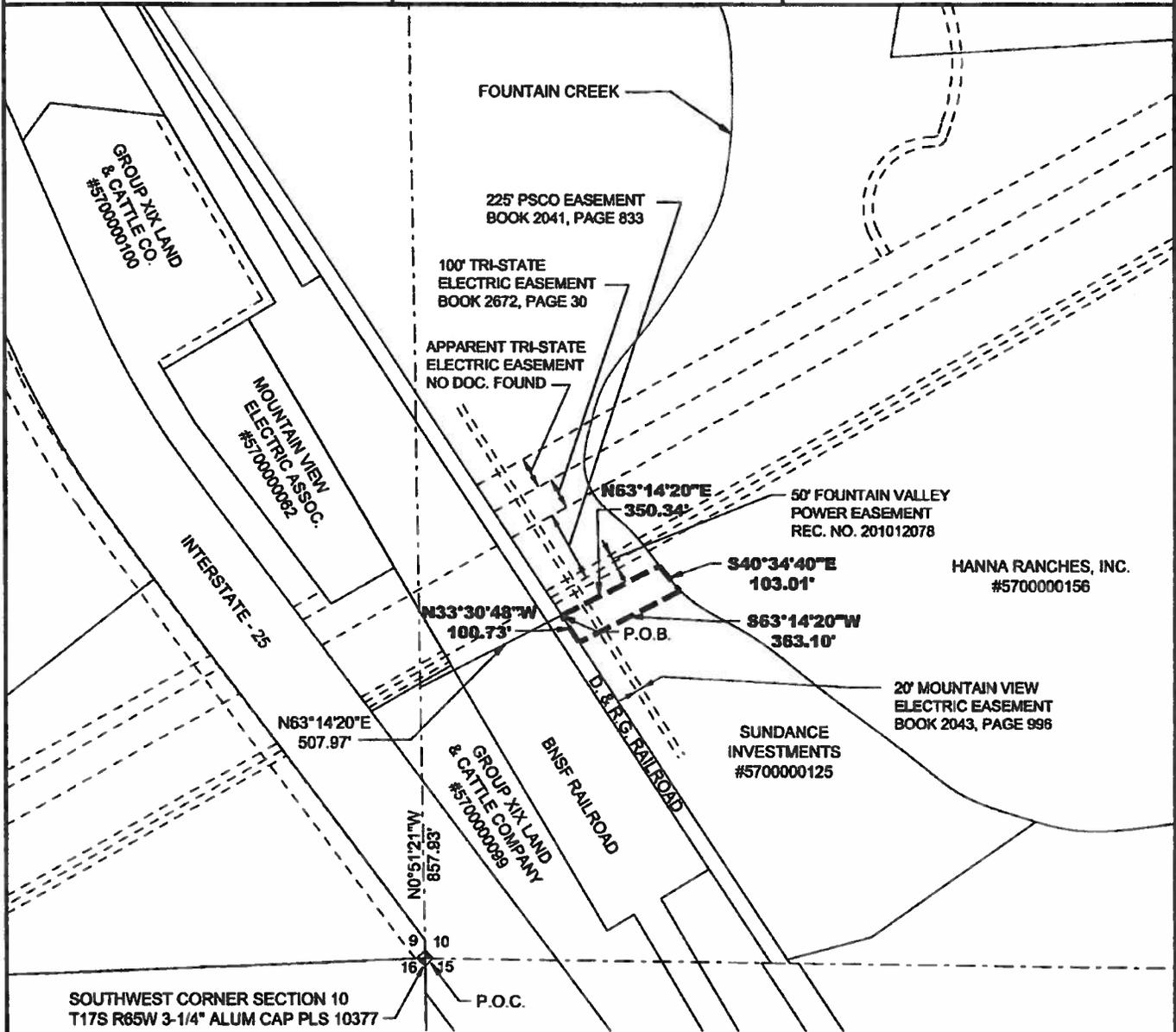
APPROVED BY: T SHAUGHNESSY

DRAWING: 5700000125\_PE\_EXC

### EXHIBIT C SKETCH

PERMANENT EASEMENT  
PARCEL #5700000125  
SECTION 10  
T17S, R65W, 6TH P.M.  
EL PASO COUNTY, COLORADO

## CITY OF COLORADO SPRINGS



**NOTES:**

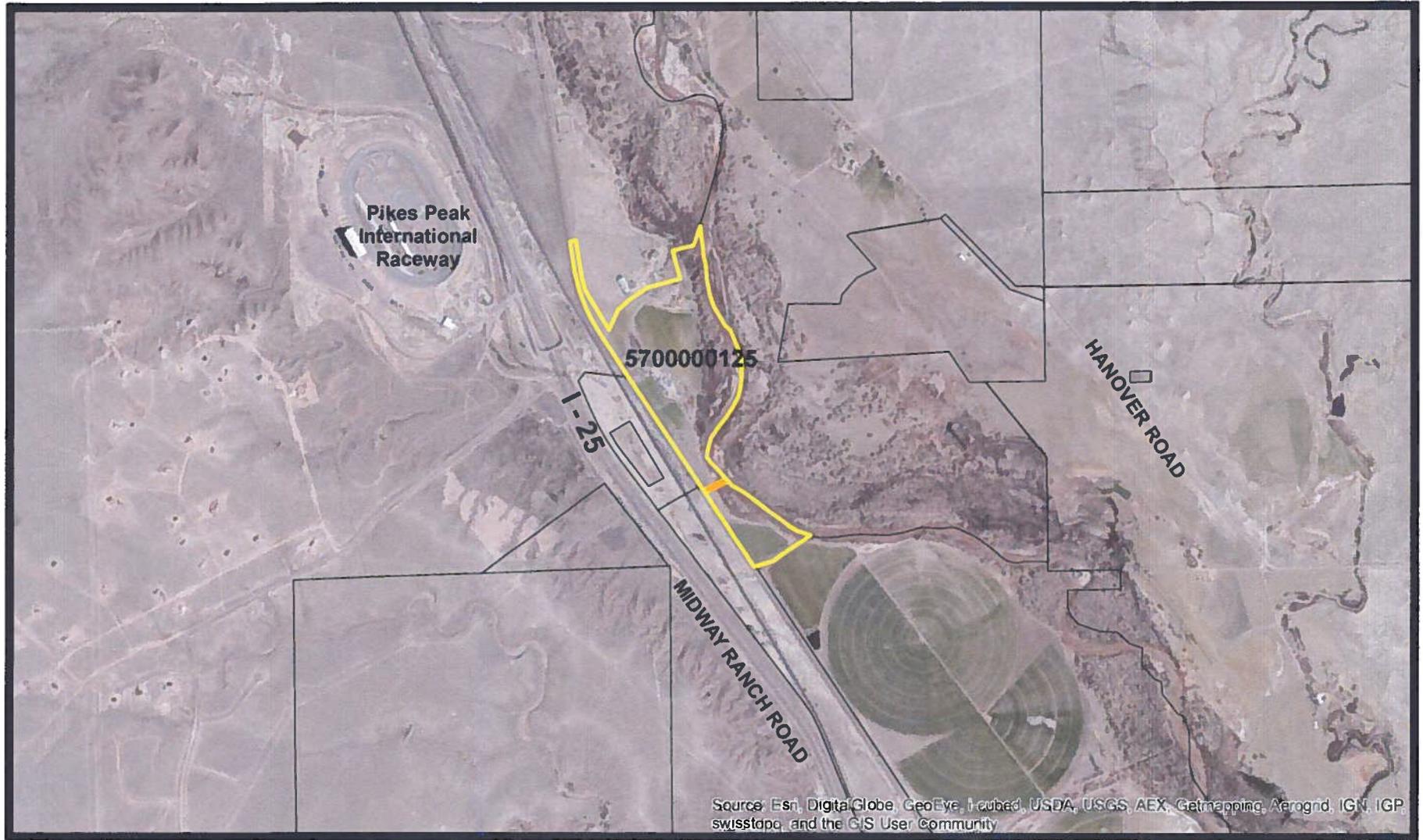
1. This sketch does not constitute a land survey plat by CRITIGEN, LLC., and is only intended to depict Exhibit B - Legal Description. In the event that Exhibit B contains an ambiguity, Exhibit C may be used to solve said ambiguity.
2. Bearings are based on a line from NGS Station "Pueblo CBL 973" (PID JK1355), monumented by a 3" brass disk set in 1.5' diameter concrete pad to NGS Station "Clevenger" (PID JK1353), monumented by a stainless steel rod set in concrete, said line was assumed to bear North 13°33'20" West according to a survey control diagram prepared by Kirkham Michael Consulting Engineers deposited with the El Paso County Surveyor on August 10, 2004 at Survey Deposit Number 204900110.



SCALE: 1" = 500'



SHEET 1 OF 1



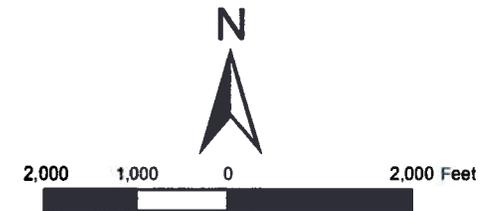
- PARCEL AREA IN ACRES ( 110.36 ±)
- PERMANENT EASEMENT IN ACRES ( 0.82 ±)
- TEMPORARY EASEMENT IN ACRES ( 0.00 ±)

**SOUTHERN DELIVERY SYSTEM  
EASEMENT AND ACQUISITION EXHIBIT**

**PARCEL # 5700000125**

August 7, 2013

**Note: This exhibit does not represent a land survey plat by CH2M HILL.  
CH2M HILL has made a good-faith effort to provide the most recent  
and accurate information available. This information is not to be used in any  
legal or official venue and is subject to change.**





# Interoffice Memorandum

**MEETING DATE:** February 25, 2014

**TO:** President and Members of City Council

**FROM:** Jerry Forte, P.E., Chief Executive Officer *[Signature]*

**SUBJECT:** **A RESOLUTION DIRECTING THE CHIEF EXECUTIVE OFFICER OF COLORADO SPRINGS UTILITIES TO EXECUTE AN AMENDMENT TO THE GROUNDWATER CAPACITY LEASE AGREEMENT WITH SECURITY WATER DISTRICT**

**SUMMARY:** Colorado Springs Utilities requests approval of a resolution directing the Chief Executive Officer to execute an amendment to the Groundwater Capacity Lease Agreement between Colorado Springs Utilities and Security Water District.

**PREVIOUS COUNCIL ACTION:** City Council approved the Groundwater Capacity Lease Agreement between Colorado Springs Utilities and Security Water District on December 11, 2012.

**BACKGROUND:** City Code § 12.4.304 allows Colorado Springs Utilities (Utilities) to provide by contract for the use of or connection to the City's water supply system by institutions, organized special districts, governments, municipal corporations, or other similar users located outside of the corporate limits of the City. Security Water District (Security) is a Colorado special district that provides water to the town of Security, which is located just south of Colorado Springs.

Utilities is entitled to withdraw its apportionment of the Widefield Aquifer capacity through its Pinello wells at a base level pumping rate of not more than 375 acre-feet per month, nor more than 1,200 acre-feet in any successive four month period, nor more than 1,600 acre-feet in any calendar year. Pursuant to a December 2012 Groundwater Capacity Lease Agreement (Lease Agreement) approved by City Council, Utilities leases up to 600 acre-feet per year of its apportionment of Widefield Aquifer capacity to Security from Pinello Wells 8, 10, and 13 (Pinello Wells) for a period of 25 years. The Lease Agreement requires Security to take a minimum of 300 acre-feet of water from the Pinello Wells and limits Security to taking 600 acre-feet per year with other restrictions on the timing of taking water.

Security has requested an amendment to the Lease Agreement to allow it to withdraw the leased portion of Utilities' Widefield Aquifer capacity from two of Security's wells located in the same reach of the Widefield Aquifer. Utilities has negotiated an amendment to the Lease Agreement that provides the terms and conditions under which the leased portion of Utilities' Widefield Aquifer capacity can be withdrawn through Security's wells. The negotiated amendment also corrects clerical errors in the schedule of the price to be paid for the leased portion of Utilities' Widefield Aquifer capacity set forth in paragraph 5 of the Lease Agreement and makes another revision that clarifies a provision of the Lease Agreement.

Since the Lease Agreement is a regional water service agreement, its amendment requires City Council approval. Utilities requests that City Council approve the attached resolution authorizing and directing the Chief Executive Officer of Colorado Springs Utilities to execute the amendment to the lease agreement.

**FINANCIAL IMPLICATIONS:** The revenue received under the lease agreement between Utilities and Security will not be changed by the requested amendment.

**BOARD/COMMISSION RECOMMENDATION:** N/A

**STAKEHOLDER PROCESS:** N/A

**ALTERNATIVES:**

- (1) Pass the attached resolution;
- (2) Not pass the attached resolution;
- (3) Modify the attached resolution or the amendment to the Lease Agreement; and
- (4) Refer the matter back to Colorado Springs Utilities for future consideration.

**RECOMMENDATION:** Move for approval of the proposed resolution.

**PROPOSED MOTION:** Approval of the proposed resolution.

c: Utilities Officer Team

**Attachments:**

- Amendment to Groundwater Capacity Lease Agreement
- Proposed Resolution

**RESOLUTION NO. \_\_\_\_\_ - 14**

**A RESOLUTION DIRECTING THE CHIEF EXECUTIVE OFFICER OF COLORADO SPRINGS UTILITIES TO EXECUTE AN AMENDMENT TO THE GROUNDWATER CAPACITY LEASE AGREEMENT WITH SECURITY WATER DISTRICT**

WHEREAS, City Code § 12.4.304 allows Colorado Springs Utilities to provide by contract for the use of or a connection to the City's water supply system by institutions, organized special districts, governments, municipal corporations, or other similar users, and

WHEREAS, Security Water District is a Colorado special district that provides water to the town of Security, Colorado, which is located south of Colorado Springs, and

WHEREAS, Colorado Springs Utilities is entitled to withdraw its apportionment of Widefield Aquifer capacity through its Pinello Wells at a base level pumping rate of not more than 375 acre-feet per month, nor more than 1,200 acre-feet in any successive four month period, nor more than 1,600 acre-feet in any calendar year, and

WHEREAS, Colorado Springs Utilities has leased up to 600 acre-feet per year of its apportionment of Widefield Aquifer capacity to Security Water District from Pinello Wells 8, 10, and 13 for a period of 25 years pursuant to a Groundwater Capacity Lease Agreement entered into on December 14, 2012, and

WHEREAS, Security Water District has requested an amendment to the Groundwater Capacity Lease Agreement to allow it to withdraw the leased portion of Colorado Utilities' Widefield Aquifer capacity from two of Security Water District's wells located in the same reach of the Widefield Aquifer, and

WHEREAS, Colorado Springs Utilities has negotiated an amendment to the Groundwater Capacity Lease Agreement that provides the terms and conditions under which the leased portion of Utilities' Widefield Aquifer capacity can be withdrawn through two of Security Water District's wells, and

WHEREAS, Colorado Springs Utilities requests that City Council authorize and direct the Chief Executive Officer of Colorado Springs Utilities to execute the amendment to the Groundwater Capacity Lease Agreement with Security Water District, and

WHEREAS, the City Council finds that it is appropriate for Colorado Springs Utilities to enter into such an amendment to the Groundwater Capacity Lease Agreement with Security Water District.

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

Section 1: The Chief Executive Officer of Colorado Springs Utilities is authorized and directed to enter into an amendment to the Groundwater Capacity Lease Agreement with Security Water District in a form substantially similar to that attached hereto.

Section 2: The Chief Executive Officer of Colorado Springs Utilities is also authorized to administer the Groundwater Capacity Lease Agreement and any amendment thereto.

Section 3: This Resolution shall be in full force and effect immediately upon its adoption.

Dated at Colorado Springs, Colorado, this 25<sup>th</sup> day of February, 2014.

---

Keith King, Council President

ATTEST:

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City Clerk

## **FIRST AMENDMENT TO GROUNDWATER CAPACITY LEASE AGREEMENT**

This First Amendment to Groundwater Capacity Lease Agreement (“First Amendment”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2014, by and between Colorado Springs Utilities, an enterprise of the City of Colorado Springs, a Colorado home-rule city and municipal corporation, hereinafter called (“UTILITIES”), and the Security Water District, acting by and through its water activity enterprise, whose address is 231 Security Boulevard, Colorado Springs, Colorado 80911 (“DISTRICT”).

### **RECITALS**

- A.** UTILITIES and DISTRICT entered into a Groundwater Capacity Lease Agreement on December 14, 2012 (“Agreement”), under which DISTRICT leased up to 600 annual acre feet of UTILITIES apportionment of the Widefield Aquifer capacity as agreed to by the parties in the stipulation in Case No. W-116, with such water to be diverted from Pinello Wells 8, 10, and 13 (“Aquifer Capacity”);
- B.** DISTRICT is the owner of Wells S-13 and S-14 which wells are located in the same Reach 1 of the Widefield Aquifer as the Aquifer Capacity.
- C.** The Widefield Aquifer Stipulation agreed to in Case No. W-116 allows alternate and changed points of diversion for wells that are located within the same aquifer reach.
- D.** DISTRICT has filed an application in Case No. 12CW99, with the District Court, Water Division 2, seeking alternate points of diversion for the Aquifer Capacity at DISTRICT’S existing Wells S-13 and S-14.
- E.** UTILITIES is willing to allow DISTRICT to divert the Aquifer Capacity at DISTRICT’S Wells S-13 and S-14, as alternate points of diversion, under the Agreement pursuant to this First Amendment.
- F.** UTILITIES and DISTRICT also desire to revise paragraphs 5 and 12 of the Agreement to correct clerical errors.

G. Pursuant to Section 6-50 (Water Rights) of Article VI (Utilities) of the Charter of the City of Colorado Springs, as amended, the City of Colorado Springs has the authority to buy, exchange, augment, lease, own, and control water and water rights; and

H. UTILITIES has entered into the Agreement and this First Amendment pursuant to Section 304 (Service; Special Contract) of Article 4 (Water Code) of Chapter 12 (Utilities) of the Code of the City of Colorado Springs 2001, as amended.

**NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION INCLUDING THE FOREGOING REPRESENTATIONS, IT IS AGREED AS FOLLOWS:**

1. **Alternate Points of Diversions:** UTILITIES agrees that, subject to DISTRICT obtaining any required Water Court or State and/or Division Engineer approvals, DISTRICT may divert the Aquifer Capacity at DISTRICT'S Wells S-13 and S-14 as alternate points of diversion. The locations of Wells S-13 and S-14 are shown on Exhibit A to the Agreement.

2. **Administration of Alternate Points of Diversions.** To the extent DISTRICT implements the alternate points of diversion of the Aquifer Capacity at Wells S-13 and S-14, then Wells S-13 and S-14 shall be the Delivery Point under the Agreement. DISTRICT shall, at its own expense, construct, operate, and maintain all infrastructure necessary to pump and deliver the Aquifer Capacity from Wells S-13 and S-14 to DISTRICT'S tanks or distribution system, including any meter(s) the parties determine are reasonably necessary to measure deliveries of Aquifer Capacity through Wells S-13 and S-14 and all utilities incurred for pumping. The DISTRICT shall provide UTILITIES with written notice of the commencement and cessation of diversions at the alternate points, including DISTRICT'S meter readings at such times and the total water taken on a monthly basis from Wells S-13 and S-14 as alternate points of diversion for the Aquifer Capacity. Such notice shall be provided to UTILITIES by email at the addresses provided in Paragraph 18.a of the Agreement on or before the first working day following the end of any month in which any portion of the Aquifer Capacity is diverted from Wells S-13 and S-14. The accuracy and verification of DISTRICT'S metering shall be governed under the

provisions of Paragraph 14 of the Agreement, with documentation provided by DISTRICT to UTILITIES as to the calibration and accuracy of the meters at the alternate points of diversion.

3. **Revisions to Paragraph 5 of the Agreement.** The schedule of the price to be paid for the Aquifer Capacity set forth in Paragraph 5 of the Agreement is replaced with the following:

January 1, 2013 to December 31, 2017	\$180/acre-foot
January 1, 2018 to December 31, 2022	\$210/acre-foot
January 1, 2023 to December 31, 2027	\$250/acre-foot
January 1, 2028 to December 31, 2032	\$290/acre-foot
January 1, 2033 to December 31, 2037	\$340/acre-foot

4. **Revisions to Paragraph 12 of the Agreement.** In all instances, the term “Clear Well” in Paragraph 12 of the Agreement shall be replaced with the term “receiving pit”.

5. **Remaining Terms.** With the exception of the above paragraphs, the Agreement remains unchanged in all other respects.

6. **Authority.** Both parties to this First Amendment represent that they have the full power and authority to enter into and perform this First Amendment, and the signatories represent and warrant that they have full power and authority to bind their respective entities.

7. **Entire Agreement.** The Agreement together with this First Amendment shall constitute the entire agreement between the parties relating to the subject hereof, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this First Amendment.

8. **Binding Effect.** The covenants, agreements, and obligations contained herein shall extend to, bind, and inure to the benefit of not only the parties hereto, but also their respective personal representatives, heirs, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this \_\_\_ day of \_\_\_\_\_, 2014.

**COLORADO SPRINGS UTILITIES**

**SECURITY WATER DISTRICT,  
acting by and through its water  
activity enterprise**

By: \_\_\_\_\_

Jerry Forte  
Chief Executive Officer

By: \_\_\_\_\_

Dick Gilham  
President

**APPROVED AS TO FORM:**

\_\_\_\_\_

Michael Gustafson, City Attorney's Office – Utilities Division



**Regular Agenda Item**

**Council Meeting Date:** February 25, 2014

**To:** President and Members of City Council

**cc:** Mayor Steve Bach

**Via:** Laura Neumann, Chief of Staff/Chief Administrative Officer

**From:** Peter Wysocki, Planning and Development Director  
Steve Tuck, Senior Planner

A handwritten signature or set of initials in black ink, appearing to be 'LN', is located to the right of the 'Via:' line.

**Subject Title:** Vacation of Right-of-Way at Lincoln Elementary School

**SUMMARY:** The application proposes vacating a right-of-way located within the block where Lincoln Elementary School is located (Figure 1). The 20-foot wide by 400-foot long right-of-way extends from Polk Street on the north to Tyler Street on the south and is between Cascade Avenue and Tejon Street.

**PREVIOUS COUNCIL ACTION:** None

**BACKGROUND:** The right-of-way requested for vacation was dedicated in 1888 (Addition No. 1 to the Town of Roswell) and 1889 (North Colorado Springs) for an alley. In 1947 Colorado Springs School District 11 constructed Lincoln Elementary School. The school and playground occupy the entire block where the right-of-way is located. A portion of the school building is in the right-of-way with the remainder of the right-of-way within the school playground. District 11 recently closed Lincoln Elementary and the property is available for purchase. To facilitate the sale of the property the 8,000 square-foot right-of-way must be vacated. The City has no need for the right-of-way and no street, alley, utility or drainage improvements are within the right-of-way.

**FINANCIAL IMPLICATIONS:** Not applicable

**BOARD/COMMISSION RECOMMENDATION:** As required by Section 7.7.402.B.2 of the City Code, a request to vacate right-of-way is placed directly onto a City Council agenda for action after review by the administration. No review by a board or commission is required.

**STAKEHOLDER PROCESS:** Public notification consisting of on-site posters and 25 postcards mailed to property owners within 500 feet of the right-of-way were provided after the receipt of the application and prior to the City Council meeting. Three telephone calls were received regarding the request, none in opposition.

Applicable City departments and other agencies were asked to review and comment on the application. All of the review agencies indicated no concerns or objections.

**ALTERNATIVES:**

1. Approve the request to vacate the right-of-way located within the block occupied by Lincoln Elementary School;
2. Deny the request to vacate the right-of-way; or
3. Refer the matter back to staff for further consideration.

**RECOMMENDATION:** Approve the vacation of the right-of-way located within the block occupied by Lincoln Elementary School.

**PROPOSED MOTION:**

**File No. AR V 14-00008 – Vacation of Right-of-Way**

Approve the attached ordinance vacating the right-of-way based on the finding the vacation complies with the criteria in Section 7.7.402.C of the City Code.

**Attachments:**

- An ordinance vacating alley public right-of-way consisting of 0.18 acre that extends from Polk Street on the north to Tyler Street on the south between Cascade Avenue and Tejon Street
- Application Review Criteria
- Figure 1 - Map

ORDINANCE NO. 14-\_\_\_\_\_

**AN ORDINANCE VACATING ALLEY PUBLIC RIGHT-OF-WAY CONSISTING OF 0.18 ACRE THAT EXTENDS FROM POLK STREET ON THE NORTH TO TYLER STREET ON THE SOUTH BETWEEN CASCADE AVENUE AND TEJON STREET**

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. The City Council hereby finds, determines and declares that it is in the best interest of the city and its citizens to vacate as shown on Exhibit A, and accordingly that the same is hereby vacated as follows:

Vacating a portion of public alley right-of-way consisting of 0.18 acre (20 feet wide by 400 feet long) extending from Polk Street on the north to Tyler Street on the south and is between Cascade Avenue and Tejon Street.

Section 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by Charter.

Section 3. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance shall be available for inspection and acquisition in the Office of the City Clerk.

Introduced, read, and passed on first reading and ordered published this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

Finally passed \_\_\_\_\_

\_\_\_\_\_  
Keith King, Council President

ATTEST:

\_\_\_\_\_  
Sarah B. Johnson, City Clerk

## **Exhibit A**

Legal description for the right-of-way located within the block occupied by Lincoln Elementary School:

The right-of-way located adjacent to and east of Lots 1 through 16, Block 54, Addition No. 1 to the Town of Roswell and adjacent to and west of Lots 17 through 32, Block 541, North Colorado Springs

AR V 14-00008 / st



↑ north

Request to vacate 20' wide right-of-way in block occupied by Lincoln Elementary school.

Figure 1

File No. ARV 14-00008

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## DEVELOPMENT APPLICATION REVIEW CRITERIA

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**VACATION PLAT REVIEW CRITERIA:**

**7.7.402 (C): VACATION PROCEDURES**

- C. Review Criteria: The vacation of right of way is solely at the discretion of the City Council. An application for vacation of public right of way may be approved by City Council only if the request complies with the following criteria:
1. The right of way is no longer needed for public transportation purposes;
  2. The vacation will not adversely impact use of the right of way for public utility and/or drainage purposes;
  3. The vacation will not adversely impact the uniform width of the remaining portions of the public right of way along the block frontage for which vacation is sought;
  4. Access to lots or properties surrounding the public right of way will not be adversely affected; and
  5. The vacation is consistent with the purpose of this Subdivision Code. (Ord. 96-44; Ord. 01-42; Ord. 06-13)

**A RESOLUTION OF APPRECIATION FOR THE FRIENDS OF UTE VALLEYPARK FOR THEIR SUCCESSFUL EFFORTS TO RAISE OVER \$100,000 TO SUPPORT THE ACQUISITION, MAINTENANCE AND PRESERVATION OF THE NEW 203 ACRE UTE VALLEY OPEN SPACE**

- WHEREAS,** the Parks, Recreation and Cultural Services Department serves the citizens of Colorado Springs through management of trails, open spaces, parks and recreation areas to improve the quality of life and enhance the image of the city; and
- WHEREAS,** when the Department became aware of the potential to acquire the 203 acre parcel of Hewlett Packard property adjacent to Ute Valley Park; and
- WHEREAS,** the Friends of Ute Valley Park formed to support the Department in the maintenance, preservation and expansion of Ute Valley Park; and
- WHEREAS,** In partnership with The Trust for Public Land, the Friends committed to raising \$50,000 to support the acquisition of the Hewlett Packard property and \$50,000 for the ongoing maintenance needs of the new open space; and
- WHEREAS,** through tireless fundraising efforts and events the Friends exceeded their fundraising goal in less than one year; and
- WHEREAS,** the acquisition of this new open space preserves this property for generations to come; and
- WHEREAS,** funds raised by the Friends will assist the City in providing maintenance and stewardship of the new open space; and
- WHEREAS,** the Parks, Recreation and Cultural Service Department acknowledges the Friends' donation of \$50,000 for maintenance and stewardship of the new open space and will deposit these funds into a Gift Trust Account to be spent expressly for stewardship and maintenance of the new open space; and
- WHEREAS,** the Friends of Ute Valley Park serve as testament to the dedicated and engaged people within our community.

**NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:**

That City Council expresses gratitude to The Friends of Ute Valley Park for their passion and commitment to enhancing the quality of life in Colorado Springs by promoting the stewardship and preservation of our great natural areas.

DATED at Colorado Springs, Colorado, this 25<sup>th</sup> day of February, 2014.

\_\_\_\_\_  
Keith King, Council President

ATTEST:

\_\_\_\_\_  
Sarah B. Johnson, City Clerk



Colorado Springs Utilities  
It's how we're all connected

# Interoffice Memorandum

**MEETING DATE:** February 25, 2014

**TO:** President and Members of City Council

**FROM:** Jerry Forte, P.E., Chief Executive Officer 

**SUBJECT:** **AN ORDINANCE AMENDING SECTIONS 1303 (DEFINITIONS), 1306 (STAGE I SHORTAGE); 1307 (STAGE II SHORTAGE); 1310 (DURATION OF WATER USE RESTRICTIONS); 1311 (ALTERNATIVE WATER MANAGEMENT PLANS); AND 1313 (SPECIAL CONTRACT SERVICE) OF PART 13 (WATER SHORTAGE) OF ARTICLE 4 (WATER CODE) OF CHAPTER 12 (UTILITIES) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO WATER SHORTAGE**

**SUMMARY:** The Water Shortage Ordinance (WSO) has been in place since 2002 and is the policy which enacts Colorado Springs Utilities' (Utilities) demand side drought response. In 2013 Utilities prepared an update to the WSO to reflect past experience, best management practices and community values. Based on experience gained during the drought of 2013, Utilities has prepared additional revisions to the WSO to address several housekeeping matters.

**PREVIOUS COUNCIL ACTION:** Council approved the WSO via Ordinance No. 02-59 on May 14, 2002 and the following Ordinances amending the WSO: Ordinance No. 02-121 dated August 13, 2002, Ordinance No. 02-133 dated August 27, 2002, Ordinance No. 02-154 dated September 13, 2002, Ordinance No. 02-133 dated August 27, 2002, Ordinance No. 03-41 dated March 25, 2003, Ordinance No. 03-85 dated June 24, 2003, Ordinance No. 05-46 dated April 12, 2005; Ordinance No. 13-10 dated February 26, 2013.

**BACKGROUND:** The WSO, which has been in place since 2002, is the policy which enacts demand side drought response. The WSO provides the criteria under which City Council can declare a water shortage and defines the measures that Utilities can take in response to a declared shortage, including restrictions on the use of water by customers. The WSO is a key means for City Council and Utilities to protect water supply, maintain water service essential for public health and safety, and minimize adverse impacts to economic activity during a water shortage. The WSO was substantially updated in 2013. Utilities has proposed housekeeping revisions to the WSO to reflect lessons learned during the 2013 drought. These are set forth in the attached Ordinance. Key, proposed revisions to the existing WSO are set forth below.

**KEY REVISIONS TO THE WATER SHORTAGE ORDINANCE:**

- §12.4.1303 is revised to add definitions for the following terms: Hose End Sprinkler System, Pop Up Fixed Spray Sprinkler, Pop Up Fixed Rotary Type Sprinkler, Sprinkler System, and Sprinkler Zone.
- §12.4.1306(a) is revised to extend the period of irrigation watering only between the hours of 6:00 p.m. and 10:00 a.m. from October 1 to October 14.

- §12.4.1306(b) is revised to provide that customers should water landscaped areas no more than three days per week during a Stage 1 Shortage.
- §12.4.1306(j) is revised to no longer recommend that restaurants display notice that drinking water will not be served unless requested.
- §12.4.1307(a)(2) is revised to reflect new time limits for irrigation using sprinkler systems.
- §12.4.1307(a)(3) is revised to provide that irrigation of landscaped areas shall not occur between the hours of 10:00 a.m. and 6:00 p.m. between May 1 and October 14, instead of May 1 through October 1.
- §12.4.1307(f) is revised to provide that the use of water in water features run time is no longer limited to 14 hours with a sign noting the use of recirculating water.
- §12.4.1307(g) is deleted.
- §12.4.1307(h) is revised to no longer require restaurants to display notice that drinking water will not be served unless requested.
- §12.4.1310 is revised to provide that unless a declared shortage has been withdrawn by City Council or the Utilities CEO, it will automatically reset to a Stage I Shortage on October 15 instead of December 31.
- §12.4.1311 is revised to remove the provision that Utilities intends to acknowledge previously approved conservation measures.
- §12.4.1313 is revised to clarify that only the use of Colorado Springs Utilities water supplies by regional water customers, not use of the customers own water, is subject to the terms and conditions of the WSO.

Utilities requests that City Council approve the attached Ordinance amending the WSO on first reading on February 25<sup>th</sup> and on second reading on March 11<sup>th</sup>.

**FINANCIAL IMPLICATIONS:** N/A

**BOARD/COMMISSION RECOMMENDATION:** N/A

**STAKEHOLDER PROCESS:** N/A

**ALTERNATIVES:**

- (1) Approve the Ordinance Amending the WSO;
- (2) Not approve the Ordinance Amending the WSO;
- (3) Modify the Ordinance Amending the WSO; and
- (4) Refer the matter back to Utilities for future consideration

**RECOMMENDATION:** Move for approval on first reading of the attached Ordinance Amending the WSO.

**PROPOSED MOTION:** Approve the attached Ordinance Amending the WSO on first reading.

c: Utilities' Officer Team

**Attachments:**

- Revised Water Shortage Ordinance
- WSO Presentation to City Council, Feb 25

**ORDINANCE NO. 14-\_\_\_\_\_**

**AN ORDINANCE AMENDING SECTIONS 1303 (DEFINITIONS), 1306 (STAGE I SHORTAGE); 1307 (STAGE II SHORTAGE); 1310 (DURATION OF WATER USE RESTRICTIONS); 1311 (ALTERNATIVE WATER MANAGEMENT PLANS); AND 1313 (SPECIAL CONTRACT SERVICE) OF PART 13 (WATER SHORTAGE) OF ARTICLE 4 (WATER CODE) OF CHAPTER 12 (UTILITIES) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO WATER SHORTAGE**

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:**

Section 1. That Part 13 (Water Shortage) of Article 4 (Water Code) of Chapter 12 (Utilities) of the Code of the City of Colorado Springs 2001, as amended, is hereby amended to read as follows:

**12.4.1303: DEFINITIONS:**

Unless the context specifically indicates otherwise, the following terms, as used in this part, shall have the following meanings:

\* \* \*

**HOSE END SPRINKLER SYSTEM:** A device used to irrigate that is attached to the end of a garden hose that can be set in place and periodically moved from one location to another.

\* \* \*

**POP UP FIXED SPRAY SPRINKLER:** A type of fixed spray sprinkler that pops up from underground and waters a set pattern, usually from 5 to 15 feet in range.

**POP UP ROTARY TYPE SPRINKLER:** A type of sprinkler that rotates where a stream of water is moved back and forth across the area being watered. Pop up rotary type sprinklers can be impact or gear driven.

\* \* \*

**SPRINKLER SYSTEM:** An assembly of component parts that is permanently installed for the controlled distribution and conservation of water to irrigate any type of landscape vegetation in any location.

**SPRINKLER ZONE:** Section of an irrigation system served by a single control valve.

\* \* \*

**12.4.1306: STAGE I SHORTAGE (WATCH):**

\* \* \*

A. Water landscaped areas with spray irrigation only between the hours of 6:00 p.m. and 10:00 a.m. during the period from May 1 to October 14.

B. Only water landscaped areas with spray irrigation **no more than three (3) days per week.**

\* \* \*

J. Restaurants, hotels, cafes, cafeterias or other public places where food is sold, served or offered for sale, are encouraged not to serve drinking water unless expressly requested by a patron ~~and prominently display at each table a notice to that effect.~~

**12.4.1307: STAGE II SHORTAGE (WARNING):**

\* \* \*

A. Outdoor Landscape Watering:

\* \* \*

2. Outdoor landscape watering shall not exceed: ~~a) for residential users, three (3) hours each designated watering day; and b) for commercial users, twenty (20) minutes per sprinkler zone or area for pop up fixed spray sprinklers and forty five (45) minutes per zone or area for pop up rotary type sprinklers (including, but not limited to, impact or gear drive) each watering day.~~ **Outdoor landscape watering with hose-end sprinklers shall not exceed three (3) hours each watering day.**

3. Watering of landscaped areas with spray irrigation shall not occur between the hours of 10:00 a.m. and 6:00 p.m. during the period from May 1 to October 14, except for watering essential to preserve turf grass associated with high use sports fields, except as otherwise prohibited by other applicable laws, ordinances, codes, rules and regulations.

\* \* \*

F. The use of water in all public and private water features **and ponds** is prohibited except those using recirculating water. ~~The use of recirculating water in all public and private water features shall be limited to no more than fourteen (14) hours per day. A sign shall be posted near the water feature stating designated operating hours and that it uses recirculating water. The foregoing shall not apply to the use of water essential to the support of existing exotic fish.~~

G. ~~Ponds shall be filled or refilled only during a water customer's designated watering day as set forth in subsection (A)(1) of this section, and only with a handheld hose equipped with an active~~

~~positive shutoff nozzle. The foregoing shall not apply to the use of water essential to the support of existing exotic fish.~~

~~HG. No restaurant, hotel, cafe, cafeteria or other public place where food is sold, served or offered for sale, shall serve drinking water unless expressly requested by a patron. and shall prominently display a notice to that effect.~~

~~IH. \* \* \*~~

~~JL. \* \* \*~~

~~KJ. \* \* \*~~

~~LK. \* \* \*~~

~~ML. \* \* \*~~

**12.4.1310: DURATION OF WATER USE RESTRICTIONS:**

Utilities will regularly evaluate the estimated supplies of water available to the water system to determine whether it is necessary to continue the water use restrictions of a declared stage or level. Stages and levels may be declared in accord with sections 12.4.1305, 1306, 1307, 1308 and 1309 of this part and, if water supply conditions warrant, the Chief Executive Officer may either downgrade or withdraw a declaration of a Stage I, Stage II, Stage III or Stage IV shortage, subject to City Council approval by resolution. If a declared shortage has not previously been withdrawn by the Chief Executive Officer or City Council, it shall automatically be reset to Stage I on ~~December 31~~ **October 15** of the year in which it was declared.

**12.4.1311: ALTERNATIVE WATER MANAGEMENT PLANS:**

A. General. A water customer may request relief from applicable provisions of this part by filing an alternative water management plan with Utilities. Utilities intends to provide water customers with the ability to design water management alternatives that give water customers flexibility in meeting the requirements of this part while achieving maximum conservation goals. ~~Additionally, Utilities intends to acknowledge previously implemented water conservation measures.~~

\* \* \*

**12.4.1313: SPECIAL CONTRACT SERVICE:**

All contracts for water service entered into pursuant to section 12.4.304 of this Code shall expressly provide that any use of water **provided from Colorado Springs Utilities' water supplies** pursuant to such a contract is subject to the restrictions set forth in this part.

Section 3. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by charter.

Section 4. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance shall be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Keith King, Council President

**Mayor's Action:**

- Approved: \_\_\_\_\_
- Disapproved: \_\_\_\_\_, based on the following objections:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Steve Bach, Mayor

**Council Action:**

- Finally adopted on a vote of \_\_\_\_\_, on \_\_\_\_\_.
- Amended and resubmitted \_\_\_\_\_.

\_\_\_\_\_  
Keith King, Council President

ATTEST:

\_\_\_\_\_  
Sarah B. Johnson, City Clerk

# City Council

# Water Shortage Ordinance

## February 25, 2013



Ann Seymour, Water Conservation Manager  
Michael Gustafson, City Attorney's Office

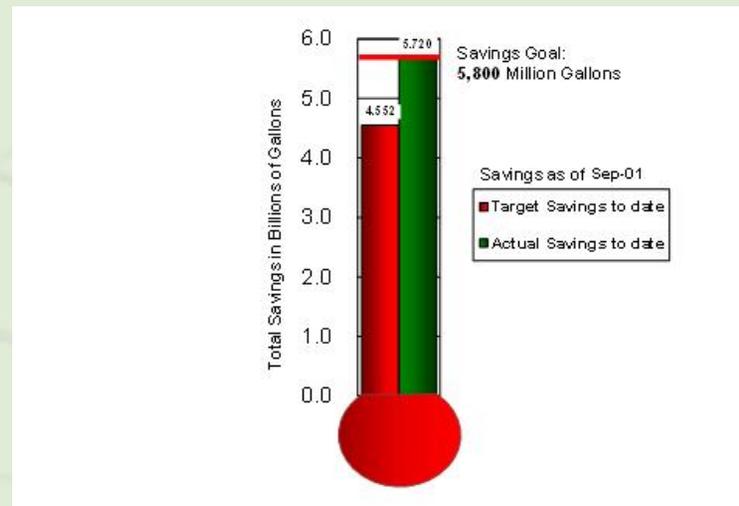
# Agenda

- Water Shortage Ordinance Revision Overview
- Next Steps



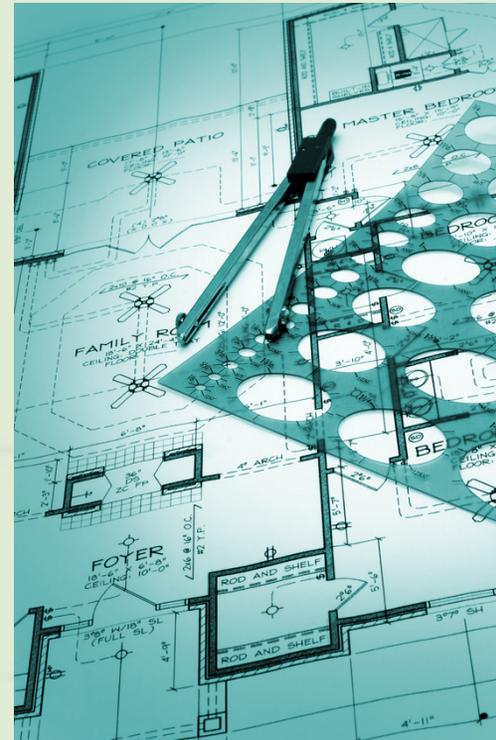
# Water Shortage Ordinance

- Adopted in 2002
- Key elements revised in 2013
- Proposed housekeeping changes 2014



# Water Shortage Ordinance High-Level Concepts

- Shortage Definition
- Authorization
- Stages
- Duration
- Violation & Charges



# Water Shortage Ordinance

## 12.4.1303: New Definitions Added

- Hose End Sprinkler System,
- Pop Up Fixed Spray Sprinkler
- Pop Up Fixed Rotary Type Sprinkler
- Sprinkler System
- Sprinkler Zone



## 12.4.1306: Stage I – Watch

- Landscape watering
  - Watering between 6:00 p.m. to 10:00 a.m.  
(May 1 - October 14)
- Voluntary conservation – **up to** 3 days per week
- Restaurants serving water – remove the suggestion to post notice on tables



## 12.4.1307: Stage II – Warning

### A. Outdoor landscape watering

- Time limits for irrigation with residential sprinkler systems to follow same limits as commercial customers
  - 20 minutes for pop-up spray and 45 minutes for rotary type sprinklers
  - Hose-end sprinklers remain the same 3 hour limit
- No watering allowed between 10:00 a.m. to 6:00 p.m. (May 1 - Oct 14)

### F/G. Water features and ponds

- Remove limits on operating hours and refilling

### H. Remove requirement for restaurants to display notice that drinking water will not be served unless requested

## 12.4.1310: Duration of Water Use Restrictions

- Revised so that if a declared shortage has not been previously withdrawn by City Council or the Utilities CEO, it will automatically reset to a Stage I Shortage on October 15 instead of December 31



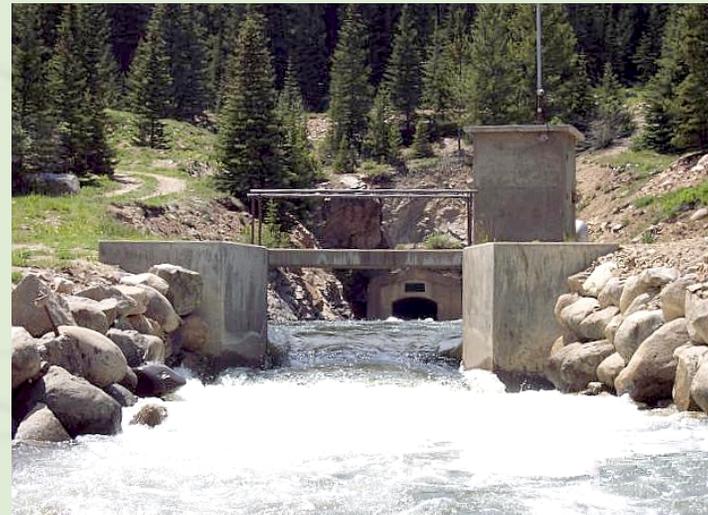
## 12.4.1311: Alternative Water Management Plans

- Clarifying the need to build in flexibility for customers who cannot water according to the requirements of the Ordinance



## 12.4.1313: Special Contract Services

- Revised to clarify that only the use of Colorado Springs Utilities water supplies by regional water customers, not the use of the customer's own water, is subject to the terms and conditions of the WSO.



# Next Steps

- City Council – WSO 1<sup>st</sup> Reading Feb 25
- City Council – WSO 2<sup>nd</sup> Reading March 11
- Utilities Board – Recommend Stage March 19
- City Council – WSO Implement Stage March 25
- City Council – WST Public hearing March 25
- City Council – WST Decisions and Orders April 8
- Implementation May 1

# Discussion



CITY ATTY'S OFFICE  
CODE CHANGE REVIEW  
ATTY INIT \_\_\_\_\_  
DATE \_\_\_\_/\_\_\_\_/\_\_\_\_

ORDINANCE NO. 14-13

AN ORDINANCE AMENDING AN ORDINANCE AMENDING SECTIONS 301 (DEFINITIONS) AND 302 (FACILITY SECURITY PLANS) OF PART 3 (FACILITY SECURITY) OF ARTICLE 2 (CITY PROPERTIES) OF CHAPTER 3 (PUBLIC PROPERTY AND PUBLIC WORKS) AND SECTION 108 (CITY FACILITY SECURITY; VIOLATION) OF PART 1 (GENERAL OFFENSES) OF ARTICLE 6 (OFFENSES AFFECTING PROPERTY) OF CHAPTER 9 (PUBLIC OFFENSES) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO POSSESSION OF MARIJUANA AT INDOOR CITY FACILITIES, AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF

WHEREAS, City Council recognizes an individual’s right to use and possess marijuana pursuant to Article XVIII, Section 16, of the Colorado Constitution; and

WHEREAS, City Council recognizes that Article XVIII, Section 16, of the Colorado Constitution permits persons, employers, corporations or any other entities who occupy, own or control a property to prohibit or otherwise regulate the possession of marijuana on or in that property;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. Sections 301 (Definitions) and 302 (Facility Security Plans) of Part 3 (Facility Security) of Article 2 (City Properties) of Chapter 3 (Public Property and Public Works) of the Code of the City of Colorado Springs 2001, as amended, are amended to read as follows:

**3.2.301: DEFINITIONS:**

\* \* \*

**Indoor City Facility:** Any enclosed building, structure, or facility owned or leased by the City of Colorado Springs that is used for City purposes.

\* \* \*

**3.2.302: FACILITY SECURITY PLANS/REGULATION**

\* \* \*

**D. Posting of Indoor Facilities:** The person or persons who have administrative or supervisory authority over any indoor City facility and their designees shall post a notice at the public entrance(s) to the indoor City Facilities, visible to persons entering the facility informing the public that the possession of marijuana within indoor City facilities is prohibited.

Section 2. Section 108 (City Facility Security; Violation) of Part 1 (General Offenses) of Article 6 (Offenses Affecting Property) of Chapter 9 (Public Offenses) of the Code of the City of Colorado Springs 2001, as amended, is amended to read as follows:

**9.6.108: CITY FACILITY SECURITY/REGULATION; VIOLATION:**

\* \* \*

**B. No person shall be authorized to enter or remain upon any indoor City Facility defined by section 3.2.301 of this Code while in possession of marijuana as defined in section 9.7.206(C) of this Code.**

**C. It shall be unlawful for any person to intentionally or knowingly remain upon any City facility, or indoor City facility after having been denied entry or having been asked to leave due to a violation of security rules and regulations posted by the manager pursuant to section 3.2.302 of this Code or this subsection C.**

**ED.** It shall be unlawful for any person to intentionally or knowingly remain upon any City facility after having been denied entry or having been asked to leave due to a violation of security rules and regulations posted by the manager pursuant to section 3.2.302 of this Code.

Section 3. Section 104 (Right to Trial by Jury; Exceptions) of Part 1 (Trial by Jury) of Article 4 (Jury Provisions) of Chapter 11 (Municipal Court) of the Code of the city of Colorado Springs 2001, as amended, is amended to read as follows:

**11.4.104: RIGHT TO TRIAL BY JURY; EXCEPTIONS**

The election of jury trial is hereby eliminated relating to the following sections of this Code and violations of the following sections of this Code shall not be punishable by imprisonment, but shall be punishable by a fine not to exceed five-hundred dollars (\$500.00), by a sentence of probation, or by a combination of such fine and sentence of probation.

\* \* \*

**Section 9.6.108, "City Facility Security/Regulation; Violation", of this Code. Penalty: For a violation of 9.6.108 of this Code, the maximum penalty shall be: A first time conviction shall be punished by confiscation of the marijuana possessed and a fine of not more than one hundred dollars. A second or subsequent conviction shall be punished by confiscation of the marijuana possessed and a fine of not more than five hundred dollars.**

Section 4. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by charter.

Section 5. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance shall be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this 11<sup>th</sup> day of February, 2014.

**Finally passed:** \_\_\_\_\_  
Keith King, Council President

Delivered to Mayor on \_\_\_\_\_.

**Mayor's Action:**

- Approved on \_\_\_\_\_.
- Disapproved on \_\_\_\_\_, based on the following objections:

\_\_\_\_\_  
\_\_\_\_\_

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\_\_\_\_\_  
Steve Bach, Mayor

**Council Action After Disapproval:**

- Council did not act to override the Mayor's veto.
- Finally adopted on a vote of \_\_\_\_\_, on \_\_\_\_\_.
- Council action on \_\_\_\_\_ failed to override the Mayor's veto.

\_\_\_\_\_  
Keith King, Council President

ATTEST:

\_\_\_\_\_  
Sarah B. Johnson, City Clerk

CITY ATTY'S OFFICE  
CODE CHANGE REVIEW  
ATTY INIT \_\_\_\_\_  
DATE \_\_\_\_/\_\_\_\_/\_\_\_\_

ORDINANCE NO. 14-14

AN ORDINANCE AMENDING SECTIONS 301 (DEFINITIONS) AND 302 (FACILITY SECURITY PLANS) OF PART 3 (FACILITY SECURITY) OF ARTICLE 2 (CITY PROPERTIES) OF CHAPTER 3 (PUBLIC PROPERTY AND PUBLIC WORKS) AND SECTION 108 (CITY FACILITY SECURITY; VIOLATION) OF PART 1 (GENERAL OFFENSES) OF ARTICLE 6 (OFFENSES AFFECTING PROPERTY) OF CHAPTER 9 (PUBLIC OFFENSES) AND SECTION 104 (RIGHT TO TRIAL BY JURY; EXCEPTIONS) OF PART 1 (TRIAL BY JURY) OF ARTICLE 4 (JURY PROVISIONS) OF CHAPTER 11 (MUNICIPAL COURT) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO POSSESSION OF MARIJUANA AT THE COLORADO SPRINGS MUNICIPAL AIRPORT, AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF

WHEREAS, City Council recognizes an individual’s right to use and possess marijuana pursuant to Article XVIII, Section 16, of the Colorado Constitution; and

WHEREAS, City Council recognizes that Article XVIII, Section 16, of the Colorado Constitution permits persons, employers, corporations or any other entities who occupy, own or control a property to prohibit or otherwise regulate the possession of marijuana on or in that property; and

WHEREAS, City Council recognizes that possession of marijuana is prohibited by federal law; and

WHEREAS, City Council recognizes the need to protect the federal interests identified in the Department of Justice’s guidance on its federal marijuana enforcement policy and that the Transportation Security Administration, the Federal Aviation Administration, and/or airlines, have prohibited marijuana from being brought onto airplanes in carry-on and/or checked bags; and

WHEREAS, City Council desires to ensure that the Municipal Airport maintains its status as a Federal Aviation Administration certificated airport and continues to comply with all applicable federal grant assurances;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. Sections 301 (Definitions) and 302 (Facility Security Plans) of Part 3 (Facility Security) of Article 2 (City Properties) of Chapter 3 (Public Property and Public Works) of the Code of the City of Colorado Springs 2001, as amended, are amended to read as follows:

3.2.301: Definitions:

**AIR OPERATIONS AREA (AOA):** has the meaning defined in 49 C.F.R. Section 1540.5, as amended.

\* \* \*

**MUNICIPAL AIRPORT:** All properties presently leased or owned by the City and designated by the City Council or Mayor as a part of the Municipal Airport, including all of that property commonly known as "Peterson Field", and any properties which may be acquired by the City as a municipal aeronautical facility. "Municipal Airport" includes a terminal facility for development, promotion and accommodation of air commerce, air travel and air transportation.

**PASSENGER TERMINAL FACILITY:** The building and overhang structure located at 7770 Milton E. Proby Parkway in Colorado Springs, Colorado.

3.2.302 FACILITY SECURITY PLANS/REGULATION:

\* \* \*

**C. Posting of Municipal Airport:** The person or persons who have administrative or supervisory authority over the Municipal Airport and their designees shall post a notice at the public entrance(s) to the passenger terminal facility of the Municipal Airport and the AOA, visible to persons entering the facility or the AOA, informing the public that the possession of marijuana within the passenger terminal facility of the Municipal Airport and the AOA is prohibited.

Section 2. Section 108 (City Facility Security; Violation) of Part 1 (General Offenses) of Article 6 (Offenses Affecting Property) of Chapter 9 (Public Offenses) of the Code of the City of Colorado Springs 2001, as amended, is amended to read as follows:

**9.6.108: CITY FACILITY SECURITY/REGULATION; VIOLATION:**

\* \* \*

**C. Unlawful Possession; Municipal Airport: No person shall be authorized to enter or remain upon the passenger terminal facility or the Air Operations Area (AOA) of the Municipal Airport as those areas are defined by section 3.2.301 of this Code while in possession of marijuana as defined in 9.7.206 of this Code.**

**GD.** It shall be unlawful for any person to intentionally or knowingly remain upon any City facility, or indoor City facility, **or in or upon the passenger terminal facility or the AOA of the Municipal Airport** after having been denied entry or having been asked to leave due to a violation of security rules and regulations posted by the manager pursuant to section 3.2.302 of this Code or this subsection **GD**.

**DE.** It shall be unlawful for any person to intentionally or knowingly remain upon any City facility after having been denied entry or having been asked to leave due to a violation of security rules and regulations posted by the manager pursuant to section 3.2.302 of this Code.

Section 3. Section 104 (Right to Trial by Jury; Exceptions) of Part 1 (Trial by Jury) of Article 4 (Jury Provisions) of Chapter 11 (Municipal Court) of the Code of the city of Colorado Springs 2001, as amended, is amended to read as follows:

11.4.104: RIGHT TO TRIAL BY JURY; EXCEPTIONS

The election of jury trial is hereby eliminated relating to the following sections of this Code and violations of the following sections of this Code shall not be punishable by imprisonment, but shall be punishable by a fine not to exceed five-hundred dollars (\$500.00), by a sentence of probation, or by a combination of such fine and sentence of probation.

\* \* \*

**Section 9.6.108, "City Facility Security/Regulation; Violation", of this Code. Penalty: For a violation of 9.6.108 of this Code, the maximum penalty shall be: A first time conviction shall be punished by confiscation of the marijuana possessed and a fine of not more than one hundred dollars (\$100.00). A second or subsequent conviction shall be punished by confiscation of the marijuana possessed and a fine of not more than five hundred dollars (\$500.00).**

Section 4. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by charter.

Section 5. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance shall be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this 11<sup>th</sup> day of February, 2014.

**Finally passed:** \_\_\_\_\_

\_\_\_\_\_  
Keith King, Council President

Delivered to Mayor on \_\_\_\_\_.

**Mayor's Action:**

- Approved on \_\_\_\_\_.
- Disapproved on \_\_\_\_\_, based on the following objections:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Steve Bach, Mayor

**Council Action After Disapproval:**

- Council did not act to override the Mayor's veto.
- Finally adopted on a vote of \_\_\_\_\_, on \_\_\_\_\_.
- Council action on \_\_\_\_\_ failed to override the Mayor's veto.

\_\_\_\_\_  
Keith King, Council President

ATTEST:

\_\_\_\_\_  
Sarah B. Johnson, City Clerk



**Regular Agenda Item**

**Council Meeting Date:** February 25, 2014

**To:** President and Members of City Council  
**cc:** Mayor Steve Bach  
**Via:** Laura Neumann, Chief of Staff/Chief Administrative Officer   
**From:** Michael Sullivan, Human Resources Director and Secretary to the Civil Service Commission

**Subject Title:** Changes to Civil Service Rules 1.3, 1.4, 8.7, 8.10, 10.1

**Summary:**

The Civil Service Commission approved the attached changes to the Civil Service Rules by a vote of 4-0 (Commissioner Manuszak absent) on January 7, 2014, after receiving no objections to the proposed changes. The changes: (1) conform the Civil Service Rules to the Council-Mayor form of government; (2) clarify references to "D.C.;" (3) implement exclusive rights to appeal to the Deputy Chief not in the employee's chain of command (a full due process appeal) or the Police/Fire Chief in circumstances involving sustained complaints of unlawful discrimination, fitness for duty, or failure to meet minimum qualifications of the position; and (4) clarify that appeals to the Police/Fire Chief must be accompanied by a knowing and voluntary waiver of due process rights. The rule changes also implement a procedure for second and third physician opinions in a fitness for duty situation.

**Previous Council Action:**

No previous action with regard to the requested amendments.

**Background:**

Civil Service Rules 1.3, 1.4, 10.1, and the Table of Contents contain references to the City Manager. The amendments to Rules 1.3, 1.4, 10.1, and the Table of Contents replace the term City Manager with Mayor, consistent with City Charter, Article XV, § 15-30.

Civil Service Rule 8.10 currently refers to the "D.C.," which is an abbreviation for the Deputy Chief. The amendment to this Rule clarifies that the reference is to the Deputy Chief.

Civil Service Rule 8.7 currently permits suspensions without pay, reductions in rank/grade or compensation, and termination to be appealed to the Deputy Chief not in the employee's chain of command, to the Board of Rights/Peer Review Panel, or to the Police/Fire Chief at the employee's election. As amended, Rule 8.7 carves out appeals involving sustained complaints of unlawful discrimination, fitness for duty, and failure to meet minimum qualifications of the position as appealable only to the Deputy Chief not in the employee's chain of command or the Police/Fire Chief. Thus, subsequent to amendment, Rule 8.7 will not permit Board of Rights/Peer Review Panel appeal of

discipline matters involving sustained complaints of unlawful discrimination, fitness for duty, or failure to meet minimum qualifications of the position. Rule 8.7 retains the employee's right to elect appeal of suspensions without pay, reductions in rank/grade or compensation, and termination to the Board of Rights/Peer Review Panel in all but the specifically excepted circumstances. This change recognizes the degree of risk to the City associated with sustained complaints of unlawful discrimination, fitness for duty, and failures to meet minimum qualifications of the position and appropriately places appeal of such matters within the final decision-making authority of a Deputy Chief or the Police/Fire Chief.

Rule 8.7.B permits discipline appeals to the Police/Fire Chief. However, if an employee elects to appeal to the Police/Fire Chief, he or she is required to waive due process rights. Rule 8.7.B is amended to clarify that an employee electing a Police/Fire Chief appeal must *voluntarily* waive due process rights.

**Financial Implications:**

There are no financial implications.

**Board/Commission Recommendation:**

The Civil Service Commission discussed and unanimously agreed (Commissioner Manuszak absent) to the rule changes on January 7, 2014.

**Stakeholder Process:**

The Police Protective Association (PPA) and the International Association of Fire Fighters Local 5 (IAFF) have stated no objections to the proposed changes. Civil Service Rule 11.8 requires the posting of proposed rule changes for 10 business days prior to the effective date of the rule change. The proposed changes were posted on November 22, 2013 in compliance with the Rule 11.8 and were posted again on December 31, 2013.

**Alternative:**

City Council can deny the proposed changes to the Civil Service Rules.

**Recommendation:**

It is recommended by the Civil Service Commission that the City Council approve the changes to Civil Service Rules 1.3, 1.4, 8.7, 8.10, and 10.1.

**Proposed Motion:**

Approval of a resolution to amend Civil Service Rules 1.3, 1.4, 8.7, 8.10, and 10.1.

c: PPA % Robin Rodgers, IAFF % Richard Radabaugh

**Attachments:**

- Resolution for changes to Civil Service Rules 1.3, 1.4, 8.7, 8.10, and 10.1
- Rule Changes Redline Version - Exhibit A
- Final Rule Changes – Exhibit B

**A RESOLUTION APPROVING AMENDMENTS TO THE RULES OF THE  
COLORADO SPRINGS CIVIL SERVICE COMMISSION FOR THE  
MUNICIPAL POLICE AND FIRE FORCES.**

WHEREAS, City Charter, Art. XIV, § 14-10 establishes a Civil Service Commission and City Charter, Art. XIV, § 14-20 empowers the Civil Service Commission, with the approval of City Council, to make such rules and regulations for the proper conduct of its business as it shall find necessary or expedient;

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

Section 1. That the amendments to Rules 1, 8 and 10, Sections 1.3, 1.4, 8.7, 8.10, 10.1, and the Table of Contents of the Rules of the Colorado Springs Civil Service Commission for the Municipal Police and Fire Forces, approved by the Civil Service Commission on January 7, 2014 and attached hereto as Exhibits A and B are hereby approved.

DATED at Colorado Springs, Colorado, this \_\_\_\_\_ day of \_\_\_\_\_  
2014.

\_\_\_\_\_  
Keith King, Council President

ATTEST:

\_\_\_\_\_  
Sarah B. Johnson, City Clerk

### **1.3 Office Facilities and Payment of Expenses (2014)**

The ~~City Manager~~ Mayor shall provide a suitable and properly furnished meeting place for the Civil Service Commission. An estimate of the anticipated expense of the Commission for the ensuing fiscal year shall be prepared by the Commission and presented to the ~~City Manager~~ Mayor at the appropriate time for inclusion in the ~~Manager's~~ Mayor's annual budgetary request. The Controller shall, from time to time, pay the expenses of the Commission.

### **1.4 Reports to City Council and City Manager ~~the~~ Mayor (2014)**

The Commission shall in January of each year make an annual report to the ~~City Manager~~ for Mayor and transmission to the City Council showing its own actions, the number of examinations held, the number of persons placed on employment lists, and other like information; and setting forth any suggestions it may approve for the more effectual enforcement and carrying out of the principles of sound personnel administration. Special reports shall be submitted as requested by the Mayor or City Council.

### **8.7 Appeal Of Suspension Without Pay, Reduction In Rank/Grade Or Compensation, Or Termination (1998, 1999, 2004, 2007, 2014)**

- A. **Except for appeals governed by Rule 8.7.C,** An employee may: ~~1) accept the disciplinary action~~ 2) request that a Deputy Chief not in the employee's chain of command hear the appeal of the action or ~~3) request that the Board of Rights/Peer Review Panel be impaneled to hear the appeal~~ or 3) appeal to the Police/Fire Chief as set forth in Rule 8.7.B. The make-up of the review panel shall be consistent with Police/Fire policy. Disciplinary action, pending appeal pursuant to this Rule, shall be stayed subject to the limitations set forth in Rule 8.8 E.
- B. **Appeal to the Police or Fire Chief.** An employee may ~~bypass the appeal options outlined in Rule 8.7.A~~ by appealing the level of discipline imposed to the Police/Fire Chief. This review is solely limited to whether the amount of discipline imposed is appropriate. The employee must admit to the underlying policy violation(s) and the conduct that supported the violation(s). Such appeal will be comprised of a review of the investigatory file, employee's personnel file and oral argument by the employee as to why the imposed discipline should be reduced. The Police Department Commanding Officer of Internal Affairs or Fire Department Human Resources Manager or designee, will be present during the meeting between the ~~e~~Chief and subject employee. At the conclusion of the hearing, the Police/Fire Chief may affirm or decrease the discipline. The Police/Fire Chief's findings will be final, with no right to appeal to the Commission. An employee electing this appeal option will be required to knowingly ~~waive~~ and voluntarily waive certain rights including appeal to District Court pursuant to C.R.C.P. Rule 106 (a) (4) certiorari review, any rights to bring forward a lawsuit in a court of law based to the Chief's action, any rights set forth in these rules and the City Charter, the right to be represented by counsel, right to discovery, present witnesses, cross examine witness, present evidence, and appeal to the Civil Service Commission (as set forth in Rule IX). Upon the employee electing to appeal to the Chief, he/she must execute a waiver which outlines the rights that the employee must knowingly and voluntarily waive prior to proceeding under this subsection. The employee will be afforded five business days as defined in 8.16 to seek legal counsel and ~~sign~~ sign the waiver. Failure to timely sign and submit the waiver will result in the employee having to elect an alternate appeal option outlined in Rule 8.7.A. Such election shall occur within one business day of the waiver review period expiring.
- C. **Appeals Involving Discrimination, Fitness for Duty, or Minimum Qualifications.** Appeals involving one of the following: 1) sustained complaints of unlawful discrimination, harassment, or retaliation; 2) fitness for duty; or 3) failure to meet minimum qualifications of the position. An employee may: 1) request that a Deputy Chief not in the employee's chain of command hear the appeal of the action; or 2) appeal to the Police Chief or Fire Chief as set forth in Rule 8.7.B. Disciplinary action, pending appeal pursuant to this Rule, shall be stayed subject to the limitations set forth in Rule 8.8.E. Appeals involving termination based on a fitness for duty will proceed as set forth in Rule 8.7.D.
- D. **Appeals Involving Fitness for Duty.** An employee appealing a termination based upon a finding by the Police/Fire Department that the employee is not fit for duty shall have the option to obtain a second medical opinion by a licensed physician selected by the employee at the employee's expense. If the second medical opinion results in a conclusion that the employee is fit

for duty, then the Police/Fire Department shall have the option to: 1) accept the second medical opinion; or 2) obtain a third medical opinion from a licensed physician selected by the Police/Fire Department at the Department's expense. If two of the three medical opinions find the employee fit for duty, the employee will be found fit for duty. If two of the three medical opinions find the employee not fit for duty, the employee will be found not fit for duty. An employee found not fit for duty shall have the appeal options set forth in Rule 8.7.C. The procedures for fitness for duty and second and third medical opinions will be determined by Police/Fire policy. The Police/Fire Departments comply with all requirements of the Americans with Disabilities Act.

### **8.10 Conduct Of Appeal Hearings To Review Panel/D-C Deputy Chief. (1998, 1999, 2004, 2007, 2014)**

The employee appealing discipline pursuant to Rule 8.7, shall have the right to counsel of the employee's choice at employee's expense, shall have the right to cross-examine all witnesses, and shall have the right to call witnesses on the employee's behalf. Any witness requested on behalf of the employee who is an employee of the City shall be required to be available to give testimony at the Hearing. If the employee appealing fails to attend the Hearing, the Review Panel/D-C Deputy Chief shall proceed to hear the evidence and render a decision. A full and complete verbatim record shall be kept of the proceedings before the Review Panel/Deputy Chief.

### **10.1 Layoffs (2010, 2014)**

The ~~City Manager~~ Mayor may authorize the lay off of an employee, reduce an employee in grade/rank or reduce the employee's compensation when it is deemed necessary by reason of shortage of funds, the abolition of the position, other material change in the duties or organization, or for other related reasons which are outside the employee's control and which do not reflect discredit upon the service of the employee. The duties performed by any employee laid off may be reassigned to other employees already working who hold positions in appropriate classes/ranks. No regular employee shall be laid off while another person in a classified position is employed on a temporary basis in the class/rank in that department. No temporary or permanent separation of an employee from the service as a penalty or disciplinary action shall be considered as a layoff.

### **1.3 Office Facilities and Payment of Expenses (2014)**

The Mayor shall provide a suitable and properly furnished meeting place for the Civil Service Commission. An estimate of the anticipated expense of the Commission for the ensuing fiscal year shall be prepared by the Commission and presented to the Mayor at the appropriate time for inclusion in the Mayor's annual budgetary request. The Controller shall, from time to time, pay the expenses of the Commission.

### **1.4 Reports to City Council and the Mayor (2014)**

The Commission shall in January of each year make an annual report to the Mayor and City Council showing its own actions, the number of examinations held, the number of persons placed on employment lists, and other like information; and setting forth any suggestions it may approve for the more effectual enforcement and carrying out of the principles of sound personnel administration. Special reports shall be submitted as requested by the Mayor or City Council.

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- A. Except for appeals governed by Rule 8.7.C, an employee may request that a Deputy Chief not in the employee's chain of command hear the appeal of the action or 2) request that the Board of Rights/Peer Review Panel be impaneled to hear the appeal or 3) appeal to the Police/Fire Chief as set forth in Rule 8.7.B. The make-up of the review panel shall be consistent with Police/Fire policy. Disciplinary action, pending appeal pursuant to this Rule, shall be stayed subject to the limitations set forth in Rule 8.8 E.
- B. **Appeal to the Police or Fire Chief.** An employee may appeal the level of discipline imposed to the Police/Fire Chief. This review is solely limited to whether the amount of discipline imposed is appropriate. The employee must admit to the underlying policy violation(s) and the conduct that supported the violation(s). Such appeal will be comprised of a review of the investigatory file, employee's personnel file and oral argument by the employee as to why the imposed discipline should be reduced. The Police Department Commanding Officer of Internal Affairs or Fire Department Human Resources Manager or designee, will be present during the meeting between the Chief and subject employee. At the conclusion of the hearing, the Police/Fire Chief may affirm or decrease the discipline. The Police/Fire Chief's findings will be final, with no right to appeal to the Commission. An employee electing this appeal option will be required to knowingly and voluntarily waive certain rights including appeal to District Court pursuant to C.R.C.P. Rule 106 (a) (4) certiorari review, any rights to bring forward a lawsuit in a court of law based to the Chief's action, any rights set forth in these rules and the City Charter, the right to be represented by counsel, right to discovery, present witnesses, cross examine witness, present evidence, and appeal to the Civil Service Commission (as set forth in Rule IX). Upon the employee electing to appeal to the Chief, he/she must execute a waiver which outlines the rights that the employee must knowingly and voluntarily waive prior to proceeding under this subsection. The employee will be afforded five business days as defined in 8.16 to seek legal counsel and sign the waiver. Failure to timely sign and submit the waiver will result in the employee having to elect an alternate appeal option outlined in Rule 8.7.A. Such election shall occur within one business day of the waiver review period expiring.
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8.8.E. Appeals involving termination based on a fitness for duty will proceed as set forth in Rule 8.7.D.

- D. **Appeals Involving Fitness for Duty.** An employee appealing a termination based upon a finding by the Police/Fire Department that the employee is not fit for duty shall have the option to obtain a second medical opinion by a licensed physician selected by the employee at the employee's expense. If the second medical opinion results in a conclusion that the employee is fit for duty, then the Police/Fire Department shall have the option to: 1) accept the second medical opinion; or 2) obtain a third medical opinion from a licensed physician selected by the Police/Fire Department at the Department's expense. If two of the three medical opinions find the employee fit for duty, the employee will be found fit for duty. If two of the three medical opinions find the employee not fit for duty, the employee will be found not fit for duty. An employee found not fit for duty shall have the appeal options set forth in Rule 8.7.C. The procedures for fitness for duty and second and third medical opinions will be determined by Police/Fire policy. The Police/Fire Departments comply with all requirements of the Americans with Disabilities Act.

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### ***10.1 Layoffs (2010, 2014)***

The Mayor may authorize the lay off of an employee, reduce an employee in grade/rank or reduce the employee's compensation when it is deemed necessary by reason of shortage of funds, the abolition of the position, other material change in the duties or organization, or for other related reasons which are outside the employee's control and which do not reflect discredit upon the service of the employee. The duties performed by any employee laid off may be reassigned to other employees already working who hold positions in appropriate classes/ranks. No regular employee shall be laid off while another person in a classified position is employed on a temporary basis in the class/rank in that department. No temporary or permanent separation of an employee from the service as a penalty or disciplinary action shall be considered as a layoff.



**Regular Agenda Item**

**COUNCIL MEETING DATE:** February 25, 2014

**To:** President and Members of City Council  
**cc:** Mayor Steve Bach  
**Via:** Laura Neumann, Chief of Staff/Chief Administrative Officer  
**From:** Peter Wysocki, Planning and Development Director  
Carl Schueler, Planning Manager-Comprehensive Planning

**Subject Title: FIRST & MAIN BUSINESS IMPROVEMENT DISTRICT REQUEST FOR CHANGE IN GOVERNANCE STRUCTURE**

**SUMMARY:**

The First & Main Business Improvement District (the BID) is requesting City Council consideration of an ordinance to allow a change in governance structure from a Council-appointed to an elected board of directors, as allowed by Colorado Revised Statutes.

**PREVIOUS COUNCIL ACTION:**

City Council approved formation of this in 2003 (Ordinance No. 03-37) and has approved this BID's Budget and Operating Plan annually since its formation. City Council has also approved the BID's issuance of its 2009 and 2011 bonds as well as a boundary modification associated with formation of the First and Main Business Improvement No. 2 District in 2008.

**BACKGROUND:**

Colorado Revised Statutes §31-25-1209(1) (d) allows for persons owning fifty percent (50%) or more of the property and representing at least 50% of the assessed valuation, to petition for conversion from an appointed to an elected board governance structure. The applicable statutory language is included as an attachment. This petition meets that requirement. For this BID, the petitioning owners represent 90% of the acreage and 95% of the valuation. Of the total of ten existing BIDs in the City, this and the First & Main No. 2 BID are the only development-specific BIDs that have appointed and not elected boards. The more broadly based Downtown BID also has a City Council-appointed board.

The way this statutory language operates, the discretion of Council is limited because this petition must be approved if due process is followed and standards are met. However, Council does have the option of adopting greater acreage ownership thresholds, via ordinance if this was desired.

Staff notes that in this case, the current Council-appointed board consists entirely of representatives of the majority owners within this BID. Conversion to an elected board would potentially confer minority owners an opportunity to qualify electors and therefore more actively participate in the affairs of this district. However, the appointed board structure also allows for this broader representation.

This action has been contemplated as part of the City Council-approved 2014 Budget and Operating Plan for this BID.

The required legal notice will be coordinated with the petitioners and the City Clerk's Office.

A copy of the draft ordinance is attached. The ordinance includes language addressing the terms of board member (staggered) and other standard requirements, all in accordance with State statute.

**FINANCIAL IMPLICATIONS:**

With this potential change in governance there are no direct financial implications to the City.

**ALTERNATIVES:**

Following this process, City Council is obligated to approve this request, unless it were to choose to implement greater proportional ownership requirements as allowed for by Statute.

**BOARD/COMMISSION RECOMMENDATION:**

The BID's Boards of Directors recommends City Council's approval of this change. This request has been provided to the City's Special District Committee. As of the date of this staff report, there have been no substantive outstanding comments or concerns. The City Clerk and Attorney's Offices have been coordinating with this request. The City's Committee "consultant", Colorado Springs Utilities, City Finance and City Public Works all state no comments or concerns. The Budget Office notes this change would result in more consistency among similar BIDs.

**RECOMMENDATION:**

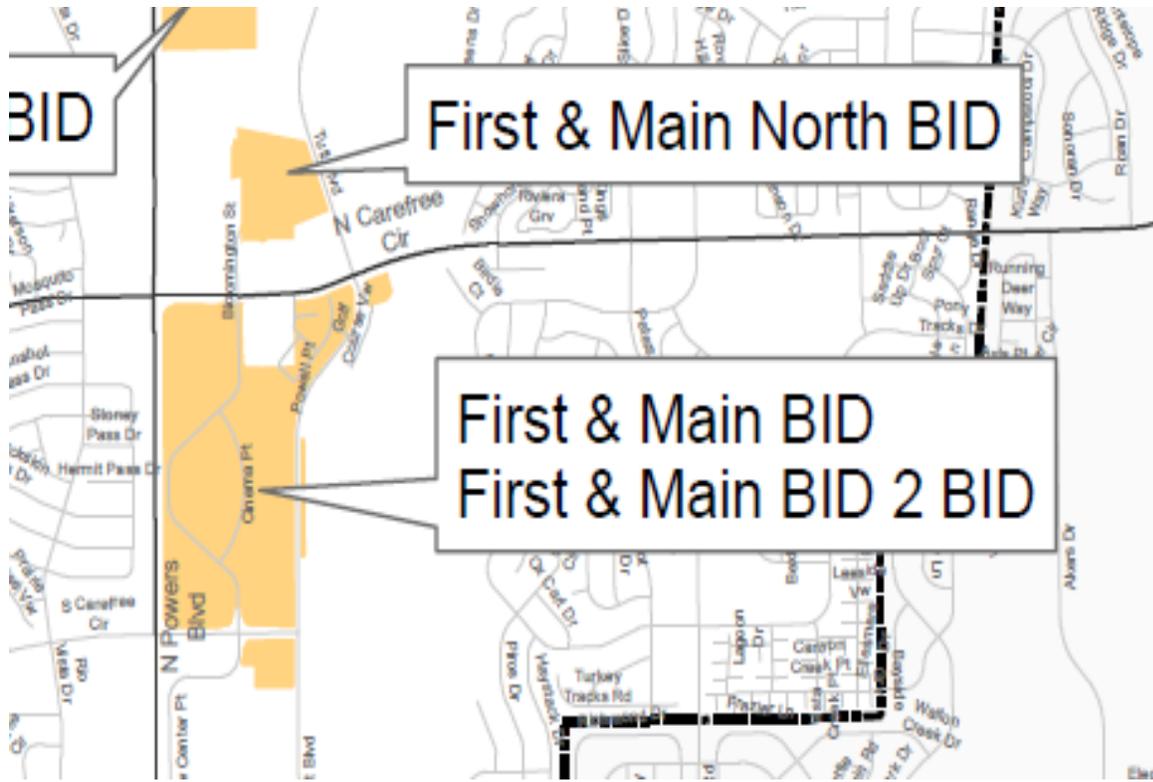
Staff recommends approval of the Ordinance.

**PROPOSED MOTION:**

Approve the ordinance approving the election of the board of directors of the First and Main Business Improvement District by the eligible electors of the district pursuant to the petition filed under C.R.S. 31-25-1209(1)(D).

**Attachments:**

- Vicinity Map
- Excerpt from Colorado Revised Statutes
- Copy of the Petition
- Ordinance



BID

First & Main North BID

First & Main BID  
First & Main BID 2 BID

Attachment ---

Excerpt from Colorado Revised Statutes §31-25-1209(1) (d)

*(d) If the petition initiating the organization of the district or any subsequent petition signed by persons who own real or personal property in the service area of the proposed district having a valuation for assessment of not less than fifty percent, or such greater amount as the governing body may provide by ordinance, of the valuation for assessment of all real and personal property in the service area of the proposed district and who own at least fifty percent, or such greater amount as the governing body may provide by ordinance, of the acreage in the proposed district so specifies, the members of the board of the district shall be elected by the electors of the district. If such a petition is approved, the terms of members of the board shall be specified by ordinance of the governing body and shall be the same as the terms of directors of special districts pursuant to article 1 of title 32, C.R.S. The initial election for members of the board shall be held within sixty days after approval of the ordinance organizing the district or the filing of any subsequent petition. All subsequent elections for members of the board shall be on the regular election date specified in article 1 of title 32, C.R.S., for special districts. The number of directors, the quorum requirements, and the oaths of office shall be the same as those provided for directors of special districts pursuant to article 1 of title 32, C.R.S. Any vacancy on the board shall be filled in the same manner as provided in paragraph (b) of this subsection (1). Until the members of the board are elected and qualified, the governing body shall serve as the board of the district. Elections pursuant to this paragraph (d) shall be held in accordance with the provisions of part 8 of article 1 of title 32, C.R.S. The cost of any election held pursuant to this paragraph (d) shall be borne by the district.*

SPENCER FANE  
& GRIMSHAW<sup>LLP</sup>  
ATTORNEYS & COUNSELORS AT LAW

MARY L. CARTER, PARALEGAL  
DIRECT DIAL: (303) 839-3871  
mcarter@spencerfane.com

File No. 5114015-0014

January 21, 2014

Bill Powell  
Deputy City Clerk  
City of Colorado Springs  
30 S. Nevada  
Colorado Springs, CO 80903

**Re: First and Main Business Improvement District**

Dear Mr. Powell:

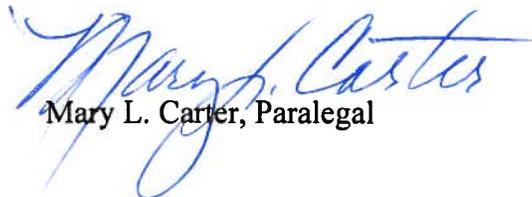
Enclosed please find the original Petition of First and Main LLC, the owner of ninety-five percent (95%) of the valuation for assessment of all real and personal property in the service area and ninety percent (90%) of the acreage in the First and Main Business Improvement District.

Kindly advise the undersigned of the date of the public hearing and we will prepare and publish the Notice of Public Hearing accordingly and provide you with the proof of publication.

If you require anything further, please advise me.

Very truly yours,

SPENCER FANE & GRIMSHAW LLP



Mary L. Carter, Paralegal

MLC/idi  
Cc: Carl Schueler  
Enclosure

1700 Lincoln Street, Suite 3800  
Denver, Colorado 80203-4538  
(303) 839-3800 www.spencerfane.com Fax (303) 839-3838

DN 948641.1

PETITION  
TO  
CITY COUNCIL  
CITY OF COLORADO SPRINGS, COLORADO

Pursuant to Section 31-25-1209, C.R.S., the undersigned, representing ninety-five percent (95%) of the valuation for assessment of all real and personal property in the service area and ninety percent (90%) of the acreage in the First and Main Business Improvement District hereby requests approval of the City Council of the City of Colorado Springs, Colorado for the members of the board of directors of the District to be hereinafter elected by the eligible electors of the District.

Attached is a copy of the property owners list provided by the El Paso County Assessor detailing the owners of real and personal property within the District and the assessed values and acreage of the parcels within the District, as verification of the claim of the Petitioner.

First and Main LLC

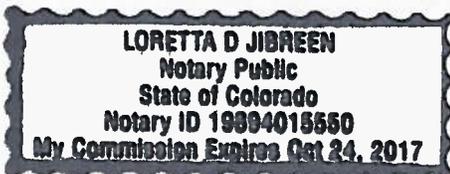
By

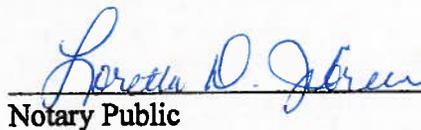
  
Christopher S. Jenkins, Manager

Subscribed and sworn to before me this 10<sup>TH</sup> day of October, 2013 by Christopher S. Jenkins as Manager of First and Main LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 10-24-2017



  
Notary Public

Parcel/Schedule Number	Property Type	Property Location	Primary Land Use	Acreage	Market Value	Assessed Value	Owner's Name 1	Owner's Name
5331202006	Vacant	NEW CENTER PT	VACANT COMMERCIAL LOTS	0.92	1,000	290	FIRST & MAIN LLC	
5331202031	Vacant	NEW CENTER PT	VACANT COMMERCIAL LOTS	1.49	1,000	290	FIRST & MAIN LLC	
5331202044	Commercial	3316 CINEMA PT	SPECIAL PURPOSE	0.31	1,511,175	438,240	FIRST & MAIN LLC	
5331202012	Commercial	3190 NEW CENTER PT	SPECIAL PURPOSE	2.47	1,645,726	477,260	FIRST & MAIN LLC	
5331202021	Commercial	3150 NEW CENTER PT	MERCHANDISING	4.64	4,275,047	1,239,760	FIRST & MAIN LLC	
5331202032	Commercial	3130 CINEMA PT	WAREHOUSE/STORAGE	3.91	651,065	188,810	FIRST & MAIN LLC	
5331202020	Commercial	3120 NEW CENTER PT	SPECIAL PURPOSE	0.75	996,863	289,090	FIRST & MAIN LLC	
5331202023	Commercial	3101 NEW CENTER PT	SPECIAL PURPOSE	1.99	1,305,705	378,650	FIRST & MAIN LLC	
5331200024	Exempt	31-13-65	POLITICAL SUBDIVISION	0.92	500	0	COLORADO SPRINGS CITY OF	
0000020038	0000 Personal Property				345,958	100,330	BEST BUY STORES LP	NO 021200
0000031255	0000 Personal Property				41,167	11,940	MENS WEARHOUSE	NO 1307
0000066713	0056 Personal Property				25,630	7,430	CISCO SYSTEMS CAPITAL CORP	C/O PROPERTY TAX ALLI
0000091396	0053 Personal Property				1,075	310	CARDTRONICS USA INC	C/O HARDING & CARBONE
0000096763	0000 Personal Property				387,704	112,440	OLD CHICAGO	C/O ROCK BOTTOM REST.
0000097909	0000 Personal Property				156,616	45,420	PANERA BREAD	NO 3076
0000101596	0000 Personal Property				121,464	35,220	FOX & HOUND PUB & GRILLE	C/O SAVAGE SAVAGE & B
0000107436	0045 Personal Property				2,229	650	MACQUARIE EQUIP FINANCE LLC	& SUBSIDIARY
0000111812	0050 Personal Property				3,888	1,130	PEPSICO SALES INC	C/O GEORGE MCELROY &
0000175836	0206 Personal Property				6,399	1,860	COCA COLA COMPANY THE	ATTN PROPERTY TAX DEF
0000195785	0280 Personal Property				74	20	MUZAK LLC	ATTN TAX DEPARTMENT
0000263960	0397 Personal Property				1,207	350	WABASHA LEASING LLC	C/O TAX DEPT
0000413975	0981 Personal Property				2,386	690	I B M CREDIT LLC	150 KETTLETOWN RD MS 3
				17.40	11,483,876			

**Owner's Name 3****Mailing Address**

	111 S TEJON ST STE 222	COLORADO SPRINGS	CO	80903-2246
	111 S TEJON ST STE 222	COLORADO SPRINGS	CO	80903-2246
	111 S TEJON ST STE 222	COLORADO SPRINGS	CO	80903-2246
	111 S TEJON ST STE 222	COLORADO SPRINGS	CO	80903-2246
	111 S TEJON ST STE 222	COLORADO SPRINGS	CO	80903-2246
	111 S TEJON ST STE 222	COLORADO SPRINGS	CO	80903-2246
	111 S TEJON ST STE 222	COLORADO SPRINGS	CO	80903-2246
	111 S TEJON ST STE 222	COLORADO SPRINGS	CO	80903-2246
	30 N NEVADA AVE # 701	COLORADO SPRINGS	CO	80903
C/O MARVIN F POER & CO	PO BOX 802206	DALLAS	TX	75380-2206
	6380 ROGERDALE RD	HOUSTON	TX	77072-1646
	PO BOX 311746	NEW BRAUNFELS	TX	78131-1746
	3903 BELLAIRE BLVD	HOUSTON	TX	77025-1119
	8001 ARISTA PL STE 500	BROOMFIELD	CO	80021-4135
D/B/A BREADS OF THE WORLD LLC	2433 S HANLEY RD	SAINT LOUIS	MO	63144-1504
	PO BOX 22845	OKLAHOMA CITY	OK	73123-1845
PO BOX 2017	2285 FRANKLIN RD	BLOOMFIELD HILLS	MI	48302-0364
	PO BOX 565048	DALLAS	TX	75356-5048
	PO BOX 4440	BRANDON	FL	33509-4440
	3318 LAKEMONT BLVD	FORT MILL	SC	29708-8309
	386 WABASHA ST N	SAINT PAUL	MN	55102-1312
	PO BOX 1159	SOUTHBURY	CT	06488-8159

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE APPROVING THE ELECTION OF THE BOARD OF DIRECTORS OF THE FIRST AND MAIN BUSINESS IMPROVEMENT DISTRICT BY THE ELIGIBLE ELECTORS OF THE DISTRICT PURSUANT TO THE PETITION FILED UNDER C.R.S. 31-25-1209(1)(d).**

WHEREAS, the City Council of the City of Colorado Springs has received a Petition (“Petition”) praying that the members of the board of directors of the First and Main Business Improvement District (“District”) shall be elected by the electors of the District; and

WHEREAS, pursuant to the authority granted in Section 31-25-1201 et seq., C.R.S. (the “Business Improvement District Act”) the City Council organized the District by Ordinance No. 03-37 effective March 11, 2003.

WHEREAS, Pursuant to its authority under the Business Improvement District Act and specifically Sections 31-25-1204 and 31-25-1209(1)(d), the City Council of the City of Colorado Springs, as the governing body of the City of Colorado Springs, is vested with the authority to approve the Petition.

WHEREAS, the City Council, following public notice as required by the Business Improvement District Act held and concluded a public hearing at 1:00 p.m. on Tuesday, February \_\_\_\_, 2014, at the City Hall, at which proponents and opponents of the Petition had the opportunity to be heard.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. City Council does hereby find that the City Council of the City of Colorado Springs is vested with jurisdiction to make the within findings necessary to approve the request made by the Petition;

Section 2. City Council does hereby find that the allegations of the Petition are true;

Section 3. City Council does hereby find that the Petition has been signed in conformity with the Business Improvement District Act, the signatures on the Petition are genuine, and that the signatures of petitioners represent the persons who own real or personal property in the service area of the District having a valuation for assessment of not less than fifty percent (50%) of the valuation of all real and personal property in the service area of the District, and that the signatures of petitioners represent the persons who own at least fifty percent (50%) of the acreage of the District;

Section 4. City Council, having found the Petition legally sufficient pursuant to Section 31-25-1209(1)(d), C.R.S., hereby approves the Petition and provides that the members of the board of directors of the District shall be elected by the eligible electors of the District as provided by law and subject to the conditions in this Ordinance and that the board of directors shall carry out the responsibilities required of such board by the Business Improvement District Act and other law.

Section 5. The Council hereby finds that the regular special district election to be held on May 6, 2014 is within sixty (60) days after the approval of this ordinance.

Section 6. The members of the Board of Directors shall be elected on May 6, 2014 election and Mary L. Carter of Spencer Fane & Grimshaw LLP as the nominee of the Board of Directors shall be the designated election official responsible for conducting such election.

Section 7. Three of the Directors elected at the May 6, 2014 election shall serve until the regular special district election in May 2018 and two of such directors shall serve until the next regular special district election in May 2016.

Section 8. The actions of the petitioner providing public notice of the public hearing on the sufficiency of the Petition is hereby ratified and confirmed.

Section 9. This ordinance shall be in full force and effect from and after its passage and publication as provided by the Charter.

Introduced, read, passed on first reading and ordered published this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

---

Keith King, Council President

ATTEST:

---

Sarah B. Johnson, City Clerk



**Regular Agenda Item**

**COUNCIL MEETING DATE:** February 25, 2014

**To:** President and Members of City Council  
**cc:** Mayor Steve Bach  
**Via:** Laura Neumann, Chief of Staff/Chief Administrative Officer  
**From:** Peter Wysocki, Planning and Development Director  
Carl Schueler, Planning Manager-Comprehensive Planning

**Subject Title: FIRST & MAIN NO. 2 BUSINESS IMPROVEMENT DISTRICT REQUEST FOR CHANGE IN GOVERNANCE STRUCTURE**

**SUMMARY:**

The First & Main No. 2 Business Improvement District (the BID) is requesting City Council approval of an ordinance to allow a change in governance structure from a Council-appointed to an elected board of directors, as allowed by Colorado Revised Statutes.

**PREVIOUS COUNCIL ACTION:**

City Council approved formation of this BID in 2008 (Ordinance No. 08-144) and has approved this BID's Budget and Operating Plan annually since its formation. For this BID Council has approved issuance of bonds in 2009 and 2010, as well as a minor property inclusion in 2012.

**BACKGROUND:**

Colorado Revised Statutes §31-25-1209(1)(d) allows for persons owning fifty percent (50%) or more of the property and representing at least 50% of the assessed valuation, to petition for conversion from an appointed to an elected board governance structure. This petition meets that requirement. For this BID, the petitioning owners represent 65% of the acreage and 63% of the valuation. Of the total of ten existing BIDs in the City, this and the First & Main BID (see previous agenda item) are the only development-specific BIDs that have appointed and not elected boards. The more broadly based Downtown BID also has a City Council-appointed board.

The way this statutory language operates, the discretion of Council is limited because this petition must be approved if due process is followed and standards are met. However, Council does have the option of adopting greater acreage ownership thresholds, via ordinance if this were desired.

Staff notes that in this case, the current Council-appointed board consists entirely of representatives of the majority owners within this BID. Conversion to an elected board would potentially confer minority owners an opportunity to qualify electors and therefore more actively participate in the affairs of this district. However, the appointed board structure also allows for this broader representation.

This action has been contemplated as part of the City Council-approved 2014 Budget and Operating Plan for this BID.

The required legal notice is being coordinated with the petitioners and the City Clerk's Office.

A copy of the draft ordinance is attached. The ordinance includes language addressing the terms of board members (staggered) and other standard requirements, all in accordance with State statute.

If this petition is approved, the BID would conduct a mail ballot election in May of 2014.

**FINANCIAL IMPLICATIONS:**

With this potential change in governance there are no direct financial implications to the City.

**ALTERNATIVES:**

Following this process, City Council is obligated to approve this request, unless it was to choose to implement greater proportional ownership requirements as allowed for by Statute.

**BOARD/COMMISSION RECOMMENDATION:**

The BID's Board of Directors recommends City Council's approval of this change. This request has been provided to the City's Special District Committee. As of the date of this staff report, there have been no substantive outstanding comments or concerns. The City Clerk and Attorney's Offices have been coordinating with this request. The City's Committee "consultant", Colorado Springs Utilities, City Finance and City Public Works all state no comments or concerns. The Budget Office notes this change would result in more consistency among similar BIDs.

**RECOMMENDATION:**

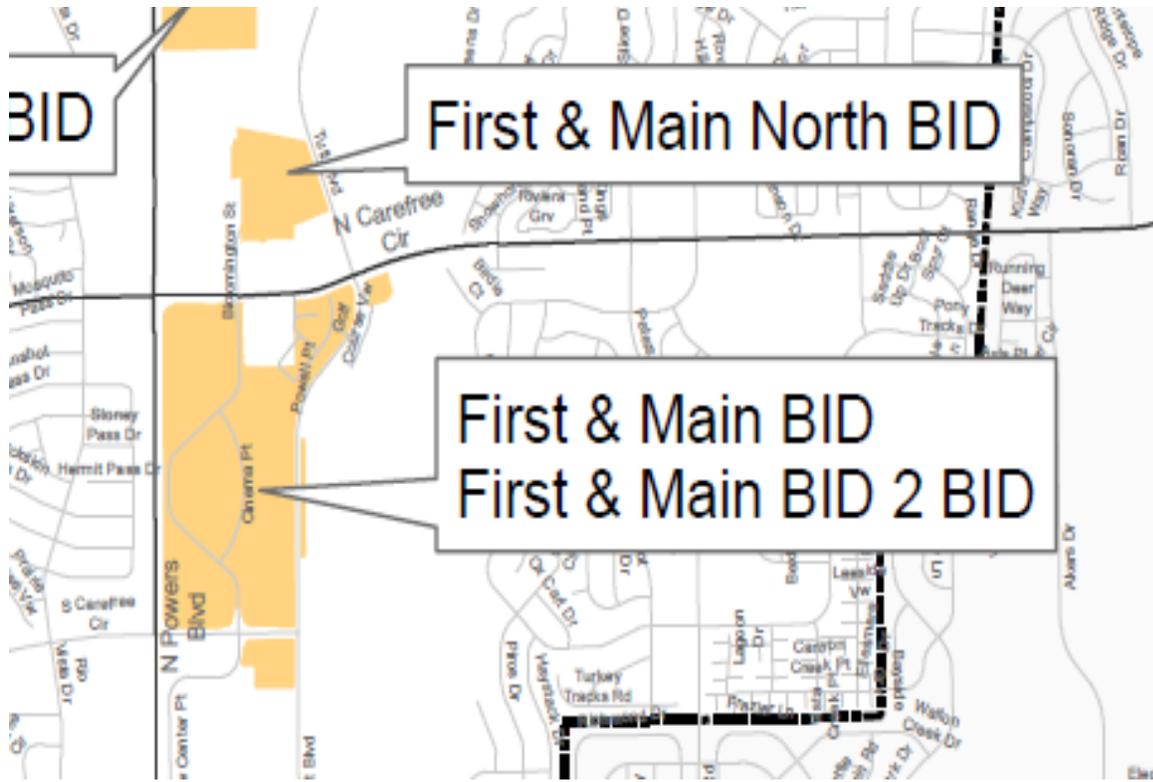
Staff recommends approval of the Ordinance.

**PROPOSED MOTION:**

Approval of an ordinance allowing election of the board of directors of the First and Main No. 2 Business Improvement District.

**Attachments:**

- Vicinity Map
- Excerpt from Colorado Revised Statutes
- Copy of the Petition
- Ordinance



Attachment ---

Excerpt from Colorado Revised Statutes §31-25-1209(1) (d)

*(d) If the petition initiating the organization of the district or any subsequent petition signed by persons who own real or personal property in the service area of the proposed district having a valuation for assessment of not less than fifty percent, or such greater amount as the governing body may provide by ordinance, of the valuation for assessment of all real and personal property in the service area of the proposed district and who own at least fifty percent, or such greater amount as the governing body may provide by ordinance, of the acreage in the proposed district so specifies, the members of the board of the district shall be elected by the electors of the district. If such a petition is approved, the terms of members of the board shall be specified by ordinance of the governing body and shall be the same as the terms of directors of special districts pursuant to article 1 of title 32, C.R.S. The initial election for members of the board shall be held within sixty days after approval of the ordinance organizing the district or the filing of any subsequent petition. All subsequent elections for members of the board shall be on the regular election date specified in article 1 of title 32, C.R.S., for special districts. The number of directors, the quorum requirements, and the oaths of office shall be the same as those provided for directors of special districts pursuant to article 1 of title 32, C.R.S. Any vacancy on the board shall be filled in the same manner as provided in paragraph (b) of this subsection (1). Until the members of the board are elected and qualified, the governing body shall serve as the board of the district. Elections pursuant to this paragraph (d) shall be held in accordance with the provisions of part 8 of article 1 of title 32, C.R.S. The cost of any election held pursuant to this paragraph (d) shall be borne by the district.*

SPENCER FANE  
& GRIMSHAW<sup>LLP</sup>  
ATTORNEYS & COUNSELORS AT LAW

MARY L. CARTER, PARALEGAL  
DIRECT DIAL: (303) 839-3871  
mcarter@spencerfane.com

File No. 5115069-0014

January 21, 2014

Bill Powell  
Deputy City Clerk  
City of Colorado Springs  
30 S. Nevada  
Colorado Springs, CO 80903

**Re: First and Main Business Improvement District No. 2**

Dear Mr. Powell:

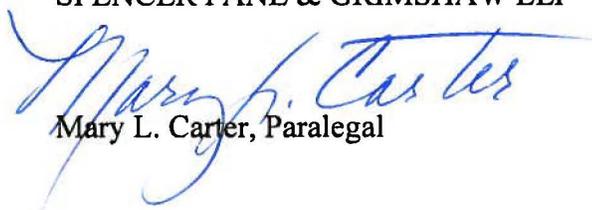
Enclosed please find the original Petition of First and Main LLC, the owner of sixty-three percent (63%) of the valuation for assessment of all real and personal property in the service area and sixty-five percent (65%) of the acreage in the First and Main Business Improvement District No. 2.

Kindly advise the undersigned of the date of the public hearing and we will prepare and publish the Notice of Public Hearing accordingly and provide you with the proof of publication.

If you require anything further, please advise me.

Very truly yours,

SPENCER FANE & GRIMSHAW LLP

  
Mary L. Carter, Paralegal

MLC/idi  
Cc: Carl Schueler  
Enclosure

1700 Lincoln Street, Suite 3800  
Denver, Colorado 80203-4538

DN 948642 1

(303) 839-3800 www.spencerfane.com Fax (303) 839-3838

PETITION  
TO  
CITY COUNCIL  
CITY OF COLORADO SPRINGS, COLORADO

Pursuant to Section 31-25-1209, C.R.S., the undersigned, representing sixty-three percent (63%) of the valuation for assessment of all real and personal property in the service area and sixty-five percent (65%) of the acreage in the First and Main Business Improvement District No. 2 hereby requests approval of the City Council of the City of Colorado Springs, Colorado for the members of the board of directors of the District to be hereinafter elected by the eligible electors of the District.

Attached is a copy of the property owners list provided by the El Paso County Assessor detailing the owners of real and personal property within the District and the assessed values and acreage of the parcels within the District, as verification of the claim of the Petitioner.

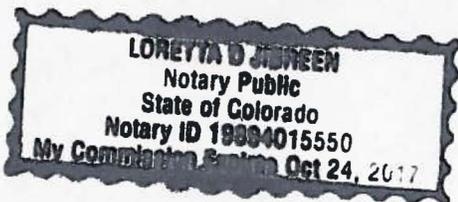
First and Main LLC

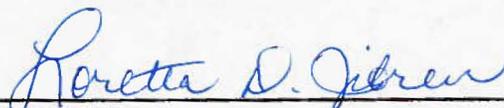
By   
Christopher S. Jenkins, Manager

Subscribed and sworn to before me this 10<sup>th</sup> day of October, 2013 by  
Christopher S. Jenkins as Manager of First and Main LLC, a Colorado  
limited liability company.

Witness my hand and official seal.

My commission expires: 10-24-2017.



  
Notary Public

Parcel/Schedule Number	Property Location	Property Type	Primary Land Use	Acreage	Market Value	Assessed Value	Owner's Name 1	
5330302011	3690 NEW CENTER PT	Vacant	VACANT COMMERCIAL LOTS	1.93	86,634	25,120	FIRST & MAIN LLC	
5330303005	6135 N CAREFREE CIR	Vacant	VACANT COMMERCIAL LOTS	1.19	194,013	56,260	CIRCLE K STORES INC	C/O SOUTH
5331200044	31-13-65	Vacant	VACANT LAND = 1 AND < 5 ACRES	2.27	166,889	48,400	FIRST & MAIN LLC	
5331202028	NEW CENTER PT	Vacant	VACANT COMMERCIAL LOTS	0.22	500	150	FIRST & MAIN LLC	
5331202029	NEW CENTER PT	Vacant	VACANT COMMERCIAL LOTS	0.09	500	150	FIRST & MAIN LLC	
5331202030	NEW CENTER PT	Vacant	VACANT COMMERCIAL LOTS	1.89	1,000	290	FIRST & MAIN LLC	
5331202034	3153-3173 CINEMA PT	Vacant	VACANT COMMERCIAL LOTS	1.08	113,378	32,880	FIRST & MAIN LLC	
5331202035	3409 CINEMA PT	Vacant	VACANT COMMERCIAL LOTS	2.00	274,428	79,580	FIRST & MAIN HOTEL PARTNERS LLC	
5331202036	3316-3396 CINEMA PT	Vacant	VACANT COMMERCIAL LOTS	2.47	259,299	75,200	FIRST & MAIN LLC	
5331202037	3306-3310 CINEMA PT	Vacant	VACANT COMMERCIAL LOTS	3.18	333,833	96,810	FIRST & MAIN LLC	
5331202038	3214-3292 CINEMA PT	Vacant	VACANT COMMERCIAL LOTS	1.39	145,921	42,320	FIRST & MAIN LLC	
5331202040	3302 CINEMA PT	Vacant	VACANT COMMERCIAL LOTS	1.19	1,000	290	FIRST & MAIN LLC	
5331202041	CINEMA PT	Vacant	VACANT COMMERCIAL LOTS	1.88	1,000	290	FIRST & MAIN LLC	
5331202043	NEW CENTER PT	Vacant	VACANT COMMERCIAL LOTS	0.96	1,000	290	FIRST & MAIN LLC	
5330302009	CENTER PT	Exempt	RELIGIOUS WORSHIP	0.08	500	0	FRIENDSHIP ASSEMBLY OF GOD	
5330302004	3650 NEW CENTER PT	Commercial	MERCHANDISING	9.53	6,707,870	1,945,290	FIRST & MAIN LLC	
5330302006	3532 NEW CENTER PT	Commercial	MERCHANDISING	2.41	2,094,371	607,370	FIRST & MAIN LLC	
5330302007	3510 NEW CENTER PT	Commercial	SPECIAL PURPOSE	2.12	1,472,245	426,950	FIRST & MAIN LLC	
5330302010	3690 NEW CENTER PT	Commercial	SPECIAL PURPOSE	0.67	639,321	185,400	FIRST & MAIN LLC	
5331201016	3035 NEW CENTER PT	Commercial	SPECIAL PURPOSE	4.50	2,166,280	628,220	FIRST AND MAIN SOUTH NO 2 LLC	
5331202039	3294 CINEMA PT	Commercial	SPECIAL PURPOSE	0.34	1,049,537	304,370	FIRST & MAIN LLC	
5331202045	3317-3377 CINEMA PT	Commercial	MERCHANDISING	0.40	410,606	119,070	FIRST & MAIN LLC	
5331202047	3205-3265 CINEMA PT	Commercial	MERCHANDISING	0.67	484,547	140,520	FIRST & MAIN LLC	
0000065054 0000		Personal Property			83,321	24,170	TAN YOUR HIDE II INC	C/O MELH
0000087216 0000		Personal Property			63,543	18,430	AI SUSHI & GRILL AT POWERS INC	
0000098264 0000		Personal Property			567,510	164,580	ROCK BOTTOM RESTAURANT & BREWERY	
0000106308 0000		Personal Property			1,846,766	535,560	J C PENNEY CORP INC	C/O PROF
0000107586 0000		Personal Property			21,213	6,150	LIFETOUCH POTRAIT STUDIOS INC	TAX DEPAI
0000110253 0000		Personal Property			22,120	6,420	SALLY BEAUTY SUPPLY CO	A/K/A SALL
0000110722 0000		Personal Property			208,805	60,560	JACK IN THE BOX	C/O SIERI
0000110907 0000		Personal Property			1,468,786	425,950	ITZ AMUSEMENT LLC	A/K/A ITZ F
0000112749 0000		Personal Property			460,938	133,670	RED LOBSTER NO 0016355	GENERAL I
0000113346 0000		Personal Property			33,840	9,820	YANKEE CAJUN LLC	C/O HINE
0000115535 0000		Personal Property			1,200	350	COFFEE AND TEA ZONE	C/O YOOI
0000118675 0000		Personal Property			560,886	152,650	TUCANOS BRAZILIAN GRILL	
0000120410 0000		Personal Property			27,435	7,950	EDIBLE ARRANGEMENTS	C/O TONY
0000122058 0000		Personal Property			0	0	HOLIDAY INN EXPRESS	C/O FIRS
0000122586 0000		Personal Property			0	0	ESCAPE VELOCITY	C/O SCOT
0000122666 0000		Personal Property			0	0	FIRST & MAIN LLC	
0000114792 0016		Personal Property			4,004	1,160	SKYBEAM COLORADO A/K/A	JAB WIREI
0000091953 0018		Personal Property			141	40	CANTEEN VENDING / COMPASS GROUP	F/K/A N C \
0000113896 0046		Personal Property			1,182	340	SMUCKER FOODSERVICE INC	F/K/A JMS
0000111812 0057		Personal Property			11,712	3,400	PEPSICO SALES INC	C/O GEOI
0000111238 0058		Personal Property			4,279	1,240	NUCO2 SUPPLY LLC	C/O RYAN
0000065720 0102		Personal Property			434	130	WESTERN UNION FINANCIAL SVCS INC	ATTN PRC

0000175836 0247  
0000137447 0248  
0000195785 0258  
0000195785 0281  
0000063175 0309  
0000263960 0408  
0000065540 0437  
0000049977 0869  
0000413975 0987  
0000003048 1644

Personal Property  
Personal Property

8,816  
506  
460  
1,043  
3,994  
11,428  
2,303  
1,342  
7,276  
4,182  
42.46 22,034,137

2,560 COCA COLA COMPANY THE  
150 COMPASS GROUP USA INC  
130 MUZAK LLC  
300 MUZAK LLC  
1,160 AUTO CHLOR SYSTEM OF DENVER INC  
3,310 WABASHA LEASING LLC  
670 MOBILE MINI INC  
390 DELL FINANCIAL SERVICES LP  
2,110 I B M CREDIT LLC  
1,210 XEROX CORP

ATTN PRO  
COMPASS  
ATTN TAX  
ATTN TAX  
C/O TAX D  
ATTN PRO  
150 KETTLE  
C/O TAX D

**Owner's Name 3**

**Mailing Address**

	111 S TEJON ST STE 222	COLORADO SPRINGS	CO	80903-2246
	3001 GATEWAY DR STE 130	IRVING	TX	75063-2668
	111 S TEJON ST STE 222	COLORADO SPRINGS	CO	80903-2246
	111 S TEJON ST STE 222	COLORADO SPRINGS	CO	80903-2246
	111 S TEJON ST STE 222	COLORADO SPRINGS	CO	80903-2246
	111 S TEJON ST STE 222	COLORADO SPRINGS	CO	80903-2246
	111 S TEJON ST STE 222	COLORADO SPRINGS	CO	80903-2246
	6704 W 121 ST ST	LEAWOOD	KS	66209-2002
	111 S TEJON ST STE 222	COLORADO SPRINGS	CO	80903-2246
	111 S TEJON ST STE 222	COLORADO SPRINGS	CO	80903-2246
	111 S TEJON ST STE 222	COLORADO SPRINGS	CO	80903-2246
	111 S TEJON ST STE 222	COLORADO SPRINGS	CO	80903-2246
	111 S TEJON ST STE 222	COLORADO SPRINGS	CO	80903-2246
	111 S TEJON ST STE 222	COLORADO SPRINGS	CO	80903-2246
	111 S TEJON ST STE 222	COLORADO SPRINGS	CO	80903-2246
	3685 NEW CENTER PT	COLORADO SPRINGS	CO	80922-2810
	111 S TEJON ST STE 222	COLORADO SPRINGS	CO	80903-2246
	111 S TEJON ST STE 222	COLORADO SPRINGS	CO	80903-2246
	111 S TEJON ST STE 222	COLORADO SPRINGS	CO	80903-2246
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	111 S TEJON ST STE 222	COLORADO SPRINGS	CO	80903-2246
	111 S TEJON ST STE 222	COLORADO SPRINGS	CO	80903-2246
	111 S TEJON ST STE 222	COLORADO SPRINGS	CO	80903-2246
	111 S TEJON ST STE 222	COLORADO SPRINGS	CO	80903-2246
	9872 PINE SPRINGS WAY	COLORADO SPRINGS	CO	80920-2420
	3215 CINEMA POINT	COLORADO SPRINGS	CO	80922-2809
	8001 ARISTA PL STE 500	BROOMFIELD	CO	80021-4135
	PO BOX 10001	DALLAS	TX	75301-0001
	11000 VIKING DR	EDEN PRAIRIE	MN	55344-7217
	PO BOX 90220	DENTON	TX	76202-5220
C/O TAX DEPARTMENT	5055 AVENIDA ENCINAS STE 200	CARLSBAD	CA	92008-4375
SYSTEMS INC	PO BOX 671287	DALLAS	TX	75367-1287
C/O TAX ADVISORS GROUP	PO BOX 695019	ORLANDO	FL	32869-5019
C/O PROPERTY TAX DEPT	3317 CINEMA POINT	COLORADO SPRINGS	CO	80922-2805
	3245 CINEMA PT	COLORADO SPRINGS	CO	80922-2809
	3294 CINEMA PT	COLORADO SPRINGS	CO	80922-2811
	4886 HARNESS CT	PARKER	CO	80134-4524
PARTNERS LLC	6704 W 121ST ST	LEAWOOD	KS	66209-2002
	3347 CINEMA POINT	COLORADO SPRINGS	CO	80922
	111 S TEJON ST STE 222	COLORADO SPRINGS	CO	80903-2246
	400 INVERNESS PKWY STE 330	ENGLEWOOD	CO	80112-5824
	2400 YORKMONT RD	CHARLOTTE	NC	28217-4511
C/O TRUE PARTNERS CONSULTING L	1 STRAWBERRY LN	ORRVILLE	OH	44667-1241
	PO BOX 565048	DALLAS	TX	75356-5048
	PO BOX 4900 DEPT 366	SCOTTSDALE	AZ	85261-4900
	12500 E BELFORD AVE M23B7	ENGLEWOOD	CO	80112-5939

C/O RASH NO 171-06-5056000141

PO BOX 4440  
PO BOX 260888  
3318 LAKEMONT BLVD  
3318 LAKEMONT BLVD  
5650 PECOS ST  
386 WABASHA ST N  
7420 S KYRENE RD STE 101  
1 DELL WAY # RR1-35  
PO BOX 1159  
100 CLINTON AVE S

XEROX SQUARE - 040A

BRANDON  
PLANO  
FORT MILL  
FORT MILL  
DENVER  
SAINT PAUL  
TEMPE  
ROUND ROCK  
SOUTHBURY  
ROCHESTER

FL 33509-4440  
TX 75026-0888  
SC 29708-8309  
SC 29708-8309  
CO 80221-6641  
MN 55102-1312  
AZ 85283-4610  
TX 78682-7000  
CT 06488-8159  
NY 14604-1801

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE APPROVING THE ELECTION OF THE BOARD OF DIRECTORS OF THE FIRST AND MAIN BUSINESS IMPROVEMENT DISTRICT NO. 2 BY THE ELIGIBLE ELECTORS OF THE DISTRICT PURSUANT TO THE PETITION FILED UNDER C.R.S. 31-25-1209(1)(d).**

WHEREAS, the City Council of the City of Colorado Springs has received a Petition (“Petition”) praying that the members of the board of directors of the First and Main Business Improvement District No. 2 (“District”) shall be elected by the electors of the District; and

WHEREAS, pursuant to the authority granted in Section 31-25-1201 et seq., C.R.S. (the “Business Improvement District Act”) the City Council organized the District by Ordinance No. 08-144 effective September 23, 2008.

WHEREAS, Pursuant to its authority under the Business Improvement District Act and specifically Sections 31-25-1204 and 31-25-1209(1)(d), the City Council of the City of Colorado Springs, as the governing body of the City of Colorado Springs, is vested with the authority to approve the Petition.

WHEREAS, the City Council, following public notice as required by the Business Improvement District Act held and concluded a public hearing at 1:00 p.m. on Tuesday, February \_\_\_\_, 2014, at the City Hall, at which proponents and opponents of the Petition had the opportunity to be heard.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. City Council does hereby find that the City Council of the City of Colorado Springs is vested with jurisdiction to make the within findings necessary to approve the request made by the Petition;

Section 2. City Council does hereby find that the allegations of the Petition are true;

Section 3. City Council does hereby find that the Petition has been signed in conformity with the Business Improvement District Act, the signatures on the Petition are genuine, and that the signatures of petitioners represent the persons who own real or personal property in the service area of the District having a valuation for assessment of not less than fifty percent (50%) of the valuation of all real and personal property in the service area of the District, and that the signatures of petitioners represent the persons who own at least fifty percent (50%) of the acreage of the District;

Section 4. City Council, having found the Petition legally sufficient pursuant to Section 31-25-1209(1)(d), C.R.S., hereby approves the Petition and provides that the members of the board of directors of the District shall be elected by the eligible electors of the District as provided by law and subject to the conditions in this Ordinance and that the board of directors shall carry out the responsibilities required of such board by the Business Improvement District Act and other law.

Section 5. The Council hereby finds that the regular special district election to be held on May 6, 2014 is within sixty (60) days after the approval of this ordinance.

Section 6. The members of the Board of Directors shall be elected on May 6, 2014 election and Mary L. Carter of Spencer Fane & Grimshaw LLP as the nominee of the Board of Directors shall be the designated election official responsible for conducting such election.

Section 7. Three of the Directors elected at the May 6, 2014 election shall serve until the regular special district election in May 2018 and two of such directors shall serve until the next regular special district election in May 2016.

Section 8. The actions of the petitioner providing public notice of the public hearing on the sufficiency of the Petition is hereby ratified and confirmed.

Section 9. This ordinance shall be in full force and effect from and after its passage and publication as provided by the Charter.

Introduced, read, passed on first reading and ordered published this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

---

Keith King, Council President

ATTEST:

---

Sarah B. Johnson, City Clerk



**Regular Agenda Item**

**Council Meeting Date:** February 25, 2014

**To:** President and Members of City Council

**cc:** Mayor Steve Bach

**From:** Wynetta Massey, Interim City Attorney

**Subject Title:** A Resolution Approving the Intergovernmental Agreement ("IGA") for the Wind-Up and Liquidation of the El Paso County Emergency Service Agency ("ESA") Between the City of Colorado Springs and El Paso County, Colorado

**Summary:** The ESA wind-up IGA formally wind-ups the ESA's activities and liquidates the assets of the ESA as required by the original and subsequently amended ESA IGA.

**Previous Council Action:** Council approved the ESA IGA on October 12, 1995. The ESA IGA was most recently amended and readopted by the City and El Paso County on November 10, 2011. Subsequently Council passed a resolution providing El Paso County with written notice of termination of the ESA IGA on June 25, 2013.

**Background:** The City and El Paso County created the ESA, a separate public entity, for purposes of ensuring a coordinated, effective and efficient emergency management system, including the provision of ground emergency ambulance services through a contract with AMR. After a recommendation from the Fire Department, the Council decided to terminate ESA IGA because of increased savings the City could achieve by directly contracting with an ambulance services company. The ESA wind-up IGA is required because the termination provisions of the original ESA IGA provide that the City and El Paso County will negotiate a division of assets of the ESA. In addition, the ESA wind-up IGA is required to comply with ESA's contract with American Medical Response ("AMR") which does not end until March 31, 2014.

**Financial Implications:** The IGA states that the City and the El Paso County will equally split any remaining cash after all ESA expenses are paid when the ESA terminates on March 31, 2014. The City and El Paso County will also equally split any money paid by AMR as a result of a compliance review conducted on their contract response performance during March 2014.

**Board/Commission Recommendation:** Not applicable.

**Stakeholder Process:** Not applicable.

**Alternatives:** City Council may choose to approve, deny or modify the attached IGA.

**Recommendation:** Recommend approval of attached IGA to finalize the wind-up and liquidation of assets of the ESA.

**Proposed Motion:** Approve the resolution.

c: Laura Neumann, Chief of Staff  
Christopher Riley, Fire Chief

**Attachments:**

- A Resolution Approving the Intergovernmental Agreement (“IGA”) for the Wind-Up and Liquidation of the El Paso County Emergency Service Agency (“ESA”) Between the City of Colorado Springs and El Paso County, Colorado
- Intergovernmental Agreement Regarding Wind-Up and Liquidation of the El Paso County Emergency Services Agency

**A RESOLUTION APPROVING THE INTERGOVERNMENTAL AGREEMENT  
FOR THE WIND-UP AND LIQUIDATION OF THE EL PASO COUNTY  
EMERGENCY SERVICES AGENCY BETWEEN THE CITY OF COLORADO  
SPRINGS AND EI PASO COUNTY, COLORADO**

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

Section 1. The Intergovernmental Agreement for the Wind-up and Liquidation of the El Paso County Emergency Services Agency between the City of Colorado Springs and El Paso County, Colorado, attached and made part of this resolution ("Agreement"), is approved.

Section 2. The President of Council is authorized to execute the Agreement on behalf of the City, and the City Clerk is directed to attest the President's signature and affix the seal of the City.

Section 3. The Agreement was approved by the Board of County Commissioners of El Paso County, Colorado on February 11, 2014. The Agreement shall be in full force and effect after approval by the City Council.

DATED at Colorado Springs, Colorado, this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Keith King, Council President

ATTEST:

\_\_\_\_\_  
Sarah B. Johnson, City Clerk

**IGA REGARDING WIND-UP AND LIQUIDATION OF THE EL PASO COUNTY  
EMERGENCY SERVICES AGENCY**

**WHEREAS**, the Board of County Commissioners of El Paso County, Colorado (“County”) and the City of Colorado Springs, a Colorado home rule city (“City”), entered into an Intergovernmental Agreement (“IGA”) on October 12, 1995 which created a separate public entity, the El Paso County Emergency Services Agency (“ESA”), for purposes of ensuring a coordinated effective and efficient emergency management system, including the provision of ground emergency ambulance services through a contract; and

**WHEREAS**, the ESA IGA was most recently amended and readopted on November 10, 2011. Article 7 of the IGA allows for the County or the City to terminate the IGA upon providing a minimum of six (6) months’ notice to the other party. City Council passed a resolution providing the County with written notice of termination of the IGA on June 25, 2013. The notice of termination was served upon the County on June 28, 2013 and recorded with the El Paso County Clerk and Recorder on July 2, 2013. Per the terms of the IGA and the City’s Notice, the ESA will cease to exist on December 31, 2013, subject to any extension necessary to comply with terms of the IGA and the ESA’s contracts with third parties; and

**WHEREAS**, the ESA’s contract for the exclusive provision of ground emergency ambulance services with American Medical Response (“AMR”) does not expire until March 31, 2014 and remains an outstanding obligation of the ESA until that time; and

**WHEREAS**, Article 7.1(B) of the ESA IGA requires that the ESA “may not be terminated so long as the Agency has financial indebtedness or other obligations outstanding, unless provision for full payment thereof by escrow or otherwise has been made pursuant to the terms of such financial indebtedness or obligations;” and

**WHEREAS**, Article 7.4 of the ESA IGA requires that, in the event of termination, the ESA must wind-up and liquidate its assets; and

**WHEREAS**, Article 7.3 of the ESA IGA provides that the Parties will negotiate a division of assets to ensure, to the extent possible, that both the County and City retain viable and adequate emergency service capabilities; and

**WHEREAS**, Article XIV, Section 18 of the Colorado Constitution and C.R.S. § 29-1-201, *et seq.* provides for and encourages political subdivisions of the State of Colorado to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with each other. The County and City deem it an efficient and effective use of their powers to enter this IGA for wind-up and liquidation of the ESA.

**NOW THEREFORE**, in consideration of the foregoing recitals, the County and City agree to the following:

## **ARTICLE ONE**

### **EXTENSION FOR ESA/AMR CONTRACT**

**1.1 Purpose.** Termination of the ESA IGA, and winding-up the ESA as an entity cannot be accomplished until the ESA's obligations under the ESA/AMR contract are satisfied. The purpose of this Article One is to extend the ESA IGA through March 31, 2014 in order for the ESA to fulfill that obligation.

**1.2 Terms of the ESA IGA control.** All terms contained in the currently operational ESA IGA and any bylaws, rules, or regulations created under that Agreement shall continue to control the ESA's affairs through March 31, 2014, after which point the termination will be effective and the ESA will dissolve. The extension is not intended to modify the way ESA conducts business.

## **ARTICLE TWO**

### **WIND-UP AND LIQUIDATION**

**2.1 Division of Assets Guidelines.** Article 7.3 of the ESA IGA requires the parties to negotiate division of assets based on the following guidelines:

A. The Parties intend that such division of assets, to the extent possible, will ensure that each Party retains viable and adequate emergency service capabilities and will return each Party to the position such Party would have been in had the Agency not been created.

B. Upon termination, those assets which were contributed by the Parties shall be returned to the contributing Party unless provided for differently in this Agreement or other written agreement by the Parties.

C. Any other assets remaining upon termination of the Agency, after the payment of lawful debts and other encumbrances on the assets, shall be apportioned to the Parties in the quantity and to the extent of the percentage share of each of the Parties' contributions for the preceding fiscal year.

**2.2 Division of Assets.** The County and City do not anticipate substantial funds remaining with the ESA on the effective termination date. Neither the County nor the City contributed money to the ESA during the preceding fiscal year. Assets of the ESA include remaining money held by ESA and a small amount of computer equipment and office furniture, none of which was contributed by the County or City.

Considering the intent of Article 7.3 of the ESA IGA to place the County and City in the position they would have been in had the ESA not been created, it is agreed that County and City will equally split any remaining ESA money and the County will receive all other remaining assets when the ESA terminates.

**2.3 Audit of AMR's Performance during March 2014.** Pursuant to its contract with the ESA, a compliance report for AMR's monthly performance for March 2014 shall be completed by the former ESA Administrator, who is currently employed by the City. The City shall forward the compliance report, along with any supporting documents, to the County for review and concurrence. Upon the County's concurrence, the City shall submit an invoice to AMR for any assessments arising from the compliance report in conformance with the terms of AMR's contract with ESA. Any fees assessed against AMR for contract performance in March 2014 shall be equally split between the County and City.

## **ARTICLE THREE**

### **MISCELLANEOUS PROVISIONS**

**3.1 Amendments.** Neither this IGA, nor any term hereof, can be changed, modified, or abandoned, in whole or in part, unless amended in writing and signed by the County and City.

**3.2 Severability.** If any clause or provision herein contained shall be adjudged to be insubstantial and invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such invalid or unenforceable clause or provision shall not affect the validity of the IGA as a whole and all other clauses or provisions shall be given full force and effect.

**3.3 No Third Party Beneficiaries.** Nothing in this IGA, expressed or implied, is intended or shall be construed to confer upon any person other than the County and the City, any right, remedy or claim under or by reason of this IGA, this IGA being intended to be for the sole and exclusive benefit of the County and City. This IGA shall not be construed to create a duty for the provision of emergency services by either the County or the City, nor shall this IGA be construed as creating a benefit enforceable for any person. Nor shall this IGA be construed to create a duty for the County or City to assume any liability for injury, property damage, or any other damage that may occur by any action or non-action taken, or service provided to the public or any person, as result of this Resolution.

**3.4 Governing Law.** This IGA shall be subject to and shall be interpreted under the laws of the State of Colorado. Court jurisdiction shall be exclusively in the District Court for El Paso County, Colorado.

**3.5 Paragraph Headings.** The paragraph headings are inserted only as a matter of convenience and for reference and in no way are intended to be a part of this IGA or to define, limit or describe the scope or intent of this IGA or the particular paragraphs to which they refer.

**3.6 Singular and Plural.** Whenever the context shall so require, the singular shall include the plural and the plural shall include the singular.

**FOR EL PASO COUNTY:**

**ATTEST:**

**BOARD OF COUNTY COMMISSIONERS  
OF EL PASO COUNTY, COLORADO**

By: \_\_\_\_\_  
County Clerk and Recorder

By: \_\_\_\_\_  
Dennis Hisey, Chair

Approved as to Form:

\_\_\_\_\_  
County Attorney's Office

**FOR THE CITY OF COLORADO SPRINGS:**

**ATTEST:**

**COLORADO SPRINGS CITY COUNCIL**

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Keith King, Council President

Approved as to Form:

\_\_\_\_\_  
City Attorney's Office



**Regular Agenda Item**

**Council Meeting Date:** February 25, 2014

**To:** President and Members of City Council

**cc:** Mayor Steve Bach

**From:** Jan Martin, City Council Member and Chair of Colorado Springs Utilities' Personnel Committee

**Subject Title:** **A RESOLUTION APPROVING THE 4<sup>TH</sup> AMENDMENT TO THE EMPLOYMENT AGREEMENT FOR APPOINTMENT OF CHIEF EXECUTIVE OFFICER**

**Summary:**

Following the presentation and recommendations provided during the February 24, 2014 working session, this agenda item presents the resolution to amend the employment agreement based on the consultant's recommendations.

**Previous Council Action:**

The 3rd amendment to the employment agreement was approved by City Council Resolution No. 138-10 effective January 1, 2010.

**Background:**

Following an extensive procurement process which included participation and advisement by Council Member, Merv Bennett and four HR Community Leaders, Milliman Consulting was selected to conduct a compensation study of the executive positions at Colorado Springs Utilities, as well as the City Auditor position as Utilities business comprises 65% of the work performed by that office. The consultant met with the Utilities' Personnel Committee to confirm the scope and methodology of the study prior to conducting market research. Periodic status updates were provided to the committee throughout the study and were subsequently provided to the Utilities Board by Personnel Committee Chair, Jan Martin. The consultant, Greg McNutt, presented the results of the study to the committee in November. After a review of the results and additional discussion, the consultant attended a Personnel Committee via conference call and presented the results to the HR Community Leaders who reviewed the conclusions and confirmed the methodology as appropriate and consistent with compensation best practices. The consultant returned the following week and presented this information in an expanded Personnel Committee meeting to include Utilities Board members.

The consultant noted the following conclusions in his presentation, specific to the Chief Executive Officer:

- The base salary earned by the current CEO is 38% below the 50<sup>th</sup> percentile of market
- The total cash compensation earned in 2013 is 46% below the 50<sup>th</sup> percentile of market
- The current compensation is not competitive or aligned to the stated compensation philosophy

**Financial Implications:**

The proposed recommendations do not present additional expense above the approved 2014 budget.

**Alternative:**

Retain the current employment agreement, which would include continued short and long term incentives and a compensation package which is significantly below market.

**Recommendation:**

Pass the Resolution

**Proposed Motion:**

Move to approve the Resolution approving the 4<sup>th</sup> amendment to the Employment Agreement for appointment of Chief Executive Officer.

**Attachments:**

- Resolution
- 4<sup>th</sup> amendment to the employee agreement

**Resolution No. \_\_\_\_\_ -14**

**A RESOLUTION APPROVING THE FOURTH AMENDMENT TO THE EMPLOYMENT AGREEMENT FOR APPOINTMENT AS CHIEF EXECUTIVE OFFICER**

WHEREAS, the City Council of the City of Colorado Springs appointed Mr. Jerome A. Forte, Jr. as Chief Executive Officer of Colorado Springs Utilities, an enterprise of the City of Colorado Springs, as of December 2, 2005 and signed an employment agreement with Mr. Forte entitled "Employment Agreement for Appointment As Chief Executive Officer" ("Employment Agreement"); and

WHEREAS, by Resolution No. 45-07 the City Council approved the First Amendment to the Employment Agreement for Appointment As Chief Executive Officer effective February 28, 2007; and

WHEREAS, by Resolution No. 112-07 the City Council approved the Second Amendment to the Employment Agreement for Appointment As Chief Executive Officer effective June 26, 2007; and

WHEREAS, by Resolution No. 138-10 the City Council approved the Third Amendment to the Employment Agreement for Appointment As Chief Executive Officer effective January 1, 2010; and

WHEREAS, the City Council now desires to revise Section 2 and related provisions of the amended Employment Agreement to bring those provisions into alignment with the present compensation policies of Colorado Springs Utilities; and

WHEREAS, the City Council finds that the proposed amendment is reasonable, appropriate, and in the public interest; and

WHEREAS, the City Council finds that the President of the City Council is authorized to sign and execute the proposed amendment on behalf of the City Council;

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

SECTION 1. The City Council hereby approves the attached Fourth Amendment to the Employment Agreement for Appointment As Chief Executive Officer ("Fourth Amendment") and authorizes the President of the City Council to execute and sign the Fourth Amendment.

SECTION 2. This Resolution shall be in full force and effect immediately upon its adoption.

Dated at Colorado Springs, Colorado this 25th day of February, 2014.

\_\_\_\_\_  
Keith King, Council President

Attest:

\_\_\_\_\_  
Sarah B. Johnson, City Clerk

**FOURTH AMENDMENT TO THE EMPLOYMENT AGREEMENT  
FOR APPOINTMENT AS CHIEF EXECUTIVE OFFICER**

This is the Fourth Amendment to the EMPLOYMENT AGREEMENT FOR APPOINTMENT AS CHIEF EXECUTIVE OFFICER effective as of December 2, 2005, made and entered into by and between 1) THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS, on behalf of the City of Colorado Springs (the "City"), a Colorado home-rule city and municipal corporation, pursuant to City Charter Art. VI, section 6-10 and the City's Colorado Springs Utilities enterprise, and 2) MR. JEROME A. FORTE, JR. (the "Appointee"). The First Amendment was effective as of February 28, 2007, the Second Amendment was effective as of June 26, 2007, the Third Amendment was effective as of January 1, 2010, and this Fourth Amendment is effective as of February 25, 2014. The initial December 2, 2005, agreement and the first three amendments are collectively referred to herein as the "Agreement."

**RECITALS**

WHEREAS, the City Council and the Appointee have honored the Agreement; and

WHEREAS, to continue the Appointee's valuable contributions to Colorado Springs Utilities, the City Council desires to amend Section 2 of the Agreement and other related provisions concerning the Appointee's salary; and

WHEREAS, the City Council desires to amend Section 2 and other related provisions to revise the salary provisions to bring those provisions closer into alignment with the present compensation policies of Colorado Springs Utilities;

WHEREAS, the 2013 Executive Compensation Study performed for Colorado Springs Utilities determined that \$447,175 represents the 50th percentile base salary for similar public and private entities; and

NOW, THEREFORE, in consideration of the Agreement and this Fourth Amendment, the parties agree as follows:

- 1) Section 2.1 of the Agreement, Base Salary, is modified to increase the Base Salary to the annual rate of \$447,175 effective March 2, 2014. Further adjustments to the Appointee's Base Salary will be processed as an annual market adjustment equivalent to the percentage increase included in the annual budget as funding for staff base pay.
- 2) The City's obligations under Section 2.2 of the Agreement, Incentive Pay, will be considered fully performed with payment of the calendar year 2013 Annual Incentive Pay and Long Term Incentive Pay which is due prior to or on April 10, 2014 and the prorated portion of the 2014 Annual Incentive Pay and Long Term Incentive Pay through March 2, 2014 according to the provisions of the Agreement. The prorated portion of the 2014 Annual Incentive Pay and Long Term Incentive pay will be paid at the same time as the 2013 incentive on or prior to April 10, 2014. No further Incentive Pay amounts will be paid under the Agreement after payment of the

amounts due for 2013 except as provided in this Amendment. All amounts of Long Term Incentive Pay previously paid and paid for 2013 into Appointee's SERP account pursuant to the Agreement are deemed fully vested. The following Section 2.2(d), Retention Incentive Pay, is hereby added to the Agreement:

"(d) Retention Incentive. The Appointee shall be eligible to receive a Retention Incentive payment of \$50,000 conditioned upon meeting the following requirements at the time of retirement or separation from employment: (1) completion of two years or more of employment from the effective date of this Fourth Amendment, and (2) substantial completion of the Southern Delivery Project. The method for funding and distribution of this incentive payment will comply with applicable taxation or legal requirements."

- 3) Section 2.3 of the Agreement, Benefits and Perquisites, is modified to add a benefit value of \$52,800 to be distributed upon Appointee's retirement or separation from employment. If the Appointee separates from employment or retires prior to completion of two years of employment from the effective date of this Fourth Amendment, the amount of the benefit will be prorated in 1/24 increments for each month of employment completed from the effective date of this Fourth Amendment. The method for funding and distribution of the benefit value will comply with applicable taxation or legal requirements.
- 4) This Fourth Amendment to the Agreement does not affect the Appointee's United States Internal Revenue Code Section 401(a) contributions for PERA excess earnings.
- 5) All other terms and conditions of the Agreement remain in full force and effect for the duration of the Agreement according to its terms.

#### **EXECUTION AND EFFECTIVE DATE**

In Witness Whereof the foregoing, the City Council and the Appointee have duly executed this Fourth Amendment to the Employment Agreement for Appointment as Chief Executive Officer that was effective as of December 2, 2005, first amended as of February 28, 2007, second amended as of June 26, 2007, and third amended as of January 1, 2010. This Fourth Amendment is effective as of February 25, 2014.

**CITY COUNCIL OF THE CITY OF COLORADO SPRINGS**

By: \_\_\_\_\_  
Keith King, City Council President

Date: \_\_\_\_\_

**APPOINTEE**

By: \_\_\_\_\_  
Jerome A. Forte, Jr.

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Wynetta Massey, Interim City Attorney

Date: \_\_\_\_\_



## REGULAR ITEM

**Council Meeting Date:** February 25, 2014

**To:** President and Members of City Council

**cc:** Mayor Steve Bach

**From:** Eileen Lynch Gonzalez, City Council Administrator

**Subject Title:** An Ordinance Amending Ordinance No. 07-113 Pertaining to the Art Commission of the Pikes Peak Region

**Summary:** The Art Commission of the Pikes Peak Region seeks to change its name to the Public Art Commission of the Pikes Peak Region. Councilmember Collins, who serves as the City Council representative to the Art Commission, is sponsoring the proposed ordinance.

**Previous Council Action:** City Council adopted an ordinance recognizing the Art Commission of the Pikes Peak Region as an Advisory Board to City Council (07-113) in July 2007.

**Background:** The Art Commission was established in 1982 by the City of Colorado Springs and El Paso County to act in an advisory capacity to evaluate, advocate, stimulate and facilitate matters of public art and culture. The twelve member all volunteer board includes two elected officials serving as liaisons from Colorado Springs City Council and El Paso County Board of Commissioners.

In 2011, the Art Commission held a facilitated goal setting session and through a review of the Cultural Plan and surveys of local arts and community leaders, identified public art as a top concern for the community. The Commission is currently focusing on public art in two ways:

1. promoting the more than 50 pieces currently in the Art in Public Places collection and located throughout the City of Colorado Springs and El Paso County, and
2. working to get more art into public spaces and buildings, especially those outside of downtown.

The Art Commission recommends changing their name to the **Public Art Commission of the Pikes Peak Region** to better reflect their mission.

The City Council plans to review the work of the City's boards and commissions to ensure their purposes are appropriate in the Council-Mayor form of government. The Art Commission will be part of that review.

**Financial Implications:** None.

**Board/Commission Recommendation:** Approve the amended ordinance changing the commission's name.

**Recommendation:** Approve the amended ordinance.

**Attachments:**

- An Ordinance Amending Ordinance No. 07-113 Pertaining to the Art Commission of the Pikes Peak Region
- Exhibit A: Ordinance No. 07-113

ORDINANCE NO. 14-\_\_\_\_\_

AN ORDINANCE AMENDING ORDINANCE NO. 07-113  
PERTAINING TO THE ART COMMISSION OF THE PIKES  
PEAK REGION

WHEREAS, in 2007 City Council recognized the Art Commission of the Pikes Peak Region as an advisory board to City Council; and

WHEREAS, the mission of the Art Commission of the Pikes Peak Region is to advise City Council on matters concerning art in public places and to advise City Council on ways to integrate public art and culture of the highest quality in all aspects of community life; and

WHEREAS, the Art Commission of the Pikes Peak Region has advised City Council that this mission would be better reflected by renaming the Art Commission the "Public Art Commission of the Pikes Peak Region."

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. Ordinance No. 07-113 is amended by adding "Public" to the name of the Commission so that it reads "Public Art Commission of the Pikes Peak Region" and is abbreviated as "PACPPR".

Section 2. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by charter.

Section 3. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance shall be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this \_\_\_\_ day of \_\_\_\_\_, 2014.

Finally passed: \_\_\_\_\_  
Keith King, Council President

Delivered to Mayor on \_\_\_\_\_.

**Mayor's Action:**

- Approved: \_\_\_\_\_
- Disapproved: \_\_\_\_\_, based on the following objections:

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\_\_\_\_\_  
Steve Bach, Mayor

**Council Action After Disapproval:**

- Council did not act to override the Mayor's veto.
- Finally adopted on a vote of \_\_\_\_\_, on \_\_\_\_\_.
- Council action on \_\_\_\_\_ failed to override the Mayor's veto.

\_\_\_\_\_  
Keith King, Council President

ATTEST:

\_\_\_\_\_  
Sarah B. Johnson, City Clerk

ORDINANCE NO. 07- 113

AN ORDINANCE RECOGNIZING THE ART COMMISSION OF THE PIKES PEAK REGION AS AN ADVISORY BOARD TO CITY COUNCIL

WHEREAS, the City Council of the City of Colorado Springs recognizes the value of our community's diverse arts and cultural heritage; and

WHEREAS, the Art Commission of the Pikes Peak Region has worked for many years to preserve and promote the arts in this community; and

WHEREAS, City Council wishes to acknowledge the work of the Art Commission of the Pikes Peak Region and recognize the Commission as an advisory commission to City Council.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. There is hereby created the Art Commission of the Pikes Peak Region (ACPPR) for the purpose of advising City Council on matters concerning art in public places. Through vision, leadership and service, the ACPPR will work in an advisory capacity to integrate public art and culture of the highest quality in all aspects of community life.

Section 2. The ACPPR shall consist of eleven (11) regular members and two (2) ex officio members, representing a cross-section of the community as follows:

One (1) representative from the Pikes Peak Arts Council;

One (1) representative from the Southern Colorado Chapter of the American Institute of Architects;

One (1) representative from the Fine Arts Center;

Three (3) visual artists from the community;

One (1) higher education arts professional;

One (1) Parks, Recreation and Cultural Services representative; and

Three (3) citizens at-large.

One (1) City Councilmember and one (1) member of the El Paso County Board of Commissioners shall be appointed to serve as voting ex officio members of the ACPPR.

Section 3. ACPPR members shall be appointed to a three (3) year term, and may serve up to two (2) consecutive three-year terms. Current appointments to the ACPPR shall be continued. Current members serving less than two (2) years of a current term may be reappointed to no more than one (1) regular three-year term. All members seeking reappointment must apply to City Council. City Council may appoint alternates to the ACPPR in accord with City Code § 1.2.902. Regular and alternate members of the ACPPR shall serve at the discretion of City Council. The City Councilmember and County Commissioner members shall not be limited in term or reappointment.

Section 4. ACPPR members and alternates, when acting within the scope of their appointments, shall comply with the provisions of City Charter §§ 9-10 and 3-60(d), the City Code and the Rules and Procedures of City Council.

Section 5. The ACPPR shall meet at times and locations convenient to the Board and public. City staff shall provide support to the ACPPR as necessary.

Section 6. Seven regular members shall constitute a quorum.

Section 7. In accord with City Code § 1.2.903, the ACPPR may, with City Council approval, promulgate rules of procedure for its organization and the conduct of its meetings. The ACPPR rules of procedure may include provisions regarding: the election and responsibilities of a chair and vice-chair; calling of special meetings; the

order of business; preparation, approval and distribution of agendas and minutes; and voting methods.

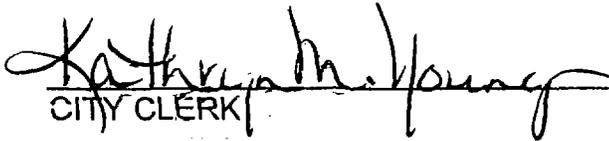
Section 8. This ordinance shall be in full force and effect from and after its passage and publication as provided by Charter.

Section 9. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance shall be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this 24<sup>th</sup> day of July, 2007.

  
\_\_\_\_\_  
MAYOR

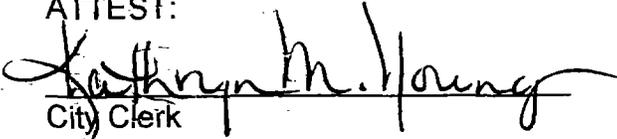
ATTEST:

  
\_\_\_\_\_  
CITY CLERK

Amended and passed on second presentation and ordered published this 14th day of August, 2007.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

Finally passed, adopted and approved this 28th day of August, 2007.

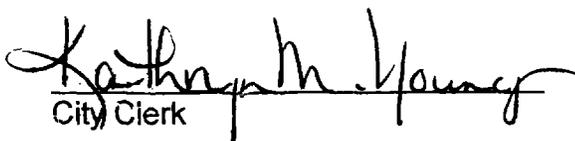
  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

I HEREBY CERTIFY, that the foregoing ordinance entitled "**AN ORDINANCE RECOGNIZING THE ART COMMISSION OF THE PIKES PEAK REGION AS AN ADVISORY BOARD TO CITY COUNCIL**" was introduced and read at a regular meeting of the City Council of the City of Colorado Springs, held on July 24, 2007, that said ordinance was amended and passed on second reading at a regular meeting held on August 14, 2007, and finally passed at a regular meeting of the City Council of said City, held on August 28, 2007, and that the same was published by summary, in accordance with Section 3-80 of Article III of the Charter, in the Daily Transcript, a newspaper published and in general circulation in said City, at least ten days before its passage.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City, this 28<sup>th</sup> day of August, 2007.

  
\_\_\_\_\_  
City Clerk



**Regular Agenda Item**

**Council Meeting Date:** February 25, 2014

**To:** President and Members of City Council

**cc:** Mayor Steve Bach

**Via:** Laura Neumann, Chief of Staff/Chief Administrative Officer

**From:** Peter Wysocki, Planning and Development Director  
Larry Larsen, Senior Planner

**Subject Title:** **Majestic Mountain Range - Indoor Shooting Range – Automatic Postponement**

**SUMMARY:**

This item is an automatic postponement of a public hearing of an appeal request of a Planning Commission action taken on January 16, 2014 to approve a conditional use to allow Indoor Sports and Recreation in the form of an indoor firing range in a PIP-2 (Planned Industrial Park) zoned property at 1170 Kelly Johnson Boulevard.

The City Clerk scheduled the item for the February 25, 2014 City Council meeting in accordance with City Code requirements. The appellant has requested that the item be postponed until the March 11, 2014 City Council meeting. Per Section 7.5.906.B.3, City Council is required to grant that request.

**PREVIOUS COUNCIL ACTION:**

None.

**BACKGROUND:**

An appeal request were filed in response to a Planning Commission approval of a conditional use to allow an indoor firing range at 1170 Kelly Johnson Boulevard. Indoor firing ranges fall under the definition of "Indoor Sports and Recreation" in the Zoning Code and are Conditional within the PIP-2 (Planned Industrial Park) zone district.

The appellant has requested the postponement.

**FINANCIAL IMPLICATIONS:**

None.

**BOARD/COMMISSION RECOMMENDATION:**

There has been no recommendation on the postponement.

**STAKEHOLDER PROCESS:**

The standard City notification process for the internal review and the neighborhood meeting included posting the property with a notice poster and mailing postcards to approximately 25 property owners within 1,000 feet of the project area.

One neighborhood meeting was conducted in regards to this project during the internal review stage.

Approximately 20 persons attended the neighborhood meeting held on December 17, 2013. During that meeting the primary concerns expressed included land use compatibility, noise abatement, safety and security, architectural design, hours of operation, and impact to property values. Copies of letters and e-mails regarding this project are included in the CPC Agenda staff report.

The same posting and notification process was utilized prior to the CPC public hearing.

All applicable agencies and departments were asked to review and comment. No significant concerns were identified. All issues and concerns were incorporated into the development plan or provided as conditions of approval. Staff finds that the outstanding comments/revisions are relatively minor in nature and do not warrant holding up the review of the conditional use permit. As always, the final compliance is verified and confirmed prior to issuance of a building permit.

**ALTERNATIVES:**

None.

**RECOMMENDATION:**

Approve the one-time automatic postponement.

**PROPOSED MOTION:**

**Postpone item AR DP 13-00488 – Conditional Use – Majestic Mountain Range to the March 11, 2014 regular City Council meeting.**



**Regular Agenda Item**

**Council Meeting Date:** February 25, 2014

**To:** President and Members of City Council

**cc:** Mayor Steve Bach

**Via:** Laura Neumann, Chief of Staff/Chief Administrative Officer

**From:** Peter Wysocki, Planning and Development Director  
Erin McCauley, Planner II

**Subject Title:** **Whistling Pines West – 4750 Peace Palace Point – Automatic Postponement**

**SUMMARY:**

This item is an automatic postponement of a public hearing of two separate appeal requests of a Planning Commission action taken on January 16, 2014 to approve a conditional use to allow Indoor Sports and Recreation in the form of an indoor firing range in a PIP-2 HS (Planned Industrial Park with Hillside Overlay) zoned property at 4750 Peace Palace Point.

The City Clerk scheduled the item for the February 25, 2014 City Council meeting in accordance with City Code requirements. The project applicant has requested that the item be postponed until the March 11, 2014 City Council meeting. Per Section 7.5.906.B.3, City Council is required to grant that request.

**PREVIOUS COUNCIL ACTION:**

None.

**BACKGROUND:**

Two separate appeal requests were filed in response to a Planning Commission approval of a conditional use to allow an indoor firing range at 4750 Peace Palace Point. Indoor firing ranges fall under the definition of "Indoor Sports and Recreation" in the Zoning Code and are Conditional within the PIP-2 (Planned Industrial Park) zone district.

The project applicant has requested the postponement.

**FINANCIAL IMPLICATIONS:**

None.

**BOARD/COMMISSION RECOMMENDATION:**

There has been no recommendation on the postponement.

**STAKEHOLDER PROCESS:**

The site was posted for ten (10) days and postcards were sent to 13 property owners within 500 ft. of the subject property in accordance with standard procedure.

**ALTERNATIVES:**

None.

**RECOMMENDATION:**

Approve the one-time automatic postponement.

**PROPOSED MOTION:**

Postpone item **CPC CU 13-00077 – WHISTLING PINES WEST – 4750 PEACE PALACE POINT** to the March 11, 2014 regular City Council meeting.