6:00 p.m. – Study Session

1. Joint Study Session – Board of Adjustment and Appeals
2. Security Training
3. Discussion of Agenda Items

6:30 p.m. – Regular Meeting

1. Call to Order
2. Roll Call of Members
3. Pledge of Allegiance
4. Approval of Agenda
5. Audience Participation Period (limit 5 minutes per speaker)
6. Reports from City Boards, Commissions and Committees
7. Consent Agenda
   a. Approval of Minutes – March 5, 2019
   b. Contract for Services with Straight Line Saw Cutting for the 2019 Street Improvement Concrete Project

8. Items Removed From Consent Agenda

9. Unfinished Business
   a. Council Bill 2, Series 2019; A Bill for an Ordinance of the City of Cherry Hills Village to Rezone 120 Meade Lane, John Meade Park and Alan Hutto Memorial Commons from R-1 (2 1/2 Acre Residential District), C-1 (Community District) and O-1 (Open Space, Park and Recreation Area District) to O-2 (Open Space, Conservation and Historic Area District), to Rezone 2450 E. Quincy Avenue from C-1 to C-1 and O-2, and Amending the Zoning Map (second and final reading)

***Agenda Continues on Second Page***
10. New Business
   a. Council Bill 3, Series 2019; A Bill for an Ordinance of the City of Cherry Hills Village
      Amending Chapter 2 Article 6 of the Cherry Hill Village Municipal Code concerning
      duties and responsibilities of the Planning and Zoning Commission in maintaining the
      City’s Master Plan (first reading)
   b. Discussion Regarding Landscape Improvements for Belleview Medians
   c. Wireless Communication Facilities Master License Agreement – Zayo Group, LLC

11. Recess of the City Council to Convene as the GID Board

   Meeting of the Cherry Hills Village Charlou Park 3rd Filing General Improvement District Board

12. Call to Order

13. Roll Call of Members

14. Consent Agenda
   a. Approval of Minutes – March 5, 2019

15. Adjournment

   Reconvene Meeting of the Cherry Hills Village City Council

16. Reports
   a. Mayor
   b. Members of City Council
   c. City Manager and Staff
      (i) Department Monthly Reports
   d. City Attorney

17. Adjournment

Notice: Agenda is subject to change. If you will need special assistance in order to attend any of the City’s public meetings, please notify the City of Cherry Hills Village at 303-789-2541, 48 hours in advance.
Minutes of the
City Council of the City of Cherry Hills Village, Colorado
and of the Cherry Hills Village Charlou Park 3rd Filing
General Improvement District Board of Directors
Held on Tuesday, March 5, 2019 at 6:30 p.m.
At the Joint Public Safety Facility

MEETING OF THE CHERRY HILLS VILLAGE CITY COUNCIL

The City Council held a study session at 5:30 p.m.

Mayor Russell Stewart called the meeting to order at 6:32 p.m.

ROLL CALL

Mayor Russell Stewart, Councilors Randy Weil, Afshin Safavi, Al Blum, Mike Gallagher, Dan Sheldon, and Katy Brown were present on roll call. Also present were City Manager Jim Thorsen, Deputy City Manager and Public Works Director Jay Goldie, City Attorney Kathie Guckenberger, Police Chief Michelle Tovrea, Community Development Director Rachel Granrath, Finance Director Jessica Sager, Parks and Recreation Coordinator Emily Black and City Clerk Laura Gillespie.

Absent: none

PLEDGE OF ALLEGIANCE

The Council conducted the pledge of allegiance.

APPROVAL OF AGENDA

Mayor Pro Tem Brown moved, seconded by Councilor Sheldon to approve the agenda.

The motion passed unanimously.

AUDIENCE PARTICIPATION PERIOD

Earl Hoellen, 3 Vista Road, indicated that it was a pleasure to be in the new City Hall and that the new building was the culmination of a lot of work by previous Councils and of City Manager Thorsen and Deputy City Manager/Director Goldie. He stated that as a resident he was pleased with both the design and financing of the building. He noted that he appreciated the intent to streamline and clarify the Code through the Code Modernization project but warned about accumulative effects. He stated that residents loved the City's institutions but that there were limited opportunities for Council to examine the effect of development of these institutions on the City. He indicated that the impacts of new development were never less than estimated and asked Council to keep that in mind. He asked Council to be aware of past Council discussions about the
proposed guard comfort station. He suggested that a sign be installed to make clear that the street was public and that vehicles would not need to stop at the guard station.

Maureen Welch, 4896 S. Clarkson Street, explained that she was a volunteer lobbyist at the state capital for Medicaid issues because her younger has Down Syndrome, and her older son was there tonight for his Boy Scout civics badge. She emphasized the importance of considering unintended consequences and transparency. She asked that Council keep in mind people with disabilities and that they consider live streaming Council meetings with closed captioning. She noted that this was also an issue to keep in mind with the microphones in the Council Chambers and to make sure everyone used the microphones. She indicated that it was a beautiful new building and thanked Council for serving the community.

Mayor Pro Tem Brown noted that the new Council Chambers had a system for people with audio impairments that would be available soon.

Kelley Digby, 21 Cherry Hills Farm Drive, stated that she agreed with Mr. Hoellen and that the community did not want the proposed comfort station to impede traffic. She explained that the purpose of the station had been misunderstood in 2015 and that it was simply to have a place for a bathroom and heater so that the neighborhood guard did not have to be in their car the whole time. She added that the station would also house some AV equipment. She indicated that the neighborhood had incorporated all of Council’s suggestions from 2015 including having a sign on the street and not having a door facing the street. She stated that the neighborhood wanted people to come into the neighborhood and visit their parks. She noted that the HOA had some suggestions for the wording to be added to the City Code that would not conflict with the HOA covenants.

REPORTS FROM CITY BOARDS, COMMISSIONS AND COMMITTEES

None

CONSENT AGENDA

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

a. Approval of Minutes – February 19, 2019
b. Resolution 12, Series 2019; A Resolution of the City Council of the City of Cherry Hills Village Approving an Agreement with Michow Cox & McAskin for City Attorney Legal Services
c. Resolution 13, Series 2019; A Resolution of the City Council of the City of Cherry Hills Village Concerning the Appointment of a New Member to the Quincy Farm Committee

The motion passed unanimously.

March 5, 2019
City Council
ITEMS REMOVED FROM CONSENT AGENDA

None

UNFINISHED BUSINESS

None

NEW BUSINESS

Public Hearing – Council Bill 2, Series 2019: A Bill for an Ordinance of the City of Cherry Hills Village to Rezone 120 Meade Lane, John Meade Park and Alan Hutto Memorial Commons from R-1 (2 ½ Acre Residential District), C-1 (Community District) and O-1 (Open Space, Park and Recreation Area District) to O-2 (Open Space, Conservation and Historic Area District), to Rezone 2450 E. Quincy Avenue from C-1 to C-1 and O-2, and Amending the Zoning Map (first reading)

Councilor Gallagher indicated that as liaison to the Parks, Trails and Recreation Commission (PTRC) he had attended the PTRC meeting at which this proposal was presented which created a potential conflict due to ex-parte communications, but stated that he could make a fair and impartial decision.

Director Granrath presented Council Bill 2, Series 2019 on first reading. She explained that the bill would rezone John Meade Park, Alan Hutto Memorial Commons, and portions of 2450 E. Quincy Avenue to the O-2 district. She indicated that the biggest difference between the current O-1 zoning for John Meade Park and the proposed O-2 zoning for these areas was that O-1 was meant for passive parks and O-2 for active parks. She noted that City Hall, the Joint Public Safety Facility, and the parking lot would stay as C-1, and the remainder including the new Park pavilion would be rezoned to O-2.

Mayor Stewart opened the Public Comment Period of the Public Hearing at 6:55 p.m. Hearing no comments the Public Comment Period of the Public Hearing was closed at 6:56 p.m.

Councilor Sheldon commended staff on this project, noting that the O-1 and O-2 zoning had seemed complicated initially but after reading staff’s memorandum and hearing staff’s presentation it made sense.

Councilor Gallagher moved, seconded by Councilor Blum to approve Council Bill 2, Series 2019; a bill for an ordinance of the City of Cherry Hills Village to rezone 120 Meade Lane, John Meade Park and Alan Hutto Memorial Commons from R-1 (2 ½ acre Residential district), C-1 (Community district) and O-1 (Open space, park and recreation area district) to O-2 (Open space, conservation and historic area district), to rezone 2450 E. Quincy Avenue from C-1 to C-1 and O-2, and amending the zoning map on first reading.

March 5, 2019

City Council
The following votes were recorded:

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<tr>
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<td>Brown</td>
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<td>Gallagher</td>
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<tr>
<td>Sheldon</td>
<td>yes</td>
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<tr>
<td>Blum</td>
<td>yes</td>
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Vote on the Council Bill 2-2019: 6 ayes. 0 nays. The motion carried.

Resolution 14, Series 2019; A Resolution of the City Council of the City of Cherry Hills Village Waiving the Requirement to Obtain an Additional Floodplain Permit for the Planned Improvements Located in the Floodplain at John Meade Park and Alan Hutto Memorial Commons

Director Granrath presented Resolution 14, Series 2019 for Council's consideration. She explained that in 2017 Council approved a floodplain development permit for the redevelopment of John Meade Park and Alan Hutto Memorial Commons. Final plans for the Park redevelopment were now complete and included improvements that were not considered structures by FEMA but were considered structures in the City Code, such as the boardwalk, play area, benches, fishing piers, and bridges. Because these improvements were considered structures in the City Code they required an additional floodplain development permit. Staff was requesting a floodplain permit waiver from Council as allowed by the Code when a floodplain permit was not required to protect public health, safety, convenience and general welfare. The City's engineering consultant for this project, RESPEC, determined that the proposed improvements would not affect the floodplain. The Parks, Trails and Recreation Commission (PTRC) reviewed the waiver application at their January 10, 2019 meeting and the Planning and Zoning Commission (P&Z) reviewed it at their January 22, 2019 meeting. Neither group was required to make a formal motion but they did not have any issues with the application. Meeting minutes from both groups were attached to the staff memorandum. The other exhibits to the staff memorandum showed the floodplain approved by Council in 2017 (Exhibit D) and the minor revisions based on updated data in 2018 (Exhibit C).

Councilor Blum asked if a Letter of Map Revision (LOMR) would be done for this project.

City Manager Thorsen replied that a LOMR would be filed with FEMA after the project was complete.

Councilor Sheldon asked if the floodplain waiver process was available for any residence or institution in the City and confirmed that the City had not received any special treatment by having the option to apply for a waiver.
City Attorney Guckenberger replied that was correct.

Mayor Stewart asked if Council should consider amending the City Code to make its restrictions regarding floodplain development more in line with FEMA's.

City Manager Thorsen agreed that the City Code was very restrictive regarding modifications in the floodplain because historically that was what Councils had preferred, but staff could add this topic to the Code Modernization project for further review.

Mayor Pro Tem Brown noted that the Master Plan directed the Council to preserve the City's floodplains and natural areas, so although she agreed that the Code was perhaps a bit too limiting she noted that the restrictions were intended to address more than just the waterflow.

Councilor Blum asked about the floodplain development permit application for a pool that P&Z and Council had considered several years ago.

Director Granrath replied that a pool was a very different structure from the improvements proposed for John Meade Park, and that after submitting applications three times the permit had eventually been approved, but that the waiver process had been available to those applicants as well.

Councilor Sheldon noted that the City's engineering consultant had done a good job on complicated work regarding the floodplain development for John Meade Park.

Mayor Pro Tem Brown moved, seconded by Councilor Blum to approve Resolution 14, Series 2019; a Resolution of the City Council of the City of Cherry Hills Village waiving the requirement to obtain an additional floodplain permit for the planned improvements located at John Meade Park and Alan Hutto Memorial Commons based on the findings in the March 5, 2019 staff report and associated attachments.

The motion passed unanimously.

**RECESS OF THE CITY COUNCIL TO CONVENE AS THE GID BOARD**

Councilor Blum moved, seconded by Mayor Pro Tem Brown to recess the City Council meeting and call to order the meeting of the Cherry Hills Village Charlou Park 3rd Filing General Improvement District Board.

The motion passed unanimously.
Mayor Russell Stewart, serving ex-officio as the GID Chairperson, called the meeting to order at 7:11 p.m.

ROLL CALL OF MEMBERS

The City Council for the City of Cherry Hills Village serving ex-officio as the Board of Directors of the Cherry Hills Village Charlou Park 3rd Filing General Improvement District: Mayor Russell Stewart, Councilors Randy Weil, Afshin Safavi, Al Blum, Mike Gallagher, Dan Sheldon, and Katy Brown were present on roll call.

Absent: none

The administrative staff of the City serving as the administrative staff of the GID: City Manager Jim Thorsen, Deputy City Manager and Public Works Director Jay Goldie, City Attorney Kathie Guckenberger, Police Chief Michelle Tovrea, Finance Director Jessica Sager, Parks and Recreation Coordinator Emily Black and City Clerk Laura Gillespie.

CONSENT AGENDA

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

a. Approval of Minutes – February 19, 2019
b. Resolution 4, Series 2019; A Resolution of the Cherry Hills Village Charlou Park 3rd Filing General Improvement District (GID) Board of Directors Memorializing the Designation of the Public Place for Posting Notices of GID Meetings

The motion passed unanimously.

BUSINESS

Board Bill 1, Series 2019; A Bill for an Ordinance of the Cherry Hills Village Charlou Park 3rd Filing General Improvement District, in the City of Cherry Hills Village, Colorado, Providing for the Issuance of General Obligation Bonds of Such District, Series 2019, in an Aggregate Principal Amount Not Exceeding $550,000, to Finance the Cost of Certain Improvements Approved at a District Election Held on November 6, 2018; Ratifying Actions Heretofore Taken; Authorizing the Execution by the District of the Bonds and Related Documents Required in Connection Therewith; and Making Determinations as to Other Matters Related to the Bonds (second and final reading)

Director Sager presented Board Bill 1, Series 2019 on second and final reading. She noted there had been no changes since first reading.

Mayor Pro Tem Brown moved, seconded by Councilor Sheldon to approve Board Bill 1, Series 2019; A Bill for an Ordinance of the Cherry Hills Village Charlou Park 3rd Filing
General Improvement District, in the City of Cherry Hills Village, Colorado, providing for the issuance of General Obligation Bonds of such District, Series 2019, in an aggregate principal amount not exceeding $550,000, to finance the cost of certain improvements approved at a District election held November 6, 2018; ratifying actions heretofore taken; authorizing the execution by the District of the Bonds and related documents required in connection therewith; and making determinations as to other matters related to the Bonds on second and final reading.

City Clerk Gillespie noted that Mayor Stewart could vote on GID matters as Chairperson of the GID Board.

The following votes were recorded:

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<tr>
<th>Name</th>
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<tr>
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<td>Brown</td>
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<td>Stewart</td>
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<td>Gallagher</td>
<td>yes</td>
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<td>Sheldon</td>
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<tr>
<td>Blum</td>
<td>yes</td>
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<tr>
<td>Safavi</td>
<td>yes</td>
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Vote on the Board Bill 1-2019: 7 ayes. 0 nays. The motion carried.

ADJOURNMENT

Councilor Blum, seconded by Councilor Weil moved to adjourn the meeting of the Cherry Hills Village Charlou Park 3rd Filing General Improvement District Board.

The motion passed unanimously.

RECONVENE MEETING OF THE CHERRY HILLS VILLAGE CITY COUNCIL

The meeting of the Cherry Hills Village City Council reconvened at 7:15 p.m.

REPORTS

Mayor's Report

Mayor Stewart reported that he and other mayors of municipalities in Arapahoe County had met with Senator Gardner's staff regarding Denver MetroPlex and that they expressed interest and desire in helping the Arapahoe County communities communicate with the FAA. He noted that there were three federal statutes that they might be able to use to oppose Denver MetroPlex including the National Environmental Policy Act, the National Historic Preservation Act, and the Transportation Act.
Mayor Pro Tem Brown noted that she had asked the FAA where they got their information about historic structures so that the City could check that theirs were included.

Mayor Stewart added that there was a section in the federal regulations that took into account an area being a quiet setting.

Councilor Blum asked when the FAA's environmental study for Denver MetroPlex would be released.

Mayor Pro Tem Brown noted that the government shut down had postponed the timeline.

Mayor Stewart indicated that the report was expected in May, followed by the 30 day public input period and public hearings.

Mayor Pro Tem Brown added that the biggest challenge might be that the 2012 overhall of FAA flight plans had gone largely unchallenged and it might be difficult to show that the new plans involved significant changes.

Mayor Stewart agreed but noted that without information from the FAA on noise and flight paths, the significance of the changes were unknown. He reported that Denver Water continued the process of purchasing water rights along the High Line Canal. He indicated that a new coyote report by Stewart Breck examined urban versus rural coyotes. He stated that City Manager Thorsen had sent a letter to CDOT regarding the new striping on University and it looked promising that CDOT would agree to returning to the original striping for the neighborhoods bordering University. He reported that Colorado Municipal League director Sam Mamet was retiring after many years.

**Members of City Council**

Councilor Blum asked about the Belleview medians.

City Manager Thorsen replied that the topic was on the next Council agenda for discussion.

Councilor Blum welcomed Council Weil back.

Councilor Sheldon reported that former Mayor Christman was enjoying her retirement from Council and hoped to attend the Grand Opening. He indicated that the petition for renaming Swastika Acres was close to complete. He stated that the Charlot HOA was in the process of designing security cameras at the entrance and was working with staff on the necessary permits. He reported that at last week's meeting of the High Line Canal Working Group (HLCWG) they had learned that Denver Water will continue to own and maintain the High Line Canal. He indicated that this would be helpful as it would allow the HLCWG to interact with just Denver Water instead of many different
owners along the Canal. He requested that staff do their presentations at the podium instead of from the staff tables so that Council could more easily see them.

City Manager Thorsen noted that if staff did not have a Power Point presentation then they could present from the podium.

Councilor Gallagher thanked City Manager Thorsen and Deputy City Manager/Director Goldie for all their work on the new building. He recognized former Councilor Earl Hoellen for his work on the financing of the capital projects.

Mayor Pro Tem Brown agreed. She reported that the last DRCOG meeting had been focused on what the Metro Denver area could do about transportation funding.

Councilor Weil indicated that the new striping on University had also negatively affected the Cherry Hills Farm neighborhood and asked that be returned to its original striping as well.

Councilor Safavi stated that he had lived in several countries, states and cities and that the City was the safest community he had lived in with the most professional Police Department. He noted that residents had been unhappy that the information about the recent incident on Happy Canyon had not been communicated more quickly by the Police Department. He suggested that Council have a community meeting to discuss safety in the Village, update residents on recent events, and discuss what Council may want to change about the process.

City Manager & Staff

City Manager Thorsen thanked Council and previous Councils for their support of the new City Hall. He stated that it had been a lot of hard work and now that it was complete, staff would be moving forward with the redevelopment of John Meade Park and Alan Hutto Memorial Commons. He noted that two of the three capital projects were now on time and under budget. He thanked staff for their help with designing, moving and cleaning. He presented a plaque to Deputy City Manager/Director Goldie to thank him for his work on the new City Hall.

City Attorney

City Attorney Guckenberger had no report.

ADJOURNMENT

The meeting adjourned at 7:41 p.m.

___________________________________________
Russell O. Stewart, Mayor

___________________________________________
Laura Gillespie, City Clerk

March 5, 2019
City Council
MEMORANDUM

TO: HONORABLE MAYOR STEWART AND MEMBERS OF CITY COUNCIL

FROM: RACHEL GRANRATH, COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: COUNCIL BILL 2, SERIES 2019; A BILL FOR AN ORDNANCE OF THE CITY OF CHERRY HILLS VILLAGE TO REZONE 120 MEADE LANE, JOHN MEADE PARK AND ALAN HUTTO MEMORIAL COMMONS FROM R-1 (2 ½ ACRE RESIDENTIAL DISTRICT), C-1 (COMMUNITY DISTRICT) AND O-1 (OPEN SPACE, PARK AND RECREATION AREA DISTRICT) TO O-2 (OPEN SPACE, CONSERVATION AND HISTORIC AREA DISTRICT), TO REZONE 2450 E. QUINCY AVENUE FROM C-1 TO C-1 AND O-2, AND AMENDING THE ZONING MAP (SECOND AND FINAL READING)

DATE: MARCH 19, 2019

ISSUE:
Shall City Council approve Council Bill 2, Series 2019 to rezone 120 Meade Lane, John Meade Park and Alan Hutto Memorial Commons from R-1 (2 ½ acre Residential district), C-1 (Community district) and O-1 (Open space, park and recreation area district) to O-2 (Open space, conservation and historic area district), to rezone 2450 E. Quincy Avenue from C-1 to C-1 and O-2, and amending the zoning map on second and final reading (Exhibit A)?

DISCUSSION:
Staff is presenting for review and recommendation to City Council a rezoning application for John Meade Park and Alan Hutto Memorial Commons, located at 120 Meade Lane. The property is currently zoned as R-1 (Residential 2 ½ acre district), C-1 (Community district) and O-1 (Open space, park and recreation area district). As the owner, the City is proposing a rezone to O-2 (Open space, conservation and historic area district). See Attachment A to the council bill for current zoning and Attachment B to the council bill for the proposed zoning.

In August of 2016 the City Council passed Ordinance 5, Series 2016 which amended the procedures for rezoning properties within the City. Any rezoning application includes the following as outlined in Sec. 16-2-40 of the Municipal Code:

1. Description of the land area to be rezoned and the requested new classification, along with a sketch, to scale, showing the boundaries of the area requested to be rezoned, along with the existing zoning on all adjacent sides of the area.
2. A statement of justification for the rezoning, including discussion of such of the following conditions as are applicable:
   a. Change in area conditions;
   b. Error in original zoning;
   c. Conformance to the Master Plan for the area; and
   d. Suitability of the site to the proposed use.

3. Description and sketches, if available, of structures or uses proposed if rezoning is granted, along with a description of uses within two hundred (200) feet of the boundary of the proposed area of change, in all directions, and the effect of the proposed use upon the adjacent areas.

4. Time schedule for any contemplated new construction or uses.

Staff presented a study session to Parks, Trails and Recreation Commission (PTRC) at the December 2018 meeting. Direction from the PTRC included pursuing a full application to rezone the property to O-2. See Exhibit B for the full rezoning application materials. On January 10, 2019, PTRC made a unanimous recommendation to approve the rezoning to O-2 (see Exhibit C for draft minutes). On January 22, 2019 the Planning and Zoning Commission (P&Z) also made a unanimous recommendation to approve the rezoning to O-2 (see Exhibit D for draft minutes).

All public notice requirements have been met as outlined in Sec. 16-2-40 of the Municipal Code. Staff wants to highlight that notice was sent to property owners within 1,000 feet of the Park 15 days prior to both the January 22nd P&Z Public Hearing and March 5th City Council Public Hearing.

There have been no changes to the council bill since first reading.

STAFF RECOMMENDATION:
Staff recommends the approval of the proposed rezoning of 120 Meade Lane, also known as John Meade Park and Alan Hutto Memorial Commons, from R-1, C-1, and O-1 to O-2 and amendment of the zoning map.

RECOMMENDED MOTION:
"I move to approve Council Bill 2, Series 2019; a bill for an ordinance of the City of Cherry Hills Village to rezone 120 Meade Lane, John Meade Park and Alan Hutto Memorial Commons from R-1 (2 ½ acre Residential district), C-1 (Community district) and O-1 (Open space, park and recreation area district) to O-2 (Open space, conservation and historic area district), to rezone 2450 E. Quincy Avenue from C-1 to C-1 and O-2, and amending the zoning map on second and final reading."

ATTACHMENTS:
Exhibit A: Council Bill 2, Series 2019
   Attachment A: Current Zoning
   Attachment B: Proposed Zoning
Exhibit B: Rezoning Application Materials
CHERRY HILLS VILLAGE
COLORADO

Exhibit C: Parks, Trails and Recreation Commission Draft Meeting Minutes from January 10, 2019
Exhibit D: Planning and Zoning Commission Draft Meeting Minutes from January 22, 2019
A BILL FOR AN ORDINANCE
OF THE CITY OF CHERRY HILLS VILLAGE
TO REZONE 120 MEADE LANE, JOHN MEADE PARK, AND ALAN HUTTO MEMORIAL COMMONS FROM R-1 (2½ ACRE RESIDENTIAL DISTRICT), C-1 (COMMUNITY DISTRICT) AND O-1 (OPEN SPACE, PARK AND RECREATION AREA DISTRICT) TO O-2 (OPEN SPACE, CONSERVATION AND HISTORIC AREA DISTRICT), TO REZONE 2450 E. QUINCY AVENUE FROM C-1 TO C-1 AND O-2, AND AMENDING THE ZONING MAP

WHEREAS, pursuant to Section 16-2-40(a) of the Municipal Code ("Code"), the City Council is authorized to initiate amendments to the official zoning map of the City of Cherry Hills Village; and

WHEREAS, the City of Cherry Hills Village is the record owner of the following parcels of land within the boundaries of Cherry Hills Village, as identified by an identification number assigned by the Arapahoe County Assessor ("AIN"), which are collectively referred to herein as the "Subject Properties"; and

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<tr>
<th>AIN Address/Identification</th>
<th>Current Zoning</th>
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<tr>
<td>2077-12-2-002 2450 E. Quincy Avenue</td>
<td>C-1</td>
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<tr>
<td>2077-12-2-02-051 120 Meade Lane</td>
<td>C-1</td>
</tr>
<tr>
<td>2077-12-2-004 Alan Hutto Memorial Commons</td>
<td>R-1 and O-1</td>
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<tr>
<td>2077-12-2-02-039 John Meade Park</td>
<td>O-1</td>
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<tr>
<td>2077-12-2-02-050 John Meade Park</td>
<td>O-1</td>
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WHEREAS, a map depicting the location and current zoning of the Subject Properties is attached to this Ordinance as Attachment A, and is incorporated herein by reference; and

WHEREAS, City Staff initiated a rezoning of the Subject Properties by application dated December 14, 2018 (the "Application"), which Application seeks to rezone the Subject Properties or a portion thereof from their current zoning of C-1 (Community District), R-1 (2½-Acre Residential District), and O-1 (Open Space, Park and Recreation Area District), respectively, to O-2 (Open Space, Conservation and Historic Area District) as depicted in Attachment B, a copy of which is attached hereto and incorporated herein by reference; and

WHEREAS, the Application was presented to the Parks, Trails and Recreation Committee at its December 2018 meeting and its January 10, 2019 meeting and PTRC unanimously recommended approval; and

WHEREAS, the Planning and Zoning Commission held a duly noticed public hearing on January 22, 2019 to consider the Application and following the conclusion of the public hearing voted to recommend approval of the Application to City Council; and

WHEREAS, the City Council held a duly noticed public hearing on the rezoning
Application, at which time evidence and testimony were presented to the City Council; and

WHEREAS, the City provided notice of the City Council public hearing in accordance with all applicable provisions of the Code; and

WHEREAS, the City Council finds that the proposed rezoning is consistent with the requirements outlined in Section 16-2-40 of Code relating to rezoning applications; and

WHEREAS, pursuant to Article 23 of Title 31, C.R.S., as amended, City Council has determined that the proposed rezoning of the Subject Properties, subject to any conditions set forth herein, furthers the public health, safety, convenience and general welfare of the community; generally conforms with the City’s Master Plan, as amended and updated; is compatible with surrounding uses; and otherwise meets the applicable criteria set forth in the Code; and

WHEREAS, the City Council further finds that the proposed rezoning of the Subject Properties satisfies the purpose and intent of the O-2 zone district, as set forth in Section 16-11-110 of the Code, in that the rezoning of the Subject Properties will: (1) promote conservation values of properties owned or leased by the City, and (2) provide for the development, maintenance, and operation of the Subject Properties consistent with the Master Plan and the semi-rural character of the City.

NOW, THEREFORE, the Council of the City of Cherry Hills Village, Colorado ordains:

Section 1. Incorporation of Recitals. The recitals contained above are incorporated herein by reference and are adopted as findings of the City Council.

Section 2. Rezoning Approved. The zoning classifications of the Subject Properties as described herein and depicted in Attachment A shall be, and are hereby, changed from R-1 (2½ Acre Residential District), C-1 (Community District), and O-1 (Open Space, Park and Recreation Area District) to the new zoning classifications as set forth in the chart below:

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<th>New Zoning</th>
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<td>2450 E. Quincy Avenue</td>
<td>C-1</td>
<td>C-1 and O-2, as depicted in Attachment B</td>
</tr>
<tr>
<td>2077-12-2-02-051</td>
<td>120 Meade Lane</td>
<td>C-1</td>
<td>O-2</td>
</tr>
<tr>
<td>2077-12-2-004</td>
<td>Alan Hutto Memorial Commons</td>
<td>R-1 and O-1</td>
<td>O-2</td>
</tr>
<tr>
<td>2077-12-2-02-039</td>
<td>John Meade Park</td>
<td>O-1</td>
<td>O-2</td>
</tr>
<tr>
<td>2077-12-2-02-038</td>
<td>John Meade Park</td>
<td>O-1</td>
<td>O-2</td>
</tr>
<tr>
<td>2077-12-2-02-050</td>
<td>John Meade Park</td>
<td>O-1</td>
<td>O-2</td>
</tr>
</tbody>
</table>

Section 3. Zoning Map Amendment. The City of Cherry Hills Village Zoning Map is hereby amended to show the change in zoning classifications set forth in Section 2 of this Ordinance and a certified copy of such amendment shall be filed with the City Clerk.

Section 4. Safety Clause. The City Council of the City of Cherry Hills Village deems this Ordinance to be necessary for the public health, safety, and welfare.

Section 5. Severability. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or
applications of this Ordinance that can be given effect without the invalid portion, provided that such remaining portions or applications of this Ordinance are not determined by the court to be inoperable. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, despite the fact that any one or more section, subsection, sentence, clause, phrase, or portion be declared invalid.

Section 6. Effective Date. This Ordinance shall become effective ten (10) days after publication after second reading in accordance with Section 4.5 of the Charter for the City of Cherry Hills Village.

Adopted as Ordinance No. _____, Series 2019, by the City Council of the City of Cherry Hills Village, Colorado this _____ day of ________________, 2019.

______________________________
Russell O. Stewart, Mayor

ATTEST:

______________________________
Laura Gillespie, City Clerk

______________________________
Kathie B. Guckenberger, City Attorney

Published in The Villager
Published:________________________
Legal #:________________________
ATTACHMENT A
John Meade Park and Alan Hutto Memorial Current Zoning Map
ATTACHMENT B
John Meade Park and Alan Hutto Memorial Rezoning Map
City of Cherry Hills Village
Application for Zoning Amendment

Today’s Date: 12-14-18

Applicant Information
Name: City of Cherry Hills Village – Community Development Director, Rachel Granrath
Phone: 303-783-2749
Fax: 303-761-9386
Address: 2450 E. Quincy Avenue, Cherry Hills Village CO 80113

Property Information
Address: 120 Meade Lane, Cherry Hills Village CO 80113
Parcels: #2077-12-2-002; #2077-12-2-004; #2077-12-2-02-050; #2077-12-2-02-051; #2077-12-2-02-038; #2077-12-2-02-039 commonly known as John Meade Park, Alan Hutto Memorial Commons and City Hall

Legal Description of Property to be Rezoned
Lot 15 & 14 of Meade Subdivision; Lot 1B Blk 1 Cherry Hills Village Center Minor Subdivision; Lot 2 Blk 2 Cherry Hills Village Center Tog With The East 30 Ft Of Vacated Meade Lane Adj On The West; Lot 16 Ex Part Desc As Beg At Nly Most Cor Lot 16 Located On Meade Lane Th Sely Alg Sd Lane 130 Ft Th Swly 240 Ft Th Nwly 130 Ft To Pt On W Line Lot 16 Th Nely 240 Ft To Beg Meade Sub; Part Of Lot 16 Desc As Beg At Most Nly Cor Sd Lot Th Sw 240 Ft Th Se 130 Ft Th Ne 240 Ft Th Nw 130 Ft To Beg Meade Subdivision;

Please attach a graphic—to scale—of the land in question showing boundaries of the area along with the existing zoning and the zoning of all lands adjacent to the subject property.

Application – to be filed with the Community Development Department
- Description of the land area to be rezoned and the requested new classification, along with a sketch, to scale, showing the boundaries of the area requested to be rezoned, along with the existing zoning on all adjacent sides of the area.
- A statement of justification for the rezoning, including discussion of such of the following conditions as are applicable:
  - 1. Change in area conditions;
  - 2. Error in original zoning;
  - 3. Conformance to the Master Plan for the area; and
  - 4. Suitability of the site to the proposed use.
- Description and sketches, if available, of structures or uses proposed if rezoning is granted, along with a description of uses within two hundred (200) feet of the boundary of the proposed area of change, in all directions, and the effect of the proposed use upon the adjacent areas.
- Time schedule for any contemplated new construction or uses.

Signature
Date 12-14-18
John Meade Park has always been intended to be the City of Cherry Hills Village's most active park, as stated in the John Meade Park and Alan Hutto Memorial Commons Master Plan, adopted in 2015. This park space is the Village's most central park. Many of the goals and strategies outlined in the Master Plan are linked to the reasoning behind this rezoning application. The Master Plan goals include:

1. Create a community gathering space
2. Create a connection between park users and the natural environment
3. Create a community appropriate performance area within the John Meade Park and Alan Hutto Memorial Commons
4. Maintain and increase current floodplain capacities
5. Increase park usage and accessibility
6. Create a park that is maintenance friendly
Alan Hutto Memorial Commons was gifted to the City in 2013 in memory of Alan Hutto, a third grader who attended Cherry Hills Village Elementary School. He loved performing and in his memory this property was donated to the City in order to continue spreading the happiness associated with performing arts in his memory. In the Alan Hutto Memorial Commons Agreement, it was determined that the City would build a public performing arts space to be used by the City, community and local schools. Originally signed in 2013, the City has completed a temporary performance space in 2015 until the construction plans for the park could be finalized and put out for bid.

Currently there are a multitude of parcels included in John Meade Park and Alan Hutto Memorial Commons. These parcels have a range of zoning classifications including Alan Hutto currently as R-1 (Residential 2 ½ acre district), John Meade Park as O-1 (Open space, park and recreation area district), and a portion of City Hall which is planned as improved park space which is zoned C-1 (Community District). The parcels associated with John Meade Park and Alan Hutto Memorial Commons are proposed to be rezoned to O-2 (Open space, conservation and historic area district). The allowed uses included in the proposed O-2 zoning include the following:

- Unimproved open space and wildlife habitat.
- Bridle and pedestrian paths and trails.
- Irrigation canals, ponds and similar uses.
- Agricultural uses and facilities, including conservation of agricultural resources and structures, and equestrian uses and facilities, when operated by a nonprofit entity, including keeping, raising and boarding livestock and horses.
- Single-family dwellings and caretaker’s dwellings associated with historic use of properties or maintenance operations of properties.
- Community, educational, cultural and recreational facilities and activities.
- Museums, public libraries and galleries when operated by a nonprofit entity.
- Government and nonprofit offices.

Alan Hutto Memorial Commons is currently zoned R-1, which allows for Single-family dwellings, agricultural uses, water containment, utility stations, recreational paths, accessory structures incidental to allowed use, home occupations, and permitted satellite dish antennas. The R-1 zoning focuses on primarily private residential uses rather than providing the community engagement opportunities as allowed in O-2.

John Meade Park is currently zoned O-1 and C-1. O-1 allows for unimproved open space, bridle and pedestrian paths, growing and preservation of trees and other nursery stock, and the protection of watercourses and watersheds from erosion and floods. O-1 zoning focuses on passive park spaces for preservation and unimproved parks. This is typically used in City parks such as Woodie Hollow, Three Pond and Blackmer Common. The proposed park improvements (such as the park shelter) are not included in the allowed uses of O-1 zoning. The O-2 zoning provides a broader range of uses that are compatible with the proposed uses and park improvements at this site.

The City Hall site is currently zoned C-1. This application proposes a rezone to O-2 of a portion of the site that is designed with wetland improvements, paths, walkways etc. This is to clearly define the area that is to be used for park and open space versus the portion of the site dedicated to City Hall and associated uses.
The property appropriately meets the following conditions, which are applicable for any rezoning discussion:

1. **Change in area conditions:**
The John Meade Park and Alan Hutto Memorial Commons area has completed construction drawings for park improvements including a pavilion, playground, wetland restoration, amphitheater, and much more. The park improvements are not consistent with the current zoning, as outlined in the above narrative. The O-2 zoning will allow for an active park space while maintaining the natural environment and floodplain preservation.

2. **Error in original zoning:**
There was not an error in the original zoning. In the past, the property has been utilized as a more passive park space while zoned O-1. In the years of planning and visioning for this property, the intention was always to increase usage and accessibility. There was not an error in the original zoning of Alan Hutto as R-1, but since the property has been gifted to the City with the condition an element of the park be designed for an amphitheater, the single-family zoning designation is no longer appropriate. In regards to the C-1 zoning associated with the wetlands and paths of John Meade Park, it is appropriate to zone the areas that are used for recreation and open space appropriately from C-1 to O-2.

3. **Conformance to the Master Plan for the area:**
The City of Cherry Hills Village Master Plan, adopted in 2008, includes goals and strategies that act as guiding principles. Many of these goals and strategies illustrate that rezoning John Meade Park and Alan Hutto Memorial to O-2 is in conformity with the plan. The following goal listed from the Master Plan clearly states that this park is meant to be the central park of the Village with activated spaces and uses for all to enjoy. This supports the rezoning action to O-2.

**Goal:** Improve John Meade Park to become an active community recreational park and meeting place that offers different kinds of recreational activities and can host outdoor organized events.

**Strategies:**
1. Install play equipment and facilities that would accommodate special events.
2. Evaluate infrastructure needs for the park such as an equestrian ring, small playing field, pond area, xeriscaped area, public seating, low key lighting (for safety) and parking.
3. Utilize energy efficient techniques and environmentally sensitive site design in developing the park and its infrastructure.

4. **Suitability of the site to the proposed use:**
John Meade Park and Alan Hutto Memorial Commons have floodplain considerations in place. The City went through a floodplain development permit in order to accommodate the new City Hall building as well as the proposed park pavilion and playground. The site is suitable to be zoned an O-2 property. The uses are compatible with the proposed park improvements.
Time schedule for any contemplated new construction or uses:

- The City has completed 100% construction documents on the proposed park and recreation improvements for John Meade and Alan Hutto Memorial Commons. Staff is estimating that the proposed improvements may be completed sometime in Spring of 2020. Please see the proposed schedule on the next page for the full timeline from Mundus Bishop.
Commissioner Wolfe asked about the final decision for the playground features for the park. Ms. Black explained the Commission's decision from the last meeting was to maintain the prefabricated hollow log in the existing plan, and to also install cottonwood timbers that would be secured to the ground. She continued that there are two family-sized hammocks and an observation tower with a "shaky bridge" leading to it. Commissioner Wolfe asked if these logs posed a possible hazard or obstruction in a flood. Ms. Black replied that they did not pose any more of a hazard than trees or natural features, and that FEMA does not review any of the smaller park elements because they are not considered hazards.

Chair Eber stated for the newer commissioners that PTRC had known there would be some park elements within the floodplain, but they would be secured and in case of a flood event the park could be closed. He continued that PTRC had been aware of this and it was not a new item, and that if the City is comfortable with the items there from a liability standpoint, it should not be a concern.

Ms. Black explained there was never any conflict between elements that the City or PTRC wanted in the park and what RESPEC thought was safe.

City Manager Thorsen explained that this floodplain was not a creek or river, but is a "sheet flow" floodplain. The benches and park elements do not affect flood heights, which is why FEMA is not concerned with these items; it is only the City code that requires this process.

Chair Eber asked for any other comments, and hearing none noted that the agenda item was for informational purposes only. Ms. Black agreed and stated staff would update PTRC as the process moves forward to City Council in conjunction with the rezoning application.

c. Rezone John Meade Park and Alan Hutto Memorial Commons (Public Hearing)

Parks and Recreation Coordinator Black reviewed the staff memo with the Commission, including the rezoning application materials. She noted the next steps for the rezoning application, which will go before the Planning and Zoning Commission on Tuesday, January 22nd for a public hearing and will then have two more public hearings before City Council (dates to be determined). She explained that staff is recommending the approval of the proposed rezoning of 120 Meade Lane, also known as John Meade Park and Alan Hutto Memorial Commons, from R-1, C-1, and O-1 to O-2.

Chair Eber reminded the Commission that this was a quasi-judicial item and asked for any Commissioners with conflicts to disclose them. He asked if the area zoned C-1 (the City Hall building) was the only area of C-1 in the Village. City Manager Thorsen stated he believed there may be another area of C-1 within the Village.
Chair Eber asked if this obviates the need to have C-1 as a zoning category, given that O-2 zoning allows government buildings. Ms. Black replied no, and that that discussion was likely outside the scope of this application.

Chair Eber asked if the police and fire building would also change to O-2. Ms. Black replied no, and showed on the map (Exhibit B) that the City Hall and police and fire building would remain zoned C-1, but everything within the park would change to O-2.

Chair Eber asked if the City Hall building is considered within the boundaries of John Meade Park. Ms. Black stated that City Hall is not considered part of the park.

Commissioner Wolfe stated that staff had done a good job of outlining the application, and Ms. Black stated the credit was to Community Development Director Granrath.

Chair Eber opened the public hearing at 6:50pm.

Garret Francis, 2605 Cherryridge Road, stated he sees that O-2 zoning allows for a lot of different facilities, and asked if that would affect flood mitigation. He continued that there is a concrete drainage ditch next to his house that is overgrown. He asked if additional facilities with foundations would impede the ground’s ability to soak up water.

Chair Eber explained the Commission would take public comment, and then he would close the public comment and ask staff to address the public’s questions.

Alice Abrams, 105 Meade Lane, asked if she could get a copy of the uses allowed under O-2 zoning. She asked whether it was the City or Arapahoe County who determines that; City Manager Thorsen indicated that it was the City. Ms. Abrams stated she would like to know how the allowable uses under O-2 were decided, as compared to O-1, since O-2 includes many more uses.

Chair Eber closed the public hearing at 6:55pm and asked staff to address the comments made during the public hearing.

City Manager Thorsen stated he was familiar with the area Mr. Francis was referring to. Mr. Thorsen explained the park has been designed to not increase or decrease the floodplain at all. He continued that any flow that originally came from that site (the area close to Mr. Francis’ house) would continue to flow from that site to the park. He stated that the drainage within that area would not change.

Chair Eber asked staff to speak about the waiver discussed earlier in the meeting and whether the specific items planned for the park could cause flooding issues.

City Manager Thorsen stated the area of the park in a flood zone is a “sheet flow” flood zone, meaning the overflow moves through the city and continues north. He explained the shelter at John Meade Park and City Hall itself are outside of the floodplain and will not impact anything within the floodplain. He continued that the only items within the
floodplain are benches, playground equipment, etc., but because it is a sheet flow, those items do not affect the floodplain in that area.

Ms. Black stated to address concern about the uses allowed under O-2 zoning, the buildable area consists of two “islands” where the City is building the park shelter and City Hall. She continued that no other buildings can be constructed in John Meade Park outside of the area where the park shelter is planned, because everything else is within the floodplain. Ms. Black explained that though O-2 zoning may allow certain uses, most are not possible since buildings can’t be constructed in the floodplain. She concluded that O-2 zoning would allow the playground to be constructed, which is not a use permitted in O-1.

City Manager Thorsen explained City Council recently approved the new O-2 zoning to accommodate all the uses planned for Quincy Farm, and there had previously been no zoning category appropriate for that type of property. He stated it is also appropriate for John Meade Park, since it allows for the playground features.

Chair Eber recalled that O-2 zoning would allow for all the elements of the park, but that O-1 zoning would require going through the expanded use permit process to build or later change playground features. He stated it was that flexibility that leads him to believe the O-2 zoning is appropriate for the property, and that having to go through expanded use processes for the park was not an appropriate use of city resources.

Commissioner Wolfe pointed out that the uses in O-1 and O-2 are the same to a certain point. He stated to respond to Ms. Abrams’ question about what could be built in O-2, and noted the uses were for Quincy Farm.

Ms. Black explained O-2 zoning was not created to be specific to Quincy Farm. She explained the City did not have a similar zoning category before that allowed historic preservation, libraries, active park space, and so on, and that the O-2 zoning was created to allow the City to accommodate these uses that are typical in other cities.

Ms. Dahl asked for confirmation that the areas that could be built on were highlighted in the map for the floodplain waiver.

Ms. Black affirmed that that was correct and that floodplain area would not change drastically in the future to increase buildable area.

Chair Eber asked that the floodplain waiver map from the prior agenda item be included in the record for the rezoning application since it had been referenced.

Commissioner Murphy asked if the park would enhance or address the drainage away from property.

Ms. Black explained a condition of building the park is that it cannot send more water onto other properties. She stated that all the water that is historically within the park must stay on that property and cannot affect others.
Chair Eber stated perhaps the drainage culvert mentioned earlier is a separate maintenance issue that should be addressed, but that the park is not to cause backups onto neighboring properties.

City Manager Thorsen stated he believes the drainage culvert was designed by the Army Corps of Engineers and flows onto city property, and the park should not affect it. He stated the maintenance of that structure is a private property issue.

Chair Eber reopened the public hearing at 7:11pm.

Garret Francis, 2605 Cherryridge Road, stated he walks his children to Cherry Hills Village Elementary almost every day, and has noticed that after heavy rains, there is existing flooding over the paths. He specifically noted the areas to the south of the east pond, and stated it creates a hazard because it’s not clear where the edge of the pond is. He stated he is concerned about a 50- or 100-year flood event.

Chair Eber closed the public hearing at 7:13pm. He asked staff to provide history of the “no net change” means and whether the project is designed to move water better through the existing floodplain.

City Manager Thorsen stated there will be changes to the grading and trails, and that the project involved cleaning out the existing cattails, which would provide a little extra volume. He stated Mr. Francis was correct that there were marsh areas of the park that naturally collect more water and have been for years. He stated the design may improve that somewhat, but for the 100-year floodplain, the city requires no net change and zero effect, so the project does not increase or decrease any of the flood zone. He explained there will not be any impact to the larger area at all. City Manager Thorsen stated it will have to be seen whether some of the changes help with the minor problems, but it just all depends on the amount of rain.

Chair Eber asked if by moving from the cattail monoculture to the redesign the water will move through more effectively.

City Manager Thorsen stated the land area was very flat, and the engineer for the park wanted to ensure water kept moving through the system, both for the health of the ecosystem and to help with flooding. City Manager Thorsen continued it is graded to keep the water moving, but there is very little grade to work with.

Chair Eber asked if the edges of the ponds versus the pathways would be more defined.

City Manager Thorsen stated the cattails would be removed, which would define the boundaries of the wetlands, and the trail system would be redesigned.

Commissioner Wolfe asked if there would be a bridge. Parks and Recreation Coordinator Black showed on the map locations of footbridges and the boardwalk across the wetlands.
Commissioner Wolfe asked the height of the boardwalks. Ms. Black stated they were less than 36 inches from the ground; they are low enough that no edge is required on them. Commissioner Wolfe asked if there was a railing. Ms. Black replied that there was not a railing on the boardwalks, but that there would be a railing on one side of each of the fishing piers so that people could lean if they wanted or sit on the other side.

Chair Eber asked for other comments. No Commissioners had further comments.

Commissioner Grodinsky moved, seconded by Commissioner Dahl, to recommend City Council approval of the proposed rezoning of 120 Meade Lane, also known as John Meade Park and Alan Hutto Memorial Commons, from R-1, C-1, and O-1 to O-2. The motion passed unanimously.

REPORTS

a. PTRC Chair Report

Chair Eber reported that there are several projects on the agenda for 2019. Once City Council approves the floodplain waiver for John Meade Park the Commission can begin working on implementing a park plan.

Chair Eber thanked Commissioner Dahl and City staff for their work on the Winter Celebration. He commented that the event is a great way for the Community to come together.

Chair Eber recognized City Staff for their work on the new City Hall. He acknowledged that the new facility will be a great addition for the entire community.

Chair Eber announced that he was approached about the idea of having an off-road trail along the north side of Mansfield Avenue between Colorado Boulevard and Dahlia Street. He questioned if the trail is part of the traffic calming issues that are currently being discussed. Chair Eber noted that the south side of Mansfield Avenue has already been allocated to a combined bicycle and pedestrian trail. There is a safety concern with people using this trail and the traffic speeds along Mansfield Avenue.

Commissioner Wolfe suggested that more research should be done before considering a new trail along Mansfield Avenue. He is concerned that the trail would create a lot of work and very few people would use it.

Commissioner Wolfe suggested adding a trail off Colorado Boulevard going west to the High Line Canal. A bridge could be added to access the High Line Canal Trail.

Councilor Gallagher inquired about the history of the trail off Colorado Boulevard that Commissioner Wolfe referred to. He questioned if there might be an opportunity to get an easement for the trail.
Vice Chair LaMair called the meeting to order at 6:33 p.m.

ROLL CALL

Present at the meeting were the following Planning and Zoning Commissioners: Commissioner Doris Kaplan, Vice Chair LaMair, Commissioner Jennifer Miller, Commissioner David Wyman, and Commissioner Miles.

Present at the meeting were the following staff members: Rachel Granrath, Community Development Director; Emily Black, Parks and Recreation Coordinator and Kathie Guckenberger, City Attorney.

PLEDGE OF ALLEGIANCE

The Commission conducted the Pledge of Allegiance.

AUDIENCE PARTICIPATION PERIOD

None

CONSENT AGENDA

Commissioner Kaplan made a motion, which was seconded by Commissioner Wyman, to approve the following items on the Consent Agenda:

a. Approval of Minutes – August 28, 2018

The motion passed unanimously.

ITEMS REMOVED FROM CONSENT AGENDA

None

NEW BUSINESS

a. Selection of Planning and Zoning Commission Chair and Vice Chair

Community Development Director Rachel Granrath introduced the process of selecting Chair and Vice Chair. Director Granrath stated the Commission hasn’t met since last year and that Mr. Peter Savoie was the last Chair and that he is no longer with the Commission. We need to select
a new Chair and new Vice Chair. Currently Vice Chair Mike LaMair is acting as Chair and Vice Chair.

Commissioner David Wyman asked whether Vice Chair LaMair was Vice Chair.

Director Granrath stated yes Vice Chair LaMair was Vice Chair but he is acting Chair and Vice Chair tonight.

Vice Chair LaMair stated he is Vice Chair and acting as Chair. Would you like to nominate anyone to be Chair or Vice Chair?

Commissioner David Wyman nominates Commissioner Jennifer Miller as Vice Chair.

Vice Chair LaMair asked for nominations for Chair?

Commission members comment that Vice Chair LaMair may ascend to Chair.

Vice Chair LaMair ascends from Vice Chair to Chair.

The Commission voted on Vice Chair Miller.

The nomination passes unanimously.

The Commission voted on Chair LaMair.

The nomination passes unanimously.

b. Request from the City of Cherry Hills Village to rezone the property known as Alan Hutto Memorial Commons and John Meade Park from R-1, 2 1/2 Acre Residential District, O-1, Open Space, Parks and Recreation Area District, and C-1, Community District to O-2 Open Space, Conservation and Historic Area District (Public Hearing).

Chair LaMair opens the public hearing at 6:37 p.m.

Community Development Director Rachel Granrath introduced Parks and Recreation Coordinator Emily Black to present the application on rezoning and provided an overview of its scope of the address of 120 Meade Lane, current temporary City Hall building is standing. Parks and Recreation Coordinator Black gave an overview of the plan and process of Alan Hutto and John Meade Park. Coordinator Black will go over the plans for the Park as she has been intimately involved in the design process that has gone on for many years and there are 100% construction designs at this time. Coordinator Black will explain the background, the work that has gone in and where we’re going.

Coordinator Black explained she was here to give the Commission an idea of what is in the Park before asking for their vote on the rezone application. Coordinator Black explained the Park is a result of the 2015 John Meade Master Plan. The 2015 process involved a lot of public input to Planning and Zoning Commission Meeting
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create the Master Plan. Now through the design process come up with a Park that satisfies the goals of the Master Plan. Some of which is to create a real community gathering space that we don’t have in our other parks. And create a real connection between people and nature. This design was the result of sixteen public meetings with the consultant and many meetings with the regular Parks Commission and an online survey for residents that gave us a lot of feedback. This is really a community informed designed.

Coordinator Black listed off the proposed amenities that will be included in John Meade Park. This includes the two ponds and the large wetlands that are already located in the area. Currently the wetlands are a cattail monoculture which is pretty unsightly and gives off a smell. It is not great for the ecosystem so the cattails will be cleared out and replanted with diverse vegetation that is better for the water quality and better for the animals as well as improve the movement of the water. There will be a boardwalk raised 30 inches above grade that walks out over the wetland. While referring to a map and picture, Coordinator Black stated in the corner there will be a net across the corner for kids to walk out and look down into the water. There will be a splash area where you can wade into it with three to four inches of water from the wetlands with seeded concrete. It won’t be mucky.

Commissioner Wyman asked what is seeded concrete?

Coordinator Black explained concrete that has smooth river rock that is pressed into it to make it look like a natural rocky surface not just plain brushed concrete.

Commissioner Wyman asked about allowing sediment to fill in between the gaps and let the grass grow out of there?

Coordinator Black responded that you could but that this particular section won’t have growth or plantings and will only have bumpy rocks to walk onto.

Coordinator Black continued to list park amenities including in the center of the park there will be a shelter with restrooms and running water. People will be able to wash hands and there will be a water fountain. There will also be a kid and dog wash station on one side to wash your feet off if you get muddy before you get back to your car. In the play area, there are two family size hammocks so multiple kids can get on or a whole family. There is a play log which will be a four-foot hollow log that is pre-fab and smaller logs that are bolted to the ground to play on. There will be an observatory tower with a shaky bridge to look out over the area.

Coordinator Black explained what was located at the Alan Hutto Memorial site including performance area that is a very low-key concrete pad, a trail and ring around the performance area, and flat sections and graded sections for tiered grass and seating to place chairs.

Vice Chair Miller asked whether the neighbors have approved of the plan, specifically the theater?

Coordinator Black stated there was no formal approval process. The land was donated to the City by the parents of Alan Hutto in his memory with stipulations of a performance area. We have
kept the theater area low-key and it is screened on all sides with trees and vegetation. The neighbors are aware and were invited and very involved in the planning process.

Commissioner Doris Kaplan asked about lighting anywhere at the site?

Coordinator Black stated there is no lighting in the park besides there will be safety lighting on the park shelter. There is a conduit for the ability of possible lighting in the future. The plan right now is small solar lighting for events that are removable.

Commissioner Kaplan asked whether the park/area could be used as a recess area for children from the Cherry Hills Village elementary school? Also, she asked about using the park area for education on conservation?

Coordinator Black stated the park is public and they could come over at any time. The City has money in the budget for interpretive signing. We haven’t designed where those will go and what to highlight in the park yet. But the hope is for that use exactly.

Commissioner Wyman asked about a number structures built in the park?

Coordinator Black responded just the shelter and observation tower.

Commissioner Wyman stated also a boardwalk, play equipment and fencing?

Coordinator Black responded there will be the hammocks and the play logs but the existing playground equipment including the swings will be removed.

Commissioner Wyman asked about the fencing?

Coordinator Black stated there will be some split rail fence mostly where it exists now, actually I think only where it exists now. Some will be removed and replaced.

Commissioner Wyman asked and stated about the improvements to the area, even though they are modest but that it is a wet area. In a wet area you have to be careful with your footers things that roll and hold the structure up. What’s particularly nasty is the on again and off again inundations when it’s wet and dries again. Also concern for the fence posts being secured and hammocks getting loose. The safety issues caused by any potential wood rot if the fence post will be secured with concrete? If they are permanently wet then they are usually okay. We could have a major precipitation event and that could change the fence posts elevations even with a modest amount of concrete. Hydrostatic pressure can cause a lot of unpleasant things, hope they keep that in mind. Hope they keep in mind the wet/dry or hydrostatic pressure.

Coordinator Black responded that the engineers were very aware of those things and the complications. But I do appreciate the feedback.

Director Granrath stated this was a good start and introduction of the area and where we are going with this park/area. There are currently three different zoning districts for the area, R-1 (residential), C-1 (City Hall) and O-1 (Open Space, preserved Area, Unimproved Land). The

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current allowed uses of the space/area are governmental and unimproved open space including
paths, trees and single family. The catalyst for this application was looking at the Alan Hutto
Memorial parcel which doesn’t match the design of the current classifications. The use proposed
does not match the zoning. R-1 or use for residential homes has not been planned for use for
many years. Staff went through a study session with the Parks, Trails and Recreation
Commission a month and a half ago. We brought forward a few options for rezoning to get their
feedback. The leading candidate out of those study sessions is what is here before you tonight
and it was a recommendation to rezone the entire park as it’s designed, only rezoning the park
spaces. But not touching the City Hall space or the parking lot area which will still remain C-1.
We are really incorporating the park spaces and recommending that they be zoned at O-2. The
reasoning behind this of changing from O-1 and O-2 zoning is O-1 is a passive, wetlands, and
they are open and could be in the flood plain or preservation planning. Other examples in the
City of O-1 are Three Pond Park and Woodie Hollow Park. Those are not activated park spaces.
Whereas, O-2 came around three or four years ago in reaction to the acquisition of Quincy Farm.
Quincy Farm is a park space that is meant to be activate and have programs. The anticipated use
as a park with more of an active space including programs, and people uses for more than
unimproved open space. The rezoned that space from O-1 to O-2 for Quincy Farm with those
differences in mind.

John Meade and Alan Hutto are planned to be the central park of Cherry Hills Village. It’s the
core, we have our City Hall and we host a lot of main events such as the Holiday Tree Lighting,
Car Show and Movie Night. A few staples Cherry Hills has that are a great show case. With that
some of the allowed uses for an activated park in the O-2 zoning do overlap with O-1 including
unimproved open space, the bridal and pedestrian paths, irrigation and agriculture use for
nonprofit uses. Single family dwelling for caretakers for existing tenants was allowed in reaction
to Quincy Farm specifically to allow for caretakers, as well as museums, community education
uses, nonprofit and government. That is a bit of an overview of O-1 versus O-2.

Parks, Trails and Recreation Commission meeting reviewed this change last week and made a
unanimously recommendation to approve and send this issue to Planning and Zoning as well as
City Council. The minutes from that meeting are located in your packets. I’m happy to answer
any questions the Commission may have on uses or location and why we’re doing this.

Chair LaMair asked Vice Chair Miller if she had any questions?

Vice Chair Miller stated she did not have any questions. Vice Chair Miller remembers approving
the O-2 change for Quincy Farm. Stating that they did with a unanimously vote as well and that
she was all for the rezoning plan.

Chair LaMair asked about prior uses under O-1 and whether those were inconsistent with the
current zoning use? Like the Car Show or other active uses?

Director Granrath stated no the Car Show was permitted under a special event basis. But when
you put in permanent play structures and permanent facilities that’s meant to be a use that
continues actively rather than permitting each specific incident. Zoning wasn’t consistent with
uses proposed.

Planning and Zoning Commission Meeting
January 22, 2019
Chair LaMair asked if there were other properties that should be reviewed to be rezoned as O-2?

Director Granrath stated not at this time.

Commissioner Wyman inquired about 105 Meade Lane site and where changing the zoning from O-1 to O-2 poses a problem for that parcel of land?

Director Granrath stated it does not. The purpose of the current designation is a preservation tactic that is an incentive through FEMA for rezoning floodplain areas to keep from developmental purposes. It is a preservation through zoning.

Chair LaMair asked for any other questions?

Vice Chair Miller asked about the parking lot regarding how many spaces? 100 some spots?

Coordinator Black stated she thought there were about 110 but at this point we are not sure where the specific access to the park will be off of the parking lot and where the trash will be located.

Commissioner Britta Miles asked if the parking spots were available all day for access to the park?

Chair LaMair opened for public comment at 6:53 p.m.

Chair LaMair clarified that the Abrams are the neighbors adjacent to the property to the south.

Neighbor Mrs. Abrams spoke regarding living in the park space for over 50 years. She stated that they loved to see the children and horse people. It is a pleasure. They have enjoyed living in the Park area.

Chair LaMair responded to the Abrams that it must be like having a yard in the area that you don’t have to maintain.

Former Councilmember Earl Hoellen stated he was good with everything discussed.

Chair LaMair closed the public hearing at 6:55 pm.

Chair LaMair asked what action do you need from us as a commission?

City Attorney Kathie Guckenberger stated she needed a formal motion from the Commission.

Commissioner Wyman made a motion which was seconded by Vice Chair Miller, to recommend approval to rezone the property known as Alan Hutto Memorial Commons and John Meade Park from R-1, 2 ½ Acre Residential District, O-1, Open Space, Parks and Recreation Area District and C-1, Community District to O-2 Open Space, Conservation and Historic Area District.

Planning and Zoning Commission Meeting
January 22, 2019
The motion passes unanimously.

c. **Floodplain Waiver for John Meade Park Development**

Community Development Director Rachel Granrath introduced a proposed floodplain waiver and provided an overview of its scope for information purposes. In 2017 the Planning and Zoning Commission reviewed the plan which is listed in your packets as Exhibit B. This went through the floodplain development permit process which includes a public hearing through Planning and Zoning Commission and a public hearing with City Council. This was to get approval to alter the floodplain. In this case the plan was altered so that City Hall and the parking lot are located in the floodplain. Director Granrath explained that there was new data that came out which created a minor change from 2017. Everything is still out of the floodplain but those islands shifted a tiny bit. The maps show the difference between 2017 and now with different colors.

Chair LaMair asked if it was out of the floodplain?

Director Granrath stated there are no structures formally designed through the park planning process just ideas at that point. There was no request for structures received to be in the floodplain development permit at the time it was proposed in 2017 when the Commission reviewed it. Staff is asking for a waiver for structures planned for Alan Hutto and John Meade Park including benches, boardwalk, bridges, fencing, seeded concrete, fishing piers, seeding walls and signs. The way City Code defines structure is anything constructed or erected with a fixed location on the ground. That’s including pretty much anything you would include in a design for a park. These inhabited structures are allowed with FEMA. The current City code is stricter than FEMA’s guidelines. The engineers designed the floodplain permit for the structures and facilities for the flow and floodplain items. Due to the way the City Code is written we are asking for a waiver to allow for those structures in the floodplain.

Chair LaMair asked about a similar situation or one that had parallels to this situation with a swimming pool permit that proposed to be built in the floodplain and we denied that. This is obviously different but can you explain what this waiver has in common with that swimming pool request process that we went through?

Director Granrath stated completely different processes. That prior request was amending the floodplain. They were moving and filling the floodplain whereas this waiver only asks for small elements to be built in the floodplain as part of the park development.

City Attorney Kathie Guckenberger clarified that there is no formal vote for this topic, Council and the City are asking for any feedback from the Planning and Zoning Commission.

Director Granrath stated yes in agreement with City Attorney Guckenberger’s statement, stating that Council is the only deciding body on this issue.

Planning and Zoning Commission Meeting
January 22, 2019
MEMORANDUM

TO: HONORABLE MAYOR STEWART AND MEMBERS OF CITY COUNCIL  
FROM: RACHEL GRANRATH, COMMUNITY DEVELOPMENT DIRECTOR  

SUBJECT: COUNCIL BILL 3, SERIES 2019; A BILL FOR AN ORDINANCE OF THE CITY OF CHERRY HILLS VILLAGE AMENDING CHAPTER 2 ARTICLE 6 OF THE CHERRY HILLS VILLAGE MUNICIPAL CODE CONCERNING DUTIES AND RESPONSIBILITIES OF THE PLANNING AND ZONING COMMISSION IN MAINTAINING THE CITY’S MASTER PLAN (FIRST READING)  

DATE: MARCH 19, 2019

ISSUE:
Shall City Council approve Council Bill 3, Series 2019, amending Chapter 2 Article 6 of the Cherry Hills Village Municipal Code concerning duties and responsibilities of the Planning and Zoning Commission in maintaining the City’s Master Plan on first reading (Exhibit A)? Mayor Stewart has requested the attached revision to Chapter 2 Article 6 of the Municipal Code.

RECOMMENDED MOTION:

ATTACHMENTS:
Exhibit A: Council Bill 3, Series 2019  
Exhibit B: Current Chapter 2 Article 6 of the Municipal Code
A BILL FOR AN ORDINANCE
OF THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE
AMENDING CHAPTER 2 ARTICLE 6 OF THE CHERRY HILLS VILLAGE MUNICIPAL CODE
CONCERNING DUTIES AND RESPONSIBILITIES
OF THE PLANNING AND ZONING COMMISSION IN MAINTAINING
THE CITY'S MASTER PLAN

WHEREAS, Section 8.3 of the Cherry Hills Village Home Rule Charter creates a Planning and Zoning Commission (the "Commission") that is authorized to prepare and submit to the City Council a Master Plan for the physical development of the City and areas adjacent thereto; and

WHEREAS, Section 2-6-10 of the Cherry Hills Village Municipal Code (the "Code") directs the Commission to maintain a Master Plan as described by state statute, subject to periodic revision and amendments as necessary, and to submit any amendments thereto to the City Council for the Council's adoption, modification, or rejection; and

WHEREAS, City Council desires to require the Commission to review the Master Plan at least once every ten years to facilitate regular periodic review by the Commission and City Council; and

WHEREAS, the City Council desires to clarify that it may initiate a review of the Master Plan at any time and may consider any findings, recommendations, or amendments of the Commission after any review of the Master Plan regardless of whether the Commission has initiated a review.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE ORDAINS:

Section 1. Section 2-6-10 of the Cherry Hills Village Municipal Code is hereby repealed and replaced in full to read as follows:

Sec. 2-6-10. – Powers and Duties

The Planning and Zoning Commission, created by Section 8.3 of the City Charter, shall have all of the powers and perform all of the duties specified in the Charter and this Code, including the following:

(1) The Planning and Zoning Commission shall maintain a Master Plan. The Planning and Zoning Commission shall review the Master Plan as often as it deems appropriate but no less frequently than once every ten (10) years. In addition to reviews initiated by the Planning and Zoning Commission, City Council may at any time direct the Planning and Zoning Commission to review one or more provisions of the Master Plan. Following any review of the Master Plan, the Planning and Zoning Commission shall submit to City Council findings, recommendations, and amendments, if any, which Council may adopt, modify, or reject.
(2) The Planning and Zoning Commission shall implement the provisions of Chapters 16 and 17 of this Code and shall perform all functions and powers referred to in said chapters where reference is made.

(3) The Planning and Zoning Commission shall study and recommend to the City Council amendments to the Zoning Map of the City.

(4) The Planning and Zoning Commission shall study and recommend appropriate zoning classifications for all annexations to the City.

(5) The Planning and Zoning Commission shall exchange information with the various governmental agencies charged with planning and zoning responsibilities and with the Board of Adjustment.

(6) The Planning and Zoning Commission shall have all other duties and powers incidental to the above and any and all powers and duties set out by state statute, except that nothing herein shall:

a. Limit the City Council's authority to approve, modify or reject the Master Plan; or

b. Permit the Planning and Zoning Commission to make amendments or changes in the zoning of the City, such powers expressly being reserved by the City Council.

(7) The Planning and Zoning Commission shall consider and make recommendations regarding any matter that is referred to it by the City Council that is within the functions, powers, and duties assigned to it by the Cherry Hills Village Home Rule Charter and the ordinances of the City.

(8) Except as superseded or modified by this Chapter, the provisions of Parts 2 and 3, Article 23, Title 31, C.R.S., shall apply to the Planning and Zoning Commission.

Section 2. This ordinance shall become effective ten (10) days after publication after second reading in accordance with Section 4.5 of the Charter for the City of Cherry Hills Village.

Adopted as Ordinance No. ____, Series 2019, by the City Council of the City of Cherry Hills Village, Colorado, on the ____ day of __________, 2019.

________________________
Russell O. Stewart, Mayor

ATTEST: APPROVED AS TO FORM:

________________________
Laura Gillespie, City Clerk

________________________
Kathie B. Guckenberger, City Attorney
ARTICLE VI - Planning and Zoning Commission

Sec. 2-6-10. - Purpose.

The Planning and Zoning Commission, as created by Section 8.3 of the City Charter, has been established for the following purposes:

(1) To prepare and maintain, subject to periodic revision and amendments as necessary, a Master Plan as described by state statute and to submit the proposed Master Plan, or any amendments thereto, to the City Council for the Council's adoption, modification or rejection.

(2) To implement the provisions of Chapters 16 and 17 of this Code and to perform all functions and powers referred to in said chapters where reference is made.

(3) To study and recommend to the City Council amendments to the Zoning Map of the City.

(4) To study and recommend appropriate zoning classifications for all annexations to the City.

(5) To exchange information with the various governmental agencies charged with planning and zoning responsibilities and with the Board of Adjustment.

(6) To have all other duties and powers incidental to the above and any and all powers and duties set out by state statute, except that nothing herein shall:

a. Limit the City Council's authority to approve, modify or reject the Master Plan; or

b. Permit the Planning and Zoning Commission to make amendments or changes in the zoning of the City, such powers expressly being reserved by the City Council.

(7) Except as superseded or modified by this Chapter, the provisions of Parts 2 and 3, Article 23, Title 31, C.R.S., shall be applicable to the Planning and Zoning Commission.

(Ord. 9 §1, 2003; Ord. 4 §1, 2009)

Sec. 2-6-20. - Members; appointment.

The Planning and Zoning Commission shall consist of seven (7) members who reside in the City, none of whom shall be ex officio members by reason of any elective office held with the City. (Ord. 4, 1973; prior code 2-1-1; Ord. 2, 1981; Ord. 4, 1987)

Sec. 2-6-30. - Terms of office; organization.

(a) The terms of office of the members of the Planning and Zoning Commission shall be for overlapping terms of three (3) years as provided by the City Charter. Each member shall therefore be appointed for a three-year term with terms expiring the third Tuesday in September of each year.
(b) The Planning and Zoning Commission shall elect its chairman from among the appointed members and create and fill such other offices as it may determine. The term of the chairman shall be one (1) year, with eligibility for reelection. The Planning and Zoning Commission shall adopt rules for transaction of its business and keep record of its resolutions, transactions, findings and determinations, which record shall be a public record. (Prior code 2-1-2; Ord. 4, 1987; Ord. 9 §1, 2003; Ord. 07 §1, 2008)

Sec. 2-6-40. - Meetings.

Meetings shall be held as the business of the Planning and Zoning Commission requires. The Planning and Zoning Commission shall provide in its rules for the time and place of its regular meetings and the manner of calling special meetings. (Ord. 8, 1966; prior code 2-1-3; Ord. 9 §1, 2003)
MEMORANDUM

TO: HONORABLE MAYOR STEWART AND MEMBERS OF CITY COUNCIL

FROM: JIM THORSEN, CITY MANAGER

SUBJECT: LANDSCAPING IMPROVEMENTS FOR BELLEVUE AVENUE MEDIANS

DATE: MARCH 19, 2019

ISSUE:
Shall City Council approve the preliminary landscaping design for the Bellevue Avenue medians from Quebec Street to University Boulevard as proposed by the City of Greenwood Village and should the City assist Greenwood Village in funding the project?

DISCUSSION:
In 2018, representatives from the City of Greenwood Village approached the City of Cherry Hills Village to let the City know they were in the process to begin the landscaping design for future median improvements along Bellevue Avenue from Quebec Street to University Boulevard. Bellevue Avenue is a Colorado Department of Transportation (CDOT) owned and maintained roadway. The purpose of the project is to beautify the Bellevue Avenue corridor by installing new irrigation and landscaping and repairing hard surfaces in a similar fashion as other medians in Greenwood Village. They requested that the City provide input on the design and participate financially on the project and future maintenance.

At that time, the City of Cherry Hills Village advised Greenwood Village that the City would prefer that any design: should not require watering (xeriscape native plants) and that due to budgetary constraints, the City may only be able to provide minimal funding, if any.

BACKGROUND:
In the 1980's, CDOT widened Bellevue Avenue to four lanes. At that time, the City of Cherry Hills, Greenwood Village, and CDOT agreed to jointly fund the irrigation and landscaping of the medians. Both cities entered into a contract with CDOT in 1985 (amended in 1987) to fund the irrigation and landscaping improvements. CDOT agreed at that time to maintain the irrigation and landscaping, provided that funds were allocated by the State. The two cities agreed to supply and pay for water to the medians.

In 1988, an agreement was reached between the cities of Cherry Hills Village and Greenwood Village to lease well water from a property owner in Cherry Hills Village near Fairfax. The well
CHERRY HILLS VILLAGE
COLORADO

water was used up into the early 2000's. At that time the well no longer produced water and the irrigation system became dormant. Simultaneously, CDOT determined that they no longer would maintain the irrigation and landscaping within the medians due to budget shortfalls.

Since the early 2000's, the medians have steadily deteriorated due to lack of water and maintenance. CDOT, Greenwood Village, and Cherry Hills Village have received complaints over the years about their appearance. At times, CDOT would clear the trash and weeds, however, over the last many years, Cherry Hills Village has cleared the trash and weeds from the medians. In 2018, Greenwood Village cleared the weeds.

PROJECT:
Attached as Exhibit A are the preliminary plans, cost estimate, expected maintenance costs, and project schedule as prepared by Greenwood Village's consultant, Goodbee and Associates. The project consists of improving 13 medians. Three of the medians are outside the jurisdiction of Cherry Hills Village and 10 of them are within Greenwood Village and Cherry Hills Village. The total landscape median area is just over 36,000 square feet (sf), the total concrete area is nearly 57,000 sf, and the cobble area totals about 24,000 sf. Greenwood Village proposes to be the lead agency and bid, award, and oversee construction of the project.

The project includes removing existing irrigation, cobble, and damaged concrete. The weeds and seeds will need to be eradicated with an herbicide, the topsoil will be amended to allow for healthy plant growth, and the medians will have a variety of trees, bushes, grasses, mulch, and decorative boulders installed. Typical plantings are shown in the attached exhibit. It is intended to have enhanced plantings at "focal areas" near intersections. The landscaping material has been reviewed by the Denver Botanic Gardens to ensure the plantings are durable, sized appropriately, and require minimal watering. Not all plantings are xeriscape and therefore watering will likely be necessary. The intent of the plan is to provide a variety of colors and interest within the medians throughout the entire year. Two new water meters are planned to be installed on the south side of Belleview Avenue and there is an existing meter on the Cherry Hills Village side at Fairfax.

The construction cost estimate provided for the project is just over $2.04M. A contingency of 15% has been added to bring the total estimated construction cost up to $2,347,912. The annual ongoing watering (~$17,000) and maintenance cost ($25,000) has been estimated to be approximately $42,000/year. The construction schedule as outlined by Greenwood Village shows award of the contract in April or May and construction starting no later than June.

A community meeting was held on the evening of January 17th, 2019 at Greenwood Village City Hall. Approximately 25-30 people attended including Mayor Stewart and Councilmember Gallagher. About 50% of the individuals that were present were from Cherry Hills Village with most of them from the Glenmoor neighborhood. Overall, there was large support for the project.

FUNDING:
Cherry Hills Village has not appropriated any funds for this project. However, representatives from Greenwood Village have expressed that they would like for the City to partner on an equal basis for the project, excluding the design cost, which they have already funded. In addition,
Greenwood Village has already budgeted $2,500,000 for the project as part of their 2019 Five-Year Capital Improvement Program. That amount would pay for the entire construction project.

The project appears to be a fairly high priority for the City of Greenwood Village and would bring the medians up to similar median standards for their city. It is noted that Greenwood Village has approximately 7.4 times the amount of yearly revenue when compared to Cherry Hills Village ($52.8M vs. $7.16M).

In previous meetings with Greenwood Village, the City of Cherry Hills Village has stated that even though this is a worthy project the City would be unlikely to contribute on an equal basis. It has been suggested by Cherry Hills Village that the City may be willing to fund the first five-years of the annual watering costs as well as the annual maintenance costs (through 2024). The expected cost of watering and maintenance is approximately $210,000 for the five years and would equate to approximately 10% of the construction costs. This amount is comparable to the yearly revenue percentage between the two cities. The City could utilize existing Fund 30, Parks and Recreation Funds to pay for those maintenance costs.

Should City Council determine to fund a portion of the construction costs, a variety of options would exist. One option would be to include funding up to 50% ($1.02M) of the construction costs by utilizing the City’s General Fund Reserves. Using these funds would reduce the reserves from $7.8 down to $6.8M, which would be a 13% reduction in our reserves.

It is noted that the City’s Capital Fund Improvement Program consists of a yearly chip seal project and a concrete curb and gutter repair program with no other major repair items. Currently there is a small surplus in that fund, however, because the fund only has expenditures and no revenue, our long-range forecasts shows that fund having a negative balance by 2023. From that point, the City would need to include up to a $1M/year in transfers from the General Fund in order to sustain our roadway maintenance.

**STAFF RECOMMENDATION:**
Staff is recommending that City Council approve the conceptual landscape plans, with any suggested changes, and direct staff to notify Greenwood Village of the approval. However, due to overall limitations on City budgeting and long-range forecasts, staff is recommending that City Council only consider the option to fund the first five-years of the watering and maintenance costs (through 2024) of the project and direct staff to secure an agreement with Greenwood Village stating the same. At the time the project is completed, City staff will need to bring a Council Bill to City Council that would amend the 2019 budget to allow for payment of maintenance costs.

**RECOMMENDED MOTION:**
“I move that City Council (1) direct the City Manager to notify Greenwood Village that the City approves the conceptual landscaping plans, and; (2) direct staff to secure an agreement with Greenwood Village to identify payment of the water and maintenance costs through 2024, and; (3) direct staff to prepare a Council Bill to amend the 2019 budget, when appropriate, to allow for the payment of 2019 watering and maintenance costs for the project.”
CHERRY HILLS VILLAGE
COLORADO

ATTACHMENTS:
Exhibit A: Bellevue Avenue Median Improvements: Design Development & Conceptual Plans — January 3, 2019; Greenwood Village
Belleview Avenue Median Improvements
Greenwood Village
Design Development & Conceptual Plans - January 3, 2019
Belleview Avenue Project Overview
### Construction Cost Estimate

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<tr>
<th>Task/ Material Description</th>
<th>Quantity</th>
<th>Unit Cost</th>
<th>Extended Cost</th>
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<tbody>
<tr>
<td>Excavation &amp; Disposal - contaminated soil &amp; exist.</td>
<td>60108 s.f.</td>
<td>$4.00</td>
<td>$240,432</td>
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<td>Irrigation</td>
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<td>Irrigation System</td>
<td>60108 s.f.</td>
<td>$0.50</td>
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<td>Irrigation Equipment, mainline &amp; Control System</td>
<td>1 l.s.</td>
<td>$78,306.00</td>
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<td>Electrical Work</td>
<td>3 l.s.</td>
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<td>Bore to Medians</td>
<td>360 l.f.</td>
<td>$48.00</td>
<td>$17,280</td>
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<td>Water Tap/ Mainline Infrastructure</td>
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<td>Landscape</td>
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<tr>
<td>Soil preparation - Organics &amp; Squeegee Mix</td>
<td>60108 s.f.</td>
<td>$0.92</td>
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<td>Wood Mulch</td>
<td>20000 s.f.</td>
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<td>Rock Mulch w/ Fabric</td>
<td>40108 s.f.</td>
<td>$3.50</td>
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<td>Decorative Boulders, 1-2 ton</td>
<td>200 ea.</td>
<td>$375.00</td>
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<td>Landscape Edging (steel, 5-1/2')</td>
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<td>Construction Costs</td>
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<td>Mobilization</td>
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<td>BMP's</td>
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<td><strong>Construction Sub-total:</strong></td>
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<td><strong>15% Contingency:</strong></td>
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<td><strong>Total Estimated Construction Cost:</strong></td>
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<td><strong>$2,347,912</strong></td>
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## Estimated Maintenance Costs

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<th>Water Source / Ownership</th>
<th>Area Serviced</th>
<th>Estimated Annual Cost</th>
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<td>#1 - Fairfax / Cherry Hills Village</td>
<td>18,690 s.f.</td>
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<td>Annual Water Cost (Medians E, G, H &amp; I)</td>
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<thead>
<tr>
<th>#2 - Fey Property / Greenwood Village</th>
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<td>Annual Landscape Maintenance Cost</td>
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<th>#3 - Bellevue Station Meter</th>
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<td>Annual Water Cost (Median M)</td>
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<td>Annual Landscape Maintenance Cost</td>
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<td>Total:</td>
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<td>$4,275.48</td>
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Project Total Irrigation Cost: $16,885.44  
Project Total Maintenance Cost: $25,000.00  
Project Total Irrigation & Maintenance Cost: $41,885.44
### Project Schedule

**Bellevue Median Improvements Project Schedule**

1/1/2019

<table>
<thead>
<tr>
<th>Phase/Task</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
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<tbody>
<tr>
<td></td>
<td>October</td>
<td>November</td>
<td>December</td>
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<tr>
<td>Kickoff Meeting</td>
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<td>Award Contract/ Signatures/ Bonds</td>
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<td>Excavation &amp; Disposal</td>
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<td>Pre-emergent Application</td>
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<td>Shrub/ Perennial Installation</td>
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<td>Rock/ Mulch Installation</td>
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<td>Substantial Completion - 2020</td>
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Existing Medians
Typical Plantings – Standard Improvement Areas
Typical Plantings – Focal Areas
Proposed Median Trees

- Crimson Spire Oak
  40' Height, 12' Spread

- New Mexico Privet
  12' Height, 8' Spread

- Washington Hawthorn
  25' Height, 20' Spread

- Russian Hawthorn
  20' Height, 20' Spread
Proposed Median Trees

- **Sucker Punch Chokecherry**
  - 25' Height, 20' Spread

- **Hot Wings Tatarian Maple**
  - 15' Height, 15' Spread

- **Saskatoon Serviceberry**
  - 25' Height, 20' Spread
**Proposed Shrubs**

- **Chieftain Manzanita**  
  *Arctostaphylos x coloradensis* 'Chieftain'  
  Height: 1-2'  Spread: 5-6'

- **Leadplant**  
  *Amorpha canescens*  
  Height: 3-4'  Spread: 3-4'

- **Dart's Gold Ninebark**  
  *Physocarpus opulifolius* 'Dart's Gold'  
  Height: 4-5'  Spread: 4-5'

- **Nearly Wild Rose**  
  *Rosa x Nearly Wild*  
  Height: 3-4'  Spread: 3-4'

- **Fernbush**  
  *Chamaebatia millefolium*  
  Height: 3-5'  Spread: 3-5'

- **Bluestem Joint Fir**  
  *Ephedra equisetina*  
  Height: 4-5'  Spread: 6-8'

- **Gro-Low Sumac**  
  *Rhus aromatica* 'Gro-Low'  
  Height: 1-2'  Spread: 5-6'

**LEGEND**

- Xeric Plant
- Full Sun (8 hours a day)
- Partial Sun (2-6 hours a day)
Proposed Ornamental Grasses & Perennials

Muhly Grass
*Muhlenbergia 'Undaunted'*
Height: 2-3' Spread: 1-2'

Blonde Ambition Grama
*Bouteloua gracilis 'Blonde Ambition'*
Height: 2-3' Spread: 2-3'

Native Gayfeather
*Liatris punctata*
Height: 1-2' Spread: 1-2

Yellow Wild Indigo
*Baptisia sphaerocarpa 'Screamin' Yellow'*
Height: 2-3' Spread: 2-5'

Blaze Little Bluestem
*Schizachyrium scoparium 'Blaze'*
Height: 3-4' Spread: 2-3'

LEGEND

- Xeric Plant
- Full Sun (8 hours a day)
- Partial Sun (2-6 hours a day)
Proposed Perennials

- **Rocky Mountain Penstemon**
  - *Penstemon strictus*
  - Height: 1-2' Spread: 1-2'

- **Himalayan Border Jewel**
  - *Persicaria affinis*
  - Height: 1' Spread: 1-2'

- **Windwalker Royal Red Salvia**
  - *Salvia darcyi x S. microphylla*
  - Height: 3-4' Spread: 2-3'

- **Mojave Sage**
  - *Salvia pachyphylla*
  - Height: 1-2' Spread: 2-3'

- **Coral Canyon Twinspur**
  - *Diascia integerrima*
  - Height: 1-2' Spread: 1-2'

- **Sea Lavender**
  - *Limonium latifolium*
  - Height: 1-2' Spread: 1-2'

**LEGEND**

- **Xeric Plant**
- **Full Sun (8 hours a day)**
- **Partial Sun (2-6 hours a day)**
Proposed Perennials

Lady in Black Aster  
*Aster lateriflorus ‘Lady in Black’*  
Height: 2-3’ Spread: 2-3”

Ornamental Onion  
*Allium ‘Millennium’*  
Height: 1’ Spread: 1’

Coronado Red Hyssop  
*Agastache ‘Pslessene’*  
Height: 1-2’ Spread: 1-2’

Gold on Blue Zinnia  
*Zinnia gradiflora ‘Gold on Blue’*  
Height: 1’ Spread: 1’

Colorado Yarrow  
*Achillea millefolium ‘Colorado’*  
Height: 1-2’ Spread: 2-3’

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**LEGEND**

- ✶ Xeric Plant
- ☀ Full Sun (8 hours a day)
- ⛅ Partial Sun (2-6 hours a day)
Median Examples – Prairie Center Pkwy.
Brighton, CO (Summer)
Median Examples – Prairie Center Pkwy.
Brighton, CO (Winter)
MEMORANDUM

TO: HONORABLE MAYOR STEWART AND MEMBERS OF CITY COUNCIL
FROM: RACHEL GRAN RATH, COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: WIRELESS COMMUNICATION FACILITIES MASTER LICENSE AGREEMENT—ZAYO GROUP, LLC
DATE: MARCH 19, 2019

ISSUE:
Shall City Council approve the Wireless Communication Facilities Master License Agreement with Zayo Group, LLC regarding Small Cells in the public rights-of-way (Exhibit A)?

DISCUSSION:
There is no dispute that wireless technology is continually growing and that demand for more devices requires the physical expansion of network sites to accommodate such demand. In recent years, the Federal Communications Commission (FCC) and the Colorado legislature have adopted laws to limit the scope of municipal land use authority over wireless communication facilities. In 2015, the City amended its wireless regulations codified in Section 16-16-130 of the Municipal Code to address FCC rule changes that require local approval of expansions of facilities that meet certain criteria.

In 2017, the Colorado General Assembly approved House Bill 17-1193 which addresses the deployment of “small cell antenna facilities” within public streets. A couple of notable items in this House Bill include the following:

1. Requires a local government to process an application for small cell facilities within 90 days after receiving a complete application;
2. Declares that small cell facilities are permitted uses in all zoning districts; and
3. Declares that telecommunications and broadband providers have the right to locate and co-locate small cell facilities on a local jurisdiction’s light poles, traffic signals or utility poles.

Following House Bill 17-1193, the City of Cherry Hills Village amended Section 16-16-130 of the Municipal Code in order to incorporate HB 17-1193.

The City is well positioned to receive small cell facility applications within the rights-of-way. However, staff has not received an application since adopting the revised ordinance in 2017. Zayo
CHERRY HILLS VILLAGE
COLORADO

Group, LLC is the first small cell facility to apply for a permit within the City’s rights-of-way since the regulations have changed.

Federal and state law limit the ability of municipalities to regulate small cell facilities. A few examples of those limitations include a cap on application and permit fees, time constraints for processing applications (a.k.a. “shot clocks”), principled application of objective aesthetic standards, a “reasonableness” standard for fees, compliance of new and existing agreements with new legal constraints, and a prohibition on moratoria. Staff has included a memo from the National Association of Telecommunications Officers and Advisors (NATOA), see Exhibit B. This memo summarizes the FCC legislation and acts as a guide for local governments in deploying small cell facilities. As mentioned in the memo, shot clocks apply to every application, re-submittal, and authorization the City will require for deploying small cell facilities, this includes license agreements. The agreements must be applied in a non-discriminatory manner. Therefore, a process that allows for a quick and consistent approval of these master licensing agreements and related permits will facilitate the City’s compliance with federal and state law and the FCC order. In order to make sure the City can meet the FCC shot clock, staff is requesting approval of the Master License agreement for Zayo as well as to delegate execution of future License Agreements to the City Manager.

The Colorado Communication Utility Alliance (CCUA), of which Cherry Hills Village is an active member, keeps up to speed with the legislation, discussion, and ultimate implementation of wireless issues and how they affect local governments. The CCUA Attorney, Ken Feldman, worked with City staff to draft the proposed Master License Agreement in accordance with state, federal, and local best practices in regards to wireless small cell facilities. Section 16-16-130 of the Cherry Hills Village Municipal Code states that applications for certain wireless communication facilities, including but not limited to wireless communication facilities in the public rights-of-way, shall be permitted by administrative action of the City Manager.

STAFF RECOMMENDATION:
Staff recommends the approval of the Wireless Facilities Master License Agreement for Zayo Group, LLC and for the ability for staff to execute these agreements administratively as additional companies come to the City.

RECOMMENDED MOTION:
“I move to approve the Wireless Facilities Master License Agreement for Zayo Group, LLC, to authorize the Mayor to execute such agreement, and delegate to the City Manager the authority to execute any future License Agreements and related supplemental site permits for small cells in the City right-of-way.”

ATTACHMENTS:
Exhibit A: Zayo Master License Agreement
Exhibit B: National Association of Telecommunications Officers and Advisors (NATOA) Compliance Guide for Rules in regards to Small Cell Wireless Facilities
WIRELESS COMMUNICATIONS FACILITIES
MASTER LICENSE AGREEMENT

THIS WIRELESS COMMUNICATIONS FACILITIES MASTER LICENSE AGREEMENT ("Agreement") is entered into this __ day of __________, 2019 ("Effective Date"), by and between the City of Cherry Hills Village, Colorado ("Licensor"), a home rule municipality of the State of Colorado, with offices at 2450 E. Quincy Avenue, Cherry Hills Village, Colorado 80113, and Zayo Group, LLC a Delaware limited liability company, with its principal office located at 1805 29th Street, Suite 2050, Boulder, CO 80301 ("Company").

RECITALS

A. The Company owns and/or controls, maintains and operates a wireless and fiber communications Network (as defined in Section 1.4 below) that serves its wireless carrier customers or as applicable its customers.

B. For purposes of operating the Network, the Company wishes to locate, place, attach, install, operate, control, and maintain Wireless Communications Facilities, including Small Cell Facilities, in the Public Rights-of-Way (as defined in Sections 1.14, 1.12 and 1.11, respectively, below) ("PROW").

C. The Licensor is the owner of PROW, streets, utility easements and similar property rights, as well as certain municipal facilities located in the public rights-of-way situated within the city limits of Cherry Hills Village, Colorado.

D. The Company agrees to comply with Licensor’s PROW and Wireless Communication Facilities provisions.

SECTION 1. DEFINITIONS

For the purpose of this Agreement, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely discretionary. To the extent this Agreement refers to terms that are defined in Section 16-16-130 and any other applicable provisions of the Cherry Hills Village Municipal Code, as amended, those definitions shall apply.

1.1 "Affiliate" means any entity that, directly or indirectly controls, is controlled by, or is under common control with, the Company. Affiliate includes (i) any entity in which the Company holds a controlling or similar interest; (ii) any entity which holds a controlling equity or similar interest in the Company; (iii) any entity under common control with the Company.

1.2 "Applicable Laws" means any statutes, constitutions, charters, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, franchises, administrative orders, certificates, orders, or other requirements of the Licensor or other governmental or judicial authority
having the force and effect of law that determines the legal standing of a matter relating
to the parties and/or this Agreement.

1.3 **Emergency** means any event which may threaten public health or safety, or that results
in an interruption in the provision of service, including but not limited to damaged or
leaking water or gas conduit systems, damaged, obstructed or leaking sewer or storm
drain conduit systems and damaged electrical and communications facilities.

1.4 **Equipment** means Small Cell antennas and other wireless communications equipment
utilizing small cell technology that is specifically identified, described, and approved by
the Licensor as set forth in Attachment 1, Table 2 attached to each Site Supplement (as
defined below) and includes, but is not limited to, nodes, antennas, fiber optic cable,
coaxial cable, wires, frequencies, technology, conduits and pipes, a pole, and associated
and appurtenant equipment on the pole or on the ground deemed by Company necessary
to operate the Wireless Site and uses intended thereto.

1.5 **FCC** means the Federal Communications Commission.

1.6 **Interference** means physical interference where equipment, vegetation, or a structure
causes reduced use of another’s prior mounted equipment, or an obstruction in a
necessary line-of-sight path and/or radio frequency interference where the emission or
conduction of radio frequency energy (or electronic noise) produced by electrical and
electronic devices at levels that interfere with the operation of adjacent or nearby
equipment.

1.7 **Network** or collectively **Networks** means one or more of the wireless and fiber-based
communications facilities operated by the Company to serve its wireless carrier customers
in the City of Cherry Hills Village.

1.8 **Owner** means a person with a legal or equitable interest in ownership of real or personal
property.

1.9 **Person** means the term defined in Section 1-2-10 of the Cherry Hills Village Municipal
Code.

1.10 **Public Property** means any real property owned by the Licensor other than Public
Rights-of-Way.

1.11 **Public Rights-of-Way** or **PROW** means any public street, way, place, alley, sidewalk,
square, median, parkway, boulevard or plaza that is dedicated to public use or maintained
by the City except for those rights-of-way owned by the Colorado Department of
Transportation within the City limits. The definition of PROW does not include parks, trails, utility easements, and open space.

1.12 "Small Cell Facility" means a wireless service facility that meets both of the following qualifications:

(i) Each antenna is located inside an enclosure of no more than three cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet; and

(ii) Primary equipment enclosures are no larger than seventeen cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: Electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, and cut-off switch.

1.13 "Supplemental Site Permit" means a document, substantially in the form attached as Exhibit A. Each Wireless Site installation will be subject to a Supplemental Site Permit.

1.14 "Wireless Communications Facility" or "WCF" means a facility as defined in Section 16-16-130 of the Cherry Hills Village Municipal Code.

1.15 "Wireless Site" means a location on Public Rights-of-Way selected for the Company’s deployment of Wireless Communications Facilities, including Small Cell Facilities.

SECTION 2. GRANT OF AUTHORITY

2.1 Grant of License. The Licensor hereby grants to the Company, a non-exclusive license to use and occupy the PROW throughout the territorial boundaries of the Licensor, as these boundaries may be adjusted from time to time due to annexations, to attach, install, operate, maintain, upgrade, remove, reattach, reinstall, relocate and replace the Wireless Communications Facilities identified in each Supplemental Site Permit. This grant is subject to the terms, conditions and other provisions set forth in this Agreement and all Applicable Laws. The Company shall install its WCFs consistent with the Licensor’s applicable ordinances and regulations. The parties understand and agree that this Agreement is a limited grant of authority subject in all respects to Applicable Law, including without limitation, those regarding the kind, size, height and bulk of structures in the PROW, and further subject to all provisions contained herein, including without limitation, Exhibit B.

2.2 Installations on Poles.

2.2.1 WCFs owned and/or controlled by the Company may be installed only on the following, and in the listed priority:
(i) Licensor’s traffic signal poles or other Licensor-owned poles in the PROW under the terms of this Agreement,

(ii) third-party poles under the terms of a fully executed pole attachment agreement with the Owner of such poles,

(iii) on street lighting poles approved for street lighting purposes by the Licensor that are purchased by the Company and assigned to the Licensor, or

(iv) in instances where no other reasonable opportunity for attachment exists on the Company’s proprietary poles.

The Company shall be responsible for complying with all obligations under this Agreement regarding equipment, irrespective of ownership of or title to such equipment. Subject to the exception described below, all WCFs shall be installed on poles located at Wireless Sites. For attachments of Wireless Communications Facilities in the PROW on structures owned by the Licensor, in addition to all obligations of this Agreement, the Company shall be bound by the requirements contained in Exhibit B, and all applicable Licensor ordinances, rules and regulations, which may be modified by Licensor from time to time.

2.2.2 Locations will be prioritized based upon Company’s technical and radio frequency needs and construction costs, but in any situation where Company has a choice of Equipment locations, the Parties shall mutually exercise good faith efforts to agree on attachments to poles in the order indicated above.

2.3 License Term. The initial term of this Agreement shall commence upon the Effective Date and shall expire fifteen (15) years from the Effective Date (the “Term”), unless renewed as herein provided in Section 7.2. The term of each Supplemental Site Permit shall be concurrent with the term of this Agreement; provided, however that the minimum term of a Supplemental Site Permit shall be five (5) years. If the Term of this Agreement expires before the end of any five (5) year Supplemental Site Permit term, this Agreement shall remain in effect only with respect to any Supplemental Site Permit through the end of such Supplemental Site Permit’s term.

2.4 Conditions. The rights afforded to the Company under this Section 2 are granted subject to the conditions herein provided, the applicable attachments to this Agreement, and all Applicable Laws. In the event of any conflict between this Agreement, including the Exhibits, and the Cherry Hills Village Municipal Code as it exists on the effective date of this Agreement, the Cherry Hills Village Municipal Code prevails, except as federal or state law may preempt or act to modify the Cherry Hills Village Municipal Code at present or in the future. Future amendments to the Cherry Hills Village Municipal Code shall also prevail in the case of any conflict with any provisions of this Agreement and
any Exhibits, except as federal or state law may preempt or act to modify the Cherry Hills Village Municipal Code.

2.5 Non-Exclusive License. The Company’s right to use and occupy the PROW and attach to structures therein shall not be exclusive. The Licensor reserves the right to grant a similar use to itself or any Person at any time.

2.6 Waiver of Claims. In consideration for the rights granted under this Agreement, the Company waives all claims, demands, causes of action, and rights it may assert against the Licensor and its officials, personnel, agents, and representatives because of any loss, damage, or injury to any Wireless Communications Facilities, or any loss or degradation of service resulting from the installation, operation, maintenance or malfunction of Wireless Communications Facilities regardless of cause, except as provided in Section 5 and except with respect to claims, demands, causes of action and rights the Company may assert against the Licensor and its officials, personnel, agents, and representatives in connection with their negligence and willful misconduct.

2.7 No Interest in Public Property or PROW. Nothing under this Agreement shall be interpreted to create or vest in the Company any easement or other ownership or property interest to any Public Property or PROW or constitute an assignment of any Licensor’s rights to Public Property or PROW. The Company shall, at all times, be and remain a licensee only.

2.8 No Illegal Activity Permitted. The Company shall not use or permit the Wireless Sites or Licensor-owned infrastructure to be used for any activity violating any Applicable Laws.

2.9 Sub-Tenants and Sub-Licensees of Company. The parties understand and agree that the Company intends to provide access to the Wireless Sites to its customers through leases, licenses or similar agreements. The Company shall require in its agreements with its customers that its customers agree to be subject to all terms, conditions and obligations of this Agreement as they may relate to the customers’ use of the Wireless Sites and that the customers shall further comply with all Applicable Laws. The parties acknowledge and agree that Company’s provision of service may include “turnkey service” whereby Company installs equipment to which its customer owns legal title. As part of “turnkey service,” Company (including its contractors and agents) will be the responsible party for all of the operation, repair and maintenance of such equipment under this Agreement. If a Company customer desires to operate, repair and maintain such equipment it is understood that such customer must first obtain a Master License Agreement from the City.

SECTION 3. PERMITS, CONSTRUCTION, OPERATION AND MAINTENANCE IN THE PUBLIC RIGHTS-OF-WAY

3.1 License Requirement/Processing Fees. Each Wireless Site will be subject to a Supplemental Site Permit pursuant to the terms and conditions of this Agreement. The Company may terminate any Supplemental Site Permit for convenience at its discretion, subject to all obligations for removal of Wireless Communications Facilities, restoration
of the Wireless Site and any other applicable conditions of law related to such termination. The Company shall also submit processing fees to the Licensor for each Supplemental Site Permit, which fees are non-refundable, are comparable to Licensor’s fees for similar permits in order to allow the City to recover its costs of the permitting process and may be modified in the future to be consistent with fees then imposed on like activities. The Company shall also submit such other information as may be reasonably requested by the Licensor.

3.2 Permitted Use of PROW. Subject to Section 2.4, PROW may be used by the Company, seven (7) days a week, twenty-four (24) hours a day, only for the Wireless Sites and attachment, installation, maintenance, upgrade, removal, reattachment, reinstallation, relocation, replacement, use and operation of WCFs and not for any other purpose. It is understood that the purpose for installing WCFs at designated Wireless Sites in the PROW is to augment Network capacity otherwise provided through the installation of other facilities, such as traditional tower structures and fiber backhaul. This Agreement shall include new types of WCFs that may evolve or be adopted using wireless technologies.

3.3 Application and Approval of Wireless Sites.

3.3.1 The Company shall file with the Licensor Supplemental Site Permits for proposed Wireless Sites for which the Company is seeking administrative approval. The Company may seek approval for up to ten (10) WCFs under this Agreement at a given time. Each Wireless Site shall be processed as a separate Supplemental Site Permit. Each Supplemental Site Permit request must include information on (i) the Owner of the pole upon which the WCF is proposed to be installed; (ii) where poles are owned by a third party, a letter of authorization from the Owner of the poles confirming that Company has authority to make the requested attachment(s); and (iii) such other information as set forth on Exhibit A, which may, in the Licensor’s sole discretion, be modified from time to time to meet the needs of the Licensor. If the WCF is proposed in rights-of-way owned by another governmental entity, a copy of the agreement authorizing the Company access to that right-of-way is also required. Upon filing of a complete request for a Supplemental Site Permit, the Licensor shall process the request within thirty (30) days, or within such other time as designated by Applicable Law, and shall render a final decision within ninety (90) days of a complete request. Notwithstanding the foregoing, if the Supplemental Site Permit request seeks permission to install or construct any WCFs that are not subject to administrative approval, the time in which the Licensor shall direct the Company to apply for the necessary land use permission shall be that period permitted under Applicable Law.

3.3.2 For installations, construction, operation, maintenance, and removal of WCFs, the Company shall obtain all generally applicable permits that are required of all occupants of the PROW in accordance with Applicable Law. The Licensor shall process all permit applications in a non-discriminatory and competitively neutral manner.
3.3.3 Upon finding that a request for a Supplemental Site Permit is complete, the Licensor will verify whether the location (and any existing pole) identified by the Company as a Wireless Site is within the PROW. If it is not, then, except as set forth in Section 3.3.1, the request shall be outside the scope of this Agreement.

3.3.4 Modification. Notwithstanding anything in this Agreement to the contrary, modifications of WCFs shall be subject to permitting required under Applicable Laws, but shall not be subject to additional Licensor approval, to the extent that: (i) such modification to WCFs involve only substitution of internal components, and does not result in any change to the external appearance, dimensions, or weight of the WCF, change in loading impacts on the pole as approved by the Licensor or impact to multi-modal traffic flow; or (ii) such modification involves replacement of the WCF with a WCF that is of similar design, and the same or smaller in weight and dimensions as the approved WCF and does not impact multi-modal traffic flow.

3.4 Utilities. The Company will be responsible for telephone, electric and any other utility service used or consumed by the Company in connection with its WCFs. In no event will the Company secure its utilities by sub-metering from the Licensor.

3.5 Duty to Minimize Interference. The Company shall not impede, obstruct or otherwise interfere with the installation, existence or operation of any other facility in the PROW, including but not limited to sanitary sewers, water mains, storm water drains, gas mains, traffic signals and/or utility poles, Licensor-owned street lights, aerial and underground electrical infrastructure, cable television and telecommunication wires, public safety and Licensor networks, and other telecommunications, utility, or Public Property. All Company activities in the PROW shall be carried on as to minimize interference with the use of the PROW and with the use of private property, in accordance with all ordinances and regulations of the Licensor necessary to provide for and protect public health, safety and convenience.

3.6 Relocations.

3.6.1 The Licensor shall have the right to require the Company and its customers to relocate, remove, replace, modify or disconnect WCFs located in the PROW for public purposes, in the event of an emergency, or when the public health, safety or welfare requires such change (for example, without limitation, by reason of traffic conditions, public safety, PROW vacation, PROW construction, change or establishment of PROW grade, installation of sewers, drains, electric lines, gas or water pipes, conduits, cables, or any other types of structures or improvements approved by the Licensor for public purposes). Such work shall be performed at the Company’s expense. The Licensor also reserves the right to make full use of the property involved as may be necessary or convenient, and the Licensor retains all rights to operate, maintain, install, repair, remove, replace or relocate any of its facilities located within the Licensor’s property at any time and in such a manner as it deems necessary or convenient. Except during an emergency or for public safety purposes, the Licensor shall provide reasonable notice to the Company, of not less than ninety (90) days, and allow the Company the opportunity to perform
any relocation, removal, replacement, modification or disconnection of the WCFs located in the PROW. Within ninety (90) days written notice from the Licensor, the Company shall relocate, remove, replace, modify or disconnect any of its WCFs within any PROW. If the Licensor requires the Company to relocate its WCFs located within the PROW, the Licensor shall make a reasonable effort to provide the Company with an alternate location within the PROW. During such relocation, if necessary, in the Company’s reasonable determination, and consistent with any applicable permit requirements, it may place a temporary installation in the PROW (e.g. cell-on-wheels).

3.6.2. If the Company fails to complete the relocation within the ninety (90) day period and to the Licensor’s satisfaction, the Licensor may remove the WCFs or otherwise cause such work to be done and bill the cost of the work to the Company, including all costs and expenses incurred by the Licensor due to the Company’s delay. In such event, the Licensor shall not be liable for any damage to any portion of the Network other than damage caused by the Licensor’s negligence or willful misconduct. The Company shall make full payment to the Licensor within thirty (30) days of receipt of an itemized list of such costs.

3.7 Duty to Repair. Any PROW, Public Property or private property that is disturbed or damaged during, or as a result of, the construction, reconstruction, repair, replacement, removal, relocation, operation or maintenance of any WCFs by the Company or its agents or contractors shall be promptly repaired to the reasonable satisfaction of the Licensor by the Company at its sole expense. The Company must provide written notification to the Licensor within 24 hours of the damage and report corrective activities after completion to the Licensor.

3.8 Inventory of Wireless Sites. The Company shall maintain a current inventory of Wireless Sites throughout the Term. Upon written request of the Licensor, which request may be made once and is not required to be made annually, the Company shall provide to the Licensor a copy of the inventory of Wireless Sites by December 31st of each year until the end of the Term. The inventory shall include roadway intersection (if applicable), GIS coordinates, Wireless Site address (meter - as assigned by Licensor), date of installation, the Company Site ID #, type of pole used for installation, pole Owner, and description/type of installation for each Wireless Site WCF installation. Concerning Wireless Sites that become inactive, the inventory shall include the same information as active installations in addition to the date the Wireless Site was deactivated and the date the WCF was removed from the PROW. The Licensor will compare the inventory to its records to identify any discrepancies.

3.9 Unauthorized Installations. If there are any unauthorized Wireless Sites identified by the Licensor as a result of comparing the inventory of Wireless Sites to internal records or through any other means, the Licensor shall provide written notice to the Company of such unauthorized Wireless Site and the Company shall have thirty (30) days thereafter in which to submit an application request for a Supplemental Site Permit for that location, or alternatively to remove the WCFs and restore the property at the Company’s expense. If the Company fails to submit a request for a Supplemental Site Permit, or if the request
is denied, the Company shall remove the WCFs from the PROW and restore the property at its expense within thirty (30) days, unless a different time period is agreed to by the parties. If the request is approved, the Company must pay the required fees for a new WCF site plus interest at the rate of two percent (2%) per annum from the date of the original installation.

3.10 Signal Interference Prohibited.

3.10.1 Notice: Company Response. In the event any WCFs interfere with the Licensor’s traffic signal system, public safety radio system, or other Licensor communications infrastructure operating on spectrum where the Licensor is legally authorized to operate, the Company will respond to the Licensor’s request to address the source of the interference as soon as practicable, but in no event later than twenty-four (24) hours of receiving such request, pursuant to protocol outlined in Section 3.10.2 below, and shall follow the escalation process outlined in Section 4 of this Agreement.

3.10.2 Response Protocol. The protocol for responding to events of interference will require the Company to provide the Director of Public Works an interference remediation report that includes the following items:

3.10.2.1 Remediation Plan. Devise a remediation plan to stop the event of interference;

3.10.2.2 Time Frame for Execution. Provide the expected time frame for execution of the remediation plan; and

3.10.2.3 Additional Information. Include any additional information relevant to the execution of the remediation plan.

3.10.3 Removal; Relocation. In the event interference with Licensor’s facilities cannot be eliminated, the Company shall shut down the WCFs and pursuant to Section 3.6 remove or relocate any WCF that is the source of the interference to a suitable alternative location.

SECTION 4. EMERGENCY CONTACTS

4.1 Coordination of Emergency Events. In case of an emergency due to interference, failure of traffic signal or utility systems, or any unforeseen events, the Licensor will act to protect the public health and safety of its citizens, and to protect public and private property, notwithstanding any provision in this Agreement. The Licensor will make every reasonable effort to coordinate its emergency response with the Company. To that end, the Licensor will use the following emergency contacts:

4.1.1 Level One Contact: The Company’s network operations center may be reached 24/7 at: 866-236-2824, Option 1 and email: fsnc@zayo.com.
4.1.2 **Level Two Contact:** In the event the Company's network operations center cannot be reached, or the network operations center staff cannot address the emergency situation, the Licensor may contact the Lead Technician at 866-236-2824, Option 1 and email: dfsleads@zayo.com.

4.1.3 **Level Three Contact:** In the event the emergency situation calls for a coordinated effort between the Licensor's and Company's management team, the Licensor may contact the Manager on Duty at 918-921-6119 and email: dfsnccmanagers@zayo.com.

4.2 **Company's Duty to Maintain Current Emergency Contacts.** The Company shall maintain the emergency contact information current at all times with the Director of Public Works or his/her designee.

4.3 **Company's Response to Network Emergency.** In case of a Network emergency due to any unforeseen event, the Company may access its Wireless Sites and WCFs without first obtaining a PROW permit provided the Company has conducted Network trouble-shooting and diagnostic tests and has reasonably identified the point or points of Network failure or malfunction. While acting under this provision to address a Network emergency, the Company shall conduct its activities within the PROW in such a manner as to protect public and private property and to provide the necessary traffic control. The Company shall make every reasonable effort to coordinate its emergency response with the Licensor. To that end, prior to entering the PROW, the Company shall use the following emergency contacts to give notice to the Licensor of the Network emergency and an estimated time period to address the situation:

The Licensor's public safety communications dispatch may be reached 24/7 at: 303-795-4711. Contact should also be made to Jay Goldie, Deputy City Manager/Director of Public Works, at 303-265-1641.

If contact cannot be made with the Licensor in this manner, the Company shall call 9-1-1.

Notwithstanding the foregoing, within three (3) days after undertaking the emergency work, the Company is required to submit a complete application for a right of way permit in order to allow the Licensor to update its records of the work. Permit applications should be emailed to: jgoldie@cherryhillsvillage.com. The nature of the emergency work shall be noted on the permit application.

4.4 **Licensor’s Duty to Maintain Emergency Contacts.** The Licensor shall maintain the emergency contact information current at all times with Company's network operations contact.
SECTION 5. INDEMNITY AND INSURANCE

5.1 **Indemnity.**

5.1.1 The Company shall indemnify, defend and hold the Licensor, its employees, officers, elected officials, agents and contractors (the “Indemnified Parties”) harmless from and against all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses arising from the installation, use, maintenance, repair or removal of the WCFs, any of its or its customers’ activities on any Wireless Site, or the Company’s breach of any provision of this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence or willful misconduct of the Licensor or an Indemnified Party.

5.1.2 The Indemnified Party shall give the Company timely written notice of the making of any claim or of the commencement of any action, suit or other proceeding in connection with any WCFs. In the event such claim arises, the Indemnified Party shall tender the defense thereof to the Company and the Company shall consult and cooperate with the Licensor Attorney’s Office while conducting its defense. The Licensor and the Indemnified Party shall cooperate fully therein with Company’s legal representative and shall be consulted on any settlements of claims prior to the execution of any settlement agreements.

5.1.3. If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest between the Indemnified Party and the counsel selected by Company to represent the Indemnified Party, the Company shall pay for all reasonable expenses incurred by the Indemnified Party as a result of such separate representation; provided, however, in the event separate representation becomes necessary, the Indemnified Party shall select its own counsel and any other experts or consultants, subject to the Company’s prior approval. The Indemnified Party’s expenses hereunder shall include all reasonable out-of-pocket expenses, such as consultants’ fees, and shall also include the reasonable value of any services rendered by the Indemnified Party’s attorney or his/her assistants or any employees of the Indemnified Party or its agents but shall not include outside attorneys’ fees for services that are unnecessarily duplicative of services provided the Indemnified Party by the Company.

5.2 **Insurance.**

5.2.1 The Company shall carry during the Term, at its own cost and expense, the following insurance: (i) commercial general liability insurance with a minimum limit of liability of $2,000,000 per occurrence and $4,000,000 general aggregate and which provides coverage for bodily injury, death, damage to or destruction of property of others, including loss of use thereof, and including products and completed operations; (ii) excess or umbrella liability on an occurrence basis in excess of the commercial general liability insurance, which has coverage as broad as such policy, with a limit of not less than $2,000,000; (iii) Workers’
Compensation Insurance as required by law; and (iv) employers’ liability insurance with minimum limits of $500,000 bodily injury each accident, $500,000 bodily injury each disease, and $500,000 bodily injury disease aggregate. Notwithstanding the foregoing, the Licensorn may increase the aforementioned minimum limits of insurance at any time in its sole discretion. The Company shall require each of its contractors to adhere to these same requirements or shall insure the activities of the contractors in the Company’s insurance policies.

5.2.2 All of the insurance coverages identified in Section 5.2.1, except the workers’ compensation insurance, shall apply to and name the Licensor as an additional insured, and shall provide a defense and indemnification to the Licensor regardless of the Licensor’s fault or wrongdoing. The insurance shall indemnify and defend the Licensor against all loss, damage, expense and liability arising out of or in any way connected with the performance of this Agreement. Each of such insurance coverages shall contain a waiver of subrogation for the Licensor’s benefit. Further, the insurance coverages identified in Section 5.2.1 will be primary and non-contributory with respect to any self-insurance or other insurance maintained by the Licensor.

5.2.3 Upon execution of this Agreement and upon any subsequent request of the Licensor, the Company shall provide the Licensor with a Certificate of Insurance and any endorsements or copies of policies determined by the Licensor to be necessary to provide evidence of the coverage required by this Section 5.2.

5.2.4 The Company shall provide thirty (30) days advance notice to the Licensor in the event of cancellation of any coverage or modification of any coverage such that it is no longer compliant with this Section 5.2.

5.2.5 All of the primary insurance policies Company, and its contractors to the extent applicable under Section 5.2.1, are required to maintain in this Section 5.2 shall be obtained from insurance carriers having an A.M. Best rating of at least A-X, and each excess insurance policy shall be obtained from an insurance carrier having an A.M. Best rating of at least A-VIII.

SECTON 6. DEFAULT AND REMEDIES

6.1 Notice of Violation to Company. The Licensor shall provide the Company with a detailed written notice of any violation of this Agreement, and a thirty (30) day period within which the Company may: (i) demonstrate that a violation does not exist, (ii) cure the alleged violation, or (iii) if the nature of the alleged violation prevents correction thereof within thirty (30) days, to initiate a reasonable plan of action to correct such violation (including a projected date by which it will be completed) and notify the Licensor of such plan of action.

6.2 Company Default. If the Company fails to disprove or correct the violation within thirty (30) days, or, in the case of a violation which cannot be corrected in thirty (30) days, the Company has failed to initiate a reasonable plan of corrective action and to correct the
violation within the specified time frame in such plan, then the Licensor may declare in writing that the Company is in default.

6.3 Notice of Violation to Licensor. The Company shall provide Licensor with a detailed written notice of any violation of this Agreement, and a thirty (30) day period within which Licensor may: (a) demonstrate that a violation does not exist, (b) cure the alleged violation, or (c) if the nature of the alleged violation prevents correction thereof within 30 days, to initiate a reasonable corrective action plan to correct such alleged violation, including a projected completion date; provided, however, that such plan shall be subject to Company’s written approval where Company’s equipment or operations will be affected by the corrective action, which approval will not be unreasonably withheld.

6.4 Licensor Default. If Licensor fails to disprove or correct the violation within thirty (30) days or, in the case of a violation which cannot be corrected in 30 days if Licensor has failed to initiate a reasonable corrective action plan and to correct the violation within the specified time frame, then Company may declare in writing that Licensor is in default.

6.5 Bankruptcy. The parties expressly agree and acknowledge that it is their intent that in the event the Company shall become a debtor in any voluntary or involuntary bankruptcy proceeding (a “Proceeding”) under the United States Bankruptcy Code, 11 U.S.C. 101, et seq. (the “Code”), for the purposes of proceeding under the Code, this Agreement shall be treated as an unexpired lease of nonresidential real property under Section 365 of the Code, 11 U.S.C. 365 (as may be amended), and, accordingly, shall be subject to the provisions of subsections (d)(3) and (d)(4) of said Section 365. Any Person to which the Company’s rights, duties and obligations under this Agreement are assigned pursuant to the provisions of the Code, shall be deemed without further act to have assumed all of the obligations of the Company arising under this Agreement both before and after the date of such assignment. Any such assignee shall upon demand execute and deliver to the Licensor an instrument confirming such assumption. Any monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid to the Licensor, shall be the exclusive property of the Licensor, and shall not constitute property of the Company or of the estate of the Company within the meaning of the Code. Any monies or other considerations constituting the Licensor’s property under the preceding sentence not paid or delivered to the Licensor shall be held in trust for the benefit of the Licensor and be promptly paid to the Licensor.

6.6 Hearing Available to Company. Within fifteen (15) days after receipt of a written declaration of default from the Licensor, the Company may make a written request for a hearing before the City Council or its designee, in a public proceeding affording due process. If a hearing is not requested, the Licensor may seek any remedy available under Applicable Law. If a hearing is requested, such hearing shall be held within sixty (60) days of the receipt of the request therefor and a decision rendered within fifteen (15) days after the conclusion of the hearing. Upon a finding of default, the City Council or its designee may impose remedies of revocation and/or recovery of actual damages caused by such breach. Any decision shall be in writing and shall be based upon written findings of fact as contained in the record of the hearing.
6.7 **Appeal of Default.** The Company may appeal a finding of default and/or imposition of remedies by the City Council or its designee, which appeal shall be pursuant to C.R.C.P. 106 and based upon the written record of the hearing. Alternatively, the parties may, by mutual agreement, agree to address the finding of default through arbitration or mediation.

6.8 **Termination/Revocation.** Notwithstanding the provisions of Sections 6.6 and 6.7, in the event of a default, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate this Agreement if the default affects all Supplemental Site Permits and the Agreement as a whole, or any Supplemental Site Permit subject to the default, and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Law. Further, upon a default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party’s duty or obligation. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice therefor.

SECTION 7. AMENDMENT AND RENEWAL

7.1 **Amendment.** Written requests to amend this Agreement for any purposes may be made by either party. The parties shall engage in good faith discussions and endeavor to reach agreement within sixty (60) days of receipt of such written request. Any amendment shall become effective after being duly executed by both parties. Notwithstanding the foregoing, nothing shall require either party to agree to any amendment request.

7.2 **Renewal.**

7.2.1 Unless earlier terminated by either party pursuant to the provisions of this Agreement, the Company may request a renewal of this Agreement, by providing six (6) months written notice of the intent to renew prior to the expiration date of the Agreement. After providing such notice, this Agreement shall renew on the same terms and conditions as herein for one (1) successive term of five (5) years, provided that the Company has complied with the material terms of this Agreement. If the Licensor does not believe that the Company is entitled to renewal as requested, the Licensor shall provide written notification to the Company at least ninety (90) days prior to the expiration date of this Agreement, in which notice the Licensor shall provide support for its position.

7.2.2 As between the Licensor and the Company, the Company shall at all times retain ownership of the WCFs, unless an alternative vertical structure, such as a street light, has been purchased by the Company and ownership assigned to the Licensor, pursuant to this Agreement. Upon expiration or non-renewal of this Agreement, within forty-five (45) days of the expiration of the then-current Term, the Company shall be permitted to remove its WCFs installed within the PROW, or alternatively, sell the same to a qualified buyer consistent with Applicable Law. In no event may Company abandon in place any of its WCFs installed in or on the PROW, unless written consent of the Licensor is obtained.
SECTION 8. ASSIGNMENT/TRANSFER OF OWNERSHIP OR CONTROL

8.1 Definitions. In this Section, the following words have the meanings indicated:

8.1.1 "Control" means actual working control in whatever manner exercised. "Control" includes, but may not necessarily require, majority stock ownership or control of 51% or more of the voting rights in the Company.

8.1.2 "Proposed Transferee" means a proposed purchaser, transferee, lessee, assignee or Person acquiring ownership or control of this Agreement or of the Company.

8.2 No Transfer. Subject to Section 2.9, the Company shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation or otherwise, this Agreement, any Supplemental Site Permit as provided for herein, or any of the rights or privileges therein granted, without the prior consent of the Licensor, except that such consent shall not be required for a transfer or assignment to an Affiliate. The consent required by the Licensor may be conditioned upon the performance of those requirements necessary to ensure compliance with the obligations of this Agreement. The Company shall provide no less than thirty (30) days written notice to the Licensor of the details of any transaction described herein that requires Licensor consent. Once the Company obtains Licensor consent to transfer or assign this Agreement to a third party as required under this Section, the Company shall be authorized to transfer each Supplemental Site Permit to such third party without further consent or approval. Notwithstanding anything to the contrary in this Section, no Licensor consent is required for transfers to non-Affiliates that are currently operating in the Licensor and are in full compliance with all obligations to the Licensor. The Company shall provide no less than thirty (30) days written notice to the Licensor of a transaction covered in this Section to a non-Affiliate that it believes is compliant with its obligations to the Licensor.

8.3 Company Control. The requirements of Section 8.2 shall also apply to any change in Control of the Company. A rebuttable presumption that a transfer of Control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of fifty-one percent (51%) or more of the voting shares of the Company. The consent required (other than with respect to Affiliates and non-Affiliates that are currently operating in the Licensor and are in full compliance with all obligations to the Licensor) may be conditioned upon the performance of those requirements necessary to ensure compliance with the specific obligations of this Agreement imposed upon the Company by the Licensor. For the purpose of determining whether it should consent to transfer of Control, the Licensor may inquire into the qualifications of the proposed transferee and the Company shall assist the Licensor in the inquiry.

8.4 Required Information. In seeking the Licensor's consent to any change in ownership or control for which prior consent is required under Sections 8.2 and 8.3, the Company shall require the Proposed Transferee to indicate whether it:
8.4.1 Has ever been convicted or held liable for acts involving deceit including any violation of Applicable Laws, or is currently under an indictment, investigation or complaint charging such acts;

8.4.2 Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against the proposed transferee by any court of competent jurisdiction;

8.4.3 Has pending any material legal claim, law suit, or administrative proceeding arising out of or involving a network and/or equipment similar to that contemplated by this Agreement, except that any such claims, suits or proceedings relating to insurance claims, theft of service, or employment matters need not be disclosed;

8.4.4 Is financially solvent by submitting financial data including financial statements that are audited or reviewed by a certified public accountant who may also be an officer of the parent corporation along with any other data that the Licensor may reasonably require; and

8.4.5 Has the financial and technical capability to enable it to maintain and operate the Network and Wireless Sites and WCFs for the remainder of the Term.

8.5 Company's Compliance with Terms. In seeking the Licensor's consent to any change in ownership or control, the Company shall indicate whether it has failed to comply with any material provision of this Agreement at any point during the term of this Agreement.

8.6 No Waiver. The consent or approval of the Licensor to transfer by the Company does not constitute a waiver or release of the rights of the Licensor in or to its PROW, and any transfer shall by its own terms be expressly subject to the terms and conditions of this Agreement.

8.7 Agreement Binding. Any sale, transfer or assignment of this Agreement will bind the successor in interest to the terms of this Agreement.

8.8 Pledge of Assets. Notwithstanding anything contained in this Agreement, the Company may pledge the assets of the Network and WCFs for the purpose of financing provided that such pledge of assets shall not impair the Company or mitigate the Company's responsibility and capability to meet all its obligations under the provisions of this Agreement.

8.9 The Licensor and the Company agree and acknowledge that, notwithstanding anything in this Agreement to the contrary, certain WCFs deployed by Company in the PROW pursuant to this Agreement may be owned and/or operated by Company's third-party wireless carrier customers ("Carriers") and installed and maintained by Company pursuant to license agreements between Company and such Carriers. Such WCFs shall be treated as Company's WCFs for all purposes under this Agreement provided that (i) Company remains responsible and liable for all performance obligations under the Agreement with respect to such WCFs; (ii) Licensor's sole point of contact regarding such WCFs shall be the Company; and (iii) Company shall have the right to remove and relocate the WCFs. Such WCFs are subject to Applicable Law, and the Company shall indemnify the Licensor.
and hold it harmless from any claims from Carriers related to any action taken by the Licensor with respect to the facilities in accordance with Applicable Law. Should the Company's agreement(s) with any Carriers related to any WCFs cease, the Company shall provide the Licensor with notice of such termination and contact information for the owners of the WCFs at least ten (10) business days prior to such termination.

SECTION 9. MISCELLANEOUS

9.1 **Severability.** If any Applicable Law renders any provision of this Agreement invalid, the remaining provisions of the Agreement shall remain in full force and effect.

9.2 **Force Majeure.** Neither party shall be deemed to be in default, non-compliance, or in violation of any provision of this Agreement where performance was hindered or rendered impossible by war or riots, civil disturbances, natural catastrophes or other circumstances beyond the party's control, provided the party took steps to mitigate damages and accepts responsibility to cure the default, non-compliance or violation in a manner and within a time period reasonably acceptable to the other party.

9.3 **No Waiver.**

9.3.1 The failure of either party on one or more occasions to exercise a right or to require compliance or performance under this Agreement shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by such party, unless such right or such compliance or performance has been specifically waived in writing.

9.3.2 Both the Licensor and the Company expressly reserve all rights they may have under Applicable Law to the maximum extent possible, and neither the Licensor nor the Company shall be deemed to have waived any rights they may now have or may acquire in the future by entering into this Agreement.

9.4 **Attorney Fees.** Should any dispute arising out of this Agreement lead to arbitration or litigation, the prevailing party shall be entitled to recover its costs of suit, including (without limitation) reasonable attorneys' fees.

9.5 **Governmental Immunity.** The City, its elected officials, officers, and its employees, agents, and volunteers are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended (“CGIA”), or otherwise available to the City, its elected officials, officers, employees, agents, and volunteers.

9.6 **Change of Law.** If any Applicable Law that governs any aspect of the rights or obligations of the parties under this Agreement shall change after the Effective Date and such change preempts compliance with or the enforcement of any aspect of such rights or obligations, then the parties agree to promptly amend the Agreement as reasonably required to accommodate and/or ensure compliance with any such legal or regulatory change.
9.7 Notice. All notices that shall or may be given pursuant to this Agreement must be in writing and delivered by hand or (i) through the United States mail, by registered or certified mail; (ii) by prepaid overnight delivery service; or (iii) by email transmission. If a hard copy of the same is delivered through the U. S. Postal Service or by overnight delivery service, it shall be delivered to the following addresses:

if to Licensor:

City of Cherry Hills Village
Village Center
2450 E. Quincy Avenue
Cherry Hills Village, CO 80113
ATTN: Director of Public Works

with a copy to:

City of Cherry Hills Village
Village Center
2450 E. Quincy Avenue
ATTN: City Attorney

if to Company:

Zayo Group, LLC
1821 30th Street, Suite A
Boulder, Co 80301
ATTN: General Counsel

with a copy to:

Zayo Group, LLC
1805 29th Street, Suite 2050
Boulder, Co 80301
ATTN: General Counsel, Rocky Mountain Region

Each party shall provide timely notice to the other of changes in the address for notification under this provision. Notice shall be deemed effective upon receipt in the case of hand delivery, three days after delivery to the U.S. Postal Service, or the next business day if delivery is effectuated by email or overnight delivery service.

9.8 Representations and Warranties. Each party to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform its respective obligations hereunder and that such obligations shall be binding upon it without the requirement of the approval or consent of any other person or entity in connection herewith.
9.9 Amendment. This Agreement may not be amended except pursuant to a written instrument signed by both parties.

9.10 Other PROW Users. The parties understand and agree that the Licensor permits other persons and entities to install utility facilities in the PROW. In permitting such work to be done by others, the Licensor shall not be liable to Company for any damage caused by those persons or entities.

9.11 Entire Agreement. This Agreement and all attachments hereto (including Supplemental Site Permits) represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof, supersedes all prior oral negotiations between the parties, and can be amended, supplemented, modified or changed only by an agreement in writing which makes specific reference to this Agreement or the appropriate attachment and which is signed by the party against whom enforcement of any such amendment, supplement, modification or change is sought.

9.12 Laws Governing/Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, and applicable federal law. Venue for any proceeding brought pursuant to this Agreement shall be in the District Court located in Arapahoe County, Colorado.

9.13 No Third-Party Beneficiaries. This Agreement benefits only the parties hereto and their successors and permitted assigns. There are no third-party beneficiaries.

9.14 Counterparts: Electronic Disposition. This Agreement may be executed in multiple counterparts, each of which constitutes an original hereof. Regardless of the number of counterparts, all shall constitute only one agreement. In making proof of this Agreement, it is not necessary to produce or account for more counterparts than are necessary to show execution by or on behalf of all parties. Furthermore, the original of this Agreement, including the signature page, may be scanned and stored in a computer database or similar device, and any printout or other output readable by sight, the reproduction of which is shown to accurately reproduce the original of this Agreement, may be used for any purpose as if it were the original, including proof of the content of the original writing.

9.15 Public Disclosure. The Company acknowledges that this Agreement is public record within the meaning of the Colorado Open Records Act, C.R.S. § 24-72-202(6), and accordingly may be disclosed to the public.

9.16 Consents. To the extent either party is required hereunder to obtain the consent or approval of the other under this Agreement, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

[Signature page follows.]
IN WITNESS WHEREOF, and in order to bind themselves legally to the terms and conditions of this Agreement, the duly authorized representatives of the parties have executed this Agreement as of the Effective Date.

CITY OF CHERRY HILLS VILLAGE, COLORADO

By: __________________________
Name: _________________________
Its: __________________________
Date: _________________________

APPROVED AS TO FORM

BY: __________________________
Kathie B. Guckenberger, City Attorney

ZAYO GROUP, LLC

By: __________________________
Name: _________________________
Its: __________________________
Date: _________________________
EXHIBIT A
SUPPLEMENTAL SITE PERMIT

This Supplemental Site Permit, made this ______ day of ____________, 20____ ("Effective Date") between the ______ of ____________, hereinafter designated "Licensor," and __________ ______, hereinafter designated "Company":

1. **Supplemental Site Permit.** This is a Supplemental Site Permit as referenced in that certain Wireless Communications Facilities Master License Agreement in connection with the operation of Company’s Network, between Licensor and Company dated ____________, 20____ (the “Agreement”). All of the terms and conditions of the Agreement are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction, modification or inconsistency between the terms of the Agreement and this Supplemental Site Permit, the terms of this Supplemental Site Permit shall govern. Capitalized terms used in this Supplemental Site Permit shall have the same meaning described for them in the Agreement unless otherwise indicated herein.

2. **Project Description and Locations.** As described herein, Company shall have the right to use the Licensor-owned structure, other vertical structure owned by a third party or a newly constructed vertical structure for WCF at the Wireless Site in the PROW as further described in Attachment 1, Table 1 attached hereto.

3. **WCF Equipment.** The WCFs to be installed at the Wireless Site are described in Attachment 1, Table 2 attached hereto.

4. **Term.** The term of this Supplemental Site Permit shall be as set forth in Section 2.3 of the Agreement.

5. **Fees.** If this Supplemental Site Permit is for attaching WCFs to Licensor-owned structures in the PROW, the initial annual attachment fee shall be $200.00 ("Attachment Fee"). Such annual Attachment Fee shall not be applicable to street lighting poles approved for street lighting purposes by the Licensor that are purchased by the Company and assigned to the Licensor pursuant to Section 2.2(iii) of the Agreement.

6. **Commencement Date.** The commencement date of this Supplemental Site Permit is the first day of the month following the date Company has commenced installation of its WCFs at the Wireless Site.

7. **Approvals.** It is understood and agreed the Company’s ability to use the Wireless Site is contingent upon its obtaining all of the certificates, permits and other approvals (collectively the “Governmental Approvals”) that may be required by any Federal, State or Local authorities. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to Company is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) Company determines that such Governmental Approvals may not be obtained in a timely manner; or (iv) Company determines
one or more licensed Wireless Sites is no longer technically compatible for its use, Company shall have the right to terminate all or part of this Supplemental Site Permit. Notice of Company’s exercise of its right to terminate shall be given to Licensor in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by Company, or upon such later date as designated by Company. All fees paid to said termination date shall be retained by Licensor. If the Company has not commenced installation of its WCFs at the Wireless Site within one hundred eighty (180) days of the Effective Date, this Supplemental Site Permit shall terminate without further action required by either party; provided however that such deadline may be extended by mutual written agreement of the parties. Upon such termination, all or part of this Supplemental Site Permit, as applicable shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each party to the other hereunder and in the Agreement. Otherwise, Company shall have no further obligations for the payment of any Attachment Fee to Licensor.

[Signature page follows.]
EXECUTED to be effective as of the date shown above.

LICENSOR:

CITY OF CHERRY HILLS VILLAGE,

COLORADO

By: __________________________
Name: ________________________
Title: _________________________

APPROVED AS TO FORM

BY: __________________________
   City Attorney
   Name: ________________________

COMPANY:

[INSERT]

By: __________________________
Name: ________________________
Its: __________________________

Attachments:
Attachment 1
ATTACHMENT 1

Table 1

<table>
<thead>
<tr>
<th>WIRELESS SITE ID NO. AND ADDRESS</th>
<th>STREET NAME/INTERSECTION AND QUADRANT POLE IS LOCATED ON</th>
<th>STATE PLANE COORDINATES</th>
<th>EXISTING POLE TYPE</th>
<th>EXISTING POLE HEIGHT</th>
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<tr>
<th>WIRELESS SITE ID NO. AND ADDRESS</th>
<th>PROPOSED POLE ALTERATION</th>
<th>RESULTANT POLE HEIGHT</th>
<th>TYPE OF EQUIPMENT ATTACHED</th>
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Table 2
COMPANY SHALL PROVIDE THE FOLLOWING AS IS APPLICABLE TO BE CONSIDERED BY LICENSOR IN WHETHER TO GRANT THE SUPPLEMENTAL SITE PERMIT:

1. Plans showing engineering design, and specifications for installation of the Wireless Communication Facility, including the location of radios, antenna facilities, transmitters, equipment shelters, cables, conduit, point of demarcation, backhaul solution, electrical distribution panel, electric meter, electrical conduit and cabling, location of any potholes and all other associated equipment. Where applicable, the design documents shall include specifications on design, pole modification, and ADA compliance. Pursuant to Cherry Hills Village Municipal Code Section 11-2-60, such information shall be prepared by a Professional Engineer licensed in the State of Colorado.
   a. The plans shall show existing sidewalk size, existing utilities, existing trees and other existing improvements.
   b. The plans shall include a separate sheet showing traffic control signs and equipment.

2. For Licensor poles, include documentation from the Licensor verifying the pole is eligible for attachment. Also include a load bearing study that determines whether the pole requires reinforcement or replacement in order to accommodate attachment of the Wireless Communication Facility. If pole reinforcement or replacement is warranted, the design documents shall include the proposed pole modification.

3. For new pole installations, include documentation verifying the pole location is in the PROW and is eligible for installation. Include list of adjacent property owners. If the proposed installation includes a new pole, provide design and specification drawings for the new pole.

4. If the proposed installation will require reinforcement or replacement of an existing pole, provide applicable design and specification drawings.

5. The number, size, type, and proximity to the facilities of all communications conduit(s) and cables to be installed.

6. Description of the utility services required to support the facilities to be installed.

7. A typewritten legal description with (1) the Section, Township and Range, and County being affected, and if it is part of a subdivision, it shall be stated also; (2) the Point of Beginning to an established land corner or to a subdivision plat that is tied to an established land corner, with curves showing radius, delta, arc length and angle to radius point if curve is non-tangent, and area to be included in square feet; and (3) the legal description SIGNED and SEALED by a surveyor registered in the State of Colorado.

8. For Licensor-owned traffic signal poles, provide information required by Exhibit C of the Agreement.
EXHIBIT B

Operational and Design Criteria

A. Operational Standards.

(1) Federal Requirements. All Small Cell Facilities and other WCFs and associated Equipment (collectively, “WCFs”) shall meet the current standards and regulations of the FAA, FCC and any other agency of the federal or state government with the authority to regulate telecommunication equipment. If such standards and regulations are changed, Company shall bring such WCFs into compliance with such revised standards and regulations within the time period mandated by the controlling federal or state agency. Failure to meet such revised standards and regulations shall constitute grounds for the removal of the WCFs from any site under this Agreement at Company’s expense.

(2) Radio Frequency Standards. All WCFs shall comply with federal standards for radio frequency emissions. If concerns regarding compliance with radio frequency emissions standards are made to Licensor, Licensor may request that Company provide information demonstrating compliance. If such information suggests, in the reasonable discretion of Licensor, the WCFs may not be in compliance, Licensor may request and Company shall submit a project implementation report which provides cumulative field measurements of radio frequency emissions of all antennas installed at the subject site, and which compares the results with established federal standards. If, upon review, Licensor finds the WCF does not meet federal standards, Licensor may require corrective action within a reasonable period of time, and if not corrected, may require removal of any WCFs as an unauthorized use under this Agreement. Any reasonable costs incurred by Licensor, including reasonable consulting costs to verify compliance with these requirements, shall be paid by Company upon demand by Licensor or, if such costs remain unpaid after demand, Licensor may recover such costs by the same manner and method authorized to recover nuisance abatement costs under the Cherry Hills Village Municipal Code.

B. Design Standards.

(1) In addition to any requirements of the Cherry Hills Village Municipal Code, the requirements set forth in this Exhibit shall apply to the location and design of all WCFs governed by this Agreement as specified below; provided, however, Licensor may waive these requirements if it determines the goals of this Exhibit are better served thereby. To that end, WCFs shall be designed and located to minimize the impact on the subject neighborhood and to maintain the character and appearance of the specific location.
(2) General Principals.

a. All WCFs covered by this Agreement shall be as architecturally compatible with the surrounding area as feasible;

b. All electrical, communication, and other wiring to WCF components, including radios, antennae and backhaul connections, shall be fully concealed, internal to the structure where possible and shrouded in all other instances;

c. Height or size of the proposed WCFs and any replacement pole should be minimized and conform to the standard form factor of a Licensor traffic signal or Licensor or utility company street light or distribution pole to the maximum extent practicable;

d. WCFs shall be sited in a manner that takes into consideration its proximity to residential structures and residential district boundaries, uses on adjacent and nearby properties, and the compatibility of the facility to these uses, including but not limited to proximity of Wireless Site to first and second story windows;

e. Equipment shall be designed to be compatible with the site, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness. Appurtenances shall match the standard form factor of Licensor traffic signal or Licensor or utility company street light or distribution pole to the maximum extent practicable; and

f. WCFs and any associated landscaping fencing shall be designed and located outside of intersection sight distances and in accordance with the City of Cherry Hills Village Municipal Code and ASSHTO standards.

(3) Camouflage/Concealment. All WCFs shall, to the extent possible, match the appearance and design of existing Licensor traffic signal or Licensor or utility company street light or distribution pole adjacent to the Wireless Site; and when not technically practicable, that WCF is to use camouflage design techniques including, but not limited to the use of materials, colors, textures, screening, landscaping, or other design options that will blend the WCF to the surrounding natural setting and as built environment. Design, materials and colors of WCFs not identical to existing Licensor traffic signal or Licensor or utility company street light or distribution poles shall otherwise be compatible with the surrounding environment. Designs shall be compatible with structures and vegetation on the same parcel and adjacent parcels.
a. Camouflage design may be of heightened importance where findings of particular sensitivity are made (e.g., proximity to historic or aesthetically significant structures, views, and/or community features). In such instances where a WCF is located in areas of high visibility, they shall (where possible) be designed to minimize their profile.

b. All WCF components, including antennas, vaults, equipment rooms, equipment enclosures, and tower structures shall be constructed out of non-reflective materials (visible exterior surfaces only).

(4) Hazardous Materials. No hazardous materials shall be permitted in association with WCFs, except those necessary or requested for the operations of the WCFs and only in accordance with all Applicable Laws governing such materials.

(5) Siting.

a. No portion of any WCF may extend beyond the ROW without prior approval(s).

b. Collocation and Modification. The parties acknowledge that it is the intent of the Agreement to provide general authorization to use the PROW for Small Cell Facilities as permitted under Applicable Laws. The designs approved by the City for the installation of Small Cell Facilities as agreed to in the Supplemental Site Permits governing each specific site, including the dimensions and number of antennas and equipment boxes and the pole height are intended and stipulated to be concealment features under 47 CFR 1.40001 (as amended), and shall be addressed under Applicable Laws when considering collocation and modification requests.

c. WCFs shall be sited in a location that does not reduce the parking for the other principal uses on the parcel below Licensor standards unless it is the only option.

(6) Lighting. WCFs shall not be artificially lit, unless required by the FAA or other applicable governmental authority, or the WCF is mounted on a light pole or other similar structure primarily used for lighting purposes. If lighting is required, Licensor may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views. Lighting shall be shielded or directed to the greatest extent possible so as to minimize the amount of glare and light falling onto nearby properties, particularly residences.

(7) Landscape and Fencing Requirements.
a. Ground-mounted WCF components shall be sited in a manner that does not reduce the landscaped areas for the other principal uses on the parcel, below City standards.

b. Unless otherwise mutually agreed to by the parties, ground-mounted WCF components shall be landscaped with a buffer of plant materials that effectively screen the view of that part of the WCF from adjacent property. The standard buffer shall consist of the front, side, and rear landscaped setback on the perimeter of the site.

c. In locations where the visual impact of the WCF would be minimal, the landscaping requirement may be reduced or waived altogether by Licensor.

Noise. Noise generated on the site must not exceed the levels permitted by local standards, except as may be expressly permitted by local approval.

Additional design requirements shall be applicable to the various types of WCFs as specified below:

a. Base Stations. Any antenna installed on a structure other than a municipal structure (including, but not limited to the antennas and accessory equipment) shall be of a neutral, non-reflective color that is identical to, or closely compatible with, the color of the supporting structure, or uses other camouflage/concealment design techniques so as to make the antenna and related facilities as visually unobtrusive as possible.

b. Alternative Communication Facilities located in the Right-of-Way. In addition to the other criteria contained in this Exhibit and the Cherry Hills Village Municipal Codes, an Alternative Communication Facility located in the right-of-way shall:

i. With respect to its pole-mounted components, be located on an existing utility pole serving a utility; or

ii. Be camouflage/concealed consistent with other existing natural or manmade features in the right-of-way near the location where the Alternative Communication Facility will be located; or

iii. To the extent reasonably feasible, be consistent with the size and shape of the pole-mounted equipment installed by Licensor and any communications companies on utility poles near the Alternative Communication Facility;

iv. Be sized to minimize the negative aesthetic impacts to the right-of-way;
v. Be designed such that antenna installations near traffic signal standards are placed in a manner so that the size, appearance, and function of the signal will not be negatively impacted and so as not to create a visual distraction to vehicular traffic;

vi. Require any ground mounted WCF components be located in a manner necessary to address both public safety and aesthetic concerns under local requirements, and may, where appropriate, require a flush-to-grade underground equipment vault; and

c. Related Accessory Equipment. Accessory equipment for all WCFs shall meet the following requirements:

i. All buildings, shelter, cabinets, and other accessory components shall be grouped as closely as technically possible;

ii. The total footprint coverage area of the accessory equipment shall not exceed thirty-six (36) square feet;

iii. Accessory equipment, including but not limited to remote radio units, shall be located out of sight by locating behind landscaping, parapet walls, within the pole, behind an attached sign on a pole or underground. Where such alternate locations are not available, the accessory equipment shall be camouflaged or concealed.

iv. Notwithstanding subsections (i) – (iii), accessory equipment shall not alter vehicular circulation or parking within the right-of-way or impede vehicular, bicycle, or pedestrian access or visibility along the right-of-way. The location of WCFs must comply with the Americans With Disabilities Act and all Applicable Law.

(10) Setbacks and Separation. The minimum setbacks and separation requirements of the Cherry Hills Village Municipal Code shall apply to all WCFs and each Supplemental Site Permit.

(11) Nothing in the Agreement or this Exhibit B shall be interpreted to authorize the installation of macro wireless communications service facilities, macro base stations, or similar high-powered cellular or wireless broadband facilities in the PROW, or the installation of macro wireless towers, or poles intended for macro facilities.
EXHIBIT C

ATTACHMENTS TO LICENSOR-OWNED TRAFFIC SIGNAL FACILITIES

Traffic Signal Pole Requirements

Traffic signal poles already supporting police equipment are not eligible to be considered for Company’s WCF. Company’s WCF placed on traffic signal poles may be required to be relocated at any time if the Licensor-owned infrastructure is needed for placement of police equipment.

Traffic signal poles are engineered structures designed to specific loading criteria and required AASHTO standards. Modifications to the loading shall require an engineering analysis stamped by a Colorado licensed professional engineer.

Installations on traffic signal poles cannot alter the poles in any way. Therefore, all attachments must be banded. Drilling and taping is not allowed.

All cabling must be external to the pole to eliminate the possibility of interference with existing signal cables and conductors.

Cables, conduits and bands must not interfere with access to or operation of any of the traffic signal equipment. Specific clearances may be required and shall be reviewed on a case-by-case basis.

Analysis must be provided to show the proposed equipment shall not interfere with the Licensor’s wireless network operating in the 900 MHz and 5.8 GHz frequencies.

For installations on traffic signal poles, involved personnel must hold at least a Level I IMSA Traffic Signal certification (level II preferred) to demonstrate comprehension of the implications of any negative impacts to the Licensor’s traffic signal infrastructure.

Any installation or servicing of WCF located on traffic signal poles shall be coordinated with the Licensor’s Traffic Operations and Traffic Engineering groups a minimum of three business days in advance.

WCF located on traffic signal poles may be required to be removed and/or reset at any time at the sole cost of the Company due to any work performed by or authorized by the Licensor.
THE FCC’S DECLARATORY RULING AND THIRD REPORT AND ORDER ON SMALL WIRELESS FACILITIES DEPLOYMENT: GUIDE FOR IMPLEMENTATION

On September 27, 2018, the FCC released a Declaratory Ruling and Third Report and Order (“Order”) that significantly limits state and local management of small wireless infrastructure deployment and associated fees for use of the rights of way and public property in the rights of way. The Ruling and Order will take effect January 14, 2019.¹ We strongly encourage local governments to consider necessary steps to implement the Order prior to its effective date.

To that end, this guide provides a summary of the Order and considerations for local governments in implementing the Order. Due to variations in state law, local authority and existing ordinances (among other things), there will be no “one-size-fits-all” solution for complying with the new rules and statutory interpretations in the Order. As such, this guide is intended to raise issues for municipalities to consider rather than proposing specific solutions. Jurisdictions should consult with legal counsel and appropriate staff to determine what, if any, steps should be taken in response to the Order.

SUMMARY OF THE ORDER

- **Caps all fees** related to small wireless facilities (“SWF”) at “a reasonable approximation of the state or local governments’ actual and reasonable costs.”
  - Caps apply to application/review or similar fees for SWF inside and outside the rights of way (“ROW”); ROW use fees; and fees for use of municipal property in the ROW (not outside the ROW).
  - The following fees are presumed to meet the standard:
    - Non-Recurring Fees: $500, including a single up-front application that includes up to five SWF, with an additional $100 for each SWF beyond five, or $1,000 for non-recurring fees for a new pole to support SWF.
    - Recurring Fees: $270 per SWF per year for all recurring fees, including any ROW access fee or fee for attachment to municipally-owned structures in the ROW.
  - Local governments can charge higher fees than those set forth above if they can show the fees are:
    - A reasonable approximation of costs;
    - Those costs themselves are reasonable; and
    - They are non-discriminatory.

¹ As explained below, local governments will have an additional 90 days from the effective date, or until April 15, 2019, to comply with the aesthetic limitations in the Order.
• **Preempts aesthetics requirements** for SWF unless they are (1) reasonable; (2) no more burdensome than those applied to other types of infrastructure deployments; (3) objective; and (4) published in advance.

  o “Reasonable” means “technically feasible and reasonably directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments.”

  o “Objective” means “incorporate[s] clearly-defined and ascertainable standards, applied in a principled manner.”

  o Under this standard, requirements that all wireless facilities be deployed underground are preempted, as is any undergounding requirement that “materially inhibits wireless service.”

  o Implies that minimum spacing requirements likely could not meet this standard.

The Order provides that local governments will have an additional 90 days after the effective date to comply with these limitations, which is April 15, 2019.2

• **Imposes shot clocks** of 60 days for SWF added to existing structures (regardless of whether the structure already supports a SWF) and 90 days for SWF using a new structure.

  o Existing shot clocks for non-SWF deployments remain in place: 90 days for collocation on an existing structure; 150 days for deployment on a new structure.

  o Both the new and existing shot clocks apply to “any approval that a siting authority must issue under applicable law prior to deployment.” This includes zoning approvals and building permits, and may also include license or franchise agreements to access the ROW, leases for use of municipal poles or property in the ROW, electric permits and road closure permits, among others.

  o For SWF, shot clocks are reset, not just tolled, if the siting authority notifies the applicant within 10 days after submission that the application is incomplete. For subsequent determinations of incompleteness, the shot clock would toll—not reset—if the siting authority provides written notice within 10 days that the supplemental submission did not provide the requested information.

  o For non-SWF, shot clocks begin to run when an application is first submitted, and can be paused—not reset—if the siting authority notifies the applicant within 30 days that the application is incomplete. For subsequent determinations of incompleteness, the process is the same as described above for SWF.

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2 The Order provides 180 days from publication in the Federal Register to comply with the aesthetic requirements, which falls on a weekend and thus the effective date is Monday, April 15, 2019.
Failure to act within the new SWF shot clock constitutes a presumptive violation of the Communications Act and applicants may seek expedited injunctive relief in court within 30 days of a local government missing a shot clock deadline. There is no “deemed granted” remedy.

- **Defines SWF** as, among other things:
  - Facilities
    - mounted on structures 50 feet or less in height including their antennas; or
    - mounted on structures no more than 10 percent taller than other adjacent structures; or
    - that do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater.
  - Each antenna associated with the deployment, excluding associated antenna equipment, is no more than 3 cubic feet in volume;
  - All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume.

- **Does not grandfather** existing agreements or state small cell bills or other state laws, which may be preempted to the extent they conflict with the Ruling and Order.

**CONSIDERATIONS FOR COMPLIANCE WITH THE ORDER**

*Effective Date and Legal Review*

Multiple parties have filed petitions in federal courts seeking review of the Order. Other parties have asked the FCC to reconsider the Order. Though it may take months or years for the FCC to address reconsideration and/or courts to reach a final decision on the merits, the Order will be effective during this period unless the court issues a stay of the Order. We strongly encourage you to assume the Order will take effect and act accordingly.

However, it is important to consider that the Order may be vacated by the courts or modified by the FCC on reconsideration. You should consider whether and how to preserve the ability to require deployment and receive payment in the manner that would have been enacted or enforced in your community but for the application of the Order. We suggest you consult with your legal counsel on whether and/or how to, for example:

- Reserve the authority to collect any shortfall in fees should the Order be vacated.
  - Should you document the fees that were in place prior to the Order?
  - Should you document the fees that would have been charged but for the Order?

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3 As noted above, this guide is intended to raise issues local governments should consider in implementing the Order. This guide does not address specific legal issues, is not intended to, and does not, provide legal advice. We strongly encourage you to work with your legal counsel to ensure compliance with the Order as well as all other applicable laws.
• Reserve the authority to require changes to installed facilities to comply with requirements that are not in compliance with the Order.
  o Should you document the desired installation requirements that are not or may not be allowed under the Order?
  o Should you address this on a case-by-case basis (e.g., with respect to each SWF application) or as a larger policy issue?
  o Are there other means to preserve this authority, such as agreements with applicants/owners or a reservation of rights?

• Preserve existing agreements with SWF providers or restore any provisions of an agreement with SWF providers that are altered due to the Order.

Compliance with Shot Clocks

As noted above, the shot clocks apply to every authorization a local government requires for deploying SWFs. It may be very difficult to review and approve all of the required agreements and permits in the time provided in the shot clocks. To better ensure compliance with shot clocks, jurisdictions should consider whether any of the following steps are appropriate and permissible under state and local laws:

• **New/revised ordinances**, resolutions or similar requirements establishing the required agreements, permits, processes, etc. for deploying SWFs.
  o Consider including requirements for SWFs and non-SWFs both inside and outside the ROW; consider necessary changes, if any, to existing wireless siting requirements to address SWFs and/or wireless deployments in the ROW.
  o Specify areas in the jurisdiction in which wireless facilities are permitted and the required levels of approval for each zone; consider that approval processes must be able to be completed within the new shot clock time frames.
  o Consider whether to include collocation requirements or incentives to encourage attachments to existing structures in areas where collocation is preferred.
  o The Order does not address fiber or other wireline facilities that will be needed to serve SWFs. (The Order does address wiring/cabling installed with SWFs to provide power and connect antennas to associated equipment.) Consider whether existing codes, ordinances or other legal requirements apply to fiber installations and/or whether revisions or new provisions are needed to address the potential for new or additional requests to place fiber in the ROW.
  o Consider how to protect public safety.
    • Adopt standards to ensure deployments do not endanger lives or property, interfere with other utility services and infrastructure, or obstruct pedestrian and vehicle access and sight lines. Consider whether certain types of structures cannot be safely used for SWFs due to size, age, construction, etc.
    • Consider insurance, indemnification, bonding and other protections (which may also be included in ROW and attachment agreements).
    • Consider whether there are specific risks related to public employees working on or near SWFs that must be addressed.
• Local governments cannot regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent the facilities comply with the FCC’s regulations concerning such emissions. Consider requiring compliance with FCC RF regulations. In addition, because the standards have not been updated to address SWFs placed closer to people and homes, consider whether it is appropriate and permissible to expressly require indemnification for RF issues that arise in the future. Consider whether there are issues related to municipal employees working near SWF that should be specifically addressed.
  o See “Standard franchises” and “Aesthetic Standards” for additional considerations.

• **Standard franchises/ROW use agreements/licenses.**
  o The ROW use agreements should be separate from agreements to attach to municipally-owned poles and structures in the ROW (see below).
  o Develop a process for applicants who do not agree to the standard agreements. Should those applications be denied? Will the jurisdiction grant an extension to negotiate? How can a jurisdiction remain non-discriminatory and apply consistent standards if changes to standard agreements are permitted?
  o Include all relevant departments in developing standard agreements.
  o Consider whether to invite industry to provide comments. Consider including third party structure owners in the ROW (e.g., electric utilities) to ensure that the jurisdiction’s installation requirements are consistent with the structure owners’ requirements.
  o Address liability and public safety issues described above (in the “New/revised ordinance(s)” section).

• **Standard pole/structure attachment agreements** for use of municipally-owned assets in the ROW.
  o Consider amending or adopting Engineering Standards applicable to SWF deployments.
  o Consider different attachment agreements for each type of structure to which a SWF may be attached.
  o Develop a process for applicants who do not agree to the standard agreements. Should those applications be denied? Will the jurisdiction grant an extension to negotiate? How can a jurisdiction remain non-discriminatory and apply consistent standards if changes to standard agreements are permitted?
  o Include all relevant departments in developing standard agreements.
  o Consider whether to invite industry to provide comments.
  o Consider whether there are issues related to municipal employees working near SWF that should be specifically addressed, such as RF emissions.

• **Application forms.**
  o Consider what information and approvals must be submitted with the application. For example, should you require the application to include a completed historic/environmental review where such review is required? If the SWF will be attached to a third-party structure in the ROW, should the property owner’s approval to use that specific structure be submitted with the application? What other information must be submitted in order to ensure a complete application?
Consider requiring applicants to declare the type of deployment (including size) and applicable rules they consider the application to fall under. For example, is the deployment a modification under Section 6409(a) rules? Is it a collocation on an existing structure subject to the new shot clock in the Order? Does the facility in the application meet the definition of SWF from the Order? Consider whether there are different definitions of SWF in the local code or state law and, if so, how that may impact the treatment of the application.

- **Develop a process to track shot clock timelines** for each application.
  - Consider how to ensure permits or approvals required from various departments can be done within the required time frame. Does this require a single application that covers all required approvals, and would this allow the jurisdiction to require some approvals to be obtained prior to submitting the application? Should submittals be required to be online?
  - Develop a process to ensure applications are reviewed for completeness within 10 days of submission.
  - Consider how to track approved permits, track start and completion dates for installation, ensure timely inspections, etc.

- **Draft extension agreements** for applicants who voluntarily extend the shot clocks.

**Aesthetic Standards**

Because the Order requires aesthetic standards to be published in advance, it is important to publish standards as soon as possible, taking into consideration any existing standards that will apply until changes are made. Local governments risk violating 47 U.S.C. § 253(a), as interpreted by the FCC, if they refuse to act on an application until standards are adopted. Further, it may be difficult to deny an application if there are no standards to apply in the review process, and to enforce standards published after SWF deployments have been approved if the standards are more burdensome than those (if any) applied to the prior deployments.

Considerations with respect to aesthetic requirements include:

- The Order does not require every specification to be published in advance so long as there is sufficient detail to enable applicants to design and propose their deployments in a manner that complies with the standards. However, the Order requires standards to be applied "in a principled manner" and be objective, and thus more detail may reduce the likelihood of complaints that specifications do not meet these criteria.

- The aesthetic requirements of the Order do not take effect until April 15, 2019.
  - For jurisdictions with no existing standards applicable to SWFs, we urge you to consider adopting standards as soon as possible to ensure that criteria exist should you receive a SWF application.
  - For jurisdictions with existing standards, consider what revisions, if any, are necessary to comply with the Order. If changes are required, consider whether to make those changes as soon as possible or to retain the preferred standards until April 15th.

---

4 See the "Moratoria" subsection below. Note that the FCC’s interpretation of what violates Section 253(a) is subject to a Petition for Reconsideration and a Petition for Review in the 9th Circuit Court of Appeals.
• Consider adopting a SWF Design Manual that includes approved designs and/or specific design criteria.
  o Are different standards and requirements for different land use zones appropriate?
• Consider how aesthetic requirements apply to accessory equipment, including ground-mounted equipment such as cabinets, consistent with the Order.
• Given the shot clocks, consider what review process is achievable in the limited time frame. Is it appropriate to define situations in which SWFs will be permitted by administrative or other non-discretionary review process without a public hearing provided the applicant meets specified requirements?
• Aesthetic requirements for SWF must be no more burdensome than those applied to other types of infrastructure deployments.
  o The Order does not address how this standard will apply to previously permitted deployments of SWF or other facilities; presumably it will apply only to deployments approved after the April 15th effective date for aesthetic criteria. Consider how to address applications filed prior to the effective date (or prior to any revisions made to comply with the Order’s aesthetic requirements) but not yet approved when the rules take effect. Consider when previously approved deployments would have to comply with the new standards (e.g., legal nonconforming use requirements).
  o Consider how aesthetic requirements apply to all infrastructure deployments; this may include municipally-owned facilities that may not be subject to the same review process.
  o Consider how existing franchise agreements, permits, etc. may impact or limit authority to impose new aesthetic requirements and how to address this issue.
• As noted above, consider whether and how to preserve the authority to require removal/replacement/alteration in the event the Order is vacated where SWF installations do not comply with standards that would have been applied had the Order not taken effect.

Fees

• The fees set forth in the Order are “presumptively reasonable,” but you are not required to adopt this fee structure. Any fee that is “a reasonable approximation of the state or local governments’ actual and reasonable costs” is permissible.
• Consider a cost analysis to support existing or proposed fees or other means of documenting that fees meet the standard in the Order.
• Consider existing or future fees that may lead to allegations of a “discriminatory” fee structure relative to SWFs.
• As noted above, consider how to preserve the authority to retroactively collect higher fees should the Order be vacated by the courts.

Existing Agreements

The Order does not expressly preempt existing agreements that may be, in part, inconsistent with the Order. Thus, do not assume that existing agreements are unenforceable. Consider agreements as a whole; reducing the agreed-upon consideration (i.e., ROW or attachment fees) to comply with
the Order may not be appropriate without changes to other provisions of the agreement that were accepted as part of the whole package.

**Moratoria**

Though not included in the Order, in August the Commission issued a separate Declaratory Ruling holding that “moratoria” on accepting, reviewing and approving applications and permits to place wireless or wireline facilities in the ROW “effectively prohibit” the provision of telecommunications services in violation of federal law. The Declaratory Ruling is subject to a Petition for Reconsideration and Petitions for Review in the 9th Circuit Court of Appeals. However, it is in effect and will remain in effect unless stayed by the 9th Circuit. It is important to understand what the FCC considers a “moratorium” so that local governments avoid inadvertently establishing moratoria in implementing the Order.

The August ruling covers express and *de facto* moratoria. Express moratoria are “state or local statutes, regulations, or other written legal requirements that expressly, by their very terms, prevent or suspend the acceptance, processing, or approval of applications or permits necessary for deploying telecommunications services and/or facilities.” A footnote clarifies that this includes “facilities where such facilities are necessary for the provision of covered services within the scope of [47 U.S.C. § 253].”

*De facto* moratoria are defined as “state or local actions that are not express moratoria, but that effectively halt or suspend the acceptance, processing, or approval of applications or permits for telecommunications services or facilities in a manner akin to an express moratorium.” The Commission goes on to state, “Situations cross the line into *de facto* moratoria where the delay continues for an unreasonably long or indefinite amount of time such that providers are discouraged from filing applications, or the action or inaction has the effect of preventing carriers from deploying certain types of facilities or technologies.”

Examples of *de facto* moratoria cited by the FCC include “blanket refusals to process applications, refusals to issue permits for a category of structures, frequent and lengthy delays of months or even years in issuing permits and processing applications, and claims that applications cannot be granted until pending local, state, or federal legislation is adopted.”

If an applicant believes a local government has established a moratorium, they may ask the FCC to preempt the legal requirement that creates the express or *de facto* moratorium. The Declaratory Ruling directs the FCC’s Wireline Competition Bureau and the Wireless Telecommunications Bureaus “to review specific petitions and, as necessary, preempt state or local statutes, regulations, or other legal requirements that … constitute express moratoria or *de facto* moratoria.” Judicial remedies also could be available to an applicant alleging a moratorium.
Minutes of the
City Council of the City of Cherry Hills Village, Colorado
and of the Cherry Hills Village Charlou Park 3rd Filing
General Improvement District Board of Directors
Held on Tuesday, March 5, 2019 at 6:30 p.m.
At the Joint Public Safety Facility

MEETING OF THE CHERRY HILLS VILLAGE CITY COUNCIL

The City Council held a study session at 5:30 p.m.

Mayor Russell Stewart called the meeting to order at 6:32 p.m.

ROLL CALL

Mayor Russell Stewart, Councilors Randy Weil, Afshin Safavi, Al Blum, Mike Gallagher, Dan Sheldon, and Katy Brown were present on roll call. Also present were City Manager Jim Thorsen, Deputy City Manager and Public Works Director Jay Goldie, City Attorney Kathie Guckenberger, Police Chief Michelle Tovrea, Community Development Director Rachel Granrath, Finance Director Jessica Sager, Parks and Recreation Coordinator Emily Black and City Clerk Laura Gillespie.

Absent: none

PLEDGE OF ALLEGIANCE

The Council conducted the pledge of allegiance.

APPROVAL OF AGENDA

Mayor Pro Tem Brown moved, seconded by Councilor Sheldon to approve the agenda.

The motion passed unanimously.

AUDIENCE PARTICIPATION PERIOD

Earl Hoellen, 3 Vista Road, indicated that it was a pleasure to be in the new City Hall and that the new building was the culmination of a lot of work by previous Councils and of City Manager Thorsen and Deputy City Manager/Director Goldie. He stated that as a resident he was pleased with both the design and financing of the building. He noted that he appreciated the intent to streamline and clarify the Code through the Code Modernization project but warned about accumulative effects. He stated that residents loved the City’s institutions but that there were limited opportunities for Council to examine the effect of development of these institutions on the City. He indicated that the impacts of new development were never less than estimated and asked Council to keep that in mind. He asked Council to be aware of past Council discussions about the
proposed guard comfort station. He suggested that a sign be installed to make clear that the street was public and that vehicles would not need to stop at the guard station.

Maureen Welch, 4896 S. Clarkson Street, explained that she was a volunteer lobbyist at the state capital for Medicaid issues because her younger has Down Syndrome, and her older son was there tonight for his Boy Scout civics badge. She emphasized the importance of considering unintended consequences and transparency. She asked that Council keep in mind people with disabilities and that they consider live streaming Council meetings with closed captioning. She noted that this was also an issue to keep in mind with the microphones in the Council Chambers and to make sure everyone used the microphones. She indicated that it was a beautiful new building and thanked Council for serving the community.

Mayor Pro Tem Brown noted that the new Council Chambers had a system for people with audio impairments that would be available soon.

Kelley Digby, 21 Cherry Hills Farm Drive, stated that she agreed with Mr. Hoellen and that the community did not want the proposed comfort station to impede traffic. She explained that the purpose of the station had been misunderstood in 2015 and that it was simply to have a place for a bathroom and heater so that the neighborhood guard did not have to be in their car the whole time. She added that the station would also house some AV equipment. She indicated that the neighborhood had incorporated all of Council's suggestions from 2015 including having a sign on the street and not having a door facing the street. She stated that the neighborhood wanted people to come into the neighborhood and visit their parks. She noted that the HOA had some suggestions for the wording to be added to the City Code that would not conflict with the HOA covenants.

REPORTS FROM CITY BOARDS, COMMISSIONS AND COMMITTEES

None

CONSENT AGENDA

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

a. Approval of Minutes – February 19, 2019
b. Resolution 12, Series 2019; A Resolution of the City Council of the City of Cherry Hills Village Approving an Agreement with Michow Cox & McAskin for City Attorney Legal Services
c. Resolution 13, Series 2019; A Resolution of the City Council of the City of Cherry Hills Village Concerning the Appointment of a New Member to the Quincy Farm Committee

The motion passed unanimously.

March 5, 2019
City Council
ITEMS REMOVED FROM CONSENT AGENDA

None

UNFINISHED BUSINESS

None

NEW BUSINESS

Public Hearing – Council Bill 2, Series 2019: A Bill for an Ordinance of the City of Cherry Hills Village to Rezone 120 Meade Lane, John Meade Park and Alan Hutto Memorial Commons from R-1 (2 ½ Acre Residential District), C-1 (Community District) and O-1 (Open Space, Park and Recreation Area District) to O-2 (Open Space, Conservation and Historic Area District), to Rezone 2450 E. Quincy Avenue from C-1 to C-1 and O-2, and Amending the Zoning Map (first reading)

Councilor Gallagher indicated that as liaison to the Parks, Trails and Recreation Commission (PTRC) he had attended the PTRC meeting at which this proposal was presented which created a potential conflict due to ex-parte communications, but stated that he could make a fair and impartial decision.

Director Granrath presented Council Bill 2, Series 2019 on first reading. She explained that the bill would rezone John Meade Park, Alan Hutto Memorial Commons, and portions of 2450 E. Quincy Avenue to the O-2 district. She indicated that the biggest difference between the current O-1 zoning for John Meade Park and the proposed O-2 zoning for these areas was that O-1 was meant for passive parks and O-2 for active parks. She noted that City Hall, the Joint Public Safety Facility, and the parking lot would stay as C-1, and the remainder including the new Park pavilion would be rezoned to O-2.

Mayor Stewart opened the Public Comment Period of the Public Hearing at 6:55 p.m. Hearing no comments the Public Comment Period of the Public Hearing was closed at 6:56 p.m.

Councilor Sheldon commended staff on this project, noting that the O-1 and O-2 zoning had seemed complicated initially but after reading staff's memorandum and hearing staff's presentation it made sense.

Councilor Gallagher moved, seconded by Councilor Blum to approve Council Bill 2, Series 2019; a bill for an ordinance of the City of Cherry Hills Village to rezone 120 Meade Lane, John Meade Park and Alan Hutto Memorial Commons from R-1 (2 ½ acre Residential district), C-1 (Community district) and O-1 (Open space, park and recreation area district) to O-2 (Open space, conservation and historic area district), to rezone 2450 E. Quincy Avenue from C-1 to C-1 and O-2, and amending the zoning map on first reading.

March 5, 2019
City Council
The following votes were recorded:

Safavi  yes
Weil    yes
Brown   yes
Gallagher yes
Sheldon yes
Blum    yes

Vote on the Council Bill 2-2019: 6 ayes. 0 nays. The motion carried.

Resolution 14, Series 2019: A Resolution of the City Council of the City of Cherry Hills Village Waiving the Requirement to Obtain an Additional Floodplain Permit for the Planned Improvements Located in the Floodplain at John Meade Park and Alan Hutto Memorial Commons

Director Granrath presented Resolution 14, Series 2019 for Council’s consideration. She explained that in 2017 Council approved a floodplain development permit for the redevelopment of John Meade Park and Alan Hutto Memorial Commons. Final plans for the Park redevelopment were now complete and included improvements that were not considered structures by FEMA but were considered structures in the City Code, such as the boardwalk, play area, benches, fishing piers, and bridges. Because these improvements were considered structures in the City Code they required an additional floodplain development permit. Staff was requesting a floodplain permit waiver from Council as allowed by the Code when a floodplain permit was not required to protect public health, safety, convenience and general welfare. The City’s engineering consultant for this project, RESPEC, determined that the proposed improvements would not affect the floodplain. The Parks, Trails and Recreation Commission (PTRC) reviewed the waiver application at their January 10, 2019 meeting and the Planning and Zoning Commission (P&Z) reviewed it at their January 22, 2019 meeting. Neither group was required to make a formal motion but they did not have any issues with the application. Meeting minutes from both groups were attached to the staff memorandum. The other exhibits to the staff memorandum showed the floodplain approved by Council in 2017 (Exhibit D) and the minor revisions based on updated data in 2018 (Exhibit C).

Councilor Blum asked if a Letter of Map Revision (LOMR) would be done for this project.

City Manager Thorsen replied that a LOMR would be filed with FEMA after the project was complete.

Councilor Sheldon asked if the floodplain waiver process was available for any residence or institution in the City and confirmed that the City had not received any special treatment by having the option to apply for a waiver.
City Attorney Guckenberger replied that was correct.

Mayor Stewart asked if Council should consider amending the City Code to make its restrictions regarding floodplain development more in line with FEMA’s.

City Manager Thorsen agreed that the City Code was very restrictive regarding modifications in the floodplain because historically that was what Councils had preferred, but staff could add this topic to the Code Modernization project for further review.

Mayor Pro Tem Brown noted that the Master Plan directed the Council to preserve the City’s floodplains and natural areas, so although she agreed that the Code was perhaps a bit too limiting she noted that the restrictions were intended to address more than just the waterfall.

Councilor Blum asked about the floodplain development permit application for a pool that P&Z and Council had considered several years ago.

Director Granrath replied that a pool was a very different structure from the improvements proposed for John Meade Park, and that after submitting applications three times the permit had eventually been approved, but that the waiver process had been available to those applicants as well.

Councilor Sheldon noted that the City’s engineering consultant had done a good job on complicated work regarding the floodplain development for John Meade Park.

Mayor Pro Tem Brown moved, seconded by Councilor Blum to approve Resolution 14, Series 2019; a Resolution of the City Council of the City of Cherry Hills Village waiving the requirement to obtain an additional floodplain permit for the planned improvements located at John Meade Park and Alan Hutto Memorial Commons based on the findings in the March 5, 2019 staff report and associated attachments.

The motion passed unanimously.

**RECESS OF THE CITY COUNCIL TO CONVENE AS THE GID BOARD**

Councilor Blum moved, seconded by Mayor Pro Tem Brown to recess the City Council meeting and call to order the meeting of the Cherry Hills Village Charlou Park 3rd Filing General Improvement District Board.

The motion passed unanimously.

**MEETING OF THE CHERRY HILLS VILLAGE CHARLOU PARK 3RD FILING GENERAL IMPROVEMENT DISTRICT BOARD**

March 5, 2019
City Council
Mayor Russell Stewart, serving ex-officio as the GID Chairperson, called the meeting to order at 7:11 p.m.

**ROLL CALL OF MEMBERS**

The City Council for the City of Cherry Hills Village serving ex-officio as the Board of Directors of the Cherry Hills Village Charlou Park 3rd Filing General Improvement District: Mayor Russell Stewart, Councilors Randy Weil, Afshin Safavi, Al Blum, Mike Gallagher, Dan Sheldon, and Katy Brown were present on roll call.

Absent: none

The administrative staff of the City serving as the administrative staff of the GID: City Manager Jim Thorsen, Deputy City Manager and Public Works Director Jay Goldie, City Attorney Kathie Guckenberger, Police Chief Michelle Tovrea, Finance Director Jessica Sager, Parks and Recreation Coordinator Emily Black and City Clerk Laura Gillespie.

**CONSENT AGENDA**

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

a. Approval of Minutes – February 19, 2019
b. Resolution 4, Series 2019; A Resolution of the Cherry Hills Village Charlou Park 3rd Filing General Improvement District (GID) Board of Directors Memorializing the Designation of the Public Place for Posting Notices of GID Meetings

The motion passed unanimously.

**BUSINESS**

Board Bill 1, Series 2019: A Bill for an Ordinance of the Cherry Hills Village Charlou Park 3rd Filing General Improvement District, in the City of Cherry Hills Village, Colorado, Providing for the Issuance of General Obligation Bonds of Such District, Series 2019, in an Aggregate Principal Amount Not Exceeding $550,000, to Finance the Cost of Certain Improvements Approved at a District Election Held on November 6, 2018; Ratifying Actions Heretofore Taken; Authorizing the Execution by the District of the Bonds and Related Documents Required in Connection Therewith; and Making Determinations as to Other Matters Related to the Bonds (second and final reading)

Director Sager presented Board Bill 1, Series 2019 on second and final reading. She noted there had been no changes since first reading.

Mayor Pro Tem Brown moved, seconded by Councilor Sheldon to approve Board Bill 1, Series 2019; A Bill for an Ordinance of the Cherry Hills Village Charlou Park 3rd Filing
General Improvement District, in the City of Cherry Hills Village, Colorado, providing for the issuance of General Obligation Bonds of such District, Series 2019, in an aggregate principal amount not exceeding $550,000, to finance the cost of certain improvements approved at a District election held November 6, 2018; ratifying actions heretofore taken; authorizing the execution by the District of the Bonds and related documents required in connection therewith; and making determinations as to other matters related to the Bonds on second and final reading.

City Clerk Gillespie noted that Mayor Stewart could vote on GID matters as Chairperson of the GID Board.

The following votes were recorded:

- Weil: yes
- Brown: yes
- Stewart: yes
- Gallagher: yes
- Sheldon: yes
- Blum: yes
- Safavi: yes

Vote on the Board Bill 1-2019: 7 ayes. 0 nays. The motion carried.

**ADJOURNMENT**

Councilor Blum, seconded by Councilor Weil moved to adjourn the meeting of the Cherry Hills Village Charlou Park 3rd Filing General Improvement District Board.

The motion passed unanimously.

**RECONVENE MEETING OF THE CHERRY HILLS VILLAGE CITY COUNCIL**

The meeting of the Cherry Hills Village City Council reconvened at 7:15 p.m.

**REPORTS**

**Mayor's Report**

Mayor Stewart reported that he and other mayors of municipalities in Arapahoe County had met with Senator Gardner’s staff regarding Denver MetroPlex and that they expressed interest and desire in helping the Arapahoe County communities communicate with the FAA. He noted that there were three federal statutes that they might be able to use to oppose Denver MetroPlex including the National Environmental Policy Act, the National Historic Preservation Act, and the Transportation Act.
Mayor Pro Tem Brown noted that she had asked the FAA where they got their information about historic structures so that the City could check that theirs were included.

Mayor Stewart added that there was a section in the federal regulations that took into account an area being a quiet setting.

Councilor Blum asked when the FAA’s environmental study for Denver MetroPlex would be released.

Mayor Pro Tem Brown noted that the government shut down had postponed the timeline.

Mayor Stewart indicated that the report was expected in May, followed by the 30 day public input period and public hearings.

Mayor Pro Tem Brown added that the biggest challenge might be that the 2012 overhaul of FAA flight plans had gone largely unchallenged and it might be difficult to show that the new plans involved significant changes.

Mayor Stewart agreed but noted that without information from the FAA on noise and flight paths, the significance of the changes were unknown. He reported that Denver Water continued the process of purchasing water rights along the High Line Canal. He indicated that a new coyote report by Stewart Breck examined urban versus rural coyotes. He stated that City Manager Thorsen had sent a letter to CDOT regarding the new striping on University and it looked promising that CDOT would agree to returning to the original striping for the neighborhoods bordering University. He reported that Colorado Municipal League director Sam Mamet was retiring after many years.

Members of City Council

Councilor Blum asked about the Belleview medians.

City Manager Thorsen replied that the topic was on the next Council agenda for discussion.

Councilor Blum welcomed Council Weil back.

Councilor Sheldon reported that former Mayor Christman was enjoying her retirement from Council and hoped to attend the Grand Opening. He indicated that the petition for renaming Swastika Acres was close to complete. He stated that the Charlou HOA was in the process of designing security cameras at the entrance and was working with staff on the necessary permits. He reported that at last week’s meeting of the High Line Canal Working Group (HLCWG) they had learned that Denver Water will continue to own and maintain the High Line Canal. He indicated that this would be helpful as it would allow the HLCWG to interact with just Denver Water instead of many different
owners along the Canal. He requested that staff do their presentations at the podium instead of from the staff tables so that Council could more easily see them.

City Manager Thorsen noted that if staff did not have a PowerPoint presentation then they could present from the podium.

Councilor Gallagher thanked City Manager Thorsen and Deputy City Manager/Director Goldie for all their work on the new building. He recognized former Councilor Earl Hoellen for his work on the financing of the capital projects.

Mayor Pro Tem Brown agreed. She reported that the last DRCOG meeting had been focused on what the Metro Denver area could do about transportation funding.

Councilor Weil indicated that the new striping on University had also negatively affected the Cherry Hills Farm neighborhood and asked that be returned to its original striping as well.

Councilor Safavi stated that he had lived in several countries, states and cities and that the City was the safest community he had lived in with the most professional Police Department. He noted that residents had been unhappy that the information about the recent incident on Happy Canyon had not been communicated more quickly by the Police Department. He suggested that Council have a community meeting to discuss safety in the Village, update residents on recent events, and discuss what Council may want to change about the process.

City Manager & Staff

City Manager Thorsen thanked Council and previous Councils for their support of the new City Hall. He stated that it had been a lot of hard work and now that it was complete, staff would be moving forward with the redevelopment of John Meade Park and Alan Hutto Memorial Commons. He noted that two of the three capital projects were now on time and under budget. He thanked staff for their help with designing, moving and cleaning. He presented a plaque to Deputy City Manager/Director Goldie to thank him for his work on the new City Hall.

City Attorney

City Attorney Guckenberger had no report.

ADJOURNMENT

The meeting adjourned at 7:41 p.m.

________________________________________
Russell O. Stewart, Mayor

________________________________________
Laura Gillespie, City Clerk

March 5, 2019
City Council
MEMORANDUM

TO: HONORABLE MAYOR STEWART AND MEMBERS OF CITY COUNCIL

FROM: RACHEL GRANRATH, COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: COMMUNITY DEVELOPMENT DEPARTMENT MONTH END REPORT FOR FEBRUARY 2019

DATE: MARCH 19, 2019

BUILDING PERMITS SUMMARY:

<table>
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<th>YTD 2019</th>
<th>YTD 2018</th>
<th>YTD % Change</th>
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PLANNING AND ZONING COMMISSION:
- February 12, 2019 regular meeting:
  - Commission continued Denver First Church of the Nazarene’s expanded use request to remove 264 parking spaces to the next Commission meeting of March 12, 2019
  - Commission provided input and discussion in regards to the potential for a Master Plan review and update

BOARD OF ADJUSTMENT AND APPEALS:
- February 7, 2019 regular meeting: Cancelled due to a lack of agenda items.

ATTACHMENTS:
Exhibit A: Planning Project Activity List
Exhibit B: Year-to-Date Permit Activity Graphs
Exhibit C: Permit Summary Table
City Council and Planning and Zoning Commission Members are advised to avoid discussing quasi-judicial land use matters with any person outside of the public hearing process. The restriction on discussion of quasi-judicial matters is generally considered to take effect when a formal application has been filed with the City. The following list includes only those matters for which the City has received a formal application. City Council and Planning and Zoning Commission Members are nevertheless advised to use caution in discussing any land use matter that may become quasi-judicial, even before the filing of a formal application.

### Quasi-Judicial Cases

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<tr>
<th>Applicant</th>
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<th>Description</th>
<th>PTAC Review</th>
<th>P&amp;Z Review</th>
<th>Council Review</th>
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<tr>
<td>Kent Denver Day School</td>
<td>4000 E Quincy Avenue</td>
<td>Expanded Use request to modify development agreement to remove and modify the agreement in regards to Traffic improvements</td>
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<td>4/2/19</td>
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### Non Quasi-Judicial Cases and Ordinance Amendments

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<td>Michael Brady O’Donnell</td>
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TOTAL PERMITS
Year to Date through February
10 Year COMPARISON

Total Number of Building Permits
Ten-Year Comparison
Year to Date February

Year

Estimated Revenue of All Building Permits
Ten-Year Comparison
Year to Date February

Revenue

Year
NEW RESIDENCES
Year to Date through February
10 YEAR COMPARISON

Number of New Residential Building Permits
Ten-Year Comparison
Year to Date February

Estimated Revenue of All New Residential Permits
Ten-Year Comparison
Year to Date February
ADDITIONS & REMODELS
Year to Date through February
10 YEAR COMPARISON

Number of Addition & Remodel Building Permits
Ten-Year Comparison
Year to Date February

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<td>2010</td>
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<tr>
<td>2011</td>
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<tr>
<td>2012</td>
<td>18</td>
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<tr>
<td>2013</td>
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<td>2014</td>
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<tr>
<td>2015</td>
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<td>2016</td>
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<td>2017</td>
<td>15</td>
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<tr>
<td>2018</td>
<td>19</td>
</tr>
<tr>
<td>2019</td>
<td>28</td>
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</table>

Estimated Revenue of Addition & Remodel Permits
Ten-Year Comparison
Year to Date February

<table>
<thead>
<tr>
<th>Year</th>
<th>Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>$14,819</td>
</tr>
<tr>
<td>2010</td>
<td>$15,803</td>
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<tr>
<td>2011</td>
<td>$27,411</td>
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<td>2012</td>
<td>$18,954</td>
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<td>2013</td>
<td>$39,684</td>
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<tr>
<td>2014</td>
<td>$25,455</td>
</tr>
<tr>
<td>2015</td>
<td>$28,671</td>
</tr>
<tr>
<td>2016</td>
<td>$29,279</td>
</tr>
<tr>
<td>2017</td>
<td>$28,787</td>
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<tr>
<td>2018</td>
<td>$53,485</td>
</tr>
<tr>
<td>2019</td>
<td>$46,262</td>
</tr>
<tr>
<td>2009-2019 Av</td>
<td>$29,874</td>
</tr>
</tbody>
</table>
## CITY OF CHERRY HILLS VILLAGE BUILDING DEPARTMENT
### MONTHLY REPORT
#### FEBRUARY 1-28, 2019

<table>
<thead>
<tr>
<th>1. Residences</th>
<th>2019 YTD</th>
<th>JANUARY</th>
<th>FEBRUARY</th>
<th>MARCH</th>
<th>APRIL</th>
<th>MAY</th>
<th>JUNE</th>
<th>JULY</th>
<th>AUGUST</th>
<th>SEPTEMBER</th>
<th>OCTOBER</th>
<th>NOVEMBER</th>
<th>DECEMBER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number Issued</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
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</tr>
<tr>
<td>Project Valuation</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
<td></td>
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<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Building Permit Fee</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reinspection/ Investigation Fee</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Plan Review Fee</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Service Expansion Fee</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| 2. Addition & Remodels | | | | | | | | | | | | |
| Number Issued | 28 | 16 | 12 |
| Project Valuation | $ 2,388,448 | $ 2,053,448 | $ 2,568,740 |
| Building Permit Fee | $ 42,472 | $ 20,534 | $ 21,937 |
| Reinspection/ Investigation Fee | $ 100.00 | $ - | $ 100 |
| Plan Review Fee | $ 6,080 | $ 3,840 | $ 2,240 |
| Service Expansion Fee | $ 1,608 | $ 750 | $ 1,451 |

| 3. Accessory & Recreational Structures | | | | | | | | | | | | |
| Number Issued | 7 | 4 | 3 |
| Project Valuation | $ 690,810 | $ 355,810 | $ 335,000.00 |
| Building Permit Fee | $ 4,721 | $ 3,558 | $ 1,162.50 |
| Reinspection/ Investigation Fee | $ - | $ - | $ - |
| Plan Review Fee | $ 3,623 | $ 2,160 | $ 1,462.50 |
| Service Expansion Fee | $ 2,092 | $ 1,234 | $ 858.00 |

| 4. Other Buildings, Structures, Misc. | | | | | | | | | | | | |
| Number Issued | 47 | 28 | 19 |
| Project Valuation | $ 987,856 | $ 317,025 | $ 670,831.00 |
| Building Permit Fee | $ 33,452 | $ 3,337 | $ 30,114.31 |
| Reinspection/ Investigation Fee | $ - | $ - | $ - |
| Plan Review Fee | $ 2,958 | $ 1,240 | $ 1,717.50 |
| Service Expansion Fee | $ - | $ - | $ - |

| 5. Electrical | | | | | | | | | | | | |
| Number Issued | 23 | 12 | 11 |
| Project Valuation | $ 199,029 | $ 129,889 | $ 69,140.00 |
| Building Permit Fee | $ 4,435 | $ 2,840 | $ 1,595.94 |
| Reinspection/ Investigation Fee | $ - | $ - | $ - |
| Plan Review Fee | $ - | $ - | $ - |
| Service Expansion Fee | $ - | $ - | $ - |

| Totals | | | | | | | | | | | | |
| Number Issued | 105 | 60 | 48 |
| Project Valuation | $ 6,499,883 | $ 2,856,172 | $ 3,643,711 |
| Building Permit Fee | $ 85,080 | $ 30,269 | $ 54,810 |
| Reinspection/ Investigation Fee | $ 100 | $ - | $ 100 |
| Plan Review Fee | $ 12,660 | $ 7,240 | $ 5,420 |
| Service Expansion Fee | $ 4,293 | $ 1,984 | $ 2,309 |

### Total Fees Collected by City
$ 102,132 | $ 39,493 | $ 62,639
MEMORANDUM

TO: HONORABLE MAYOR STEWART AND MEMBERS OF THE CITY COUNCIL
FROM: TERRI LITTLEFORD, MUNICIPAL COURT CLERK
SUBJECT: MUNICIPAL COURT MONTH END REPORT FOR FEBRUARY, 2019
DATE: MARCH 19, 2019

DISCUSSION
Municipal Court Statistics

<table>
<thead>
<tr>
<th>Monthly Totals</th>
<th>2019</th>
<th>2018</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Citations filed</td>
<td>184</td>
<td>127</td>
<td>45%</td>
</tr>
<tr>
<td>Court appearances/guilty to original</td>
<td>91</td>
<td>180</td>
<td>-49%</td>
</tr>
<tr>
<td>Plea by mail letters sent</td>
<td>115</td>
<td>126</td>
<td>-9%</td>
</tr>
<tr>
<td>Revenue</td>
<td>$18,097.00</td>
<td>$23,395.00</td>
<td>$-5298.00</td>
</tr>
</tbody>
</table>

BUDGET IMPACT STATEMENT
Through February 2019 the Municipal Court has collected 14% of the total budgeted revenue amount.

ATTACHMENTS
Exhibit A: Municipal Court Monthly Activity and Graphs
CHERRY HILLS VILLAGE MUNICIPAL COURT
MONTHLY ACTIVITY
February-19

<table>
<thead>
<tr>
<th>COMPLAINTS FILED</th>
<th>MONTH</th>
<th>YTD</th>
<th>PRIOR YTD</th>
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<tbody>
<tr>
<td>TRAFFIC</td>
<td>183</td>
<td>303</td>
<td>274</td>
</tr>
<tr>
<td>PARKING</td>
<td>1</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>DOG</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>OTHER</td>
<td>0</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>184</td>
<td>311</td>
<td>281</td>
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</table>

<table>
<thead>
<tr>
<th>CLOSED BY CLERK</th>
<th>CLOSED BY CLERK</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>3</td>
<td>9</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td>3</td>
<td>9</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>PLEA BY MAIL</th>
<th>GLTY PLEA BY MAIL</th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>112</td>
<td>191</td>
<td>218</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>112</td>
<td>191</td>
<td>218</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>COURT ACTIVITY</th>
<th>GLTY TO ORIG</th>
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<tbody>
<tr>
<td></td>
<td>16</td>
<td>45</td>
<td>69</td>
</tr>
<tr>
<td></td>
<td>GUILTY TO AMENDED</td>
<td>56</td>
<td>116</td>
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<tr>
<td></td>
<td>DEFERRED JUDGMENTS</td>
<td>10</td>
<td>21</td>
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<tr>
<td></td>
<td>NOT GUILTY (set to trial)</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>NOT GUILTY (set to jury)</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>DISMISSED (proof of ins provided)</td>
<td>6</td>
<td>28</td>
</tr>
<tr>
<td></td>
<td>DISMISSED</td>
<td>3</td>
<td>3</td>
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<tr>
<td></td>
<td>SHOW CAUSE HEARINGS</td>
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<table>
<thead>
<tr>
<th>TRIAL TO COURT</th>
<th>CONVICTIONS</th>
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</thead>
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<tr>
<td></td>
<td>0</td>
<td>0</td>
<td>0</td>
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<tr>
<td></td>
<td>AQUITTALS</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>DISMISSED</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TRIAL TO JURY</th>
<th>CONVICTIONS</th>
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<th></th>
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<tr>
<td></td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>AQUITTALS</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>DISMISSED</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>MISTRIALS</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>NUMBER OF PEOPLE IN COURT</strong></td>
<td>91</td>
<td>214</td>
<td>304</td>
</tr>
</tbody>
</table>

| TOTAL MONEY COLLECTED | $18,097.30 | $38,367.00 |
MEMORANDUM

TO: HONORABLE MAYOR STEWART AND MEMBERS OF THE CITY COUNCIL

FROM: MICHELLE TOVREA, POLICE CHIEF

SUBJECT: FEBRUARY REPORT

DATE: MARCH 19, 2019

On February 11, 2019 staff attended a meeting with ATF, Arapahoe County Sheriff’s Office, District Attorney’s office and fugitive task force with regard to the Sedgwick case. The group working on this case has executed numerous warrants which continue to provide information. As previously released, another suspect has been arrested. The juvenile was arrested for accessory after the fact. At this point in the investigation, four suspects have been arrested. Two individuals who are suspected of being actual participants in the crime and two for accessory after the fact. I will continue to keep you updated.

PD staff joined Director Granrath for a meeting with the General Manager of Glenmoor Country Club, Garth Walker, to discuss parking and other issues with regard to large events at the club. It was a very good meeting and Mr. Walker was appreciative of the ideas he could use to alleviate potential problems.

The new records management system (RMS) training continues to move forward. The personnel assigned to the project have given very positive feedback regarding what the project will do for our agency.

**There were no bicycle or pedestrian accidents in February.

Investigations Case Summary:

There was 1 Mail Theft report for the month of February:
- The victim stated that she determined a check mailed to a local church back in July 2018 had not been received by the church. Her bank informed her that the check had been cashed that same month by an unknown individual. This case is inactive – no news leads.
There were 4 Theft reports for the month of February:
- In the first, the victim stated that someone stole $500 in cash from her backpack at a local high school. **This case is inactive – no news leads.**
- In the second, the victim stated she donated $25.00 for a cause that she thought was sponsored by the PTCO at the Cherry Hills Elementary School. The school officials determined this email was fraudulent and notified their members of this scam. **This case is inactive – no news leads.**
- In the third, the reporting party stated that someone gained access to their construction trailer by damaging a door latch. Two demolition saws were taken from the trailer. **This case remains under investigation.**
- In the fourth, the reporting party stated that someone gained access to a company utility trailer by cutting a door lock. Several construction tools were taken from the trailer. **This case remains under investigation.**

There was 1 Harassment report for the month of February:
- The reporting party stated that via social media, a juvenile male threatened his daughter with physical harm and asked his acquaintances to start a fight with the girl at the school she attends. The victim lives in CHV. Greenwood Village PD was working on a similar case regarding the suspect and wanted to file the cases together, as a result the case was forwarded to Greenwood Village PD.

There was 1 Menacing (Domestic Violence) report for the month of February:
- Officers responded to a report of domestic violence with a man threatening his wife. The victim reported that there was an argument between the two of them. She added her husband made verbal threats and damaged property inside their home. Officers arrested the husband who was jailed on several criminal charges. **This case was cleared by arrest.**

There was 1 Assault (Domestic Violence) report for the month of February:
- Officers responded to a report of domestic violence with a man hitting a female. The victim stated that her live-in boyfriend hit her with a pillow and one of his hands during an argument. Officers arrested the male subject who was jailed on several criminal charges. **This case was cleared by arrest.**

There was 1 Fraud report for the month of February:
- The victim stated that someone attempted to fraudulently purchase electronic equipment by using his credit card information. **This case remains under investigation.**

There was 1 Vehicle Trespass report for the month of February:
- The victims stated that someone gained access to their unlocked company truck while it was parked at a worksite. Two backpacks, a handgun, a cell phone, and (5) leaf blowers were taken from the truck. **This case is inactive – no new leads.**

There was 1 Sexual Assault report for the month of February:
- An unknown male forcefully entered a residence where the male suspect sexually assaulted a female victim. **This case remains under investigation.**
In another incident, a juvenile victim reported a sex assault which occurred at a party hosted at a residence in the City. The victim and family have been contacted and a report has been taken, however the family is assessing their options with regard to moving forward with the case. The department will stay in contact with the family.
## Cherry Hills Village Police
### Personnel Summary Comparison

<table>
<thead>
<tr>
<th>Year</th>
<th>Commendations</th>
<th>Traffic Accidents</th>
<th>Inquiries</th>
<th>Internal Investigations</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>70</td>
<td>4</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>2018</td>
<td>42</td>
<td>5</td>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>2019</td>
<td>5</td>
<td>2</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Month</td>
<td>Commendations</td>
<td>Traffic Accidents</td>
<td>Inquiries</td>
<td>Internal Investigations</td>
</tr>
<tr>
<td>-------</td>
<td>---------------</td>
<td>-------------------</td>
<td>-----------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>Jan.</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Feb</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Mar</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Apr</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>May</td>
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</tr>
<tr>
<td>Jun</td>
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<tr>
<td>Jul</td>
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<tr>
<td>Aug</td>
<td></td>
<td></td>
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<tr>
<td>Sep</td>
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<tr>
<td>Oct</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Nov</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Dec</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>End of Year</td>
<td>5</td>
<td>2</td>
<td>0</td>
<td>2</td>
</tr>
</tbody>
</table>

### 2019 Pie Chart

- **Commendations**
- **Traffic Accidents**
- **Inquiries**
- **Internal Investigations**
Cherry Hills Village Police
Personnel Summary Report 2019

Commendations

Inquiries

Traffic Accidents

Internal Investigations

Jan. Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec

Jan. Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec

Jan. Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec

Jan. Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec

2
3

2
0

2
0

2
0
# Cherry Hills Police Department Statistics

<table>
<thead>
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<th>Category</th>
<th>Feb 2019</th>
<th>Year to Date 2019</th>
<th>Year to Date 2018</th>
<th>Percent Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Traffic Accident</td>
<td>18</td>
<td>38</td>
<td>56</td>
<td>-32%</td>
</tr>
<tr>
<td>All Citations</td>
<td>230</td>
<td>384</td>
<td>325</td>
<td>18%</td>
</tr>
<tr>
<td>Parking Tickets</td>
<td>0</td>
<td>4</td>
<td>3</td>
<td>33%</td>
</tr>
<tr>
<td>Traffic Warnings</td>
<td>120</td>
<td>202</td>
<td>222</td>
<td>-9%</td>
</tr>
<tr>
<td>DUI Arrests</td>
<td>3</td>
<td>3</td>
<td>9</td>
<td>-67%</td>
</tr>
<tr>
<td>DUS Arrests</td>
<td>5</td>
<td>7</td>
<td>6</td>
<td>17%</td>
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<tr>
<td># Crime Reports</td>
<td>12</td>
<td>31</td>
<td>57</td>
<td>-46%</td>
</tr>
<tr>
<td># Alarms</td>
<td>36</td>
<td>75</td>
<td>66</td>
<td>14%</td>
</tr>
<tr>
<td># Arrests (Includes DUI's &amp; DUS's)</td>
<td>15</td>
<td>24</td>
<td>26</td>
<td>-8%</td>
</tr>
<tr>
<td>Citizen Assists</td>
<td>14</td>
<td>32</td>
<td>24</td>
<td>33%</td>
</tr>
<tr>
<td>Assist to Other Agency</td>
<td>12</td>
<td>26</td>
<td>20</td>
<td>40%</td>
</tr>
<tr>
<td>Property Checks (HW&amp;BLDG)</td>
<td>1916</td>
<td>4494</td>
<td>4148</td>
<td>8%</td>
</tr>
<tr>
<td>Crime Prevention Notices</td>
<td>3</td>
<td>5</td>
<td>5</td>
<td>0%</td>
</tr>
<tr>
<td>Field Interview Cards</td>
<td>1</td>
<td>5</td>
<td>12</td>
<td>-58%</td>
</tr>
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</table>
Cherry Hills Village Crime Statistics
YEAR-TO-DATE THROUGH February (2015-2019)

Theft / Mail Theft

<table>
<thead>
<tr>
<th>Year</th>
<th>Theft</th>
<th>Mail Theft</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015 YTD</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>2016 YTD</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>2017 YTD</td>
<td>8</td>
<td>5</td>
</tr>
<tr>
<td>2018 YTD</td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td>2019 YTD</td>
<td>21</td>
<td>6</td>
</tr>
</tbody>
</table>

Fraud Related Crimes

<table>
<thead>
<tr>
<th>Year</th>
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Theft from Motor Vehicle

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Criminal Mischief

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Burglary

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## Cherry Hills Village
### Code Enforcement Statistics
#### February 2019

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### Year To Date
- **On View Violations**: 50%
- **Requests for Service**: 15%
- **Various Code Violations**: 9%
- **Right of Way & Site Triangle Violations**: 41%
- **Construction Violations**: 5%

### Year to Date
- **Warning & Personal Contacts**: 98%
- **Notice of Violations**: 2%
- **Summons Issued**: 0%
Cherry Hills Village
Animal Control Statistics
February 2019

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![Year to Date](image1)

- Educational Contacts: 34%
- Summons Issued: 25%
- Wildlife Complaints: 66%

![Year to Date](image2)

- Verbal Warnings: 100%
- Written Warnings: 0%
- Summons Issued: 0%

![Year to Date](image3)

- Control of Dogs: 25%
- Barking Dogs: 75%
- Aggressive Dogs: 0%
MEMORANDUM

TO: HONORABLE MAYOR STEWART AND MEMBERS OF THE CITY COUNCIL
FROM: JAY GOLDIE, DEPUTY CITY MANAGER/DIRECTOR OF PUBLIC WORKS
SUBJECT: PUBLIC WORKS FEBRUARY 2019-MONTH END REPORT
DATE: MARCH 19, 2019

The streets crew spent most of February addressing snow and ice removal. The maturing trees throughout the City have caused significant ice issues as the trees now shade many of the streets. In addition, as the snow continues to accumulate many residents and/or their contractors are moving the snow from their driveways onto City Streets causing additional ice buildup. This has become a recurring problem in some neighborhoods that will need to be addressed in the future. The crew applied 150 tons of salt and sand.

In addition to snow removal the crew conducted gravel road maintenance in the Annex and on Parkway, Cherry and Middle Road. Potholes were repaired on Quincy at Little Dry Creek and Dahlia and Oxford. The crew performed sweeping throughout the City with 24 tons of material being swept up. Street sign replacement and repair continued through February. Staff continues to focus on a safe work environment by attending safety training throughout the year.

The parks crew also responded to snow removal on City trails. The crew continued to perform maintenance tasks including trail sweeping, citywide trash pick-up, stump grinding, shop work and organization, fence repair and maintenance on City Parks, Trails and Open Space. Parks staff continued to perform tree pruning and watering in John Meade Park, Woodie Hollow Park, Alan Hutto and the Annex.

The City issued 4 right-of-way permits in February bringing the total number of permits issued to 12 for 2019.

ATTACHMENTS –

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<th>Week 9</th>
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### MATERIALS

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# 2019 Right-of-Way Permits
## Monthly Report

### January 2019

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<tr>
<th>Utility Work</th>
<th>Driveway Install/Repair</th>
<th>Vehicle Tracking Pad</th>
<th>Occupancy</th>
<th>Parks/Trails</th>
<th>Landscape</th>
<th>Major Jobs</th>
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<th>Parks/Trails</th>
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<td>UTILITY WORK</td>
<td>DRIVEWAY INSTALL/REPAIR</td>
<td>VEHICLE TRACKING PAD</td>
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<td>MAJOR JOBS</td>
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| NOVEMBER 2019 |
|               |
| UTILITY WORK  | DRIVEWAY INSTALL/REPAIR | VEHICLE TRACKING PAD | OCCUPANCY | PARKS/ TRAILS | LANDSCAPE | MAJOR JOBS | TOTAL PERMITS |
|               |                          |                      |           |               |           |            | 0            |

<table>
<thead>
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