BOULDER CITY COUNCIL MEETING
COUNCIL CHAMBERS, 1777 Broadway
December 2, 2014
6 PM

AGENDA

1. **CALL TO ORDER AND ROLL CALL**

   A. Recognition of Open Space and Mountain Parks Director Mike Patton

   B. Solar Friendly Communities Designation

   C. Items Relating to the Certification of the 2014 Special Municipal Coordinated Election held on November 4, 2014

2. **OPEN COMMENT** and **COUNCIL/STAFF RESPONSE** (limited to 45 min.) Public may address any city business for which a public hearing is not scheduled later in the meeting (this includes the consent agenda and first readings). After all public hearings have taken place any remaining speakers will be allowed to address council. All speakers are limited to three minutes.

3. **CONSENT AGENDA** (to include first reading of ordinances) Vote to be taken on the motion at this time. Roll Call vote required.

   A. Consideration of a motion to **accept** the October 28, 2014 **study session summary on the Access Management and Parking Study and** provision of **information regarding parking revenues and expenses and downtown garage utilization**

   B. Consideration of a motion to **authorize the City Manager** to enter into **intergovernmental agreements** with Boulder County and Colorado Department of Transportation for the provision of construction and maintenance the **US 36 bikeway** and the **US 36 Davidson Mesa Scenic Overlook.**

   C. Council consideration of a **Resolution No. 1148 approving** and adopting amendments to the **Beverage Licensing Authority Rules of Procedure**.

   D. Third Reading and consideration of a motion to **adopt** and order published by title only **Ordinance No. 7957 amending** Title 2, "Government Administration," Chapter 7, "**Code Of Conduct**," B.R.C. 1981 and setting forth related details.

   E. Second reading and consideration of a motion to **adopt** Ordinance No. 8014 approving **supplemental appropriations to the 2014 Budget**; and

   Consideration of a motion to adjourn from the Boulder City Council and convene as the Central Area General Improvement District Board of Directors

F. Consideration of a motion to adopt R**esolution No. 270 amending the 2014 Downtown Commercial District Fund** (formerly CAGID Fund) Budget; and

Consideration of a motion to adjourn from the CAGID Board of Directors and reconvene as the Boulder City Council.

G. Introduction, **first reading** and consideration of a motion to order published by title only O**rdinance** No. 8018 amending Title 9, "Land Use Code," B.R.C. 1981, **to create** an **additional method of property valuation** for the determination of whether proposed work on a property triggers upgrades to lighting, landscaping, site access and non-conforming drive throughs under the Land Use Code.

H. Introduction, **first reading** and consideration of a motion to order published by title only O**rdinance** No. 8019 amending **Emergency** Ordinance No. 7985 **to correct the legal description** for the annexation area of the property at **2130 Tamarack Avenue**.

I. Introduction, first reading, order to publish by title only and consideration of **Emergency Ordinance** No. 8020 amending Chapter 6-16, B.R.C. 1981, amending Sections 6-16-2 "Definitions," and 6-16-3 "License Required" **to extend the time for medical marijuana businesses to convert to recreational marijuana** businesses from December 31, 2014 to March 31, 2015.

J. Introduction, **first reading** and consideration of a motion to order published by title only Ordinance No. 8021 **amending the cable television franchise agreement** between the City of Boulder and Comcast of Colorado IV, LLC, to **extend the term of the agreement by 120 days**.

K. Consideration of the following **items related to the annexation** and initial zoning **of** the properties identified as **1950 Riverside Drive, 4415 Garnet Lane, 1085 Gapter Road, 2200 Emerald Road, 2350 Norwood Avenue, and 2140 Tamarack Avenue**:

1. A resolution finding the annexation petition for each property in compliance with state statutes and establishing January 20, 2015 as the date for a public hearing; and

2. Introduction, first reading and consideration of a motion to order published by title only, six ordinances annexing the properties with an initial zoning as follows:

Resolution 1149
Ordinance No. 8022

a. 1950 Riverside Dr.
Proposed Zoning: Residential-Estate
Applicant/Owner: Seana Grady

Resolution 1150
Ordinance No. 8023

b. 4415 Garnet Ln. and a portion of the Garnet Lane right-of-way
Proposed Zoning: Residential-Estate
Applicant/Owner: Frank Alexander

Resolution 1151
Ordinance No. 8024

c. 1085 Gapter Rd.
Proposed Zoning: Residential-Rural 2
Applicant/Owner: Silvano and Elvira Deluca

Resolution 1152
Ordinance No. 8025

d. 2200 Emerald Rd.
Proposed Zoning: Residential-Rural 1
Applicant/Owner: Stephen and Amy Carpenter

Resolution 1153
Ordinance No. 8026

e. 2350 Norwood Av.
Proposed Zoning: Residential-Estate
Applicant/Owner: Norwood Garden, LLC

Resolution 1154
Ordinance No. 8027

f. 2140 Tamarack Av.
Proposed Zoning: Residential-Estate
Applicant/Owner: Stephen Tebo

4. **POTENTIAL CALL UP CHECK IN**
Opportunity for Council to indicate possible interest in the call-up of an item listed under agenda Item 8-A1.

5. **PUBLIC HEARINGS**

A. Second reading and consideration of a motion to adopt **Ordinance No. 8010 to rezone** the property located at **5400 Spine Road**, from Industrial – General to **Business Community-2**, consistent with the Boulder Valley Comprehensive Plan land use designation of Community Business.

B. Consideration of the following items related to Open Space Property:

1) Consideration of a motion to **approve the disposal of 11 noncontiguous, paved parcels of Open Space land to the** City of Boulder **Transportation Department for** the purpose of **electric bicycle use** as a means of alternate transportation. This is a disposal of Open Space land pursuant to Article XII, Section 177, of the Boulder City Charter.
2) Discussion of the process for identifying Open Space uses and disposal of Open Space lands.

6. **MATTERS FROM CITY MANAGER**

A. Request from Council Direction Regarding EcoPasses

7. **MATTERS FROM CITY ATTORNEY**

   A. Consideration of a motion to amend the Council Rules of Procedure to add a new Section XVII Executive Sessions.

8. **MATTERS FROM MAYOR AND MEMBERS**

   A. Potential Call Ups
   B. Mayor Pro Tem Election
   C. Meeting Management
   D. Kauffman Foundation Report from Council Member Karakehian

9. **PUBLIC COMMENT ON MATTERS** (15 min.)
   Public comment on any motions made under Matters.

10. **FINAL DECISIONS ON MATTERS** Action on motions made under Matters.

11. **DEBRIEF** (5 Min.) Opportunity for Council to discuss how the meeting was conducted.

12. **ADJOURNMENT**

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CITY OF BOULDER
CITY COUNCIL AGENDA ITEM

MEETING DATE: December 2, 2014

AGENDA TITLE:
Items relating to the certification of the 2014 Special Municipal Coordinated Election held on November 4, 2014:

1. Motion to convene as the General Canvassing and Election Board for the City of Boulder General Municipal Election.

2. Roll Call of the General Canvassing and Election Board.

3. Administration of oath and signing of same by Board members.

4. Consideration of a motion nominating a member to chair the Board.

5. Submission to the Board by the Secretary of the following:

   i. Certificate of the official ballot.
   ii. Certificates of the official Public Notice of the November 4, 2014 Election.
   iii. Certificate of election returns.

6. Public Hearing

7. Consideration of a motion that the abstract and result sheets be approved and signing of same, if approved.

8. Motion to adjourn from the General Canvassing and Election Board for the General Municipal Election and reconvene as the Boulder City Council.

PRESENTER/S
Jane S. Brautigam, City Manager
Alisa D. Lewis, City Clerk and Director of Support Services/Secretary of the General Canvassing and Election Board

EXECUTIVE SUMMARY

Charter Section 32 provides for the certification of election results. The City Council shall serve as the General Canvassing and Election Board. The City Clerk/Secretary for the General Canvassing and Election Board will present the Board with all official election documents for review and signature. After conducting a public hearing, the board shall consider a motion approving the abstract of votes and shall sign the official documents.

STAFF RECOMMENDATION

Suggested Motion Language:
Staff requests the General Canvassing and Election Board's consideration of this matter and action in the form of the following motion:

Motion language:

Move to approve the official abstract and result sheets from the 2014 Special Municipal Coordinated Election held on November 4, 2014.

ATTACHMENT:

A. Certificate of election returns
(documents will be distributed to council at the meeting on December 2)

CITY OF BOULDER
CITY COUNCIL AGENDA ITEM

MEETING DATE: December 2, 2014

AGENDA TITLE: Consideration of a Motion to Accept the Study Session Summary on the Access Management and Parking Study from October 28, 2014 and provision of information about Parking Revenues and Expenses and Downtown Garage Utilization.

PRESENTERS:
Jane S. Brautigam, City Manager
Maureen Rait, Executive Director, Public Works
Tracy Winfree, Director, Public Works for Transportation
David Driskell, Director, Community Planning and Sustainability
Molly Winter, Director, Downtown and University Hill Management Division and Parking Services (DUHMD/PS)
Susan Richstone, Deputy Director, Community Planning and Sustainability
Lesli Ellis, Comprehensive Planning Manager
Michael Gardner-Sweeney, Transportation Planning and Operations Coordinator
Kathleen Bracke, GO Boulder Manager, Public Works Transportation
Chris Hagelin, Senior Transportation Planner, GO Boulder
Jay Sugnet, Senior Planner, Community Planning and Sustainability

EXECUTIVE SUMMARY

This agenda item provides a summary of the October 28, 2014 study session on the Access and Management Parking Strategy.

The purpose of the study sessions was to request council feedback on the following:

1. Best practices and innovations research conducted as part of the Access Management and Parking Strategy (AMPS) project;
2. Transportation Demand Management (TDM) policies for new development; and
3. Ongoing work plan items related to AMPS and next steps.

STAFF RECOMMENDATION

Suggested Motion Language:
Staff recommends Council consideration of the summary and action in the form of the following motion:

Motion to accept the October 28, 2014 study session summary on the Access Management and Parking Strategy.

Access Management and Parking Strategy

Study Session Summary
COUNCIL CHAMBERS
OCTOBER 28, 2014

PRESENT
City Council: Matt Applebaum, Macon Cowles, Suzanne Jones, George Karakehian, Lisa Morzel, Tim Plass, Andrew Shoemaker, Sam Weaver, Mary Young

Staff members: Jane S. Brautigam, City Manager; Molly Winter, Downtown and University Hill Management Division and Parking Services (DUHMD/PS) Director; Tracy Winfree, Director of Public Works for Transportation; Kathleen Bracke, GO Boulder Manager; Chris Hagelin, Senior Transportation Planner/GO Boulder; Kurt Matthews, Manager Parking Services; Eric Guenther, Assistant Parking Manager; Lesli Ellis, Comprehensive Planning Manager; Jay Sugnet, Senior Planner, Community Planning and Sustainability; Lane Landrith, Business Coordinator, DUHMD/PS.

STAFF PRESENTATION
Molly Winter presented an overview of Access Management and Parking Strategy that included the history of the project, how we got here, and a summary of community, board and commission engagement. Chris Hagelin presented an update on the work to-date on the Transportation Demand Management tool kit for new development.

Winter and Hagelin provided a project overview and update to City Council on the Access Management and Parking Strategy (AMPS) project emphasizing these key points:

- AMPS encompasses existing access and parking districts and programs as well as taking a citywide approach tailored to addressing existing and future needs of different areas throughout the community.
- AMPS includes exploring opportunities to improve managed parking and multimodal access for public and private parking areas, including both on and off-street, within existing districts and throughout the community.
- AMPS considers all modes of transportation – automobiles, transit, biking and walking.
- AMPS is an interdepartmental effort and supports the city's sustainability framework.

- City boards and commissions are involved and engaged providing valuable feedback and ideas throughout AMPS process.
- AMPS includes seven focus areas:
    - District Management (Existing & New Districts)
    - On & Off Street Parking
    - Technology
    - Transportation Demand Management
    - Parking Code Changes (Auto & Bike)
    - Parking Pricing
    - Enforcement
- Cultivating partnerships and on-going collaboration across city departments and with community stakeholders is key and will maximize co-benefits of AMPS outcomes with other integrated planning initiatives such as Transportation Master Plan, Climate Commitment, Economic Vitality plan, corridor plans, and upcoming update to the Boulder Valley Comprehensive Plan (BVCP).

AMPS is a multi-year project that integrates with existing city planning efforts and on-going programs and operations. Community engagement is an important aspect to ensure a breadth of input from residents, businesses, employers/employees and visitors. A communications and engagement strategy is ongoing.

The first phase of the project in 2014 includes best practices research, followed by policy analysis for all of the seven AMPS focus areas. Work will continue into 2015 on developing recommendations for short-term as well as long-range implementation strategies.

The outcome of AMPS will be a citywide access management and parking strategy that will be incorporated into planning, operations, projects and programs moving forward.

COUNCIL DISCUSSION

Specific feedback from individual Council members was provided in response to questions requested by staff:

1. **Does council have feedback regarding the best practices and innovation research? Is anything missing? And does Council have any initial guidance on policy questions for staff to bring back in 2015?**

Overall, Council was appreciative of all the research and felt this was a robust and thorough investigation to provide a basis for discussion.

Similar to the previous study session, Council is cautious about comparing Boulder to other cities, particularly cities with much more density and higher levels of transit service. Any policies will need to be tailored to Boulder and our current and planned land use patterns. In addition, there is a need to keep an eye on the implications of specific policies. Policies could reduce single occupant vehicle trips by eliminating all parking, but there are implications and tradeoffs. The community needs to push the envelope, and support achieving the master plan and

sustainability goals, though not go so far as do things that are detrimental to the city, the economy and mobility in the long run. It will be a balancing act.

Technology

- Questions were raised about the type of technology going in place at 30th and Pearl and whether or not this new technology was sufficient to track the information we need. Staff responded that the technology is appropriate for the purpose of tracking users of garage – RTD patrons, hotel users, district users, residents, etc.
- Currently the city does not have adequate data to provide real time data on parking availability downtown. AMPS is looking to update garage entry system data of vehicles going in and out to address this, as well as exploring a pilot with on-street parking sensors.

On and Off Street Parking

- Question was raised about the concept of edge (intercept) parking. Staff described edge parking as a shared parking located within mixed use development areas where people commuting in/out of Boulder can park and continue their trip either on bike, bus, or rideshare option. Edge parking can be co-located with mobility hubs and are not a traditional park and ride garage or a large parking lot. It is part of a mixed use area that will allow commuters to accomplish additional trips (errands, etc.) without a car and reduce the number of cars in the downtown or other core areas of the community.
- The Armory is one example where this concept is being explored. A private public partnership with CAGID would allow CAGID employees to park at the Armory and either bus or bike downtown. Again, not a park and ride, but integrated into a mixed use center to allow users to access the system and share parking – resident parking in the evening, commuter parking during the day. It will require exploring how to share, manage and unbundle parking that will work for developer, area residents and commuters.
- Mobility hubs are also being explored in North Boulder and along East Arapahoe. If done well, could help increase transit ridership and links with bicycling and rideshare/carshare options.
- The city has a history of considering changes to the 72-hour parking limit and additional work is needed. There is a need to balance neighborhood livability and promoting multimodal transportation. The 72 hour rule is also used as a defacto notice for special events or construction in commercial areas. Any change would need to separate residential from commercial applications.
- The consultant looked at lots of examples across the country and Boulder is middle of road in terms of the 72 hour time limit. The city could look at different standards for different areas (residential vs. commercial) and have one general policy with different rules for smaller parts of city.
- How do you use parking to create a sense of place? There are current examples of this technique (art in garages, farmers markets in the street and parking lots, public plazas or a park over a parking lot). A public art plan will be developed for the downtown garages.
- Need to ensure adequate parking and protection for bikes and bikes with trailers to encourage bike usage.

District Management

- The Best Practices report described an approach to neighborhood parking programs in Houston and Austin. How are those different from Boulder? The idea is to look at ways that residential and/or commercial districts can add managed parking. The purpose is to find efficiencies and consider how parking revenues derived from the area can benefit and support neighborhood programs or amenities.

2. What is council's input on the key aspects of Transportation Demand Management (TDM) Plan policies for new private developments?

Timeframe

- Many on Council expressed concern about the existing condition of temporary TDM plans for permanent projects and the lack of the ability to enforce TDM plans.
- Many expressed support for TDM plans that span longer than three years and several expressed support for a permanent requirements tied to the site.
- There was discussion about why it takes a project up to three years to comply with the TDM goals. Staff responded that it takes time for people to learn about all the TDM tools and change their travel behavior.

Thresholds

- Exempting small properties in aggregate seems problematic as numerous small developments could have a significant impact.

Indicators

- Vehicle trip generation and vehicle miles travelled seem to be the most important indicators that could be used at the primary measurable objectives for TDM plans, but interest was expressed in measuring average vehicle rates and single occupant vehicle mode share.

Escrow, fines, or a performance bond

- Many on Council supported fines or a performance bond, instead of an escrow account.
- Development costs already high, requiring additional upfront money will add to costs and be perceived as a penalty even if the developer/property manager is doing everything right.
- Appropriate levels of fines should be sufficient to change behavior and produce effective TDM Plans that meet objectives.

Eco-passes

- Eco-Pass programs are an important part of the TDM Plans and should be a required element in appropriate contexts.
- Strong interest for a community wide pass as a way to meet TDM Plan objectives and overall TMP goals.

General

- Important to get the mix of incentives right – it is always good to provide options.

- Need Transportation Management Organizations in more parts of the city. Currently, Boulder Transportation Connections (BTC) serves as the TMO for all Boulder businesses. BTC partners with DRCOG's Way to GO program and 36 Commuting Solutions provide services to Boulder employers and employees.
- Although the TDM toolkit is a good step to address impacts of new development, it does not address the big issues such as the large number of non-resident employees. AMPS needs to also address TDM programs for existing employment, commercial, and residential areas of the community. Staff indicated that the TDM Plans for new developments work is an early action item of the first phase of AMPS and TDM for existing properties will be the focus of the second phase.

3. Does council have any feedback regarding the on-going work plan items and next steps?

Council looks forward to making progress on AMPS and the next steps in each of the AMPS focus areas. In particular, once a TDM toolkit for private development is adopted, then working on requiring TDM for existing development should be a high priority.

The question of when surveys are deployed was discussed. Do we only do surveys on the nicest day of the year? How do you capture how weather affects mode share? Staff responded that surveys are usually done in the fall and staff are looking at developing a smart phone app that could track travel behavior throughout the year during designated times. People may even want to use it more often and to track travel behavior and their correlated GHG footprint.

A request was made for more information on parking revenue and spending to determine if the city is subsidizing parking in one form or another. Staff is preparing the data, but stated that the City does not subsidize parking. Parking generates funds for the city to maintain the parking system and to fund other programs including TDM and Business Improvement Districts, sponsorship events, etc. There is a distinction between the parking taxing districts where revenues are restricted, and on-street parking revenues and parking ticket fines which are city, general fund revenues and expenses. The city budget, organized by different funds, does not clearly communicate the total parking revenue and expenses. The bottom line is that parking and enforcement provide millions to general fund to pay for programs with nothing to do with parking or downtown. There is Council interest knowing if that is still accurate when the full costs of providing the services (plowing, maintenance, etc) is accounted for. (Please see attached memorandum for an explanation of the different categories of parking revenues and expenses as well as information about garage occupancy in the downtown.)

NEXT STEPS

A city staff workshop is scheduled for early January and staff will check in with boards and commissions in late January, the broader community in February and will return to Council in March/April 2015 to review the policy analysis, policy and program options, and next steps.

For more information, please visit: www.bouldercolorado.gov/amps

Memorandum

TO: City Council

FROM: Molly Winter, Director, Downtown and University Hill Management Division/Parking Service (DUHMD/PS)
Donna Jobert, Financial Manager, DUHMD/PS
Kurt Matthews, Parking Manager, DUHMD/PS
James Cho, Municipal Court

DATE: November 15, 2014

RE: Information Regarding Parking Revenues and Expenses and Downtown Garage Utilization

City Council recently requested information regarding parking revenues and expenses and downtown garage utilization. The information below provides a breakdown of the city of Boulder parking revenues and related expenses – on-street parking meters and kiosks, parking tickets and the Neighborhood Parking Permit program (NPP) – as well as the Central Area General Improvement District (CAGID) and the University Hill General Improvement District (UHGID). In addition, statistics and background information are provided regarding the occupancy of the five downtown (CAGID) garages.

BACKGROUND

It is clear that parking revenues more than cover the direct and indirect expenses of parking and provide a source of revenue to the general fund of the city. However, it is important to clarify that the primary reason for charging for parking and imposing fines on parking violations is to manage a very valuable resource and ensure a vital community. In the commercial areas, these strategies are essential to manage parking in order to promote turnover ensuring access to businesses and services within the commercial districts, as well as balancing the needs of short term visitor and employees. Parking pricing is also a factor in encouraging the use of other access modes other than the automobile – transit, biking and walking. In the neighborhood, parking pricing and enforcement play a slightly different role: ensuring neighborhood access and quality of life, through managing spillover parking from adjacent traffic generators such as commercial areas, high schools and universities.

In the downtown and on the hill, parking districts were formed in the early 1970's in these historic areas as a strategy to provide for parking access with minimal impact on the urban environment which was built before the automobile. These districts are general improvement taxing districts with funds dedicated to the specific purposes – in the downtown parking and parking related improvements, and on the hill parking and parking related improvements but also public space maintenance. These districts

have surface parking lots and garages that are district owned but are managed in coordination with the on-street parking which is owned by the city of Boulder to ensure the access and economic vitality of the commercial areas.

Parking in the city of Boulder is a component of an overall multi-modal access strategy and is managed based on the SUMP principles – shared, unbundled, managed and paid. A portion of general fund revenues from both districts is reinvested into the downtown and hill commercial area in a variety of ways including public space improvements and activities, multi-modal access including Eco Passes, bike parking and car share support.

PARKING REVENUES AND EXPENSES

Below are charts which present the revenues and expenses associated with city of Boulder and the districts parking accompanied by explanatory notes. The numbers presented below have been consolidated from the three financial funds within DUHMD/PS – the CAGID Fund, UHGID Fund and the General Fund. Each of the funds has miscellaneous revenues and expenses that are not included in the calculations. All figures are 2013 actuals.

General Fund Parking Revenues And Expenses 2013				
	On-street Kiosks &Meters	Enforcement	NPP	Total
Revenues:	$3,536,459	$2,212,943	$127,416	$5,876,818
Expenses:	$1,958,925	$1,071,356	$72,598	$3,102,879
Net:	$2,353,743	$1,141,587	$54,818	$2,773,939
Asphalt Maintenance	$43,200			

The balance of parking revenues less expenses in the areas of on-street meters and kiosks, enforcement and NPP totals $2,773,939 for allocation for other uses in the general fund. Council had asked for additional information regarding the upkeep and maintenance of the public streets in the areas of paid parking. After consultation with the Transportation, asphalt maintenance and replacement was the most significant expense that has a direct relationship to the area of the street used for parking which totals $43,200 annually.

Explanatory notes:

- NPP revenues and expenses do not include parking enforcement; expenses include both direct costs and a percentage of administrative costs. Periodically, funds are needed for parking studies to assess a neighborhood's parking in order to qualify for NPP designation.
- Administrative expenses are not included in the parking meter or enforcement revenues. The breakdown of expenses for enforcement is $834,156 DUHMD/PS and $237,200 Municipal Court.
- Estimated cost for asphalt maintenance is based on information from the Transportation and DUHMD/PS staff: Asphalt replacement every 10-12 years; 432,000 square feet of parking lane area based on 160 square feet per parking space with 2700 on-street parking spaces; annual cost of 10 cents per square foot.

- On-street meter expenses include parking operations and maintenance, program expenses within the fund such as Eco Passes, TDM funding, downtown capital and Business Improvement District funding and a percentage of administrative costs.

District Revenues and Expenses (CAGID & UHGID) 2013	
Revenues:	$7,847,095
Expenses:	$5,330,571
Balance:	$2,516,524

- Revenues include district property tax, parking revenues and associated district revenues such as the rental income from the garages and the tax increment revenue from 1000 Walnut.
- Expenses include operations and maintenance, CAGID debt ($1,008,000 for 1500 Pearl and $901,407 for 1000 Walnut), a percentage of administrative expenses and the TIF excess to the general fund.

CAGID Garage Utilization

CAGID owns and operates five downtown parking garages: 1500 Pearl, 11th & Spruce, Randolph Center, the garage at the RTD station and 1000 Walnut underneath the St. Julien hotel. The garage occupancy is tracked through the gate access system which is currently 15 years old, difficult to support and can be unreliable. Staff is working with a consultant on an RFP to replace the gate access system in 2015 as well as provide better coordination with the other parking technologies including permits.

Attached is a chart which tracks the average monthly occupancy year to date in three time segments. It is important to note since parking is free on Saturday and Sunday, there are not statistics for those two days. However, we receive feedback from customers, businesses and Downtown Boulder Inc. that certain garages can be full at certain times of the day and night.

As indicated in the occupancy charts, downtown parking demand and occupancy varies by time of day by season of the year and by garage. During 2014, average occupancy has varied from 98% to 21%. In 2013, Fox Tuttle Transportation Engineers averaged occupancy of all public parking – on-street, off-street, lots etc. to have an occupancy of 74%. All of the five garages accommodate short term (visitor, client, and customer) parking and long term permit (employee) parking. It is essential to maintain a balance of providing spaces for all users, each with their different cycle of demand.

Permit parking is oversold; that is to say more permits are sold than those allocated. Permits are sold to 98% of all the spaces. The utilization reflects the actual use of permit parkers – including days that employees are sick, on vacation or are taking other modes to work, part time workers and those working flexible schedules.

Staff closely monitors the parking occupancy in order to accommodate the short term demand at peak times. Peak times in the downtown cycle are May for CU graduation, August at the beginning of the school year and the Christmas holiday. Parking is managed in order to ensure adequate supply for these peak demand times that reflect events and activities in the downtown such as the Boulder International Film Festival, Fall Festival, etc.

Parking demand is closely tied to the economic health and vitality of downtown. During the downturn, there was a greater level of office vacancy (8.5%) and the wait list for permits was at an all time low of 113. In 2014, office vacancy is at 2.65% which increases both short and long term demand; the parking permit waitlist is currently 1,207. And, a recent trend in the increase of employees per square foot in technology and start up firms is also increasing demand. To accommodate increasing demand, parking punch cards which allow daily parking have increased.

Parking is one component of the multi modal access system which includes transit, bikes and walking. The 2014 Downtown Intercept Survey conducted this fall indicates that 56% arrived by car, 19% walked, 9% arrived by bus, 9% rode a bike and 9% other. The Downtown Employee Survey provides data regarding employee travel modes and is currently being conducted. Past surveys have indicated an alternative mode use by downtown employees as high as 64%.

For more information, please contact Molly Winter, winterm@bouldercolorado.gov.

ATTACHMENT
Attachment A: 2014 Downtown Garage Counts

Structure Counts-2014

Percent of full spaces - Monthly Average

For this chart, use the page per garage that is the entire month. Morning = open-noon

Afternoon = 1-5pm, Evening = 6-close

		1500 Pearl	RTD	Randolph	1100 Spruce	1000 Walnut
		J	G	E	F	D
Maximum Capacity		686	302	273	392	556
Jan	Morning	91%	62%	81%	73%	51%
	Afternoon	90%	56%	83%	77%	55%
	Evening	38%	21%	58%	55%	35%
Feb	Morning	96%	61%	82%	79%	55%
	Afternoon	97%	62%	86%	85%	58%
	Evening	47%	38%	62%	60%	43%
Mar	Morning	93%	61%	79%	76%	53%
	Afternoon	94%	63%	84%	87%	57%
	Evening	43%	25%	62%	61%	44%
April	Morning	95%	61%	77%	81%	54%
	Afternoon	98%	63%	84%	90%	58%
	Evening	48%	37%	64%	64%	44%
May	Morning	94%	64%	80%	56%	79%
	Afternoon	98%	67%	88%	61%	88%
	Evening	42%	25%	72%	50%	61%
June	Morning	95%	63%	80%	75%	54%
	Afternoon	98%	66%	86%	88%	58%
	Evening	40%	27%	71%	71%	45%
July	Morning	87%	66%	83%	82%	53%
	Afternoon	96%	72%	90%	93%	59%
	Evening	45%	47%	75%	63%	48%
Aug	Morning	83%	66%	81%	81%	54%
	Afternoon	88%	68%	89%	91%	60%
	Evening	41%	26%	74%	66%	52%
Sept	Morning	85%	65%	78%	80%	58%
	Afternoon	87%	68%	85%	85%	62%
	Evening	39%	26%	61%	63%	44%
Oct	Morning	86%	65%	80%	81%	56%
	Afternoon	89%	66%	86%	88%	60%
	Evening	39%	43%	63%	65%	47%
Nov	Morning					
	Afternoon					
	Evening					
Dec	Morning					
	Afternoon					
	Evening					

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CITY OF BOULDER
CITY COUNCIL AGENDA ITEM

MEETING DATE: December 2, 2014

AGENDA TITLE: Consideration of a motion to authorize the City Manager to enter into intergovernmental agreements for the provision of constructing and maintaining the US 36 bikeway and the US 36 Davidson Mesa Scenic Overlook

PRESENTERS

Jane S. Brautigam, City Manager
Maureen Rait, Executive Director of Public Works
Tracy Winfree, Director of Public Works for Transportation
Janet Michels, Assistant City Attorney
Molly Winter, Downtown and University Hill Management Districts/Parking Services
Mark Gershman, Open Space and Mountain Parks
Marni Ratzel, GO Boulder Senior Transportation Planner

EXECUTIVE SUMMARY

The purpose of this item is to request council support for entering into intergovernmental agreements (IGA) regarding the planned US 36 bikeway and Davidson Mesa Overlook improvements to be constructed as part of the US 36 Managed Lane project. Two IGAs are proposed regarding maintenance of the US 36 bikeway. The first of these IGAs, between the city and the Colorado Department of Transportation (CDOT), addresses construction and maintenance of the bikeway. The second IGA, between the city and Boulder County, concerns an agreement between the parties to share maintenance responsibility for the stretch of proposed bikeway within the City of Boulder and unincorporated Boulder County. The third IGA, between the city and the CDOT, covers maintenance of the Davidson Mesa scenic overlook. The Convention and Visitor Bureau (CVB), a contracted service of the City of Boulder would assume the local agency maintenance responsibilities detailed in this agreement.

STAFF RECOMMENDATION

Suggested Motion Language
Staff requests council consideration of this matter and action in the form of the Following motion:

Motion to authorize the City Manager to enter into intergovernmental agreements between the city and the Colorado Department of Transportation (CDOT) for the construction and maintenance and between the city and Boulder County to share maintenance responsibility for the US 36 bikeway; and between the city and the CDOT for the maintenance of the Davidson Mesa scenic overlook.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – The US 36 Managed Lane Project is a project of regional significance and estimated to generate 3,373 direct, construction related jobs and complete more than $427 million in improvements along the corridor. The estimated cost of bikeway component is $10.37 million.
- Environmental – From 2003 to 2009, CDOT and the Regional Transportation District (RTD), in partnership with the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA), studied multi-modal transportation improvements for the U.S. 36 corridor between Denver and Boulder in the U.S. 36 Environmental Impact Statement (EIS). The city has an interest in protecting this open space for the range of purposes described in the city charter. Issues with the potential for significant effects upon open space lands and values associated with design and maintenance of the bikeway will be addressed through the processes identified in the agreements. The city also has a significant interest in ensuring that the bikeway serves commuters who are both residents and employees of the City of Boulder to help reduce greenhouse gases and vehicle emissions associated with motor vehicle use. The bikeway maintenance agreements have been crafted to both protect open space values and promote use of the bikeway by commuters.
- Social – Maintaining the US 36 bikeway assures the reliability of the facility for use by residents and employees of Boulder as a viable and efficient transportation option.

OTHER IMPACTS

- Fiscal – As the bikeway is not yet designed or constructed, it is difficult to estimate the exact costs for routine maintenance. Snow removal and mowing are anticipated to be the most significant costs. Staff estimates the city's share of these costs to be in the range of $3,500 to $6,000 annually, and will be covered by existing Public Works Transportation Division funding.
- Staff time – The maintenance of the Bikeway will be integrated into the work plan of existing staff. No additional staffing is anticipated or requested at this time.

BACKGROUND
The U.S. 36 Managed Lane project was developed by the Colorado High Performance Transportation Enterprise, a Transportation Infrastructure Finance and Innovation Act (TIFIA) sponsor, in partnership with CDOT and the RTD. The project is part of RTD's FasTracks Program, a multi-billion dollar comprehensive transit expansion plan, in cooperation with Denver Regional Council of Governments (DRCOG), Colorado Bridge Enterprise (CBE), Broomfield, Westminster, Boulder, Boulder County, Louisville, Superior, Adams County, Jefferson County, and Burlington Northern Santa Fe Railway (BNSF).

In December 2009, the CDOT completed the US 36 Final EIS that described preferred alternative improvements to the corridor with estimated costs of more than $1 billion. According to the EIS, these improvements would be implemented in the future as funding became available. The Phase I U.S. 36 Record of Decision (ROD) documents the main elements in the Preferred Alternative:

- One buffer-separated managed lane in each direction;
- Bus Rapid Transit (BRT) ramp stations,;
- Auxiliary lanes between most interchanges; and
- A commuter bikeway.

In response to a request from the Boulder CVB, CDOT also has included design and construction of visitor amenities and improvements of the Davidson Mesa scenic overlook.

CDOT has requested that all local agencies along the corridor take responsibility for routine maintenance of the bikeway within their jurisdictions, while CDOT will construct as well as perform all major reconstruction of the commuter bikeway. CDOT also is seeking a local agency to assume maintenance responsibilities of the planned improvements for the Davidson Mesa scenic overlook. The Boulder CVB worked closely with CDOT on the proposed improvements and has committed to take responsibility for overlook maintenance. CDOT policy requires that an Intergovernmental Agreement (IGA) be executed prior to construction of the bikeway and overlook components of the project.

Attachment A is the IGA between CDOT and the City of Boulder for maintenance of US 36 Bikeway. Exhibits A and C of the IGA depict the bikeway corridor and portion proposed to be the city's responsibility. In addition to outlining maintenance practices of each party, the IGA will authorize construction of the bikeway. CDOT will require the Design Build contractor to warranty the bikeway for a period of no less than two years. CDOT will conduct a final walk through of the bike path with the local agency prior to CDOT's final acceptance of the bike path and prior to the start of the warranty period. CDOT will require the Design Build Contractor to address all issues identified by the local agency as a result of the final walk through prior to CDOT's acceptance of the bike Ppath and the start of the warranty period, provided that such issues are consistent with the requirements of the final Design Build Plan.

As the planned alignment of the bikeway crosses both incorporated and unincorporated lands, the city and Boulder County propose to enter into an IGA to divide CDOT-assigned local agency maintenance responsibility equally. This IGA is detailed as **Attachment B**.

Attachment C is the IGA between CDOT and the city of Boulder for maintenance of the Davidson Mesa Overlook. It details CDOT's commitment to be responsible for the routine and capital maintenance of the roadway/ramp including the parking lane. As the local agency, the City of Boulder will be responsible for routine and capital maintenance for all pedestrian and visitor amenity improvements including the information kiosk, benches and sidewalk.

ANALYSIS

Bikeway construction and maintenance

The EIS included the construction of an 18-mile long, 12-foot wide multi-purpose bikeway adjacent to U.S. Highway 36 (U.S. 36). This new bikeway will allow commuters to travel easily from Boulder to Westminster by bicycle or walking. The U.S. 36 Bikeway will also connect to existing bicycle facilities previously constructed along the highway corridor.

While only one mile of the 18 mile bikeway is adjacent to lands within the city limits, almost three miles of bikeway are adjacent to city of open space land, which extend beyond the city limit into unincorporated Boulder County. The city and county Transportation Divisions are interested in working collaboratively to cost-share the maintenance responsibilities 50 / 50 along the three miles within our respective jurisdictions. The city and county together with other local agencies along the corridor are defining uniform maintenance practices and minimum levels of service to ensure a consistent user experience along the regional bikeway. Specific routine maintenance such as snow removal, mowing and sweeping may be contracted jointly by the local agencies to ensure continuity and reduce costs.

Davidson Mesa Overlook

The Davidson Mesa Overlook provides iconic and panoramic westward views of the city and the Indian Peaks . The overlook offers the opportunity for the thousands of tourists who stop on their way to Rocky Mountain National Park to enjoy a sweeping vista of Boulder and to learn about the many attractions within the city. The CVB will provide maps and brochures at the kiosk to encourage visitors to stop and enjoy Boulder on their way to the park. During the high season (May – October) the CVB distributes approximately 2,000 to 2,500 Boulder brochures and maps monthly. At other time of the year, it distributes closer to 300-500 brochures per month. The kiosk is stocked multiple times each week to ensure that materials are available.

The CVB maintenance responsibilities will be included in the annual City of Boulder contract with the CVB including but not limited to kiosk structure, benches, signs, bike

racks, trash receptacles, and retaining walls. The 2015 contract will be finalized by the end of this year.

NEXT STEPS

Should City Council support the staff recommendation, the IGAs will be executed by the City Manager. The city will continue to work with local agencies along the corridor to maximize the potential for a consistent user experience and minimize maintenance costs through a coordinated effort, as appropriate.

US 36 Express Lanes project is being constructed in two phases. Construction on segment 1 began in summer 2012. The reconstruction of US 36 from Federal Boulevard to 88th Street in Louisville/Superior is anticipated to be complete in late 2015. Segment 2 will continue the managed lanes, Bus Rapid Transit and U.S. 36 Bikeway from 88th Street to Table Mesa Road. CDOT began a design/build contract to reconstruct this segment in 2013. It is estimated that construction of the entire project will be complete by early, 2016. More information about the project can be found in **Attachment D**.

ATTACHMENTS

Attachment A – Intergovernmental agreement between the City of Boulder and the Colorado Department of Transportation concerning the construction and maintenance of that portion of the US 36 Bikeway in Boulder

Attachment B – Intergovernmental agreement between the City of Boulder and Boulder County for the maintenance of bikeway improvements along US 36 between Table Mesa Drive and the Top of Davidson Mesa

Attachment C - Intergovernmental agreement between the City of Boulder and the Colorado Department of Transportation concerning the maintenance of the Davidson Mesa scenic overlook

Attachment D – US 36 Managed Lane Project Fact Sheet

(Maintenance)
Regional Transportation District
REGION 1 - wma

SAP # 331000514

FOR CDOT TRACKING PURPOSES (subject to change).

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made this ___ day of _____ 20___, by and between the State of Colorado for the use and benefit of the COLORADO DEPARTMENT OF TRANSPORTATION ("State" or "CDOT"), and the City of Boulder ("Local Agency"), PO Box 791, Boulder, CO, 80306, CDOT Vendor #: 2000011.

This Agreement shall not be effective or enforceable until it is approved and signed by the Governor or his designee ("Effective Date").

RECITALS

1. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.

2. The parties desire to enter into this Agreement to delineate each ones responsibilities for maintenance of the US 36 bikeway and bikeway facility as part of the US 36 Managed Lane Project detailed in **Exhibits A and C**;

3. For the purposes of this contract, "Bikeway" shall be defined as the facility constructed as part of the US 36 Managed Lane Project through various jurisdictions which include all supporting infrastructure designed and constructed to support the function of the bike path including but not limited to signage, irrigation, culverts, landscaping and other infrastructure intended to enhance the operation and safety of the intended use of the bike path. "Bike Path" shall be defined as that portion of the Bikeway facility constructed as part of the US 36 Managed Lane Project that is within the Jurisdiction of the Local Agency.

4. The State and the Local Agency have the authority, as provided in Sections 29-1-203, 43-1-106, 43-2-103, 43-2-104, and 43-2-144 CRS, as amended, and in applicable ordinance or resolution duly passed and adopted by the Local Agency, to enter into this Agreement with the Local Agency for the purpose of maintaining a bikeway along a US highway system as hereinafter set forth;

5. The Local Agency has the resources to perform the desired maintenance on the bikeway within its jurisdiction;

6. The US 36 Managed Lane Project has been cleared environmentally via the US 36 EIS Phase 1 Record of Decision (ROD) signed December 2009, and will be funded with local, state, TIFIA loan, and federal-aid dollars; and

7. Per the ROD signed December 2009 the Project will provide a bikeway facility adjacent to US 36 connecting Boulder and Denver. Maintenance of the US 36 bikeway will be the responsibility of the local jurisdictions through an Intergovernmental Agreement with CDOT **.**

THE PARTIES NOW AGREE THAT:

Section 1. Scope of Work

The Local Agency will maintain the bike path partially within its jurisdiction along the US 36 corridor as such bike path is generally depicted on Exhibit C and as such bike path is within the geographical boundaries of the Local Agency, which bike path is hereinafter referred to as the "Bike Path." The Bike Path is a portion of the bikeway that is part of the US 36 Express Lanes, NH 0361-103 (18907) described in **Exhibits A and C**, and is hereinafter referred to as the "Bikeway."

Section 2. CDOT Commitments

1. CDOT will construct, at its own expense, the Bikeway, including the Bike Path, along the reconstructed section of the US 36 corridor to provide a continuous commuter bikeway by connecting to or using existing facilities along the corridor. CDOT shall consider the Local Agency's comments concerning the draft design build plan for the Bike Path. CDOT's construction of the Bike Path will be in accordance with a final design build plan for the Bike Path that is approved by CDOT (hereinafter referred to as the "Bike Path Plan"), and such construction shall include all requirements of the Bike Path Plan, including all fences, railings, wildlife barriers, landscaping, signage, electrical fixtures, and striping as set forth in the Bike Path Plan. CDOT will provide a dedicated power source for all electrical fixtures required by the Bike Path Plan.

2. CDOT, at its own expense, will acquire all property necessary to build the Bike Path, by acquiring fee simple title or a permanent public access easement allowing for the Bike Path, including legal authorization for the Local Agency or its employees, representatives, contractors or sub-contractors to access the Bike Path to fulfill the Local Agency's obligations under this Agreement.

3. In the event that safety concerns are identified along the commuter Bikeway, including the Bike Path, CDOT will partner with the local jurisdictions to identify the appropriate response to maintain a safe and functional commuter Bikeway. CDOT will perform at its own expense, all improvements determined to be Capital improvements and the local jurisdiction will perform at its own expense all activities determined to be routine maintenance.

4. CDOT will perform at its own expense, all major reconstructions to the commuter bikeway facility. CDOT will perform major reconstruction of the commuter bikeway facility only after funding for the improvement has been identified and obtained.

5. CDOT will perform, at its own expense, routine inspection and all maintenance of any structure constructed for grade separation along the Bike Path.

6. CDOT will conduct a final walk through of the Bike Path with the Local Agency prior to CDOT's final acceptance of the Bike Path and prior to the start of the warranty period. CDOT will require the Design Build Contractor to address all issues identified by the Local Agency as a result of such final walk through prior to CDOT's acceptance of the Bike Path and the start of the warranty period, provided that such issues are consistent with the requirements of the final Design Build Plan. CDOT will require the Design Build contractor to warrant the Bike Path and commuter bikeway facility for a period of no less than two years. CDOT shall be responsible for enforcing all warranty obligations of the Design Build Contractor for the Bike Path, including repairs of the Bike Path as required by the agreement between CDOT and the Design Build Contractor and the final Design Build Plan. CDOT shall respond in writing to the Local Agency's written notice of warranty issues during the 2-year warranty period within 5 business days and will work cooperatively diligently with the Local Agency to resolve any issues. The warranty period will begin from the time of the Bike Path's final acceptance by CDOT.

7. CDOT shall perform all of its duties and obligations hereunder in accordance with all applicable law.

Section 3. Local Agency Commitments

A. The Local Agency will:

1. Permit CDOT to connect newly constructed segments of the US 36 commuter Bikeway to the South Boulder Creek trail and Table Mesa Drive to provide a continuous commuter bikeway along the reconstructed section of the corridor in those sections where it is not feasible to construct a new bikeway with the project as agreed upon by the Parties. This includes, but is not limited to, modifying the signage and striping of the facility to accommodate the commuter bikeway.

B. The Local Agency shall perform at its own expense, all routine maintenance activities necessary to maintain a safe and functional commuter bikeway within their jurisdiction. Routine maintenance activities to be performed by the Local Agency under this Agreement shall not include any warranty obligations or major reconstruction obligations or capital improvements that are the obligations of CDOT pursuant to the terms of this Agreement. Routine maintenance activities to be performed by the Local Agency under this Agreement shall be performed in accordance with the Local Agency's standard bike path maintenance procedures and shall include, but not be limited to the following:

1. Keeping the Bike Path free from obstructions and impediments that may interfere with bicycle and pedestrian traffic, including sand and debris;, signing, striping and electrical lighting fixtures installed along the Bike Path, including for that portion of the commuter Bike Path facility that crosses or is adjacent to a public street or highway and repair of damaged pavement slabs and subgrades to the extent that such repair is not an obligation of the Design Build Contractor or CDOT as a warranty obligations or a major reconstruction obligation or capital improvement obligation of CDOT.

2. Snow removal (snow plowing) along the Bike Path.

3. Mowing, tree and shrub upkeep; repair of damaged Bike Path delineation; removal of graffiti from Bike Path pavement, structures and signage; and maintaining and repairing safety fences and railings associated with the commuter Bike Path.

4. Stormwater management and water quality responsibilities related to the Bike Path as follows:

   Maintain stormwater management facilities and structures including inlets, storm sewer pipes, ditches, drainage facilities intended to reduce, detain, convey, and manage stormwater runoff on the Bike Path, “drainage facilities,” and facilities intended to provide water quality benefits, “water quality facilities,” only as such facilities are associated with the Bike Path, hereinafter referred to as the "Bike Path Stormwater Facilities." Maintenance of the Bike Path Stormwater Facilities shall include routine inspection, sediment removal and repair of the Bike Path Stormwater Facilities as necessary, consistent with the Local Agencies standard procedures. This maintenance obligation for Bike Path Stormwater Facilities does not include any roadway storm water quality ponds constructed as part of this project, regardless of whether such roadway facility is combined with or impacts the Bike Path Stormwater Facilities.

5. Maintain irrigation

   The infrastructure intended to control, measure, deliver and direct irrigation water, to the degree such facilities are affected by the Bike Path. These facilities include but are not limited to irrigation canals, ditches, laterals, pipes and culverts, irrigations headgates, flumes, gages or other water measurement structures and/or devices. Maintenance of the Bike Path irrigation facilities shall include routine inspection, sediment removal and repair as necessary consistent with the Local Agency’s standard procedures.

Section 4. Term and Termination Provisions

1. This Agreement shall be in effect only after it is executed by both Parties. The Maintenance obligations of the Local Agency under this Agreement shall commence on the date of the final written acceptance of the Bike Path by CDOT and will remain in effect until this Agreement is terminated in accordance with the requirements of this Section 4 and both Parties agree to terminate

2. Termination for Cause. If, through any cause, either Party shall fail to fulfill its obligations under this Agreement, or if either Party shall violate any of the covenants, agreements, or stipulations of this Agreement, either Party shall thereupon have the right to terminate this Agreement for cause by giving written notice to the other Party of its intent to terminate and giving at least thirty (30) days opportunity to cure the default or show cause why termination is otherwise not appropriate.

Section 5. Legal Authority

The Local Agency warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that

authority, and to lawfully authorize its undersigned signatory to execute this Agreement and to bind the Local Agency to its terms. The person(s) executing this Agreement on behalf of the Local Agency warrants that such person(s) has full authorization to execute this Agreement.

Section 6. Representatives and Notice

The State will provide liaison with the Local Agency through the State's Region Director, Region 6, 2000 South Holly Street, Denver, Colorado 80222. Said Region Director will also be responsible for coordinating the State's activities under this Agreement and will also issue a "Notice to Proceed" to the Local Agency for commencement of the Work. All communications relating to the day-to-day activities for the work shall be exchanged between representatives of the State's Transportation Region 6 and the Local Agency. All communication, notices, and correspondence shall be addressed to the individuals identified below. Either party may from time to time designate in writing new or substitute representatives.

If to State:

Mark Gosselin
CDOT Project Manager
500 Eldorado, Suite 2301
Broomfield, Colorado 80021
(303) 404-7020

If to the Local Agency:

Tracy Winfree
City of Boulder
P.O. Box 791
Boulder, Colorado 80306
(303) 441-3200

Section 7. Successors

Except as herein otherwise provided, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 8. Governmental Immunity

Notwithstanding any other provision of this Agreement to the contrary, no term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, CRS, as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of §24-10-101, *et seq*., CRS, as now or hereafter amended and the risk management statutes, §§24-30-1501, *et seq*., CRS, as now or hereafter amended.

Section 9. Severability

To the extent that this Agreement may be executed and performance of the obligations of the parties may be accomplished within the intent of the Agreement, the terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

Section 10. Waiver

The waiver of any breach of a term, provision, or requirement of this Agreement shall not be construed or deemed as a waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision or requirement.

Section 11. Modification and Amendment

A. This Agreement is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this Agreement on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this Agreement shall be effective unless agreed to in writing by both parties in an amendment to this Agreement that is properly executed and approved in accordance with applicable law.

B. Either party may suggest renegotiation of the terms of this Agreement, provided that the Agreement shall not be subject to renegotiation more often than annually, and that neither party shall be required to renegotiate. If the parties agree to change the provisions of this Agreement, the renegotiated terms shall not be effective until this Agreement is amended/modified accordingly in writing.

Section 12. Disputes

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement will be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of the Department of Transportation. In connection with any appeal proceeding under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of the Agreement in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals will be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this Agreement, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

Section 13. Does not supersede other agreements

This Agreement is not intended to supersede or affect in any way any other agreement (if any) that is currently in effect between the State and the Local Agency for other "maintenance and operations services" on State Highway rights-of-way within the jurisdiction of the Local Agency. Also, the

Local Agency shall also continue to perform, at its own expense, all such activities/duties (if any) on such State Highway rights-of-ways that the Local Agency is required by applicable law to perform.

Section 14. Sub-Local Agencies

The Local Agency may subcontract for any part of the performance required under this Agreement, subject to the Local Agency first obtaining approval from the State for any particular Sub-local Agency. The State understands that the Local Agency may intend to perform some or all of the services required under this Agreement through a Sub-local Agency. The Local Agency agrees not to assign rights or delegate duties under this Agreement [or subcontract any part of the performance required under the Agreement] without the express, written consent of the State [which shall not be unreasonably withheld]. Except as herein otherwise provided, this agreement shall inure to the benefit of and be binding only upon the parties hereto and their respective successors and assigns.

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SPECIAL PROVISIONS

Section 15. The Special Provisions apply to all Agreements except where noted in *italics*

1. CONTROLLER'S APPROVAL. **CRS §24-30-202(1)**. This Agreement shall not be valid until it has been approved by the Colorado State Controller or designee.

2. FUND AVAILABILITY. **CRS §24-30-202(5.5)**. Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. GOVERNMENTAL IMMUNITY. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

4. INDEPENDENT LOCAL AGENCY. Local Agency shall perform its duties hereunder as an independent Local Agency and not as an employee. Neither Local Agency nor any agent or employee of Local Agency shall be deemed to be an agent or employee of the State. Local Agency and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Local Agency or any of its agents or employees. Unemployment insurance benefits will be available to Local Agency and its employees and agents only if such coverage is made available by Local Agency or a third party. Local Agency shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. Local Agency shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Local Agency shall **(a)** provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, **(b)** provide proof thereof when requested by the State, and **(c)** be solely responsible for its acts and those of its employees and agents.

5. COMPLIANCE WITH LAW. Local Agency shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

6. CHOICE OF LAW. Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Agreement, to the extent capable of execution.

7. BINDING ARBITRATION PROHIBITED. The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contact or incorporated herein by reference shall be null and void.

8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00. State or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Local Agency hereby certifies and warrants that, during the term of this Agreement and any extensions, Local Agency has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Local Agency is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

9. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. **CRS §§24-18-201 and 24-50-507**. The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. Local Agency has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Local Agency's services and Local Agency shall not employ any person having such known interests.

10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4. [Not Applicable to intergovernmental agreements] *Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for:* ***(a)*** *unpaid child support debts or child support arrearages;* ***(b)*** *unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.;* ***(c)*** *unpaid loans due to the Student Loan Division of the Department of Higher Education;* ***(d)*** *amounts required to be paid to the Unemployment Compensation Fund; and* ***(e)*** *other unpaid debts owing to the State as a result of final agency determination or judicial action.*

11. PUBLIC AGREEMENTS FOR SERVICES. CRS §8-17.5-101. [Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] *Local Agency certifies, warrants, and agrees that it does not knowingly employ or Agreement with an illegal alien who will perform work under this Agreement and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Local Agency shall not knowingly employ or Agreement with an illegal alien to perform work under this Agreement or enter into an Agreement with a sub-Local Agency that fails to certify to Local Agency that the sub-Local Agency shall not knowingly employ or Agreement with an illegal alien to perform work under this Agreement. Local Agency* ***(a)*** *shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed,* ***(b)*** *shall notify the sub-Local Agency and the contracting State agency within three days if Local Agency has actual knowledge that a sub-Local Agency is employing or contracting with an illegal alien for work under this Agreement,* ***(c)*** *shall terminate the subcontract if a sub-Local Agency does not stop employing or contracting with the illegal alien within three days of receiving the notice, and* ***(d)*** *shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Local Agency participates in the Department program, Local Agency shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Local Agency has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Local Agency fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this Agreement for breach and, if so terminated, Local Agency shall be liable for damages.*

12. PUBLIC AGREEMENTS WITH NATURAL PERSONS. CRS §24-76.5-101. Local Agency, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she **(a)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(b)** shall comply with the provisions of CRS §24-76.5-101 et seq., and **(c)** has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Agreement.

THE PARTIES HERETO HAVE EXECUTED THIS INTERGOVERNMENTAL AGREEMENT

*** Persons signing for The Local Agency hereby swear and affirm that they are authorized to act on The Local Agency's behalf and acknowledge that the State is relying on their representations to that effect.**

LOCAL AGENCY:

City of Boulder
Legal Name of Contracting Entity

2000011
CDOT Vendor Number

_____
Signature of Authorized Officer

_____
Print Name & Title of Authorized Officer

STATE OF COLORADO:
JOHN W. HICKENLOOPER, GOVERNOR

_____
By: Timothy J. Harris, PE, Chief Engineer
For Donald E. Hunt, Executive Director,
Colorado Department of Transportation

Date: _____

LOCAL AGENCY:
(A Local Agency attestation is required.)

Attest (Seal) By_____
(Town/City/County Clerk)

(Place Local Agency seal here, if available)

EXHIBIT A

SCOPE OF WORK

The US 36 Managed Lane Project ("Project") was developed by the Colorado High Performance Transportation Enterprise (TIFIA sponsor) in partnership with the Colorado Department of Transportation (CDOT) and the Regional Transportation District (RTD). The Project is part of RTD's FasTracks Program, a multi-billion dollar comprehensive transit expansion plan, in cooperation with Denver Regional Council of Governments (DRCOG), Colorado Bridge Enterprise (CBE), City and County of Broomfield, City of Westminster, City of Boulder, Boulder County, City of Louisville, Town of Superior, Adams County, Jefferson County, and Burlington Northern Santa Fe Railway (BNSF).

In addition to those duties and responsibilities of CDOT set forth in the Agreement, including those duties and responsibilities required by Section 2 of the Agreement, the primary responsibilities of CDOT are as follows:

- Partner with the US 36 Mayors and Commissioners Coalition and seek input from all affected jurisdictions along the US 36 corridor regarding implementation of the Project.
- Perform Preliminary Engineering work which includes: survey, preparation of ROW plans, developing preliminary design plans, ROW purchase and construction.
- Perform general administration and supervision of Performance of the Project, including entering into a Design-Build Agreement for both design and Construction of the Project, and the administration of federal funds, state funds, and Local Agency funds. CDOT shall perform, as required, project inspection and testing.
- Provide Project funding
- Approving sources of materials.
- Perform required plant and shop inspections
- Documentation of Agreement payments
- Preparing and approving pay estimates
- Preparing, approving, and securing the funding for Agreement modification orders and minor Agreement revisions.
- Processing Agreement or claims.
- Construction supervision.
- Overseeing Quality Control activities and meeting requirements of the FHWA/CDOT Stewardship Agreement.
- Monitor completed bikeway improvements for deficiencies and maintenance during the project 2-year warranty period.

The multi-modal, toll integrated US 36 Managed Lane Project will include the following major construction activities and project elements:

The primary responsibilities of CDOT are as follows:

EXHIBIT A

- Partner with the US 36 Mayors and Commissioners Coalition and seek input from all affected jurisdictions along the US 36 corridor regarding implementation of the Project.
- Perform Preliminary Engineering work which includes: survey, preparation of ROW plans, developing preliminary design plans, ROW purchase and construction.
- Perform general administration and supervision of Performance of the Project, including entering into a Design-Build contract for both design and Construction of the Project, and the administration of federal funds, state funds, and Local Agency funds. CDOT shall perform, as required, project inspection and testing.
- Provide Project funding
- Approving sources of materials.
- Perform required plant and shop inspections
- Documentation of contract payments
- Preparing and approving pay estimates
- Preparing, approving, and securing the funding for contract modification orders and minor contract revisions.
- Processing contractor claims.
- Construction supervision.
- Overseeing Quality Control activities and meeting requirements of the FHWA/CDOT Stewardship Agreement.
- Monitor completed bikeway improvements for deficiencies and maintenance during the project 2-year warranty period.

The multi-modal, toll integrated US 36 Managed Lane Project will include the following major construction activities and project elements:

- Reconstruct and widen US 36 to accommodate a new buffer-separated managed lane in each direction of US 36
- Reconstruct gore points (areas where ramps exit or join the main highway) at interchange ramps to tie to widened U.S. 36 and to accommodate queue bypass lanes at on-ramps. Existing Bus Rapid Transit (BRT) facilities on the ramps will be maintained.
- Construct retaining walls and sound walls.
- Replacement of the Wadsworth Parkway, Wadsworth Boulevard, and Lowell Boulevard bridges
- Reconstruct portions of the Wadsworth Parkway interchange.
- Install Intelligent Transportation Systems for tolling, transit information, and incident management. Toll systems installation and integration will be provided by others.
- Construction of portions of a commuter bikeway along the reconstructed section of the corridor and to provide a continuous commuter bikeway along the reconstructed section of the corridor by connecting to or using existing facilities along the corridor.
- Implement an appropriate transportation demand management (TDM) program

The Colorado Department decided to pursue a design build contractor to deliver the project. The

EXHIBIT A

design build contract between CDOT and the Design-Build contractor will define the project elements as follows:

- Basic Configuration which includes minimum acceptable elements to be constructed in the project
- CDOT will identify Additional Requested Elements (A.R.E.s) to maximize construction of elements with the funding available. Within the maximum project funding amount, the Design-Build contractor may propose to construct all or portions of the A.R.E.s.

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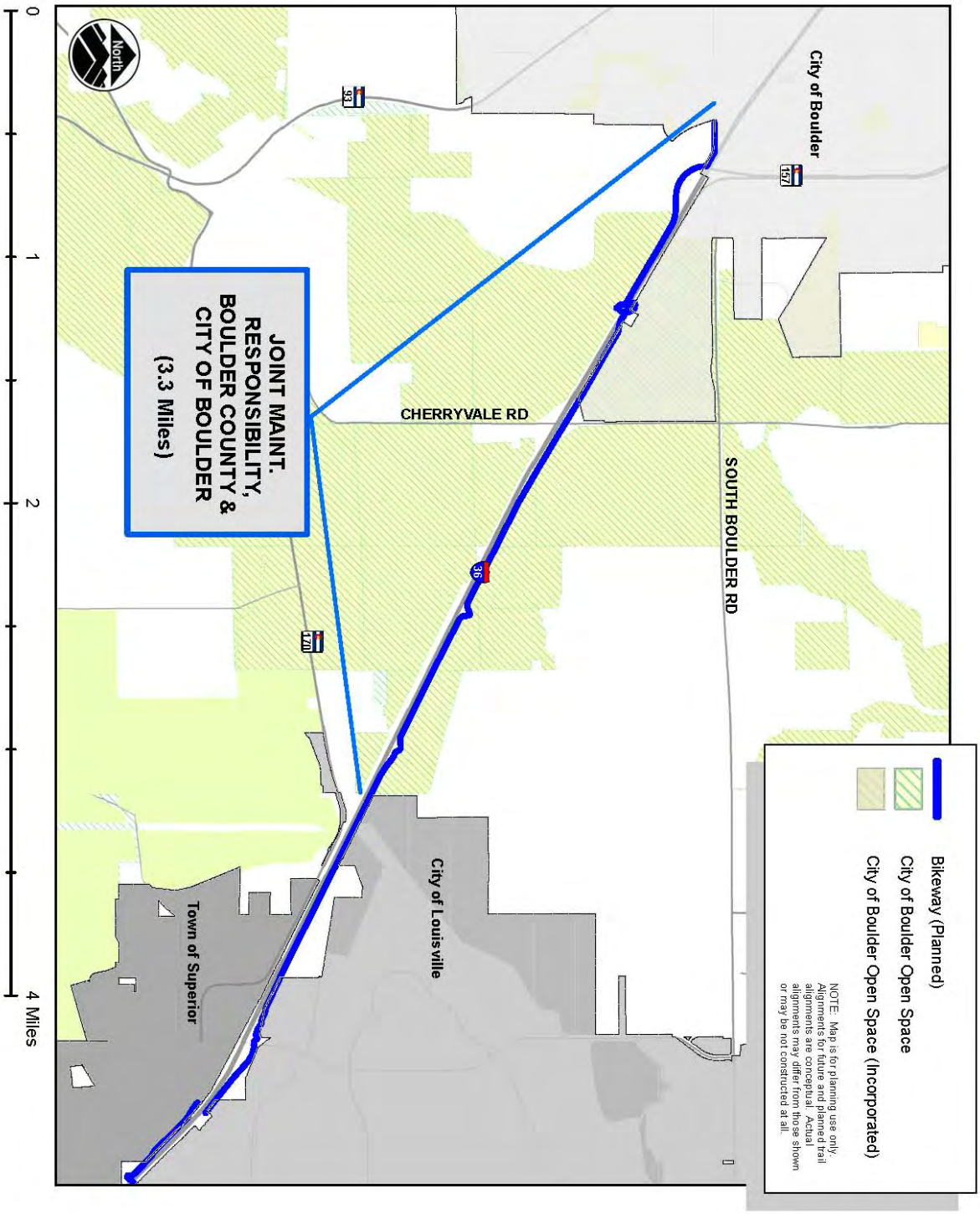
EXHIBIT B (NOT APPLICABLE)

LOCAL AGENCY ORDINANCE or RESOLUTION

EXHIBIT C – MAP

EXHIBIT C- MAP



Boulder County
DRAFT
11/18/2014

INTERGOVERNMENTAL AGREEMENT FOR MAINTENANCE OF BIKEWAY IMPROVEMENTS ALONG U.S. HIGHWAY 36 BETWEEN TABLE MESA ROAD AND THE TOP OF DAVIDSON MESA

THIS INTERGOVERNMENTAL AGREEMENT FOR MAINTENANCE OF BIKEWAY IMPROVEMENTS ALONG U.S. HIGHWAY 36 BETWEEN TABLE MESA ROAD AND THE TOP OF DAVIDSON MESA (this "**Agreement**") is entered into this _____ day of _____, 2013, by and between the CITY OF BOULDER (the "**City**"), a Colorado home rule municipality, and BOULDER COUNTY, a political subdivision of the State of Colorado, (the **"County**"), collectively referred to herein as the "Parties."

RECITALS

WHEREAS, the parties are authorized to enter into this Agreement pursuant to C.R.S. §29-1-201 et seq.; and

WHEREAS, the Colorado Department of Transportation is planning to design/build Bikeway improvements along U.S. Highway 36 (the "**Bikeway**") and has requested all local agencies along the corridor to take responsibility for day-to-day maintenance of the Bikeway; and

WHEREAS, the planned alignment of the Bikeway is difficult to assign responsibility as it crosses a mixture of both incorporated and unincorporated lands; connects to multiple city facilities; and serves residents and visitors of both the City of Boulder and unincorporated Boulder County; and

WHEREAS, the design/build process makes it difficult to ascertain the exact nature of and extent of the maintenance needs and costs for the Bikeway;

NOW, THEREFORE, in consideration of the mutual covenants below, and other good and valuable consideration, the receipt of which is acknowledged, the Parties agree to the following terms:

TERMS AND CONDITIONS

1. The Recitals set forth above are incorporated herein and made a part of this Agreement.

2. **Exhibit A**, which consists of one (1) 8-1/2" x 11" drawing, depicts the most current proposed alignment for the Bikeway.

3. The City and the County agree that maintenance responsibility for the stretch of proposed bikeway displayed in Exhibit A, shall be divided in such a manner that both cost and responsibility are evenly split between the two entities for this specific stretch of Bikeway.

   a. Specifics of how these are to be split will be worked out in a subsequent agreement to be completed at such a time as where the overall maintenance needs of the Bikeway are specifically identified and before the Bikeway is open to the public;

Boulder County
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11/18/2014

b. This agreement shall be sufficient support for both the City and the County to sign the required Maintenance Cost Agreement with the Department of Transportation stating that the bikeway as shown in Exhibit "A" is the joint responsibility of both the City and the County;

4. Any notices or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to either Party by the other Party, shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the representative to whom it is addressed or in lieu of such personal services, upon receipt in the United States mail, first-class postage prepaid, addressed to the following:

City of Boulder: City of Boulder
Transportation
PO Box 791
Boulder, Colorado 80303
Attn: Tracy Winfree

Boulder County: Boulder County Transportation
PO Box 471
Boulder, CO, 80306
Attn: George Gerstle

Either Party may change its address for the purpose of this paragraph by giving written notice of such change to the other Party in the manner provided in this paragraph.

5. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the Parties that any person other than Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

6. Neither the City nor the County may assign this Agreement or parts hereof or its duties hereunder without the express written consent of the other Party.

7. This Agreement may be amended or modified only in writing signed by both Parties.

8. This Agreement constitutes the entire agreement between the Parties relating to the Work Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force and effect.

9. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, with venue in Boulder County for any litigation related to this Agreement.

10. Each party agrees to be responsible for its own negligent actions or omissions and those of its officers, agents and employees in the performance or failure to perform work under this Agreement. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provisions of this Agreement, nor shall such waiver constitute a

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11/18/2014

continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

11. Nothing herein shall be construed as a waiver of the rights and privileges of the City or the County under the Colorado Governmental Immunity Act, § 24-10-101, *et seq*., C.R.S.

12. No officer, member, or employee of Boulder County, and no members of its governing body, and no other public official or employee of the governing body of the locality or localities included within the Colorado Department of Transportation, during his or her tenure or for one year thereafter, shall have any interest, direct or indirect, in this Agreement, or the proceeds thereof.

13. The City and the County agree that in connection with the performance of this Agreement, they will each maintain an environment free from discrimination. To that end, each shall comply with any applicable federal, state and/or local law or regulation regarding non-discrimination, affirmative action, and/or disadvantaged business enterprises.

Boulder County
DRAFT
11/18/2014

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

CITY OF BOULDER:

By:_____

Jane S. Brautigam, City Manager

ATTEST:

_____

City Clerk on behalf of the
Department of Finance and Record

APPROVED AS TO FORM:

_____

City Attorney

COUNTY OF BOULDER, STATE OF COLORADO COUNTY:

_____

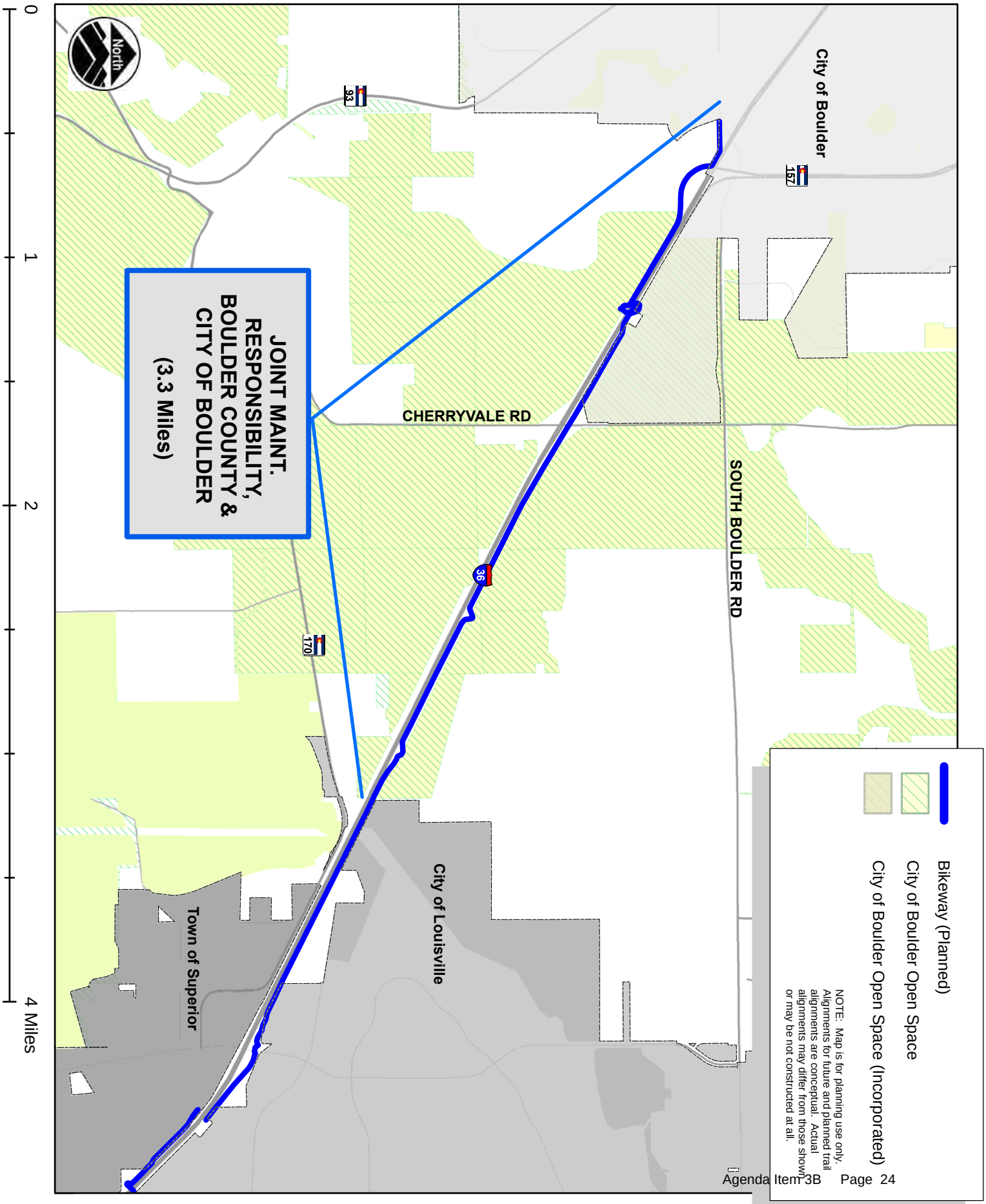
Cindy Domenico, Chair, Board of County Commissioners

ATTEST:

_____

Mike Ryder, Clerk to the Board of Commissioners

EXHIBIT A - MAP



SAP # 331000513

FOR CDOT TRACKING PURPOSES (subject to change).

(Maintenance)
REGION 1 -wma

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made this ___ day of _____ 2014, by and between the State of Colorado for the use and benefit of the COLORADO DEPARTMENT OF TRANSPORTATION ("State" or "CDOT"), and the City of Boulder ("Local Agency"), 1739 Broadway, Boulder, CO, 80306, CDOT Vendor #: 2000011. .

This Agreement shall not be effective or enforceable until it is approved and signed by the Governor or his designee ("Effective Date").

RECITALS

1. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.

2. The parties desire to enter into this Agreement to delineate each one's responsibilities for maintenance of the US 36 Scenic Overlook (approximate US 36 mile marker 41.9);

3. The State and the Local Agency have the authority, as provided in Sections 29-1-203, 43-1106, 43-2-103, 43-2-104, and 43-2-144 CRS, as amended, and in applicable ordinance or resolution duly passed and adopted by the Local Agency, to enter into this Agreement with the Local Agency for the purpose of maintaining the Scenic Overlook along a US highway system as hereinafter set forth;

4. The Local Agency has the resources to perform the desired maintenance on the Scenic Overlook;

5. The US 36 Managed Lane Project has been cleared environmentally via the US 36 EIS Phase 1 Record of Decision (ROD) signed December 2009, and will be funded with local, state, TIFIA loan, and federal-aid dollars; and

THE PARTIES NOW AGREE THAT:

Section 1. Scope of Work

The Local Agency will maintain the improved Scenic Overlook. The improvements are a part of the US 36 Express Lanes, HPTE-SW01-49 (20062) described in **Exhibits A and C**, and is hereinafter referred to as the "Project."

Section 2. CDOT Commitments

1. Pavement Maintenance
    a. Routine and capital maintenance of the off/on ramp pavement surface and striping, including the parking lane.
    b. Snow and Ice removal of off/on ramp pavement surface, including the parking lane.
2. CDOT shall perform all of its duties and obligations hereunder in accordance with all applicable law.

Section 3. Local Agency Commitments

1. The Local Agency will:
    a. Be responsible for any maintenance costs associated with the concrete sidewalk
    b. Be responsible for any routine or capital maintenance costs associated with the aesthetic treatment enhancements (including, but not limited to, kiosk, kiosk structure, benches, signs, bike racks, trash receptacles retaining walls)

2. The Local Agency shall perform, at its own expense, maintenance activities necessary to maintain a safe and functional Scenic Overlook. Routine maintenance activities to be performed by the Local Agency under this contract shall include, but not be limited to, the following:
    a. Maintenance of Landscaping
    b. Routine or capital maintenance of all sidewalks, including snow and ice removal.
    c. Routine or capital maintenance of the aesthetic treatment enhancements (including, but not limited to, kiosk, benches, signs, retaining walls)
    d. Routine maintenance of stone terraced walls, including graffiti removal
    e. Keeping the Scenic Overlook free from obstructions that may interfere with bicycle, pedestrian, and automotive traffic, including sand and debris, and repair of damaged concrete slabs and subgrades.
    f. Mowing, tree and shrub upkeep; repair of walls and structures; removal of graffiti (shall be performed in accordance with the Local Agencies

policies and procedures).

g. Removing trash and debris

Section 4. Term and Termination Provisions

1. This Agreement shall be in effect only after it is executed by both Parties. The Maintenance obligations of the Local Agency under this Agreement shall commence on the date of the final written acceptance of the Scenic Overlook by CDOT and will remain in effect until this Agreement is terminated in accordance with the requirements of this Section 4 and both Parties agree to terminate

Termination for Cause. If, through any cause, either Party shall fail to fulfill its obligations under this Agreement, or if either Party shall violate any of the covenants, agreements, or stipulations of this Agreement, either Party shall thereupon have the right to terminate this Agreement for cause by giving written notice to the other Party of its intent to terminate and giving at least thirty (30) days opportunity to cure the default or show cause why termination is otherwise not appropriate.

Section 5. Legal Authority

The Local Agency warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement and to bind the Local Agency to its terms. The person(s) executing this Agreement on behalf of the Local Agency warrants that such person(s) has full authorization to execute this Agreement.

Section 6. Representatives and Notice

The State will provide liaison with the Local Agency through the State's Region Director, Region 1, 2000 South Holly Street, Denver, Colorado 80222. Said Region Director will also be responsible for coordinating the State's activities under this Agreement and will also issue a "Notice to Proceed" to the Local Agency for commencement of the Work. All communications relating to the day-to-day activities for the work shall be exchanged between representatives of the State's Transportation Region 6 and the Local Agency. All communication, notices, and correspondence shall be addressed to the individuals identified below. Either party may from time to time designate in writing new or substitute representatives.

If to State:	If to the Local Agency:
Mark Gosselin	Jane Brautigam
CDOT Project Manager	City of Boulder
2000 South Holly Street	1777 Broadway
Denver, Colorado 80222	Boulder, Colorado 80302
(303) 404-7020	303-441-3090

Section 7. Successors

Except as herein otherwise provided, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 8. Governmental Immunity

Notwithstanding any other provision of this Agreement to the contrary, no term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, §24-10101, *et seq.*, CRS, as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of §24-10-101, *et seq.*, CRS, as now or hereafter amended and the risk management statutes, §§24-30-1501, *et seq.*, CRS, as now or hereafter amended.

Section 9. Severability

To the extent that this Agreement may be executed and performance of the obligations of the parties may be accomplished within the intent of the Agreement, the terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

Section 10. Waiver

The waiver of any breach of a term, provision, or requirement of this Agreement shall not be construed or deemed as a waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision or requirement.

Section 11. Modification and Amendment

A. This Agreement is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this Agreement on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this Agreement shall be effective unless agreed to in writing by both parties in an amendment to this Agreement that is properly executed and approved in accordance with applicable law.

B. Either party may suggest renegotiation of the terms of this Agreement, provided that the Agreement shall not be subject to renegotiation more often than annually, and that neither party shall be required to renegotiate. If the parties agree to change the provisions of this Agreement, the renegotiated terms shall not be effective until this Agreement is amended/modified accordingly in writing.

Section 12. Disputes

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement will be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of the Department of Transportation. In connection with any appeal proceeding under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of the Agreement in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals will be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this Agreement, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

Section 13. Does not supersede other agreements

This Agreement is not intended to supersede or affect in any way any other agreement (if any) that is currently in effect between the State and the Local Agency for other "maintenance and operations services" on State Highway rights-of-way within the jurisdiction of the Local Agency. Also, the Local Agency shall also continue to perform, at its own expense, all such activities/duties (if any) on such State Highway rights-of-ways that the Local Agency is required by applicable law to perform.

Section 14. Sub-Local Agencies

The Local Agency may subcontract for any part of the performance required under this Agreement, subject to the Local Agency first obtaining approval from the State for any particular Sub-local Agency. The State understands that the Local Agency may intend to perform some or all of the services required under this Agreement through a Sub-local Agency. The Local Agency agrees not to assign rights or delegate duties under this Agreement [or subcontract any part of the performance required under the Agreement] without the express, written consent of the State [which shall not be unreasonably withheld]. Except as herein otherwise provided, this agreement shall inure to the benefit of and be binding only upon the parties hereto and their respective successors and assigns.

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SPECIAL PROVISIONS

Section 15. The Special Provisions apply to all Agreements except where noted in *italics*

1. **CONTROLLER'S APPROVAL**. **CRS §24-30-202(1)**. This Agreement shall not be valid until it has been approved by the Colorado State Controller or designee.

2. **FUND AVAILABILITY**. **CRS §24-30-202(5.5)**. Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. **GOVERNMENTAL IMMUNITY**. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

4. **INDEPENDENT LOCAL AGENCY**. Local Agency shall perform its duties hereunder as an independent Local Agency and not as an employee. Neither Local Agency nor any agent or employee of Local Agency shall be deemed to be an agent or employee of the State. Local Agency and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Local Agency or any of its agents or employees. Unemployment insurance benefits will be available to Local Agency and its employees and agents only if such coverage is made available by Local Agency or a third party. Local Agency shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. Local Agency shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Local Agency shall **(a)** provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, **(b)** provide proof thereof when requested by the State, and **(c)** be solely responsible for its acts and those of its employees and agents.

5. **COMPLIANCE WITH LAW**. Local Agency shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

6. **CHOICE OF LAW**. Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Agreement, to the extent capable of execution.

7. **BINDING ARBITRATION PROHIBITED.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contact or incorporated herein by reference shall be null and void.

8. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00**. State or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Local Agency hereby certifies and warrants that, during the term of this Agreement and any extensions, Local Agency has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Local Agency is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

9. **EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST**. **CRS §§24-18-201 and 24-50-507**. The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. Local Agency has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Local Agency's services and Local Agency shall not employ any person having such known interests.

10. ***VENDOR OFFSET***. ***CRS §§24-30-202 (1) and 24-30-202.4***.*[**Not Applicable to intergovernmental agreements**] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(a)** unpaid child support debts or child support arrearages; **(b)** unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; **(c)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(d)** amounts required to be paid to the Unemployment Compensation Fund; and **(e)** other unpaid debts owing to the State as a result of final agency determination or judicial action.*

11. PUBLIC AGREEMENTS FOR SERVICES. ***CRS §8-17.5-101***.*[**Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services**] Local Agency certifies, warrants, and agrees that it does not knowingly employ or Agreement with an illegal alien who will perform work under this Agreement and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Local Agency shall not knowingly employ or Agreement with an illegal alien to perform work under this Agreement or enter into an Agreement with a sub-Local Agency that fails to certify to Local Agency that the sub-Local Agency shall not knowingly employ or Agreement with an illegal alien to perform work under this Agreement. Local Agency **(a)** shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed, **(b)** shall notify the sub-Local Agency and the contracting State agency within three days if Local Agency has actual knowledge that a sub-Local Agency is employing or contracting with an illegal alien for work under this Agreement, **(c)** shall terminate the subcontract if a sub-Local Agency does not stop employing or contracting with the illegal alien within three days of receiving the notice, and **(d)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Local Agency participates in the Department program, Local Agency shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Local Agency has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Local Agency fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this Agreement for breach and, if so terminated, Local Agency shall be liable for damages.*

12. PUBLIC AGREEMENTS WITH NATURAL PERSONS. CRS §24-76.5-101. Local Agency, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she **(a)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(b)** shall comply with the provisions of CRS §24-76.5-101 et seq., and **(c)** has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Agreement.

THE PARTIES HERETO HAVE EXECUTED THIS INTERGOVERNMENTAL AGREEMENT

*** Persons signing for The Local Agency hereby swear and affirm that they are authorized to act on The Local Agency's behalf and acknowledge that the State is relying on their representations to that effect.**

LOCAL AGENCY:

City of Boulder

_____
Legal Name of Contracting Entity

STATE OF COLORADO: JOHN W. HICKENLOOPER, GOVERNOR

_____
By: Joshua Laipply, PE, Chief Engineer For
Donald E. Hunt, Executive Director,
Colorado Department of Transportation

Date: _____

CDOT Vendor Number

_____
Signature of Authorized Officer

_____
Print Name & Title of Authorized Officer

LOCAL AGENCY:
(A Local Agency attestation is required.)

Attest (Seal) By _____

(Town/City/County Clerk) **(Place Local Agency seal here, if available)**

EXHIBIT A

SCOPE OF WORK

The Colorado Department of Transportation (CDOT) and the High Performance Transportation Enterprise (HPTE) selected Plenary Roads Denver as the Concessionaire for Phase 2 of the US 36 Express Lanes Project between 88th Street and Table Mesa, which will complete improvements to the entire US 36 corridor between Denver and Boulder. The project is CDOT's first public-private partnership (P3), an innovative partnership where the public and private sectors team together to provide transportation improvements and services to the traveling public. CDOT and HPTE have entered into a 50-year agreement with Plenary Roads Denver who will:

- Construct Phase 2 of the US 36 corridor, including:
    - Constructing an Express Lane in each direction of US 36 between 88th Street and Table Mesa for Bus Rapid Transit (BRT), High Occupancy Vehicles (HOV) and tolled Single Occupancy Vehicles (SOV);
    - Reconstruction two general purpose lanes in each direction between 88th Street and Table Mesa
    - Widening the highway to accommodate 12-foot-wide inside and outside shoulders;
    - Replacing the Coal Creek Bridge and rehabilitating and widening the South Boulder Creek bridge and widening the McCaslin Boulevard bridge to accommodate a diverging diamond interchange;
    - Adding Bus Rapid Transit (BRT) improvements, including new electronic display signage at stations and bus priority improvements at ramps. The improvements also will allow buses to operate on the shoulders of US 36 between interchanges to decrease bus travel time;
    - Installing Intelligent Transportation Systems (ITS) for tolling, transit and traveler information, and incident management;
    - Installing a separate commuter bikeway along the rest of the corridor; and
    - Improving the RTD station at McCaslin Boulevard.
    - Operate and maintain the entire US 36 corridor along with the I-25 Express Lanes between downtown Denver and US 36
- Partner with the US 36 Mayors and Commissioners Coalition and seek input from all affected jurisdictions along the US 36 corridor regarding implementation of the Project.
- Perform Preliminary Engineering work which includes: survey, preparation of ROW plans, developing preliminary design plans, ROW purchase and construction.

EXHIBIT A

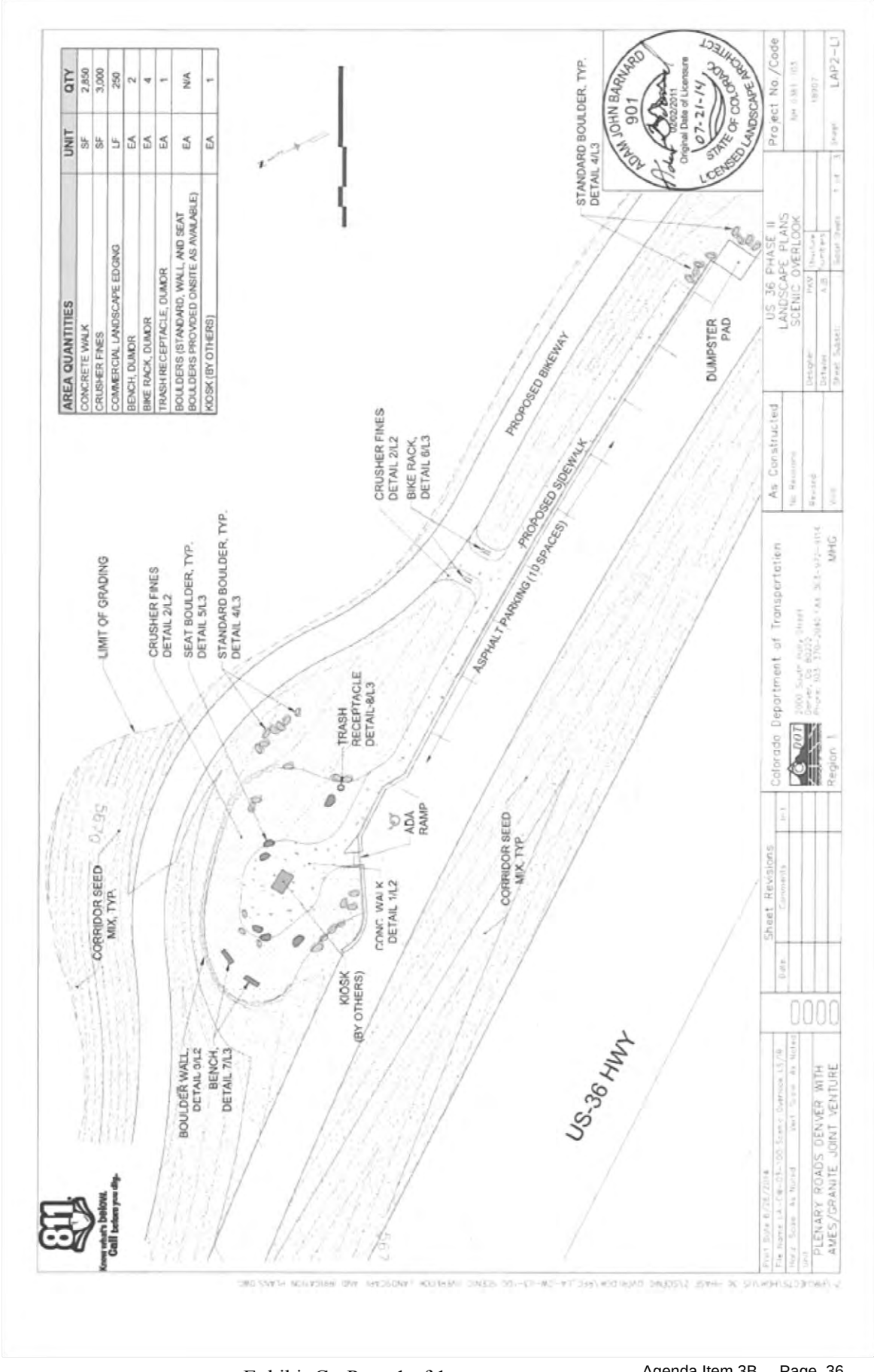
- Perform general administration and supervision of Performance of the Project, including entering into a Design-Build contract for both design and Construction of the Project, and the administration of federal funds, state funds, and Local Agency funds. CDOT shall perform, as required, project inspection and testing.
- Provide Project funding
- Approving sources of materials.
- Perform required plant and shop inspections
- Documentation of contract payments
- Preparing and approving pay estimates
- Preparing, approving, and securing the funding for contract modification orders and minor contract revisions.
- Processing contractor claims.
- Construction supervision.
- Overseeing Quality Control activities and meeting requirements of the FHWA/CDOT Stewardship Agreement.
- Monitor completed bikeway improvements for deficiencies and maintenance during the project 2-year warranty period.

EXHIBIT B (NOT APPLICABLE)

LOCAL AGENCY

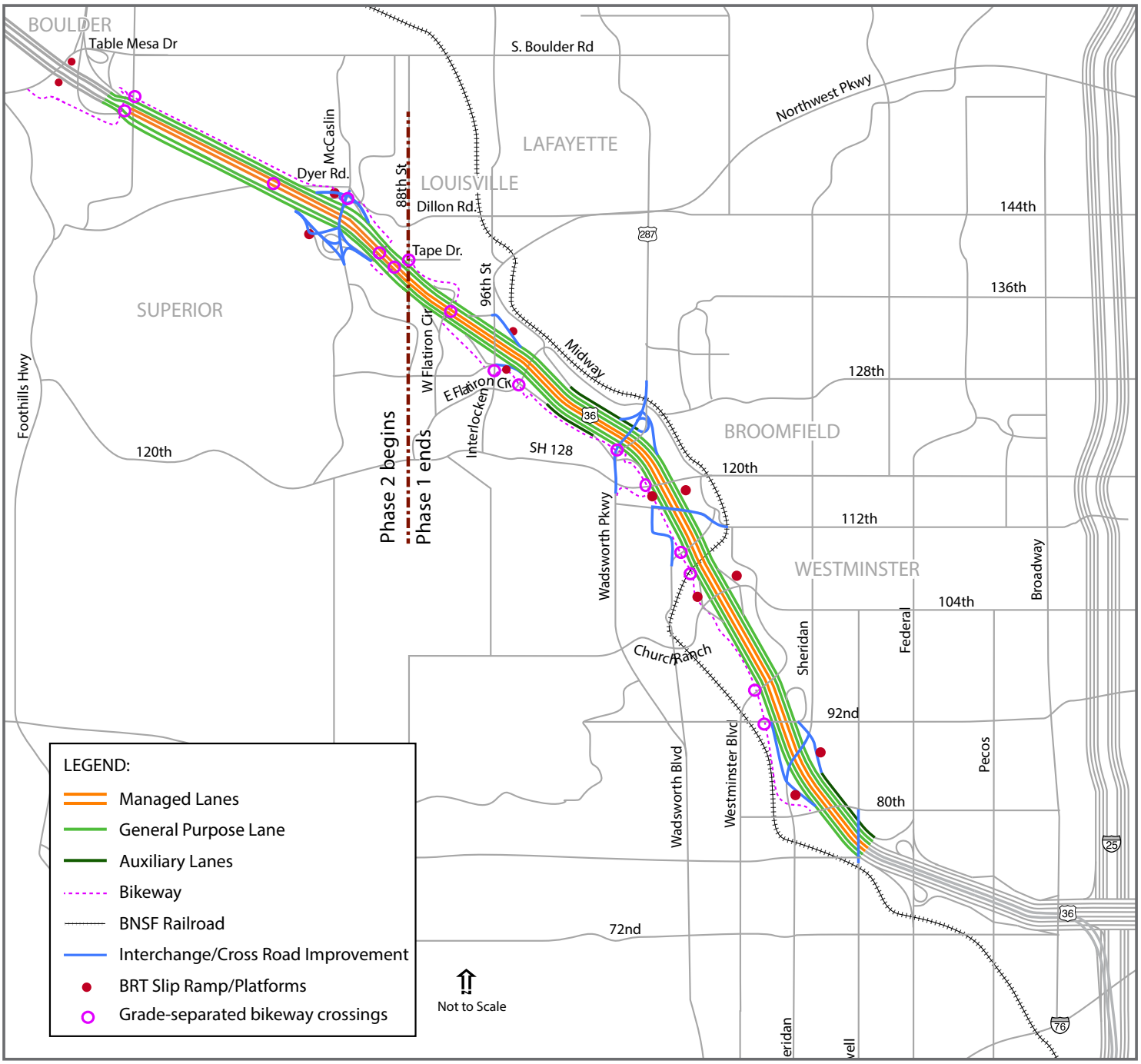
ORDINANCE or RESOLUTION

EXHIBIT C – MAP



US 36 Express Lanes Project

BIKEWAY FACT SHEET



HOTLINE: 303-404-7042 | **www.us36expresslanes.com**

US 36 Express Lanes Project

BIKEWAY FACT SHEET

Bikeway Overview

The US 36 corridor is intended to provide travelers with choices on how to get to where they need to go. One of the major components of the US 36 Express Lanes Project is the bikeway.

The bikeway will:

- Be 12 feet wide with 2-foot-wide shoulders and 6-inch thick concrete for a comfortable ride and to ensure minimal maintenance costs in the future.
- Run adjacent to US 36 between 80th Avenue in Westminster and Table Mesa Drive in Boulder, where it will tie into the existing trail system.
- Be constructed in phases throughout the corridor, opening to the public in 2016.
- Provide a safe way to travel through the US 36 corridor by bicycle.
- Include wayfinding signage to direct bicyclists.
- Link to the existing bike paths and trails within the corridor to provide easy access to the bikeway.
- Will be maintained by the local jurisdictions and adhere to their standards including sweeping, striping, and snow and ice removal.

Safety Improvements

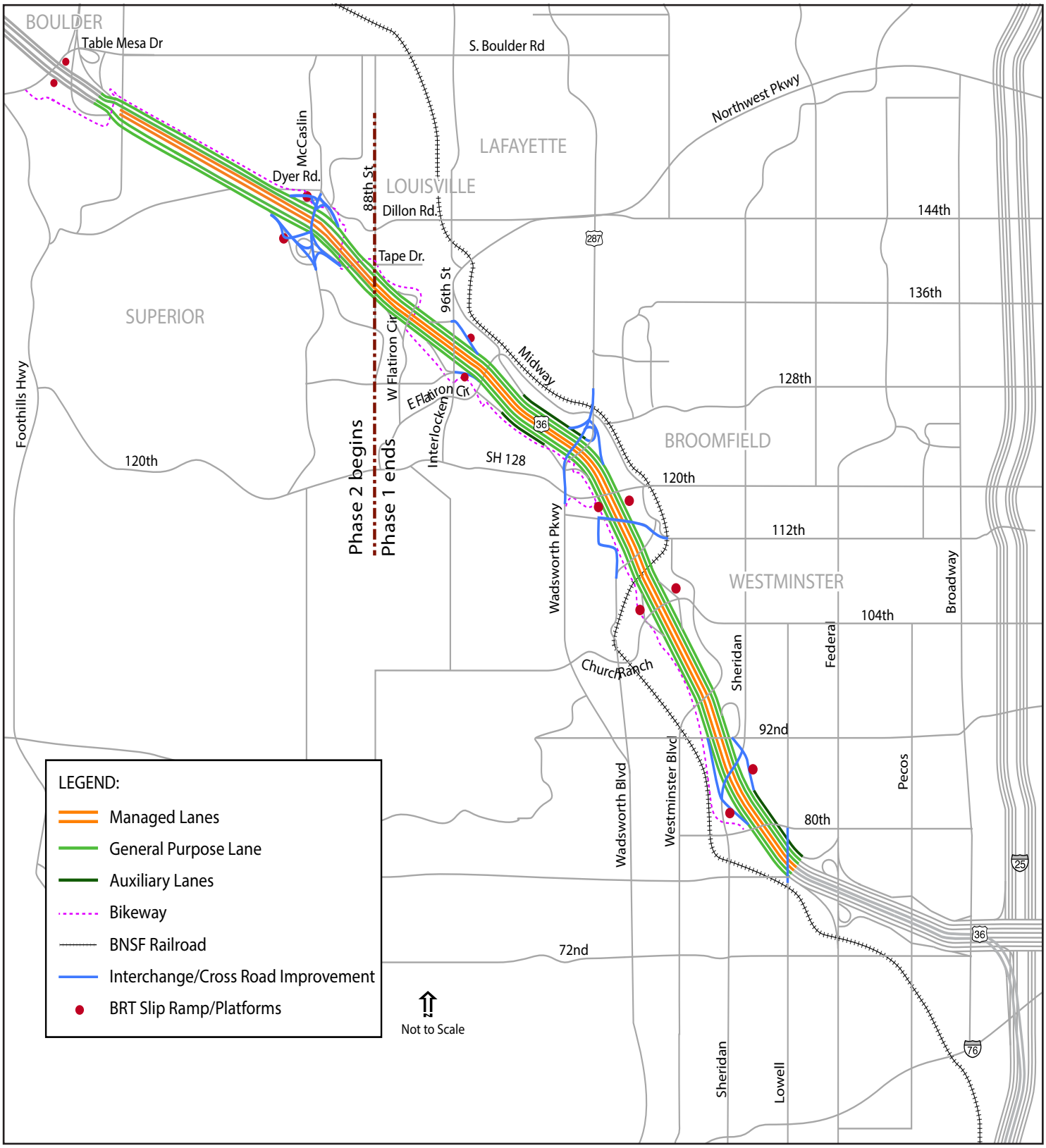
The bikeway was designed based on the principle of improving safety for both recreational and commuter bicyclists. With that in mind, the following safety improvements are being made:

- In areas where the bikeway is directly adjacent to the highway, barrier will be installed to protect bicyclists and motorists alike.
- At-grade crossings at major intersections were eliminated, where possible, during design. The only at-grade crossings are at Sheridan Boulevard, 88th Avenue and Church Ranch Boulevard.
- Grade-separated bikeway crossings will be at:
  - 92nd Avenue
  - Westminster Boulevard
  - BNSF Railroad
  - Uptown Avenue
  - 120th Avenue
  - Wadsworth Parkway
  - East Flatiron Circle
  - East of Davidison Mesa
  - West Flatiron Circle
  - Interlocken Loop
  - 88th Street
  - Coal Creek
  - McCaslin Boulevard
  - Cherryvale Road
  - Avista Hospital
  - South Boulder Creek

Project Boundaries

80th Avenue in Westminster to Table Mesa Drive in Boulder

US 36 Express Lanes Project Phase 2 FACT SHEET



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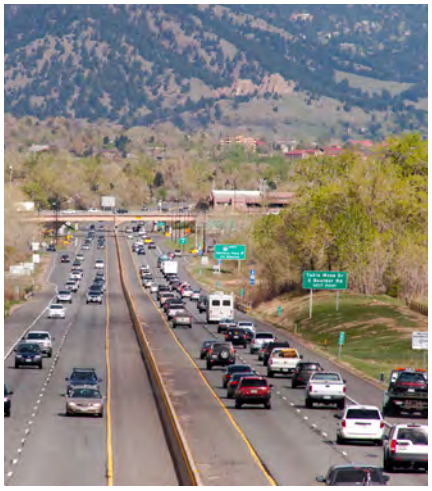

Phase 2 Boundaries
88th Street in Louisville/Superior to Table Mesa/Foothills Parkway in Boulder

Phase 2 Schedule
- Commercial close of contract – summer 2013
- Construction began – late 2013
- Financial close of contract – early 2014
- Project opens – early 2016

Phase 2 Elements
The Colorado Department of Transportation (CDOT) and the High Performance Transportation Enterprise (HPTE) selected Plenary Roads Denver as the concessionaire for Phase 2 of the US 36 Express Lanes Project, which will complete improvements to the entire US 36 corridor between Denver and Boulder.

Project elements include:
- Constructing an express lane in each direction of US 36 between 88th Street and Table Mesa for Bus Rapid Transit (BRT), High Occupancy Vehicles (HOV) and tolled Single Occupancy Vehicles (SOV);
- Reconstructing two general purpose lanes in each direction between 88th Street and Table Mesa;
- Widening the highway to accommodate 12-foot-wide inside and outside shoulders;
- Replacing the Coal Creek bridge, rehabilitating and widening the South Boulder Creek bridge, and widening the McCaslin Boulevard bridge to accommodate a diverging diamond interchange;
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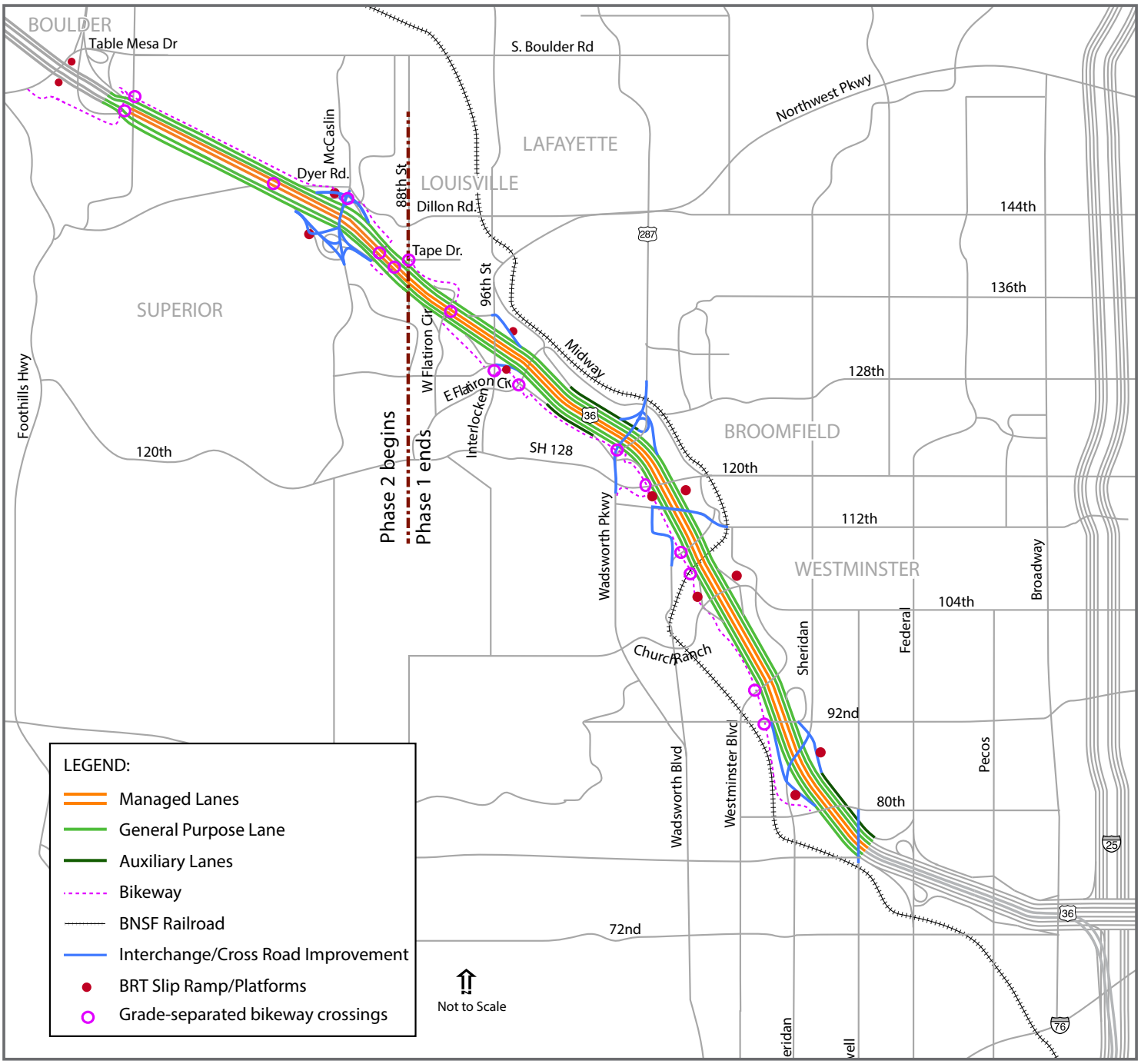
- Installing Intelligent Transportation Systems (ITS) for tolling, transit and traveler information and incident management;
- Installing a separate commuter bikeway along the rest of the corridor; and
- Improving the RTD station at McCaslin Boulevard.

In addition to the project elements, Plenary Roads Denver will be responsible for operating and maintaining the following highways:
- US 36 between I-25 and Table Mesa
- I-25 Express Lanes between downtown Denver and US 36

Their responsibilities include minor repairs, striping, and snow and ice removal on the highways.

US 36 Express Lanes Project

BIKEWAY FACT SHEET



US 36 Express Lanes Project

BIKEWAY FACT SHEET

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  - 88th Street
  - Coal Creek
  - McCaslin Boulevard
  - Cherryvale Road
  - Avista Hospital
  - South Boulder Creek

Project Boundaries

80th Avenue in Westminster to Table Mesa Drive in Boulder

C I T Y O F B O U L D E R
CITY COUNCIL AGENDA ITEM

MEETING DATE: December 2, 2014

AGENDA TITLE: Consideration of a motion to adopt a resolution approving and adopting amendments to the Beverage Licensing Authority Rules of Procedure.

PRESENTERS:
Jane S. Brautigam, City Manager
Thomas A. Carr, City Attorney
Sandra Llanes, Senior Assistant City Attorney
Mishawn Cook, Tax and License Manager
Michele Lamb, Tax and License Administrator
Carlene Hofmann, Boulder Police Department Special Enforcement Unit-Alcohol Enforcement

EXECUTIVE SUMMARY

This memorandum asks Council to amend the Beverage Licensing Authority ("BLA") Rules of Procedure by resolution.

The BLA Rules of Procedure empower the BLA to exercise all of the rights and responsibilities it has under state law. The Rules were last revised on December 5, 2006 when Council passed Resolution No. 1013.

These amendments are intended to bring the Rules of Procedure into compliance with new elements of state law, and refining procedures. The amendments will also increase clarity and ease of use.

At their publicly noticed annual retreat on April 29, 2014, the Beverage Licensing Authority (BLA) discussed potential changes to their Rules of Procedure. The BLA's Rules of Procedure ("Rules") govern how they (1) provide public notice of hearings; (2) conduct monthly hearings; and (3) deliberate on liquor license matters.

In addition, the BLA held a properly noticed public hearing on rulemaking on June 24, 2014 to again discuss the proposed changes and to obtain input from the public. The June 24, 2014 public hearing and BLA Retreat minutes are attached to this memo for reference as **Attachment B**.

The BLA approved and city staff recommends the proposed amendments to the BLA Rules as referenced in **Attachment D**.

STAFF RECOMMENDATION:

Suggested Motion Language:
Staff requests council consideration of this matter and action in the form of the following motion:

Approval of the Resolution adopting the revised Boulder Beverage Licensing Authority Rules of Procedure.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS:

- Economic: There will be little to no economic impact to the public. For example, licensees will be required to train their staff members in responsible alcohol service in 3 rather than 6 months; applicants will be required to use city petition forms which better inform community members; and licensees will be required to post closed locations to better inform the adjacent businesses and residents.
- Environmental: It is not expected that the proposed Rule changes will have any environmental impacts.
- Social: City of Boulder Hospitality businesses in total (including eating places category, food service tax, accommodations tax, and admissions tax) are in the top three of the city's largest sales tax remittance categories. In addition, the Boulder brand is very important for our city. It is also acknowledged that there is great concern with underage consumption of alcohol within the proximity of the University of Colorado in Boulder. A liquor license is an immense privilege and important business asset that requires responsible service of alcohol. The BLA underscores that responsibility when granting new liquor licenses and when imposing suspensions related to liquor violations.

<u>OTHER IMPACTS:</u>

- Fiscal: City staff has reviewed the proposed changes, and while there will be some minimal retraining of certain hearing processes and some changes to city forms, the only anticipated cost will be for printing of posters for closed locations. That cost is approximately $100 per year. It is expected that the new Rules, if approved, can be implemented with existing city staff.

- Staff time: As described above, the new Rules will require learning some new tasks and re-tooling of the liquor licensing website and application forms. These required changes can be completed with current city licensing staff.

PUBLIC FEEDBACK AND REQUESTS:
Public feedback was solicited at the BLA hearing on June 24, 2014 and is summarized in the minutes referenced as **Attachment B**. In addition, the hearing date of this meeting in which the amended rules will be considered by council and related public materials have been circulated to the Responsible Hospitality Group for review.

BACKGROUND:
The BLA Rules of Procedure first became effective on April 22, 1982. Council Resolution No. 995 amended the Rules on March 7, 2006 and most recently on December 5, 2006, City Council approved Resolution No. 1013 enacting the current version of the BLA Rules. The current version of the Rules makes clear to city staff, BLA members, and the public of deadlines, procedures, and expectations related to liquor licensing.

The BLA has discussed some of the proposed changes for several years, but with the recent addition of Art Gallery Permits to the list of state licenses and permits, it is a timely opportunity to organize and review all suggested changes to update the Rules.

ANALYSIS:
City staff has provided a detailed list citing relevant page and section numbers impacted by the Rule changes along with a brief explanation. **Attachment C**. The most notable changes are as follows:

1) Changing the server training requirement from 3 to 6 months from hire or opening of business.
2) Stating in writing that only petition results on city supplied petition forms will be considered by the BLA.
3) Changing the term of “Summary Renewals” to “Administrative Renewals” to avoid any potential confusion with “Summary Suspensions.”
4) Clarifying the definition of “timely” for purposes of renewal application submissions.
5) Requirement to post closed establishments with a city supplied poster that notifies surrounding businesses and residents.
6) Provided procedures for recent addition of Art Gallery Permits by the state.

ATTACHMENTS:

A. Proposed Resolution for Approval of Amended BLA Rules of Procedure.
B. BLA April 29, 2014 Retreat Summary, BLA May 21, 2014 Final Minutes, and BLA June 24, 2014 Final Minutes.
C. Detailed summary of amendments to BLA Rules of Procedure.
D. Redlined amendments version of Council Resolution as BLA Rules of Procedure.

RESOLUTION NO. 1148

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BOULDER AMENDING THE RULES OF PROCEDURE FOR THE BEVERAGE LICENSING AUTHORITY.

WHEREAS, the City is charged with implementation of the Colorado Liquor Code, Section 12-47-101, *et seq.*, C.R.S. (2005); and

WHEREAS, the City has created the City of Boulder Beverage Licensing Authority to carry out the state liquor code's requirements insofar as they apply to local licensing authorities; and

WHEREAS, the City Council is required by Section 2-3-3, "Beverage Licensing Authority," B.R.C. 1981, to establish and adopt rules of procedure for the Beverage Licensing Authority.

WHEREAS, on December 5, 2006, City Council adopted revised Rules of Procedure for the Beverage Licensing Authority in Resolution No. 1013.

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

Section 1. The "Rules of Procedure for the City of Boulder Beverage Licensing Authority" attached as Attachment C are hereby amended and shall supersede the Rules adopted in Resolution No. 1013. These Rules of Procedure shall become effective upon adoption.

APPROVED this 2nd day of December, 2014.

_____
Mayor

ATTEST:

_____
City Clerk

BLA ANNUAL RETREAT

NOTES

4/29/2014 1-5 pm

Fishbowl Conference Room

DIRECTIVES:

1. Steve would like guidelines as to statements/declarations that would strengthen board's position i.e. "I find that the applicant has or has not . . ." or "I find that the needs and desires met or not met", etc. Sandra is going to meet w/Steve & Dave to conduct Chair & Vice Chair training on 5/9/2014 2 PM (regarding admissibility of evidence, handling objections). Maybe they could also discuss Steve's request for guidelines?
2. Needs & Desires – Steve made statement that liquor store in defined neighborhood opposition given less weight because a competitor. Colorado Liquor Code 12-47-301(2)(a).
3. Majority of board want Carlene to submit what she sees as mitigating/aggravating factors along with her paperwork for show cause. Sent email to Carlene 5/2/2014, she has agreed to do that.
4. RHG – back on the agenda, provide BLA update on education, no lobbying, 5 minutes. Michele has contacted RHG and Michael Absalom will be at May 21 hearing.
5. Overservice – Carlene agreed to conduct overservice class within next 8 months. Scheduled for June 3, 10:30 am - 2:30 pm in Council Chambers. Carlene will provide licensing with flyers to mail out to licensees. BLA members want to be invited to class. When we receive the flyers, Michele will send email w/flyer to board members.
6. Rotating speakers – keep on agenda in addition to RHG. Michele asked board members for more suggestions for speakers and followed up with email. Dave Timken replied with suggestion. Michele contacted that individual on 5/1 but has not heard back yet.
7. Mitigating/Aggravating factors – lots of discussion. Board wants to continue discussion during a hearing. Mishawn is putting on May 21 agenda. Continued to June 24, 2014 hearing.
8. Transfer to Landlords – Poster on dark liquor establishments notifying public of liquor license. Mishawn drafted language for poster, Sandra approved. Michele will take to Kinko's to have copies made. Mishawn will put on June 24 agenda – good to include reference in the Rules. Also, if approve transfer to landlord put on nonadministrative renewal – also include on June 24 agenda and include reference in the Rules.
9. Training requirements – changed from 6 to 3 months. Will require council approval and updating of Rules of Procedure. Discuss at June 24 BLA hearing.
10. Tim will draft something, send it to Harriet to review. Believe it will be one page information sheet for licensees; Tim will clarify. Michele sent reminder email to Tim & Harriet.

11. Known habitual drunkard – board agreed good idea to educate licensees that they have the right to refuse service without providing a reason. No other follow up decided upon.
12. Beginning date for suspension dates? Discussed and decided to revisit. Mishawn will put on May 21 agenda. Continued to June 24, 2014 hearing.

The Beverage Licensing Authority reviewed this document, made minor edits, at their May 21, 2014 hearing.

CITY OF BOULDER
BEVERAGE LICENSING AUTHORITY
*** * * MINUTES * * ***
WEDNESDAY, MAY 21, 2014, 3:00 P.M.
CITY COUNCIL CHAMBERS
MUNICIPAL BUILDING – 2ND FLOOR
1777 BROADWAY, BOULDER, COLORADO

NAME OF BOARD/COMMISSION:	Beverage Licensing Authority (BLA)
DATE OF MEETING:	May 21, 2014
NAME & PHONE OF PERSON PREPARING SUMMARY:	Mishawn Cook, Licensing Manager (303-441-3010) Kristen Huber, Licensing Specialist (303-441-3034)

NAMES OF MEMBERS, STAFF, AND INVITED GUESTS PRESENT:

Board Members: Steve Wallace, Harriet Barker, Lisa Spalding, and David Timken.

Staff Present: Sandra Llanes, Assistant City Attorney, Mishawn Cook, Licensing Manager, and Kristen Huber, Licensing Specialist.

QUASI-JUDICIAL MEETING OUTLINE OF AGENDA

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1. **Member roll call; Approval of Beverage Licensing Authority (BLA) minutes from April 16, 2014, and hearing agenda issues from licensing clerk.**

   Roll call was taken. A quorum of four BLA members were present, with Member McMurray absent. Member Spalding suggested changes to the draft minutes for April 16, 2014. Member Barker moved, Timken seconded, to approve the April 16, 2014 minutes as amended. Motion approved 4:0.

   Ms. Cook inquired whether the BLA would like to continue agenda item #5 regarding the Rulemaking Public Hearing to the June BLA hearing since Member McMurray was absent. Member Wallace stated that this agenda item should be continued to the June hearing.

2. **Matters from the Boulder Police Department (BPD).**

   Officer Carlene Hofmann with BPD provided an enforcement update to the BLA. Officer Hofmann reported that she scheduled a training session regarding over-service on June 3, 2014.

Member Wallace asked Ms. Cook to provide public notice of the training in case BLA members decided to attend.

3. **Matters from the Responsible Hospitality Group.**

   Mike Absalom provided an update to the BLA on behalf of the Responsible Hospitality Group.

4. **Rotating Monthly Presentation concerning alcohol: Donald A. Misch, M.D., Senior Assistant Vice Chancellor for Health and Wellness, Director, Wardenburg Health Center.**

   Dr. Misch presented a power point regarding alcohol abuse. A copy of the presentation was entered as Exhibit 1.

5. **BLA Rulemaking public hearing concerning penalty schedule review with consideration of administrative violations vs. public health and safety violations, mitigating and aggravating factors discussion, and acceptance of fines in lieu of suspension days.**

   Member Spalding entered a document titled "Over-Service Cases" as Exhibit 1. This agenda item was continued to the June hearing.

6. **Show cause continued hearing concerning a February 9, 2014 violation and whether the Hotel-Restaurant type liquor license held by R&F Corp d/b/a Cosmo's Pizza, 1325 Broadway, Unit 108, Boulder, CO 80303, should be suspended or revoked.**

   Adam Stapen appeared as licensee's attorney. Ryan Shorter, restaurant owner, was sworn in and provided testimony regarding mitigating evidence. Hearing procedures were waived. No BLA members disclosed ex-parte communications or conflicts of interest.

   Janet Michels, Assistant City Attorney, stated that a stipulation to the facts in this matter had been reached. The signed stipulation was entered as Exhibit 1. Member Barker moved, Spalding seconded, to accept the stipulation to the facts. Motion approved 4:0.

   The BLA noted some mitigating and aggravating factors. Member Barker moved, Spalding seconded, to set this violation penalty at 5 suspension days served with 9 days held in abeyance. Motion approved 3:1 with Member Timken opposed.

   The licensee requested to serve the 5 suspension dates from June 7 to June 11, 2014. Member Barker moved, Spalding seconded, to accept the requested 5 suspension dates from June 7 to June 11, 2014. Motion approved 4:0.

7. **Show cause continued hearing concerning a February 9, 2014 violation and whether the Tavern type liquor license held by Austin & Ambrose LLC d/b/a Press Play, 1005 Pearl Street, Boulder, CO 80302, should be suspended or revoked.**

   Joaquin Padilla appeared as licensee's attorney. Mr. Padilla stated that he would have five witnesses: Michael Boselli, co-owner, Jessie Gossett, co-owner, and Carl Oskarsson, Akemi

Glasscock, and Linda Crane. Ms. Cook then served subpoenas to Mr. Oskarsson and Ms. Glasscock since the process server was unable to serve them before the hearing. All of the licensee's witnesses were sworn in.

Ms. Michels stated that she would have seven witnesses: Steve Faber, BPD Detective with BPD, Daniel Bergh, police officer with BPD, Ian Compton, police officer with BPD, Kathy Dunne, Investigator with Colorado State Liquor and Tobacco Enforcement, Chelsea Rosipajla, Investigator with Colorado State Liquor and Tobacco Enforcement, Kelly Haralson, Investigator with Colorado State Liquor and Tobacco Enforcement, and Carlene Hofmann, alcohol enforcement officer with BPD. All of the BPD's witnesses were sworn in.

Hearing procedures were waived. No BLA members disclosed ex-parte communications or conflicts of interest. The affidavit of service and subpoena for Ms. Crane and the affidavits of non-service for Ms. Glasscock, Mr. Oskarsson, and Joel Figueroa were entered as Exhibit 1.

Ms. Cook stated that Ms. Michels requested sequestration of the witnesses. The witnesses were sequestered to the lobby of the Municipal Building.

Investigator Haralson was sworn in and provided testimony about the violation.

Officer Bergh was sworn in and provided testimony about the violation.

Member Wallace moved, Spalding seconded, to schedule a special hearing to continue this agenda item. Motion approved 4:0. Member Barker moved, Spalding seconded, to schedule the special hearing for continuation of this matter on June 5, 2014 at 9:30 AM.

8. **Public Hearing and Consideration of whether there is good cause for a non-renewal of a March 18, 2014 non-administrative renewal application from 3 Margaritas XXX, Inc d/b/a 3 Margaritas XXX, 3390 28th St, Boulder, CO 80301; Gustavo Morales, President, and Jose Luis Gordivas, Vice President and Registered Manager; with a premise business mailing address, for a renewal of a Hotel-Restaurant type liquor license.**

   Erika Kaiser appeared as the licensee's attorney. Jose Luis Gordivas, Vice President and Registered Manager, was sworn in and confirmed the ten day premise posting under oath. Hearing procedures were waived. No BLA members disclosed ex-parte communications or conflicts of interest. Mr. Gordivas provided testimony that the licensee is now purchasing all liquor from a wholesaler. Ms. Cook noted that the sales tax area would now approve this license renewal.

   Member Barker moved, Timken seconded, to approve this renewal application for a Hotel-Restaurant type liquor license. Motion approved 4:0.

9. **Public Hearing and Consideration of whether there is good cause for a non-renewal of a March 19, 2014 renewal application from Native Foods Boulder LLC d/b/a Native Foods Cafe, 1675 29th St., Suite 1272, Boulder, CO 80301; Daniel Dolan, Owner, and Ashleigh**

Siefker, Registered Manager; with a business mailing address of 500 N Dearborn, Unit 1000, Chicago, IL 60654, for a renewal of a Hotel-Restaurant type liquor license.

Adam Stapen appeared as the licensee's attorney. Jesse Marshall, Vice President, was sworn in and confirmed the ten day premise posting under oath. Hearing procedures were waived. No BLA members disclosed ex-parte communications or conflicts of interest. No third parties requested interested party status and no public comments were received. Mr. Stapen provided comment regarding the late filed renewal.

Member Spalding moved, Timken seconded, to approve this renewal application for a Hotel-Restaurant type liquor license. Motion approved 4:0.

10. **Public Hearing and Consideration of whether there is good cause for a non-renewal of a March 20, 2014 renewal application from PDQ Development, Inc d/b/a PDQ Gas and Food, 5200 Manhattan Circle, Boulder, CO 80303; Jeffrey Jacobsen, President, Director, and Owner, and Jerry Archer, VP, Secretary, and Director, with a premise business mailing address, for a renewal of a 3.2% Beer Off Premise type liquor license.**

Richard Gundersen, manager, was sworn in and confirmed the ten day premise posting under oath. Hearing procedures were read. No BLA members disclosed ex-parte communications or conflicts of interest. No third parties requested interested party status and no public comments were received.

Officer Hofmann was sworn in and provided testimony regarding her request for non-administrative renewal. Mr. Gunderson provided testimony regarding his inactive liquor license.

Mr. Gunderson requested to continue this agenda item to the June hearing.

Member Spalding moved, Timken seconded, to continue this agenda item to June hearing.

11. **Public Hearing and Consideration of whether there is good cause for a non-renewal of an April 8, 2014 renewal application from Natarelli Turner, LLC d/b/a Absinthe House, 1109 Walnut Street, Boulder, CO 80302; Alfonso Natarelli, 100% Member, Erika Turner, Current Registered Manager, and Claudio Natarelli, Proposed Registered Manager; with a premise business mailing address, for a renewal of a Tavern type liquor license.**

Alfonso Natarelli, Owner, and Claudio Natarelli, proposed Registered Manager, were sworn in and confirmed the ten day premise posting under oath. Hearing procedures were waived. No BLA members disclosed ex-parte communications or conflicts of interest. No third parties requested interested party status and no public comments were received.

Alfonso Natarelli provided testimony regarding the sales tax issue and that he is now 100% owner of this location. Ms. Cook noted that the sales tax area would now approve this license renewal. Claudio Natarelli provided testimony regarding his experience in the restaurant industry.

Member Timken moved, Barker seconded, to approve this renewal application for a Tavern type liquor license. Motion approved 4:0.

12. **Public hearing of a March 11, 2014 application from Rallysport LLC d/b/a Rallysport Health and Fitness Club, 2727 29th Street, Boulder, CO 80301; Erin Carson, Managing Member, Melissa Lindamood, Managing Member, David Wilson, Member, Matt McConnell, Member, and Mary Jean O'Hair, Member, with no other members holding over a 10% Interest; with a premise business mailing address, for a transfer of a Beer and Wine type liquor license.**

    Erin Carson, Managing Member, and Melissa Lindamood, Managing Member, were sworn in and confirmed the ten day premise posting under oath. Hearing procedures were waived. No BLA members disclosed ex-parte communications or conflicts of interest. No third parties requested interested party status and no public comments were received.

    Ms. Lindamood and Ms. Carson provided testimony regarding their transfer application.

    Member Spalding moved, Barker seconded, to approve this transfer application for a Beer and Wine type liquor license. Motion approved 4:0.

13. **Public hearing of a March 11, 2014 application from Sforno Restaurant Concepts LLC d/b/a Sforno Trattoria Romana, 1308 Pearl St, Boulder, CO 80302; Leslie Young, Managing Member, Elodie Lisle, Member and Registered Manager, and Kenneth Budde, Member; with a premise business mailing address, for a transfer of a Hotel-Restaurant type liquor license.**

    Leslie Young, Managing Member, was sworn in and confirmed the ten day premise posting under oath. Hearing procedures were waived. No BLA members disclosed ex-parte communications or conflicts of interest. No third parties requested interested party status and no public comments were received.

    Ms. Young provided testimony regarding the transfer application.

    Member Barker moved, Timken seconded, to approve this transfer application for a Hotel-Restaurant type liquor license. Motion approved 4:0.

14. **Public hearing of a March 17, 2014 application from 4479 Restaurants, Inc d/b/a 4479 Restaurant, 4479 N. Broadway, Boulder, CO 80304; John Fertitta, President and Treasurer, and Harjinder Gill, Vice President, Secretary, and Registered Manager; with a premise business mailing address, for a new Hotel-Restaurant type liquor license.**

    Diane Goldenstein appeared as the licensee's attorney. Harjinder Gill, Vice President, Secretary, and Registered Manager, was sworn in and confirmed the ten day premise posting under oath. Hearing procedures were waived. No BLA members disclosed ex-parte communications or conflicts of interest. No third parties requested interested party status and no public comments were received.

Mr. Gill provided testimony regarding this liquor license application for a new restaurant.

Ron Gallegos was sworn in and provided testimony regarding the submitted needs and desires petition results.

Member Barker moved, Timken seconded, to approve this application for a Hotel-Restaurant type liquor license. Motion approved 4:0.

15. Matters from the Assistant City Attorney:

Sandra Llanes, Assistant City Attorney, requested that the June 18, 2014 hearing be moved to another date due to a scheduling conflict with the assigned city attorneys. Member Wallace directed Ms. Cook to reschedule the hearing on Tuesday, June 24, 2014 at 3:00 PM.

16. Matters from the Licensing Clerk:

A. Neighborhood boundaries for June 24, 2014 hearing:

i) CCRC Inc. d/b/a Agave Mexico Bistro & Tequila House- Permanent Modification to a Hotel-Restaurant type liquor license at 2845 28th Street, Boulder, CO 80301

The following neighborhood boundaries were discussed: Iris Avenue on the North, Walnut Street on the South, Foothills Parkway on the East, and Folsom Street on the West. Member Spalding moved, Barker seconded, to set the neighborhood boundaries for this application as above described. Motion approved 4:0.

ii) Verde No. 1 Limited Partnership L.L.L.P. d/b/a Verde – New Hotel-Restaurant type liquor license at 3070 28th Street, Unit B, Boulder, CO 80301

The following neighborhood boundaries were discussed: Kalmia Avenue on the North, Pearl Street on the South, Foothills Parkway on the East, and Folsom Street on the West. Member Wallace moved, Barker seconded, to set the neighborhood boundaries for this application as above described. Motion approved 4:0.

B. Informational items:

i) Directives from BLA Annual Retreat on April 29, 2014

Member Barker directed Ms. Cook to make several changes to the BLA Annual Retreat notes.

ii) May Special Events and Temporary Modifications

This material was stated to be in the hearing packet.

iii) May Liquor License renewal mailing list

This material was stated to be in the hearing packet.

iv) 2013 Report of Enforcement Violations published by Liquor & Tobacco Enforcement Division of the Colorado Department of Revenue

Ms. Cook stated that an email containing a link to the report was included in the packet.

v) "Serving Visibly Intoxicated People Training" to be held by Officer Carlene Hofmann on June 3, 2014

This material was stated to be in the hearing packet. Ms. Cook noted that invitations to the training were mailed to all liquor licensees in Boulder.

In addition to the agenda items above, Ms. Cook also addressed the following topics:

1. Family Learning Center special event liquor permit
2. Trattoria on Pearl recent closure
3. Illegal Pete's move to Abo's Pizza on the Hill location
4. Catacombs construction to change to License No. 1
5. K's China license transfer to landlord

17. Matters from the Chair and Members of the Authority

Member Spalding suggested that Ms. Cook contact the head of MADD to present at a future BLA hearing.

ADJOURNMENT

Member Spalding moved, Barker seconded, to adjourn the meeting. Motion approved 4:0, thus the hearing was adjourned at 8:21 p.m.

TIME AND LOCATION OF FUTURE MEETINGS, COMMITTEES OR SPECIAL HEARINGS:

3rd Wednesday of every Month at 3PM in City Council Chambers for 2014.

Attested:

Mishawn J. Cook, Tax and License Manager

Approved:

Chair of Beverage Licensing Authority

CITY OF BOULDER
BEVERAGE LICENSING AUTHORITY
*** * * MINUTES * * ***
TUESDAY, JUNE 24, 2014, 3:00 P.M.
CITY COUNCIL CHAMBERS
MUNICIPAL BUILDING – 2ND FLOOR
1777 BROADWAY, BOULDER, COLORADO

NAME OF BOARD/COMMISSION: Beverage Licensing Authority (BLA)

DATE OF MEETING: June 24, 2014

NAME & PHONE OF PERSON PREPARING SUMMARY: Michele Lamb, Licensing Administrator (303-441-3436)

Beata Mazurkiewicz, Licensing Specialist (303-441-3091)

NAMES OF MEMBERS, STAFF, AND INVITED GUESTS PRESENT:

Board Members: Steve Wallace, Harriet Barker, Lisa Spalding, David Timken, and Tim McMurray (arrived during item 1).

Staff Present: Sandra Llanes, Assistant City Attorney, Mishawn Cook, Licensing Manager, Michele Lamb, Licensing Administrator, and Beata Mazurkiewicz, Licensing Specialist.

QUASI-JUDICIAL MEETING OUTLINE OF AGENDA

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1. **Member roll call; Approval of Beverage Licensing Authority (BLA) minutes from May 21, 2014 April 16, 2014, and hearing agenda issues from licensing clerk.**

   Chair Wallace recognized Member Timken as having received an award from the Colorado Chapter of MADD. Roll call was taken. A quorum of four BLA members was initially present, with Member McMurray arriving late to the hearing. Chair Wallace moved, Member Spalding seconded, to approve the May 21, 2014 minutes. Motion approved 4:0.

2. **Matters from the Boulder Police Department (BPD).**

   Officer Carlene Hofmann of BPD was absent. Officer Hofmann provided her enforcement update to the BLA via an email which was entered as agenda item 2, exhibit 1.

3. **Matters from the Responsible Hospitality Group.**

   No members from the Responsible Hospitality Group were present. President Mike Absalom provided an update to the BLA via an email which was entered as agenda item 3, exhibit 1.

4. **BLA Rulemaking public hearing concerning penalty schedule review with consideration of administrative violations vs. public health and safety violations, mitigating and aggravating factors discussion, and acceptance of fines in lieu of suspension days.**

   Member McMurray arrived at the beginning of this agenda item. The board members discussed the above issues. The board opened the discussion to the public. There was no public comment at this point. Member Spalding confirmed with Attorney Llanes that the requirement that a licensee had not had a suspension stayed by payment of a fine during the two years immediately preceding had been removed from the Colorado Liquor Code. The board said they use or grant fines in lieu sparingly and usually in combination with some suspension day(s). Member McMurray brought up administrative violations.

   Members agreed that since they have flexibility there was no reason to change the penalty schedule and they would determine penalties on a case-by-case basis. The board confirmed that membership in the RHG may be considered a mitigating factor. Attorney Llanes brought up mitigating factors before a violation versus after a violation has occurred. This was discussed by the board and they decided it is discretionary and the board would look at it on a case by case basis. The board confirmed that "final" as mentioned in C.R.S. 12-47-601(3)(a) means when the board makes its decision on suspensions. The board reiterated Colorado Liquor Rule 47-600(F) regarding posting of notice of suspension in licensee window. The Board requested that a copy of the minutes for agenda items 3 and 4 be forwarded to the RHG. The discussion was opened back up to public comment.

   Tony Milazzo of the newly formed Boulder Chapter of the Colorado Restaurant Association (CRA) addressed the board. He asked whether the board was involved with or aware of the state reviewing the penalty schedule. Mr. Milazzo urged the board members to use their discretion and grant fines in lieu of suspension days. He mentioned lost employee wages and loss of sales tax revenue to the city during a suspension period. Member Spalding invited the CRA to speak to the BLA at one of their hearings after the CRA is introduced at the city council meeting in July.

5. **BLA Rulemaking public hearing about BLA mission, change from 6 months to 3 months in city training condition, terminating the practice of letting licensees select suspension days, non-administrative renewal hearings for transfers to landlords and posting of closed locations, and any other changes requiring council approval.**

Attorney Llanes suggested the members begin by discussing the proposed changes to the BLA Rules of Procedure. The board discussed Section 3-6 Training Requirements and agreed unanimously to change the amount of time a liquor licensee has to train staff from 6 months to 3 months. They also confirmed that online training is unacceptable.

The board discussed Section 6-5 Exhibits. The question was whether exhibits in electronic format are acceptable. The discussion evolved to distributing the board member's packets electronically. The board decided that they may allow electronic distribution of the hearing packet in the future and this would involve future discussions. The board did decide to allow licensees/applicants to submit exhibits in electronic format.

The board next addressed Subsection 10-2-3(E) Show Cause Hearings. They approved adding the words "generally are not" regarding whether suspension dates are subject to change. There was an extensive discussion among the board members regarding who determines or sets the dates for a suspension i.e. the board or the licensee. It was opened to public comment.

Tony Milazzo, Boulder Chapter of CRA, then addressed the board. Mr. Milazzo stated that it could be viewed in an adversarial light if the BLA chose the starting of the suspension dates. Member Barker brought up that with the recent light on the BLA this could be seen as arbitrary and have the unintended result of the board having to listen to more exception requests than anticipated. The board decided to leave it as it has been practiced which is to allow the licensee to recommend dates to be served and the board make the final determination. Attorney Llanes will amend the rules to reflect this.

Ms. Cook informed the board that her office's standard practice is to set a BLA approved transfer to a landlord as new licensee for non-administrative review regardless of whether BLA has directed that or not. Also included for the board's information was a mock-up poster for posting of closed locations which has been approved by the City Attorney's office. Attorney Llanes will include in the rules the requirement for posting of the poster at closed locations.

6. **Public hearing and continued consideration of whether there is good cause for a non-renewal of a March 20, 2014 renewal application from PDQ Development, Inc d/b/a PDQ Gas and Food, 5200 Manhattan Circle, Boulder, CO 80303; Jeffrey Jacobsen, President, Director, and Owner, and Jerry Archer, VP, Secretary, and Director, with a premise business mailing address, for a renewal of a 3.2% Beer Off Premise type liquor license.**

Dan Carr, Esq. appeared on behalf of the applicant. Richard Gunderson, licensee supervisor, was sworn in and confirmed the 10 day posting. Hearing procedures were waived. No Authority members disclosed ex parte communications or conflicts of interest. No third parties requested interested party status and no public comment was given in this matter. Mr. Gunderson requested the authority to renew their license. Mr. Gunderson confirmed

that the licensee does want and intend to start selling 3.2 Beer upon approval of the renewal application by the Authority. Member Spalding moved, Timken seconded, to approve the renewal with the condition that sales of alcohol commence within 60 days of the hearing. Motion passed 5:0.

7. **Public hearing of a March 24, 2014 application from Learfield Levy Foodservice LLC d/b/a Levy Restaurants – East Side, 372 UCB University of Colorado, Boulder, CO 80309; Levy Premium Foodservice LP, 50.01% Owner, with Andrew Lansing, President/CEO, Michael Perlberg, Senior Vice President & General Counsel, Robert Seiffert, CFO/Treasurer, Travis Tucker, Director of Operations and Registered Manager, and Learfield Foodservice & Entertainment LLC, 49.99% Owner, with Marc Jenkins, COO; with a business mailing address of 980 N. Michigan Avenue, Suite 400, Chicago, IL 60611, for a transfer of a Hotel-Restaurant type liquor license.**

   Jon Stonbraker, Esq. appeared on behalf of the applicant. Exhibits were entered. Joseph Smith, Director of Operations for University of Colorado for the Levy organization, and William Kelsey, both representing the applicant, were sworn in and confirmed the 10 day posting. Hearing procedures were waived. No Authority members disclosed ex parte communications or conflicts of interest. No third parties requested interested party status and no public comment was given in this matter. Mr. Smith was questioned by Mr. Stonbraker and provided testimony regarding the applicant and this transfer application. Member Spalding questioned the number of violations detailed in the attachment to the Individual History Records. Member Timken asked a follow up question regarding whether the University of Colorado was aware of the violations. Mr. Stonbraker answered that he did not know whether the university was aware of the violations or not. Mr. Stonbraker stated that his firm had diligently reported to the Board the results of what the applicant had told his firm regarding the violations. Member McMurray moved, Barker seconded, that the transfer of the Hotel-Restaurant type liquor license be approved. Motion passed 5:0.

8. **Public hearing of a March 24, 2014 application from Learfield Levy Foodservice LLC d/b/a Coors Events Conference Center, 401 UCB, Coors Events Conference Center, Boulder, CO 80309; Levy Premium Foodservice LP, 50.01% Owner, with Andrew Lansing, President/CEO, Michael Perlberg, Senior Vice President & General Counsel, Robert Seiffert, CFO/Treasurer, Travis Tucker, Director of Operations, and Learfield Foodservice & Entertainment LLC, 49.99% Owner, with Marc Jenkins, COO, and William Kelsey, Registered Manager; with a business mailing address of 980 N. Michigan Avenue, Suite 400, Chicago, IL 60611, for a transfer of a Hotel-Restaurant type liquor license.**

   Mr. Stonbraker asked that the Board incorporate the previous testimony given on Agenda item 7. Mr. Smith and Mr. Kelsey remained sworn in. Exhibit items were entered. Hearing procedures were waived. No Authority members disclosed ex parte communications or

conflicts of interest. No third parties requested interested party status and no public comment was given in this matter. Member Spalding questioned William Kelsey, Registered Manager, concerning his background results. Member Barker moved, McMurray seconded, the approval of the Transfer of a Hotel-Restaurant type liquor license. Motion passed 5:0.

9. **Public hearing of a March 25, 2014 application from Learfield Levy Foodservice LLC d/b/a Folsom Field – West Stands, 372 UCB University of Colorado, Boulder, CO 80309; Levy Premium Foodservice LP, 50.01% Owner, with Andrew Lansing, President/CEO, Michael Perlberg, Senior Vice President & General Counsel, Robert Seiffert, CFO/Treasurer, Travis Tucker, Director of Operations, and Learfield Foodservice & Entertainment LLC, 49.99% Owner, with Marc Jenkins, COO, and Stefanie Duda, Registered Manager; with a business mailing address of 980 N. Michigan Avenue, Suite 400, Chicago, IL 60611, for a transfer of a Hotel-Restaurant type liquor license.**

   Mr. Stonbraker asked that the Board incorporate the previous testimony given on Agenda item 7. Mr. Smith and Mr. Kelsey remained sworn in. Exhibit items were entered. Hearing procedures were waived. No Authority members disclosed ex parte communications or conflicts of interest. No third parties requested interested party status and no public comment was given in this matter. Member Spalding cautioned Mr. Smith regarding the skyboxes and previous violations. Chair Wallace questioned Mr. Smith regarding this specific location and the alcohol storage. Member McMurray moved, Timken seconded, to approve this Transfer of a Hotel-Restaurant type liquor license. Motion passed 5:0.

10. **Public hearing and consideration of an April 14, 2014 application from CMG Ventures LLC d/b/a West End Wine Shop, 777 Pearl Street, Boulder CO 80302; Mark Geraghty, Co-Owner and Manager, and Chelsea Geraghty, Co-Owner and Manager, with a business mailing address of 1078 Marble Court, Boulder, CO 80303, for a transfer of a Retail Liquor Store type liquor license.**

    Justin Konrad, Esq., entered his appearance on behalf of the applicant. Agenda item 10, exhibit 1 was entered. Mark Geraghty and Chelsea Geraghty were both sworn in and confirmed the 10 day posting. Reading the procedures was waived. Member McMurray disclosed a conflict of interest and recused himself. There were no other ex parte communications or conflicts of interest disclosed by the remaining authority members. No third parties requested interested party status and no public comments were received. Mr. Konrad provided background information regarding the applicant. Mark and Chelsea Geraghty both testified regarding the transfer application. Member Spalding moved, Timken seconded, to approve the Transfer of the Hotel-Restaurant type liquor license. Motion passed 4:0 with McMurray recused.

11. **Public hearing and consideration of an April 21, 2014 application from CCRC, Inc d/b/a Agave Mexico Bistro & Tequila House, 2845 28th Street, Boulder CO 80301; Rene**

Cervantes Jr., President and Registered Manager, with a business mailing address of 11201 Prospect Road, Longmont, CO 80504, for a permanent modification of a Hotel-Restaurant type liquor license.

Member McMurray returned to the hearing. Rene Cervantes Jr., licensee owner, was sworn in and confirmed the 10 day posting period. Procedures were read. No Authority members disclosed ex parte communications or conflicts of interest. No third parties requested interested party status and no public comment was given in this matter. Mr. Cervantes testified regarding this permanent modification. Member Spalding raised a concern concerning the lack of business petitions. Chair Wallace replied that businesses within the neighborhood boundaries would have seen the posting and had notice that they could appear at the hearing. Member Barker moved, McMurray seconded, to approve the permanent modification of a Hotel-Restaurant type liquor license. Motion passed 5:0.

12. **Public hearing and consideration of an April 21, 2014 application from Verde No. 1 Limited Partnership L.L.L.P. d/b/a Verde, 3070 28th Street, Unit B, Boulder, CO 80301; Verde Inc. as general partner with Tyson Ingraham-, as President and Registered Manager, John Sethney-, as VP & Treasurer, and Brandon Miller-, as VP, Sec, & General Counsel, with 7 other limited partners with none owning over a 10% interest, and with a business mailing address of 2650 Iris Avenue, Unit B 12, Boulder, CO 80304, for a new Hotel-Restaurant type liquor license.**

Brandon Miller, John Sethney, and Tyson Ingraham, applicant co-owners, were present on behalf of applicant, were sworn in, confirmed the 10 day posting, and testified concerning this new Hotel-Restaurant liquor license application. Exhibits were entered. Reading the procedures was waived. No Authority members disclosed ex parte communications or conflicts of interest. Chris Ingraham was sworn in, addressed the authority as an interested party, and he spoke in favor of the granting of the new Hotel-Restaurant type liquor license. Member Spalding noted a few corrections to the petitions. Member Barker moved, Timken seconded, to approve this Hotel-Restaurant type liquor license. Motion passed 5:0.

13. **Matters from the Assistant City Attorney:** No matters were addressed.

14. **Matters from the Licensing Clerk:**

A. <u>Neighborhood boundaries for July 16, 2014 hearing:</u>

i) Rincon Argentino, LLC d/b/a Rincon Argentino – Permanent Modification to a Beer & Wine type liquor license at 2525 Arapahoe Avenue, Suite A-05, Boulder, CO 80302. The board discussed the following boundaries: North: Pearl; South:

Colorado; West: 17th Street; East: 33rd Street. Chair Wallace moved, McMurray seconded, to approve these boundaries. Motion passed 5:0.

ii) Frasca Food and Wine Inc d/b/a Frasca Food And Wine/Pizzeria Locale – Permanent Modification to a Hotel-Restaurant type liquor license at 1738 Pearl Street, Unit 104, Boulder, CO 80302. The board discussed the following boundaries: North: Alpine Street; South: University Street; West: 6th Street; East: Folsom. Chair Wallace moved, Barker seconded, to approve these boundaries. Motion passed 5:0.

iii) BaconLuv, LLC d/b/a Blackbelly Market – New Hotel-Restaurant type liquor license at 1606 Conestoga Street #3, Boulder, CO 80301. The board discussed the following boundaries: North: Pearl Parkway extended; South: Baseline Road; West: Foothills Parkway; East: City limits. Chair Wallace, Spalding seconded, moved to approve these boundaries. Motion passed 5:0.

B. Informational items:

i) June Special Events and Temporary Modifications: City licensing mentioned this was in the packet.

ii) June Liquor License renewal mailing list: City licensing mentioned this was in the packet.

iii) Information Emails to BLA from John Balliet, TIPS Trainer.

iv) Licensing Clerk briefing to BLA of closed licensed locations. It was mentioned that A Spice of Life surrendered their liquor license and that Mishawn Cook received a request for information on transferring the hotel-restaurant license for 221 B Baker Street from Tebo.

15. Matters from the Chair and Members of the Authority.

It was noted that the Press Play hearing was continued to a 2nd Special Hearing Thursday, August 14, 2014.

ADJOURNMENT

Member Barker moved, Wallace seconded, to adjourn the meeting. Motion approved 5:0, thus the hearing was adjourned at 6:00 p.m.

TIME AND LOCATION OF FUTURE MEETINGS, COMMITTEES OR SPECIAL HEARINGS:

Standard hearing time: 3rd Wednesday of every Month at 3PM in Council Chambers for 2014.

Attested: Approved:

Mishawn J. Cook, Tax and License Manager Chair of Beverage Licensing Authority

ATTACHMENT C

Details of each proposed amendment to BLA Rules of Procedure.

Please see below listed changes, by page number and title or section mentioned, with a brief explanation of each change:

Page i, Table of Contents, updates of page numbers due to added text in Rules.

Page ii, Table of Contents, updates to page numbers due to added text and addition of Art Gallery Permits section 9-3.

Page 1, Section 2-2, addition of change of class application type to BLA's jurisdiction inadvertently missing from the list.

Page 2, Section 2-3, change to current hearing time of 3 p.m. reflects current meeting time for this Board.

Page 2, Section 2-4, clarification that special hearings (not standard monthly hearings) require ten (10) days of publication/posting notice to the public.

Page 4, Subsection 3-3-1, clarification that location of books and records shall be indicated on premise diagrams, since they are required in future inspections.

Page 4, Section 3-4, clarification that finger print cards are no longer available from the licensing office but that fingerprints may be completed by other jurisdictions so long as the standard print card is delivered to the licensing office.

Page 5, Section 3-5, clarification that the licensee must maintain proper premise possession at all times.

Page 5, Section 3-6, deletion of the BPD server class because it is no longer offered, requirement that alcohol servers must be trained in a state approved class within three (3) months (instead of six (6) months) of licensee opening or hiring, and confirmation that on-line training is not state approved.

Page 5, Section 4-1, addition of commas for punctuation.

Page 6, Subsection 4-2-1, inclusion of number "10" for consistent numbering.

Page 6, Subsection 4-2-2, Applicants who are submitting Petition materials to the BLA must use city supplied petition forms and materials.

Page 6, Subsection 4-2-3, Only door-to-door petition results will be considered by the BLA.

Page 7, Section 4-3, removal of "the" as a typo.

Page 7, Subsection 4-3-1, clarification that ten (10) days' notice rather than thirty (30) days' notice requirements do not apply to certain applications.

Page 7, Subsection 5-1-1, clarifying that Change of Class applications are processed the same as New License Application, pursuant to state law.

Page 11, Section 6-4, amendment to replace the term “Summary” with “Administrative” for renewal approvals to avoid confusion with “Summary Suspensions”.

Page 11, Section 6-5, change to clarify that licensing office will accept both paper and electronic exhibits.

Page 11, Section 6-7, amends record retention period of three (3) years to align with city standard record retention period.

Page 12, Section 6-8, grammar correction of text for proper tense in sentence.

Page 12, Section 6-9, clarification that a representative may appear for corporations or LLCs because such applications do not include an individual person as applicant.

Page 13, Subsection 8-1-1 (a), clarification of deadlines and definition “timely” for renewal applications.

Page 13, Subsection 8-1-2, amendment to replace the term “Summary” with “Administrative” for renewal approvals to avoid confusion with “Summary Suspensions.”

Page 14, Subsection 8-1-4, addition of term “ninety” for uniform numbering.

Page 14, Subsection 8-1-5, amendment to replace the term “Summary” with “Administrative” for renewal approvals to avoid confusion with “Summary Suspensions.”

Page 15, Subsection 8-1-6, clarifying that license renewal hearings require ten (10) days’ notice, pursuant to state law.

Page 15, Subsection 8-1-7, clarifying that renewal hearings require ten (10) days’ notice, pursuant to state law.

Page 20, Subsection 8-4-5, correction of citation to state law statute.

Page 20, Subsection 8-4-6, moved text from 8-6-2 and re-numbered to 8-4-6 in order to keep all rules associated with transfers together in Section 8-4.

Page 20, Subsection 8-4-7, addition of requirement for licensee to post as closed any location that is closed for six (6) consecutive weeks or more.

Page 21, Section 8-6, replacing the term “Change of Ownership” with “Transfer” for consistency with other sections of the Rules and state law.

Page 21, Subsection 8-6-2, deleted and moved to page 20 and re-numbered to Subsection 8-4-6.

Page 22, Section 9-3, addition of a section to describe application and hearing process for the new Art Gallery Permit, pursuant to state law.

Page 22, Section 10-1, correction of typo.

Page 23, Section 10-1, inclusion of permissive standard for violations of registered manager changes.

Page 24, Subsection 10-2-3 (D), re-organization of text into two paragraphs to clarify.

Page 25, Subsection 10-2-3 (E), amending to provide licensee with the opportunity to make recommendations regarding which dates they shall be suspended from service but that BLA makes final determination.

Page 25, Subsection 10-2-3 (F), clarification that failure to post during suspension days shall result in issuance of a new violation.

Page 25, Subsection 10-2-5, correction to make uniform reference to numbers both in text and number format.

Page 26, Subsection 10-3-3, replace the term “temporary” to “summary” for consistency and clarification regarding time frame for hearing subsequent to summary suspension that mirrors state law.

DRAFT

CITY OF BOULDER

BEVERAGE LICENSING AUTHORITY

RULES OF PROCEDURE

Approved by City Council Resolution No. 1013

~~February 18~~_____, 20~~10~~14

CHAPTER 1 APPLICABILITY AND EFFECTIVE DATE ..... - 1 -
Section 1-1 Applicability..... - 1 -
Section 1-2 Effective Date ..... - 1 -
Section 1-3 Organization and Titles of Rules of Procedure ..... - 1 -

CHAPTER 2 JURISDICTION, ORGANIZATION, AND MEETING PROCEDURES. - 1 -
Section 2-1 City Manager Shall Serve as Licensing Clerk..... - 1 -
Section 2-2 Jurisdiction..... - 1 -
Section 2-3 Regular Meetings..... - 1 -
Section 2-4 Special Meetings ..... - 2 -
Section 2-5 Meetings to be Open and Public..... - 2 -
Section 2-6 Minutes ..... - 2 -
Section 2-7 Quorum..... - 2 -
Section 2-8 Election of Chair and Vice-Chair..... - 2 -
Section 2-9 Parliamentary Procedure ..... - 3 -
Section 2-10 Supplemental Rules..... - 3 -

CHAPTER 3 GENERAL APPLICATION REQUIREMENTS ..... - 3 -
Section 3-1 Forms ..... - 3 -
Section 3-2 Fees..... - 3 -
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CHAPTER 1 APPLICABILITY AND EFFECTIVE DATE

Section 1-1 Applicability

In addition to any other laws, ordinances or regulations which may be applicable, these rules of procedure shall govern all applications and proceedings before the City of Boulder Beverage Licensing Authority ("Authority").

Section 1-2 Effective Date

These rules of procedure shall be effective as of the date of adoption or amendment noted on the cover page.

Section 1-3 Organization and Titles of Rules of Procedure

These rules shall be organized and referred to by chapter, section and subsection. Chapter, section, and subsection titles shall be used for convenience only and shall not be used as catchwords to construe the meaning of any provision of these rules of procedure.

CHAPTER 2 JURISDICTION, ORGANIZATION, AND MEETING PROCEDURES

Section 2-1 City Manager Shall Serve as Licensing Clerk

Pursuant to 2-3-3, B.R.C. 1981, the City Manager acting by and through the City Clerk shall serve as the Licensing Clerk for the Authority. The Licensing Clerk's duties may be delegated to staff other than the City Clerk should the City Manager so desire. The Licensing Clerk shall be the Authority's agent for all purposes specified by state or local law, including preliminary investigations and findings, and other actions necessary or desirable under these rules of procedure.

Section 2-2 Jurisdiction

The Authority shall have jurisdiction to hear and take final action upon all alcohol beverage license applications; renewals; change~~s~~ of location; change of class; change, alteration or modification of premises or usage; transfer of ownership; change of ownership structure; change of business names or trade names; change of registered managers; transfer of ownership by operation of law; and, any other applications or actions responsibility for which is delegated to the Authority by state or local law.

Section 2-3 Regular Meetings

There shall be one (1) regular meeting of the Authority in each calendar month, provided that the Licensing Clerk may post notice canceling the meeting if at least one

licensing application or show cause order requiring a public hearing or other Authority action has not been timely filed. Regular meetings shall be held on the third Wednesday of each month and shall commence at ~~1~~3:00 p.m. in the Council Chambers of the Municipal Building, 1777 Broadway, Boulder, Colorado. The Authority may by motion prescribe a different date, time or place for any such regular meeting, and may by motion or call of the Chair, schedule special meetings as deemed appropriate.

Section 2-4 Special Meetings

Special meetings may be called by motion of the Authority and may be conducted at any time and place within the City of Boulder. No special meeting may be conducted or continued on a licensing matter without complying with the ten (10) days publication and posting notice requirements.~~notice procedures required by law.~~

Section 2-5 Meetings to be Open and Public

Pursuant to Section 2-3-1(b)(5) B.R.C. 1981, all meetings of the Authority shall be open to the public, after full and timely notice of date, time, place, and subject matter of the meeting, and all meetings shall include an opportunity for public comment on any matter relevant to the Authority's responsibilities, subject to the discretion of the Chair on the time and length of such comment. This opportunity shall not be construed to permit public comment by persons other than Parties in Interest (as defined in Section 4-4) during public hearings required by law.

Section 2-6 Minutes

Pursuant to Section 2-3-1(b)(2), B.R.C. 1981, the Licensing Clerk shall keep minutes of all meetings and records of all transactions on behalf of the Authority.

Section 2-7 Quorum

Pursuant to Section 2-3-1(c), B.R.C. 1981, three members of the Authority shall constitute a quorum, and the Authority shall act only on an affirmative vote of at least three members.

Section 2-8 Election of Chair and Vice-Chair

Pursuant to Section 2-3-1(b)(3), B.R.C. 1981, the Authority shall appoint from amongst its membership a Chair and a Vice-Chair.

Section 2-9 Parliamentary Procedure

All questions of procedure or order shall be decided by the Chair, subject to appeal by a majority of the members present. The Chair may direct the City Attorney to provide advice and guidance on any question or procedure or order. *Robert's Rules of Order, Newly Revised (1981)* shall not be applicable to proceedings of the Authority.

Section 2-10 Supplemental Rules

The Authority may from time to time adopt supplemental rules not in conflict with these Rules of Procedure. Any supplemental rules shall be reviewed by the Licensing Clerk and approved as to form by the City Attorney.

CHAPTER 3 GENERAL APPLICATION REQUIREMENTS

Section 3-1 Forms

All applications and requests to the Authority shall be on forms promulgated by the state or City of Boulder, as applicable, and shall be filed in duplicate with the Licensing Clerk. All information supplied on applications and requests, except for drawings, plans and specifications, if any, shall be typewritten or clearly printed.

Subsection 3-1-1 Incomplete Applications

Application forms shall not be deemed filed or accepted unless and until they are determined to be complete by the Licensing Clerk.

Section 3-2 Fees

No application shall be deemed complete unless it is accompanied by the fees prescribed by Section 4-20-2, B.R.C. 1981 and any fees payable to the Colorado Department of Revenue pursuant to state law.

Section 3-3 Plans & Specifications

The applicant shall file at the time of application plans and specifications for the interior of the building if the building to be occupied is in existence at the time. If the building is not in existence, the applicant shall file a plot plan and a detailed sketch for the interior and submit an architect's drawing of the building to be constructed.

Subsection 3-3-1 Plans & Specifications

All plans, specifications and detailed sketches or drawings shall be to scale on 8-1/2" x 11" paper and shall show the floor plan and layout of the interior of the building where the license is sought to be exercised.

If a liquor or fermented malt beverage on-premise license is applied for, the plans and specifications shall show, as a minimum, the following:

(A) A separate page for each level or floor to be licensed;
(B) Walls, partitions, entrances and exits;
(C) Dimensions of the premises;
(D) Clearly identify the nearest streets;
(E) Indicate the North direction;
(F) Clearly identify the bar(s);
(G) Clearly identify where alcohol shall be stored;
(H) Clearly identify any patio(s), if applicable;
(I) Identify the type of barrier surrounding the patio, if applicable;
(J) All tables and chairs; ~~and,~~
(K) List the total seating capacity and.~~.~~
~~(K)~~(L) Where books and records will be stored.

If a hotel-restaurant license is applied for, plans and specifications shall, in addition to the above, show the following:

~~(L)~~(M) The total floor area where meals shall be served;
~~(M)~~(N) Location of all bar counters;
~~(N)~~(O) Size and dimension of the kitchen and other food preparation areas;
~~(O)~~(P) Location, number and kinds of ranges, stoves or ovens, refrigerators, food lockers, dishwashers, sinks and restrooms; and
~~(P)~~(Q) Location and dimension of food storage areas, and any other fixtures and equipment to be installed and used in connection with the preparation and serving of meals.

Section 3-4 Fingerprints

At the time of submitting an application for a new license or transfer of ownership of an existing license, the applicant, registered manager (if applicable), all corporate officers, directors and stockholders with more than 10 percent interest, and all partners and members shall make arrangements to have fingerprints taken at the Boulder Police Department or other law enforcement agency on Boulder Police Department fingerprint cards ~~(available from Licensing Clerk)~~ and have them delivered directly to the ~~City~~ Licensing Clerk's office.

Section 3-5 Proof of Right to Possession of Premises

Each application for a new license, transfer of ownership of an existing license, change of location for a liquor or fermented malt beverage license and request for modification of licensed premises shall be accompanied by a deed, lease or other documentation supporting the applicant's right to occupy the premises where the license shall be

exercised. ~~The documentation must show a right of possession extending at least one year from the date of state license issuance.~~

Section 3-6 Training Requirements

All employees involved in the service of alcohol, including, without limitation, managers, clerks, bartenders and waitpersons, ~~will~~ shall attend ~~the~~ a seller server training class approved by the Director of the Liquor Enforcement Division of the Department of Revenue within ~~six~~ three (3) months from the approval of the license. ~~Certification for satisfactory completion of a class City of Boulder Police Department Licensed Establishments Seller and Server Class or State approved Responsible Vendor alcohol server training is deemed valid for three (3) years from date of training certification.~~ Re-certification must take place on or before expiration of certification. ~~after each subsequent three (3) year period~~. New employees shall take a course within ~~six~~ three (3) months of their hire date. ~~or within 6 six months of opening an establishment.~~ The training shall be a continuous condition of the license, and all subsequent renewals, if the Authority approves the application. Online training is not accepted to fulfill training requirements.

As to Tastings held at retail liquor stores or liquor licensed drugstores, all servers must complete a server and seller training program endorsed by the Director of the Liquor Enforcement Division of the Department of Revenue and recognized under the Responsible Alcohol Beverage Vendor Act.

CHAPTER 4 PREHEARING ACTIONS AND DETERMINATIONS

Section 4-1 Neighborhood Boundaries

Upon receipt of a completed application, the Authority shall establish the neighborhood boundaries for the application at the next available regular meeting. The boundaries will typically include an area of not less than a one-half (1/2) mile radius around the proposed establishment. In addition, factors including, but not limited to, zoning boundaries, land use designations, traffic flow, access roads, demographics, size of establishment, natural and human-made barriers, and consideration of other similar licenses in the area proposed may also be considered by the Authority in determining the neighborhood boundary. Any reference in these Rules to “Neighborhood” shall refer to the Neighborhood designated by the Authority pursuant to this Section 4.1

Subsection 4-1-1 Objections to Neighborhood Boundaries

An applicant or other Party in Interest may object to the boundaries as established by the Authority. Objections to Neighborhood boundaries must be made at the same Authority meeting during which the boundaries are established.

Section 4-2 Petitions

Subsection 4-2-1 Petitions Permitted

Petitions may be circulated by the applicant, firm or corporation retained by the applicant, or any Party in Interest opposing or supporting the issuance of the license. Petitions shall be submitted to the Licensing Clerk no later than ten (10) days before the public hearing. Petitions are not the only means of establishing the reasonable requirements of the neighborhood and the desires of the adult inhabitants.

Subsection 4-2-2 Petition Format

The applicant must use the City petition format provided by ~~The petition format must be approved by the Authority prior to entry into evidence at a hearing. A pre-approved format may be developed and made available from~~ the Licensing Clerk. The Authority may approve and consider as evidence other petition formats upon good cause shown, and a sample of such other petition format shall be provided to the Licensing Clerk for review by the Authority at the hearing where the Neighborhood is designated. The Authority may, on its own motion, continue the hearing to hear testimony from the person(s) who circulated the petition prior to approving or disapproving any submitted petition.

Subsection 4-2-3 Restricted to Approved Neighborhood Boundaries

Petitions must be circulated within the Neighborhood boundaries established by the Authority. Petitions circulated outside such neighborhood shall not be considered by the Authority. Each person signing a petition shall sign only his own first and last name, address, and date petition was signed. No person shall sign more than one petition. A person is qualified to sign such petition upon attaining the age of twenty-one (21). No petitions will be considered unless the party or parties submitting them have first designated alongside each signature on the petition whether the party signing resides, or owns or manages a business, within the Neighborhood. Only door-to-door petitions will be considered by the Authority. Counter petitions, and petitions provided to customers of the establishment, will not be considered by the Authority.

Subsection 4-2-4 Legibility

Each signature and accompanying address must be clearly legible in order to be entered into the record and considered by the Authority. Any member of the Authority may move at any time prior to the conclusion of the applicable public hearing to strike and disregard illegible signatures or signatures accompanied by illegible addresses.

Section 4-3 Notice of Hearing

Upon receipt of complete state and local applications, the Licensing Clerk shall schedule a public hearing upon the application. The hearing shall be set for the next regular meeting of the Authority, occurring not less than thirty (30) days from the date of the application. The Licensing Clerk shall: (i) timely provide applicant with a poster

properly conforming with state and city posting requirements; (ii) have applicant confirm under oath completion of such mandatory postings; and, (iii) publish public notice of the hearing not less than ten (10) days before such a hearing. Public notice shall be given by ~~the~~ posting a sign in a conspicuous place on the premises that are the subject of the application, and by publication in the Boulder paper of record. Notice given by posting and publication shall conform to requirements set forth in Section 12-47-311, C.R.S.

Subsection 4-3-1 Special Notice and Hearing Requirements

The notice requirements of Section 4-3 do not apply upon receipt of applications for License Renewal, Licensing Clerk Interior Premises Approvals, Special Events, ~~or~~ Bed & Breakfast Permits, or at the request of the Authority for Special Hearings or continuation of hearings. The Sections governing these permits specify special notice and hearing requirements.

Section 4-4 Definition of “Party in Interest”

"Party in Interest" as used in these Rules of Procedure means any of the following: (1) the applicant; (2) an adult resident of the Neighborhood under consideration; (3) the owner or manager of a business located in the Neighborhood under consideration; or, (4) the principal or representative of any school located within five hundred (500) feet of the premises for which the license is sought. (Section 12-47-311(5)(b), C.R.S.).

CHAPTER 5 PRELIMINARY INVESTIGATIONS

Section 5-1 Matters Covered

Subsection 5-1-1 New Licenses and Change of Class of License

Upon receipt of a complete application for a new license/change of class of license, the Licensing Clerk shall conduct a preliminary investigation with regard to the following matters:

(A) For applications for a malt, vinous, or spirituous liquor license, whether within two (2) years, preceding the date of the application, either the state or Authority has denied an application for the same class of license at the same location or within 500 feet of the same location, for the reason that the reasonable requirements of the neighborhood and the desires of the inhabitants were satisfied by the existing outlets. For applications for fermented malt beverages at retail, whether within one year preceding the date of the application, either the state or Authority has denied an application at the same location for the reason that the reasonable requirements of the neighborhood or the desires of the inhabitants were satisfied by the exiting outlets. This requirement is not applicable to applications for Bed and Breakfast Permits;

(B) Whether it satisfactorily appears that the applicant is or shall be entitled to possession of the premises for which application is made under a lease or by virtue of ownership;

(C) Whether the sale of liquor, or fermented malt beverages as contemplated by the applicant is in compliance with the zoning laws of the City of Boulder, and within any applicable State laws, rules or regulations, or regulations for restaurants of Boulder County and of the State Board of Health;

(D) For liquor applications, whether the building in which the liquor is to be sold is located within five hundred (500) feet of any public or parochial school or the principal campus of any college, university or seminary. This requirement is not applicable to applications for Bed and Breakfast Permits;

(E) The number and type of outlets located within the Neighborhood designated by the Authority as the neighborhood affected by the license applied for;

(F) Any criminal history information on the applicant which has been discovered by or brought to the attention of the Licensing Clerk or Authority;

(G) A report of all pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed. This report and attached Exhibits provided to the Authority shall specify any direct or indirect financial interests (including notes, mortgages, leases, etc.) in other licenses as reported on or attached to State forms. This report shall include reports from appropriate law enforcement agencies of the applicant's previous criminal record, if any, and shall include registered managers, if applicable, and all partners, principals or stockholders of a private corporation and all partners, principals or stockholders holding ten percent (10%) or more of the outstanding and issued stock of a public corporation subject to the Security and Exchange Act of 1934, as amended; and,

(H) Such other matters as the Authority may direct.

Subsection 5-1-2 Transfer of Ownership

Upon receipt of a complete application for a transfer of ownership of an existing license, the Licensing Clerk shall conduct a preliminary investigation with regard to only those matters set forth in Subsection 5-1-1(B), (C), (F) and (G) above; and Subsection 5-1-4, “Change, Alteration, or Modification of Premises or Usage.”

Subsection 5-1-3 Change of Location

Upon receipt of a complete application for a change of location of an existing license, the Licensing Clerk shall conduct a preliminary investigation with regard to all matters set forth in Subsection 5-1-1 above, except that the character of the applicant shall not be considered.

Subsection 5-1-4 Change, Alteration, or Modification of Premises or Usage

Upon receipt of a complete application for a change, alteration or modification of premises or usage, the Licensing Clerk shall conduct a preliminary investigation with regard to those matters set forth in Subsection 5-1-1(B), (C), (D), and (E) above.

Section 5-2 Undue Concentration of Taverns and Retail Liquor Stores

Subsection 5-2-1 State Law Permits Denial Based Upon Undue Concentration of Licenses

The Authority may deny the issuance of any new tavern or retail liquor store license whenever it determines that the issuance of such license would result in or add to an undue concentration of the same class of license and, as a result, require the use of additional law enforcement resources. (Section 12-47-301(2)(b), C.R.S.)

Subsection 5-2-2 Factors to Consider When Determining Undue Concentration Pursuant to State Liquor Code Regulation 47-301

For purposes of determining if the issuance of a new tavern or retail liquor store license would result in or add to an undue concentration of the same class of license and, as a result, require the use of additional law enforcement resources, the Authority may consider factors, including, but not limited to:

(A) Whether the ratio of the number of tavern or retail liquor store licenses within Boulder County to the Boulder County's population exceeds the ratio of the statewide number of licenses of the same class to the state population;

(B) Whether the ratio of the number of tavern or retail liquor store licenses within the census tract or census division in the Neighborhood in which the applicant premises are located to the population of the census tract or division exceeds the ratio of number of licenses of the same class in the City of Boulder to the population of the City of Boulder;

(C) The distance between the applicant premises and the premises of other holders of the same class of license;

(D) Published data concerning the concentration of tavern or retail liquor store licenses and its effect on the need for law enforcement resources; and,

(E) Testimony concerning the use of law enforcement resources by law enforcement officials with the responsibility for enforcing state or local law in the area in which the applicant premises are located.

Subsection 5-2-3 Requirements for Usable Data

For purposes of this Section:

(A) The number of tavern and retail liquor store licenses within a given area shall be as published by the state licensing authority;

(B) The population shall be the estimate published by the most recent United States decennial or special census (for state, census tract, and census division data) or the most recent estimates published by the Department of Local Affairs (for county and municipal data); and,

(C) "Neighborhood" shall refer to the Neighborhood designated by the Authority pursuant to Section 4-1 of these Rules of Procedure.

CHAPTER 6 HEARINGS, DECISIONS AND APPEALS

Section 6-1 Rules of Evidence

The rules of evidence and requirements of proof and procedure shall conform to the extent practicable to those in civil non-jury cases, but when necessary to ascertain facts affecting the substantial rights of the public or of the licensee, the Authority may receive and consider evidence not admissible under such rules if such evidence possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. The rules of privilege required by law shall be respected, and the Chair may exclude incompetent and unduly repetitious evidence. Questions concerning the competency of witnesses to testify on behalf of, or in opposition to, the issuance of the license, the materiality, relevancy, or competency of their testimony, and other evidentiary matters shall be determined by the Chair. The Chair shall rule upon all questions of evidence and procedure, subject to being overruled on motion sustained by a majority vote of those members of the Authority present.

Section 6-2 Witnesses under Oath

All testimony shall be given under oath.

Section 6-3 Ability to Present Evidence and Cross-Examine

All Parties in Interest shall be allowed to present evidence and to cross-examine witnesses.

Section 6-4 Agreed Upon Conditions of Approval

The Authority may impose conditions of approval on any license, permit or action when agreed to by the applicant and other Parties in Interest, provided the Authority independently concurs with the proposed condition. The Authority may, separate from the agreed upon conditions in this Section 6-4, direct at any time (pursuant to notice requirements set forth in Section 4-3) that any license renewal be changed to non-~~Summary~~Administrative Approval, thus removing the renewal from possible ~~Summary~~Administrative Approval (as described in Subsection 8-1-5), and directing the Licensing Clerk to set the next annual renewal of such license for review in a hearing before the Authority, unless and until the Authority directs otherwise.

Section 6-5 Exhibits

All exhibits shall be marked and introduced as in civil cases. All exhibits shall be on 8-1/2" x 11" paper and in electronic format. For hearing purposes, exhibits may be enlarged and mounted on cardboard or similar material, but the mounted exhibits shall not be accepted or retained by the Authority and shall not become a part of the record.

Section 6-6 Time Limits

The Chair may limit the presentation of evidence and cross-examination, so as to prevent repetitive and cumulative evidence or examination.

Section 6-7 Preparation of Record

A stenographic reporter shall be provided by the Authority only upon request of the applicant with all requests for stenographic reporters to be made to the Licensing Clerk at least seven (7) days prior to the hearing at which a record is to be transcribed, and on the condition that all costs of preparing a transcript (including a copy for the Authority) and the reporter's appearance fee (including any fee for late cancellations) be paid by the applicant. In all other instances, an audio recording shall be made of the proceedings and shall be retained for a period of the current year plus an additional ~~6~~3 years. Summary minutes shall be created by the Licensing Clerk, approved by the Authority, and shall permanently be retained.

Section 6-8 Burden of Proof

During an application hearing, the applicant shall have the burden of proving that they are qualified to hold a license, have~~s~~ sufficient financial sources, that the reasonable requirements of the neighborhood are not being met by existing liquor or fermented malt beverage outlets and that the neighborhood needs and desires the applicant's particular outlet. In all other hearings before the Authority, except show cause hearings, the applicant shall have the burden of proving that they have met all the requirements of the state law and local ordinance governing the particular application.

Section 6-9 Presence of Applicant and Representation by Counsel

Applicants or other Parties in Interest may appear in person or be represented by counsel, except that the applicant or licensee, as the case may be, shall personally appear before the Authority unless a corporation or LLC in which case a representative of the Applicant may appear. ~~on all matters relating to their application or license unless s~~Such presence ~~is~~ may be waived by a majority vote of the members present.

Section 6-10 Continuances

The Licensing Clerk may grant an applicant's request to continue a matter set for hearing to the next following regular meeting, if such request is made prior to the time that publication and posting of notice of hearing on the matter has been made. After a matter has been scheduled for public hearing and public notice thereof has been given, the matter may be continued only by the Authority for good cause upon a majority vote at the time originally noticed. The Authority may by motion and majority vote continue a hearing on its own initiative for good cause, provided that the applicant and other Parties in Interest are first given an opportunity to state their position on the proposed continuance.

Section 6-11 Decisions

The decision of the Authority approving or denying an application or request after a public hearing or public meeting shall be in writing, shall state the grounds for the decision, and shall be made no later than thirty (30) days after the date of the public hearing. The City Attorney shall prepare a written decision on each application which shall be timely provided to the Licensing Clerk for certified mailing. A copy of the decision shall be sent, by certified mail or personal service, to the applicant at the address shown in the application.

Section 6-12 Appeals

Appeals of decisions of the Authority shall be to the District Court in the manner specified by the Colorado Rules of Civil Procedure.

CHAPTER 7 LICENSE ISSUANCE

Section 7-1 Confirmation of Conditions

Although the license may be approved by both the Authority and State Licensing Authorities, no license shall be issued by the Licensing Clerk until all Authority-approved conditions and all Authority directed contingencies are met and the building in which the business is to be conducted is ready for occupancy, with any necessary furniture, fixtures, and equipment in place, and then only after the Licensing Clerk's inspection of the premises has been made to determine that the applicant has complied with the drawings, plans and specifications submitted with the application.

CHAPTER 8 POST-ISSUANCE ACTIONS

Section 8-1 License Renewal

Subsection 8-1-1 Timely Application Required

All applications for renewal of alcohol beverage licenses, including both State and City forms with applicable fees for both parties, shall be submitted to the Licensing Clerk in the form prescribed by law no later than forty-five (45) days before the license expiration date together with the required license and renewal application fees. Any application received fewer than forty-five (45) days before the license expiration date shall be considered a late application.

Subsection 8-1-1-a Definition of “Timely”

Complete renewal applications which are mailed and postmarked on or before the forty-five (45) day deadline will be considered timely filed. If the deadline date lands on a weekend or city government recognized holiday then the application will be considered timely filed if postmarked on the next business day following that holiday or weekend deadline date.

Complete renewal applications that are hand delivered to the Licensing Clerk on or before the forty-five (45) day deadline will be considered timely filed. If the deadline date lands on a weekend or a city government recognized holiday then the application will be considered timely filed if hand delivered on the next business day following that holiday or weekend deadline date.

Subsection 8-1-2 Late Applications Without Objections Received Before Expiration of License

The Licensing Clerk may process late applications received before expiration of the license, for which no objections have been received, provided that the licensee agrees to suspend the sale of alcohol beverages during the period between expiration of the license and the date the license is actually renewed. If the licensee does not agree to the temporary post-expiration suspension, the Licensing Clerk shall not allow ~~Summary~~Administrative Approval (as described in Subsection 8-1-5) and shall set the

matter for a renewal hearing before the Authority for the next available Authority hearing.

Subsection 8-1-3 Late Applications With Objections Received Before Expiration of License

When objections have been received, the Licensing Clerk shall set any late applications received before expiration of the license for a renewal hearing before the Authority for the next available Authority hearing.

Subsection 8-1-4 Expired Licenses

A licensee whose license has been expired for not more than ninety (90) days may file a late renewal application upon the payment of a nonrefundable late application fee to the City. A licensee who files a late renewal application for a license that expires before its Authority hearing, or a licensee who files a renewal not more than ninety (90) days after a license is expired and pays the requisite fee, may continue to operate subject to the limitations set forth in Section 8-1-8, until the Authority has taken final action to approve or deny such licensee's late renewal application. (Section 12-47-302(2)(a), C.R.S.) No late renewal application shall be accepted more than ninety (90) days after the expiration of a licensee's permanent annual license. Any licensee whose permanent annual license has been expired for more than ninety (90) days must apply for a new license pursuant to Sections 12-47-302 and 12-47-311, C.R.S., and shall not sell or possess for sale any alcohol beverage until all required licenses have been obtained.

Subsection 8-1-5 ~~Summary~~ Administrative Approval of License Renewal by Licensing Clerk

After receiving a complete license renewal application including both State and City renewal forms with applicable fees for both parties, the Licensing Clerk shall review the application, together with the following information covering the period since the initial application or last renewal (whichever is more recent): (i) submissions to the applicant's file; (ii) City department comments; and, (iii) pertinent City records. Unless there is evidence to the contrary, whether contained in the applicant's file or otherwise, it will be presumed that the occupied premises comply with the provisions of the statutes and applicable regulations, that the character of the applicant continues to be satisfactory, and that such renewed license, if granted, continues to meet the reasonable requirements of the neighborhood and the desires of the inhabitants. If no such evidence counters these presumptions, the license renewal application shall be approved by the Licensing Clerk and forwarded to the State Department of Revenue, Liquor Enforcement Division. If the Licensing Clerk finds such evidence countering these presumptions, the Licensing Clerk shall set, for the next available Authority hearing, the license renewal application for a renewal hearing before the Authority. The Authority may, separate from the agreed upon conditions in this Section 6-4, direct at any time (pursuant to notice requirements set forth in Section 4-3) that any license

renewal be changed to non-~~Summary~~Administrative Approval, thus removing the renewal from possible ~~Summary~~Administrative Approval (as described in Subsection 8-1-5), and directing the Licensing Clerk to set the next annual renewal of such license for review in a hearing before the Authority, unless and until the Authority directs otherwise.

Subsection 8-1-6 License Renewal Hearings by the Authority

Whenever objections to the renewal of a license have been raised (by a Party in Interest, the State, or the City) before renewal of the license, the Licensing Clerk shall have the discretion to set the matter for a renewal hearing. An Objection to Renewal Hearing Notice shall be sent to licensee via certified mailing at least ten~~hirty (13~~0) days before the Authority renewal hearing date. All supporting evidence available at the time concerning the objection shall be provided to the licensee with the hearing notice. Renewal hearings shall be conducted in compliance with Chapter 6 of these Rules of Procedure.

Subsection 8-1-7 Notice and Hearing Requirements for License Renewal Hearings

A public hearing on the renewal application shall be held at the next available Authority hearing not less than ~~thirty~~ ten (~~3~~10) days from the date of mailing of the notification of renewal objection to the licensee. A notice of hearing shall be conspicuously posted on the licensed premises for a period of no less than ten (10) days prior to the renewal hearing. If such objection is made less than thirty (30) days from the expiration of the license, the Licensing Clerk shall set the renewal hearing for the next available date which provides the licensee with ~~thirty~~ ten (~~30~~10) days notice and ten (10) days proper posting of the premises.

Subsection 8-1-8 Sales Permitted Pending Hearing

If the licensee requests a continuance of the hearing date, or if a late application set for a renewal hearing cannot be processed before the expiration of the license, the Authority may order the licensee not to sell alcohol beverages beyond the expiration date of the license until a determination has been reached ruling on the license renewal.

Subsection 8-1-9 Grounds for Non-Renewal of License

Objections to renewal of a license must be for good cause. Evidence of good cause to deny a renewal may include, but shall not be limited to, the following:

(A) Evidence that the licensee or applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of the Colorado Liquor Code or any related rules and regulations;

(B) Evidence that the licensee or applicant has failed to comply with

any special terms or conditions that were placed on its license in prior disciplinary proceedings or arose in the context of potential disciplinary proceeding; or,

(C) Evidence that the licensed premises have been operated in a manner that adversely affects the public health, welfare or safety of the immediate Neighborhood in which the establishment is located, including a continuing pattern of fights, violent activity or disorderly conduct.

Section 8-2 Change of Location

An application for a Change of Location shall conform to all notice, hearing and substantive requirements for an application for a new license except as specifically provided otherwise in these Rules of Procedure. In addition, the reason for the requested change shall be specified.

Section 8-3 Change, Alteration or Modification of Premises or Usage

Subsection 8-3-1 Permission Required

A licensee shall not physically change, alter or modify the premises in a manner which materially or substantially alters the premises or the usage of the premises from the plans and specifications submitted at the time of obtaining the license without approval of the Licensing Clerk or Authority as provided below.

Subsection 8-3-2 Applicability Pursuant to State Liquor Code Regulation 47-302, As Applied

The physical changes, alterations or modifications of the premises, or in the usage of the premises requiring prior written consent, shall include, but not be limited to, the following:

(A) Any increase or decrease in the total size or capacity of the premises;

(B) The sealing off, creation or relocation of a common entryway, doorway, passage or other means of public ingress and/or egress, when such common entryway, doorway or passage permits access to the premises from or between public streets or thoroughfares, adjacent or abutting buildings, rooms or premises;

(C) Any substantial or material enlargement of a bar, or relocation of a bar or addition of a separate bar; and,

(D) Any material change in the interior of the premises that would affect the basic character of the premises or the physical structure that existed in the plan on file with the latest prior application. The foregoing shall not apply to painting and redecorating of premises; the installation or replacement of fixtures or equipment, plumbing, refrigeration, air conditioning or heating fixtures and equipment; the lowering of ceilings; the installation and replacement of floor coverings; the replacement of furniture and equipment; or other similar changes. "Character" shall include "usage" as the term is used in Regulation 47-302.

Subsection 8-3-3 Licensing Clerk Interior Premises Approvals

The Licensing Clerk may make an administrative decision to approve any proposed change, alteration or modification of the interior premises ("interior proposal") which does not significantly or materially alter the premises or the usage of the premises. The Licensing Clerk shall consider the factors set forth in Subsection 8-3-2. The Licensing Clerk may seek informal direction from the Authority in these determinations. The Licensing Clerk's approval decision shall be final, subject to call up by the Authority for review in any Authority hearing. Such hearing will comply with Notice of Hearing requirements set forth in Section 4-3. The Licensing Clerk may also refer any proposal directly for a hearing before the Authority, in which case the Licensing Clerk's action shall be deemed a denial of approval and a determination that the interior proposal would significantly or materially alter the interior premises or the usage of the interior premises.

Subsection 8-3-4 Authority Change, Alter and Modify Determinations

Following notice and hearing as specified in Section 4-3, the Authority will make a decision with respect to any denial or referral of an interior proposal by the Licensing Clerk, and with respect to any proposed change, alteration or modification of the exterior premises, expansion of the premises, or any internal change, alteration or modification which significantly or materially alters the usage of the premises. The Authority shall consider the factors set forth in Subsection 8-3-5.

Subsection 8-3-5 Decision making Factors Pursuant to State Liquor Code Regulation Code 47-302, As Applied

The Authority must consider whether the premises, as changed, altered, expanded or modified, will meet the requirements of the Colorado Liquor Code and the regulations. The factors to be taken into account include, but are not limited to, the following:

(A) The reasonable requirements of the neighborhood and the desires of the inhabitants. More specifically, the desires of the inhabitants (residents, tenants, store owners and managers) of the

neighborhood for any proposed change, alteration, expansion or modification; and the need of the neighborhood for the proposed change, alteration, expansion or modification in view of the desires of the inhabitants and the ability of existing establishments of a similar type in or near the establishment to meet the needs of the inhabitants;

(B) The possession, by the licensee, of the changed premises by ownership, lease, rental or other arrangement;

(C) Compliance with the applicable zoning laws of the municipality, city and county, or county. The Authority may for good cause shown permit concurrent processing of zoning permits, but only when the Authority has made a finding that the reasonable requirements of the neighborhood and the desires of the inhabitants as described in (A) above require approval of the application;

(D) Compliance with the distance prohibition with regard to any public or parochial school or the principal campus of any college, university or seminary; and,

(E) The legislative declaration that the Colorado Liquor Code is an exercise of the police powers of this state for the protection of the economic and social welfare and the health, peace, and morals of the people of this state.

Subsection 8-3-6 Notice of and Grounds for Denial

If the Authority denies permission to change, alter or modify the premises, written notice in accordance with Section 6-11 shall be given to the licensee stating the grounds for the denial.

Section 8-4 Transfer of Ownership

An application for transfer of ownership shall conform to the procedures, hearings, and requirements applicable to an application for a new license (see Chapter 3), except as provided in this Section.

Subsection 8-4-1 Character Investigation

The Licensing Clerk shall conduct an investigation into the character of the applicant, including when applicable, registered managers and the officers, members, partners or major shareholders.

Subsection 8-4-2 Review for Changes, Alterations or Modifications

The Licensing Clerk shall consider proposed physical alterations to a licensed premises as part of a license-transfer proceeding in determining the proper processing and necessary applications for a Transfer of Ownership. The Licensing Clerk shall compare original plans and specifications (from the existing licensee) to new plans, if any, to determine whether any proposed change, alteration or modification of the premises would significantly or materially alter the premises or usage of the premises.

(A) If the Licensing Clerk determines that the changes would significantly or materially alter the usage of the premises then the Licensing Clerk shall schedule a hearing before the Authority with public notice of such hearing to be given in accordance with the Notice of Hearing requirements in Section 4-3 herein.

(B) The Licensing Clerk shall permit concurrent processing of applications for permission for Change, Alteration or Modification of Premises or Usage and Transfers of Ownership, but in no case shall the Transfer of Ownership application be approved before the Licensing Clerk or the Authority (as applicable) have substantively addressed applications for permission for Change, Alteration or Modification of Premises or Usage.

Subsection 8-4-3 Agreement of Current Licensee

The applicant shall show proof documenting that the current licensee agrees to the transfer of ownership. A notarized statement by the current licensee requesting that the Authority transfer the license to applicant shall be sufficient. In addition, the current licensee and the prospective applicant shall complete the proper City forms as provided by the Licensing Clerk and required state-approved transfer affidavit and forms.

Subsection 8-4-4 Limited Review

When determining whether a transfer of ownership should be granted, the Authority shall consider only the applicant's possession of the premises, the applicant's ability to conduct the business according to law, the requirements of Section 12-47-307, C.R.S., which includes but is not limited to the character of the applicant, and 1 CCR 203-2, Rule 47-302 as to whether any proposed change, alteration or modification of the premises would significantly or materially alter the premises or usage of the premises.

Subsection 8-4-5 Temporary Permits

A temporary permit to authorize the applicant to continue selling alcoholic or fermented malt beverages, during the period in which an application to transfer the ownership of the license is pending, may be issued by the Licensing Clerk upon application by the transferee licensee on forms provided by the Licensing Clerk with required attachments and accompanied by the appropriate fee. The Licensing Clerk shall issue a temporary permit within five (5) working days from the date of a completed application provided

that all requirements of the Section 12-47-31~~1~~03, C.R.S., have been met by the applicant. The application shall be filed no later than thirty (30) days after the filing of a complete application for transfer of ownership. The temporary permit shall be good for no more than one hundred twenty (120) days or until such time as the application to transfer ownership of the license is granted whichever shall occur first; except that, if the transfer application has not been granted or denied within the one hundred twenty (120) day period and the transferee demonstrates good cause, the Authority may, in its discretion, extend the temporary permit for an additional period not to exceed sixty (60) days. In the event the application to transfer the ownership is denied by the Authority, the temporary permit is immediately void and the license remains in the name of the transferor licensee.

Subsection 8-4-6 Notice and Hearings Requirements for License Transfer Hearings

A public hearing will be held on the application and shall be noticed pursuant to Section 4-3 and conducted pursuant to Chapter 6. The Authority shall consider and act upon the evidence of the applicant's possession of the licensed premises, the requirements of Section 12-47-307, C.R.S, and the requirements of 1 CCR 203-2, Rule 47-302. The burden of proof is on the applicant to establish all requirements. The current licensee may appear at the hearing and contest the transfer of the license. The Authority shall consider the current licensee's evidence opposing the transfer. Such evidence shall be limited to the issue of legal possession of the premises or the character of the applicant. Should the current licensee fail to appear to contest the license transfer, the Authority shall act on the transfer considering the evidence presented by the applicant and any Parties in Interest.

Subsection 8-4-7 Required Posting of Closed Premise Locations

When a liquor licensed premise location is closed to the general public for more than six (6) consecutive weeks, the licensee shall obtain from the Licensing Clerk's office a poster prepared by that office that indicates the premises is closed. The licensee shall post this poster at their location in a manner that is conspicuously visible to members of the general public from the outside of the premise location for the duration of that licensee's closure.

Section 8-5 Change of Corporate Structure

Subsection 8-5-1 Privately-Held Corporations

Any transfer of the capital stock, and any change in officers or directors of any corporation holding a license under the provisions of the Colorado Liquor Code and which is not subject to the reporting requirements of the Securities and Exchange Act of 1934, as amended, shall be reported to the Licensing Clerk within thirty (30) days after

such transfer or change. A licensee shall use state approved forms with required attachments and proper fees paid to both city and state.

Subsection 8-5-2 Publicly-Held Corporations

Corporate licensees subject to the Securities and Exchange Act of 1934, as amended, shall submit the names and addresses of all persons owning ten percent (10%) or more of the outstanding or issued capital stock not more than thirty (30) days after such ownership occurs; and shall submit to the Licensing Clerk the names and addresses of all corporate officers within thirty (30) days after their appointments. A licensee shall use state approved forms, with required attachments and proper fees paid to both city and state.

Section 8-6 ~~Change of Ownership~~ Transfer by Operation of Law

An application for transfer of ownership by Operation of Law shall conform to the procedures, hearings and requirements applicable to an application for a ~~new license~~transfer (see Chapter ~~3~~8-4) and those set forth in Subsection 8-4-2, except as provided in this Section. When presented with an application for the issuance of a license by reason of a transfer of possession of the licensed premises by operation of law (bankruptcy, receivership, foreclosure, eviction, etc.), the Authority shall consider only the requirements of Section 12-47-307, C.R.S., which includes but is not limited to the character of the applicant and the requirements of 1 CCR 203-2, Rule 47-302 entitled “Changing, Altering, or Modifying Licensed Premises.”

Subsection 8-6-1 Additional Requirements

In addition to the requirements of Section 12-47-307, C.R.S. and 1 CCR 203-2, Rule 47-302, the application for change of ownership by operation of law shall include evidence that possession of the licensed premises has been legally restored to the owner of the licensed premises and that thereafter possession of the licensed premises was legally transferred to the applicant if the applicant is a party other than the owner of the licensed premises. Such evidence shall consist of a certified court order, a certified transcript of judgment, a certified copy of the public trustee’s deed or other similar certified official document establishing title to or a possessory interest in the licensed premises, or an affidavit of abandonment of the licensed premises from the applicant or agent thereof indicating the time and circumstances of the abandonment.

~~Subsection 8-6-2 Hearings Requirements~~

~~A public hearing will be held on the application and shall be noticed pursuant to Section 4-3 and conducted pursuant to Chapter 6. The Authority shall consider and act upon the evidence of the applicant’s possession of the licensed premises, the requirements of Section 12-47-307, C.R.S, and the requirements of 1 CCR 203-2, Rule 47-302. The burden of proof is on the applicant to establish all requirements. The current licensee may appear at the hearing and contest the transfer of the license. The Authority shall~~

~~consider the current licensee's evidence opposing the transfer. Such evidence shall be limited to the issue of legal possession of the premises or the character of the applicant. Should the current licensee fail to appear to contest the license transfer, the Authority shall act on the transfer considering the evidence presented by the applicant and any Parties in Interest.~~

CHAPTER 9 SPECIAL PERMITS

Section 9-1 Bed & Breakfast Permits

The application and procedure for obtaining approval for a Bed and Breakfast permit shall conform to the state and city approved application with required attachments and proper state and city fees and the procedure set forth in these Rules for the granting of a new license. A public hearing shall be held in all cases where a Bed and Breakfast permit is desired. Posting and public notice of such hearing shall be given.

Section 9-2 Special Events Permit

Applications for a special events permit shall be made not less than thirty (30) days prior to the proposed event under oath or affirmation to the Licensing Clerk, on such forms as are provided the City and the State Licensing Authority. Public notice of the proposed permit and of the procedure for protesting issuance of the permit shall be conspicuously posted at the proposed location for at least ten (10) days before approval of the permit by the Licensing Clerk. Any protest shall be filed by affected persons within ten (10) days after the date of initial posting of the proposed event. Protests shall be filed in duplicate with the Licensing Clerk. The Licensing Clerk may forward disputed applications to the Authority for a final decision.

Section 9-3 Art Gallery Permit

The application and procedure for obtaining approval for an Art Gallery permit shall conform to the state and city approved application with required attachments and proper state and city fees and the procedure set forth in these Rules for the granting of a new license. However, individual histories and background investigations are not required for this type of permit application. A public hearing shall be held in all cases where an Art Gallery permit is desired. Posting and public notice of such hearing shall be given.

CHAPTER 10 ENFORCEMENT

Section 10-1 Management Registration

Every licensee holding an alcohol beverage license shall personally manage such licensed premises or employ a separate and distinct manager on the premises and shall report the name of such manager to the Licensing Clerk. Such licensee shall report any change in managers to the Licensing Clerk within thirty (30) days after such change on state approved forms with required attachments and proper state and city fees, if~~t~~ any.

Failure to report the name of, or any change in, managers ~~shall~~ may be grounds for suspension or revocation of the license.

Section 10-2 Suspension and Revocation of Licenses

The Authority has the power, on its own motion or on complaint, after investigation and public hearing at which the licensee shall be afforded an opportunity to be heard, to suspend or revoke any license issued by the Authority for any violation by the licensee, or by any of the agents, servants or employees of such licensee of the provisions of the Colorado Liquor Code, or any of the rules, ordinances and regulations authorized pursuant to such Codes or of any of the terms, conditions or provisions of the license issued by the Authority.

Subsection 10-2-1 Investigation of Cause for Suspension and Revocation of Licenses

The Licensing Clerk shall cause an investigation to be commenced upon motion of the Authority, upon the Licensing Clerk's own initiative, upon request of the Police Department or City Attorney or whenever a sworn written complaint has been filed with the Authority. The investigation shall be conducted by the Licensing Clerk with the assistance of the Police Department.

(A) If the investigation shows reasonable suspicion to believe that grounds for suspension or revocation exist, the Licensing Clerk may initiate proceedings as provided below.

(B) If the investigation shows probable cause to believe that grounds for suspension or revocation exist, the Licensing Clerk shall initiate proceedings as provided below.

Subsection 10-2-2 Initiation of Suspension or Revocation Proceedings by Show Cause Order

Proceedings to suspend or revoke a license shall be initiated by providing at least thirty (30) days notice of hearing and an order to show cause why the license shall not be suspended or revoked. Such notice and order shall be sent by certified mail to the licensee at the address contained in the license, or personally served, and shall contain such information as shall reasonably notify or inform the licensee of the charges or alleged grounds for suspension or revocation.

Subsection 10-2-3 Show Cause Hearings

Except as provided in this Subsection, show cause hearings shall be conducted in a manner consistent with Chapter 6 of these Rules of Procedure.

(A) The hearing shall be held at the place and time designated in the notice, or upon such other day as may be set for good cause shown. At the hearing, evidence in support of the charges shall be given first, followed by cross-examination of those testifying thereto. The licensee, in person or by counsel, shall then be permitted to give evidence in defense and in explanation, and shall be allowed to give evidence and statements in mitigation of the charges. In the event the licensee is found to have committed the violation charged, or any other violation, evidence and statements in aggravation of the offense shall also be permitted.

(B) The Authority has the power to issue subpoenas to require the presence of persons and the production of all papers, books and records necessary to its determination.

(C) If the evidence presented at the hearing does not support the charges stated in the notice and order served upon the licensee, but standing alone establishes the guilt of the licensee of a violation of some other law, rule or regulation, the licensee shall be permitted to give evidence and statements in defense, explanation and mitigation if then prepared to do so. If such evidence is not then available but can be obtained by the licensee, the licensee shall state the substance thereof and upon his or her request, the hearing may be recessed until the next available date and shall continue under the same procedure as though no recess had occurred.

(D) In the event the licensee is found not to have violated any law, rule or regulation, the charges against him shall be dismissed. ~~If the licensee is found to have violated some law, rule or regulation, the license may be suspended or revoked. Suspension dates to be served shall be determined and approved by the Authority during the violation hearing and those suspension dates shall not be subject to change.~~

(E) If the licensee is found to have violated some law, rule or regulation, the license may be suspended or revoked. Suspension dates to be served shall be ~~determined~~ recommended by the licensee and ~~approved~~ ultimately determined by the Authority during the violation hearing. ~~and those~~ Ssuspension dates generally are not~~shall not be~~ subject to change. Suspension dates shall be served by licensee within the thirty (30) days following the show cause hearing, on consecutive days, and on days when the licensee would otherwise be open for business.

(F~~E~~) If a license has been suspended, the Authority shall order the posting of notices of suspension on the premises for the duration of suspension days served. Failure to post shall be grounds for a new violation.

Subsection 10-2-4 No Tax Refunds

In the event of revocation or suspension, no portion of the license fee, application fee, or occupation tax for an issued license shall be refunded. In the event of a transfer of ownership, no portion of the license fee, application fee or occupation tax for an issued license shall be refunded, and all occupation tax must be made current by the existing licensee prior to final transfer of the license to the new applicant. In the event of surrender, expiration or non-renewal, no portion of the license fee or the application fee for an issued license shall be refunded, but the occupation tax shall be pro-rated to the official date of the surrender or expiration of that license.

Subsection 10-2-5 No Suspension Longer than Six (6) Months

No suspension of a license shall be for a period longer than six (6) months.

Section 10-3 Summary Suspension

The Authority may summarily suspend for a period of up to fifteen (15) days any license or permit issued by the Authority or Licensing Clerk, without prior notice to the licensee, as provided in this Section.

Subsection 10-3-1 Violation of Law

The Authority may summarily suspend any license or permit issued if it has reasonable grounds to believe and finds that a licensee has been guilty of a deliberate and willful violation of any applicable law or regulation.

Subsection 10-3-2 Threat to Public Health

The Authority may summarily suspend any license or permit issued if it has reasonable grounds to believe and finds that the public health, safety or welfare imperatively requires emergency action.

Subsection 10-3-3 Prompt Hearing Required

The ~~temporary~~ summary suspension of a license without notice pending any prosecution, investigation, or public hearing shall be for a period not to exceed fifteen (15) days pending any prosecution, investigation, or public hearing.~~during which time the Authority shall commence and conduct suspension or revocation proceedings.~~

Section 10-4 Inspection of Records

The owner, licensee or operator of any establishment licensed by the Authority shall, upon request of the Licensing Clerk, furnish to the City within thirty (30) days satisfactory evidence to demonstrate whether the establishment is operating in compliance with the license category for which it was approved. Such evidence shall consist of accounting records for a period of time to be specified by the Licensing Clerk, showing separately the gross receipts from the sales of (i) food items ("meals"); (ii) non-alcoholic beverages; and, (iii) intoxicating liquors. Failure or refusal to comply with a records inspection request of the Licensing Clerk shall be grounds for revocation of the license.

Section 10-5 Inspection of Premises

If an application is approved before the building in which the business is to be conducted is ready for occupancy in compliance with law, the Licensing Clerk shall make further inspections to determine if the approved plans have been complied with before issuing the license. The Licensing Clerk may delegate that task of inspection to any other government employee and may act upon the report of such person. Nothing in this Chapter 10 shall be construed to limit the City's powers under state law or regulations, including but not limited to State Liquor Code Regulation 47-700.

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CITY OF BOULDER
CITY COUNCIL AGENDA ITEM

MEETING DATE: December 2, 2014

AGENDA TITLE: Third reading and consideration of a motion to adopt and order published by title only Ordinance No. 7957 amending Title 2, "Government Administration," Chapter 7, "Code Of Conduct," B.R.C. 1981 and setting forth related details.

PRESENTERS:
Tom Carr, City Attorney
David Gehr, Deputy City Attorney

EXECUTIVE SUMMARY

On January 21, 2014, council considered and passed on first reading extensive proposed changes to the city's code of conduct. These changes were developed based on council direction given at study sessions on October 9 and October 23, 2012. Council made no changes on first reading. After first reading, Council Members Matthew Appelbaum and Macon Cowles posted questions on the council hotline. The second reading memorandum addressed those questions (Attachment B). On February 18, 2014, Council considered the proposed ordinance on second reading. Staff requested Council direction on thirteen questions. Council provided direction on each issue and directed staff to modify the ordinance and bring a proposed revised ordinance back for a continued second reading. The questions and council direction were recorded in the council minutes. On November 18, 2014, council considered and adopted the proposed ordinance on continued second reading. The November 18, 2014 agenda packet is attached as Attachment B. While preparing the final ordinance, staff recognized a gap in the conflict of interest provision. There is no exclusion for actions that affect an entire body. Under the current proposal, council would be prohibited from accepting any benefit conferred on the general public. Staff has included a proposed amendment that addresses this issue. It is Attachment C. Accordingly, the proposed motion includes alternatives to pass the ordinance as amended on second reading, or to pass the ordinance with the amendment in Attachment C. If council chooses the latter, a fourth reading will be required.

STAFF RECOMMENDATION

Suggested Motion Language:
Staff requests Council consideration of this matter and action in the form of the following motion:

Motion to adopt on third reading Ordinance No. 7957 amending Title 2, "Government Administration," Chapter 7, "Code Of Conduct," B.R.C. 1981.

Or in the alternative:

Motion to adopt on third reading Ordinance No. 7957, as amended as set forth in attachment C, amending Title 2, "Government Administration," Chapter 7, "Code Of Conduct," B.R.C. 1981.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic:
  None identified.
- Environmental:
  None identified
- Social:
  Boulder's community values support an honest, ethical and transparent local government. The intent of the proposed ordinance is to revise the city's ethics code to be more accessible through clarity. The proposed ordinance would strengthen the sanctions for dishonest behavior, while at the same time clarifying what is acceptable and appropriate behavior for city elected officials, employees and appointed volunteers.

OTHER IMPACTS

- Fiscal:
  None identified.
- Staff Time:
  None identified.

BACKGROUND

In 2012, council directed staff to revise extensively both the financial disclosure provisions in Chapter 13-2, B.R.C. 1981 and the Code of Conduct in Chapter 2-7, B.R.C. 1981. Council's intent was to make these rules more transparent, effective and easy to use. The proposed ordinance is the last piece of this extensive project. On June 3, 2014, council passed Ordinance Number 7968 finalizing the changes to the financial disclosure provisions. The proposed ordinance would complete the final phase of this project.

ATTACHMENTS

Attachment A - Proposed Ordinance
Attachment B - Second Reading Agenda Memo for November 18, 2014 Meeting
Attachment C – Potential Amendment to Section 2-7-14

ORDINANCE NO. 7957

AN ORDINANCE AMENDING TITLE 2, "GOVERNMENT ADMINISTRATION," CHAPTER 7, "CODE OF CONDUCT," B.R.C. 1981, INCLUDING EXPANDING THE LEGISLATIVE PURPOSE, CLARIFYING THE PROHIBITIONS ON ACCEPTING GIFTS, AMENDING THE RESTRICTIONS ON APPEARING BEFORE CITY BODIES, SETTING FORTH PROHIBITED ACTS, ESTABLISHING EXPECTATIONS FOR PUBLIC OFFICIALS AND PUBLIC OFFICERS, SETTING FORTH EXAMPLES OF VIOLATIONS AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. Title 2, Chapter 7 of the Boulder Revised Code, 1981 is amended as follows:

2-7-1 Purpose, Legislative Intent and Findings.

(a) Purpose: The purpose of this chapter is to protect the integrity of city government by:

(1) Defining and forbidding certain activities including bribery and profiteering from public office~~conflicts of interest that if left unchecked tend to compromise the ability of elected and appointed public officials and public employees to perform their duties without improper financial influence~~.

(2) Establishing high standards of conduct for elected officials, appointed board and commission members and city employees by setting forth certain expectations of behavior that all such individuals shall maintain while elected, appointed or employed by the City of Boulder. ~~Defining and discouraging certain actions that may create an appearance of impropriety that undermines public trust in the accountability and loyalty of elected and appointed public officials and employees.~~

~~(3)~~ ~~Protecting the integrity of city government by providing standards of conduct and guidelines for elected and appointed public officials and public employees to follow when their private interests as residents conflict with their public duties.~~

(34) Fostering public trust by defining standards of honest government and prohibiting the use of public office for private gain.

(b) Legislative Intent: It is the intent of the city council to:

(1) Establish rules of conduct that meet or exceed the rules established by the Colorado State Constitution and the Colorado Revised Code. ~~Prohibit public~~

~~officials and public employees from acting on any matter in which he or she may have a conflict of interest.~~

(2) Establish expectations~~aspirational guidelines~~ to encourage public officials and public employees to maintain the highest standard of conduct to justify the public trust that they enjoy.~~avoid any appearance of impropriety.~~

(3) ~~Require adherence to any provision of state or federal law that imposes a higher standard of conduct than this chapter.~~ Exercise the City of Boulder's right to develop laws related to ethics in local government and appropriate standards of local conduct as matters of local concern as established by the Colorado State Constitution in Article XX recognized by Article XXIX, § 3(6).

(c) Findings: The city council finds and determines that this chapter is necessary to protect the public health, safety, and welfare of the residents of Boulder and is a matter of local concern.

2-7-2 ~~Conflicts of Interest~~ Prohibited Acts.

(a) Personal Benefit~~Conflicts~~ Prohibited: No public official or public employee shall solicit, receive or accept anything of value in exchange for performing or refraining from performing any act associated with the official or employee's position with the city. ~~make or participate in the making of any official action in which he or she knows or should have known that he or she would have a conflict of interest.~~

~~(Disclosure Required: Each public official or public employee shall disclose any conflict of interest and disqualify him or herself from participating in the relevant action as provided in section 2-7-10, "Disclosure and Recusal Procedure," B.R.C. 1981.~~

~~2-7-3 Use of Public Office or Confidential Information for Financial Gain.~~

(b~~a~~) Use of Position for Gain Prohibited: No public official or public employee ~~city council member, employee, or appointee to a city board, commission, task force or similar body~~ shall use his or her public office or position for financial gain.

(c~~b~~) Use of Confidential Information for Financial Gain Prohibited: No public official or public employee ~~city council member, employee, or appointee to a city board, commission, task force or similar body~~ shall use or disclose confidential information obtained as a result of holding his or her public office or position, to obtain financial gain, whether for personal gain; gain for his or her relative; gain of any property or entity in which the official or employee has a substantial interest; or gain for any person or for any entity with whom the official or employee is negotiating for or has any arrangement concerning prospective employment.

2-7-34 Duty to Maintain the Confidentiality of Privileged Information.

(a) Duty of a Public Official~~Member Of City Council, Board, Commission, Task Force Or Similar Body~~: No public official ~~city council member or appointee to a city board, commission, task force or similar body~~ shall disclose privileged or confidential information without a public majority vote granting the permission of the council or similar body that holds the privilege. The sanction for a member of the city council, board, commission, task force or similar body shall be censure of the body, reached by a majority vote of the body, not including the member charged with disclosing such confidential information.

(b) Duty of a Public~~City~~ Employee: No ~~city~~public employee shall disclose privileged or confidential information, obtained as a result of holding his or her public office or position, unless the employee has first received approval by the city manager acting upon the advice of the city attorney.

2-7-4~~5~~ Gifts to Public Officials and Public Employees.

(a) Gifts Prohibited: No ~~city council member or appointee to a city board, commission, task force or similar body, or city employee,~~public official or public employee or relative of such employee or official shall accept anything of value including, without limitation, a gift, a favor, a discount or a promise of future employment if:

(1) The official or employee is in a position to take official action with regard to the donor; or

(2) The city has or is known to be likely to have a transactional, business, or regulatory relationship with the donor.

(b) Exceptions and Items not Considered Gifts: The following shall not be considered gifts for purposes of this section, and it shall not be a violation of this chapter for a person to accept the same:

(1) Campaign contributions as permitted by law;

(2) An unsolicited, occasional non-pecuniary gift of a maximum amount of $53~~0~~.00 or less in value. The maximum amount will be equal to the amount established by the state of Colorado pursuant to Colorado Constitution Article XXIX, Section 6~~adjusted on January 1, 2006, and annually thereafter to reflect changes in the United States Bureau of Labor Statistics Consumer Price Index for the Denver-Boulder Consolidated Metropolitan Statistical Area for all Urban Consumers, All Goods, or its successor index~~;

(3) A gift from a relative;

(4) An award, publicly presented, in recognition of public service;

(5) Reasonable expenses ~~paid by other governments or governmentally related organizations~~ for attendance at a convention, fact-finding mission or trip, or other meeting if the person is scheduled to deliver a speech, make a presentation, participate in a panel, or represent the city provided that if travel expenses are paid:

(A) The travel is for a legitimate city purpose;

(B) The travel arrangements are appropriate to that purpose;

(C) The expenses paid are for a time period that is no longer than reasonably necessary to accomplish the business that is its purpose;

(D) The public official or public employee who will be traveling is not currently, was not in the recent past, and will not in the reasonably foreseeable future, be in a position to take direct official action with respect to the donor;

(E) Prior to travelling, the public official informs the city council or the employee informs the city manager of the name of the party paying for the travel expenses and the reason for the travel; and

(F) After completing the travel, the public official reports compliance of the first four conditions to the city council and the public employee reports compliance with the first four conditions to the city manager.

(6) Items which are similarly available to all employees of the city or to the general public on the same terms and conditions; and

(7) A single unsolicited ticket given to a city council member and valued at not in excess of $150.00 to attend events ~~open to the public~~ on behalf of the city, such as awards dinners, nonprofit organization banquets and seminars, provided that:

(A) The ticket is offered only to the council member and has no resale value; and

(B) The ticket is not offered by a commercial vendor who sells or wishes to sell services or products to the city; and

~~(C) The ticket is not for a sporting event~~

(8) A single unsolicited ticket given to a council member and valued at not in excess of $150.00 in each calendar year to attend a sporting event, concert or other event provided by a governmental entity or nonprofit organization, if the event is sponsored by the governmental entity or nonprofit organization, and the purpose

of attending the event is to promote the relationship between the city and the other governmental entity or nonprofit organization.

2-7-~~6~~5 Prior Employment, Outside Employment, and Subsequent Employment.

(a) Prior Employment: No person shall be disqualified from service with the city as a~~n~~ public official or public employee solely because of his or her prior employment. Public ~~O~~officials and public employees shall not take ~~official~~any action with respect to their former employers for a period of six months from the date of termination of the prior employment if such action involves an exercise of discretion by the public official or public employee and provides direct benefit to the prior employer, including but not limited to a contract, lease, employment or regulatory approval .

(b) Disclosure of Employment and Other Business Activities: All ~~officials and~~ public employees, ~~other than elected officials~~, shall report existing or proposed outside employment or other outside business interests that may affect their responsibilities to the city in writing to their appointing authorities prior to being appointed or hired. After being appointed or hired, all such people shall report any changes of employment or changes to outside business interests that may affect the person's responsibilities to the city, within thirty days after accepting the same. An employee that has received permission from the city manager may engage in outside employment or outside business interests.

(c) Disclosure by Public Officials ~~City Council Members~~: Public Officials ~~Members of the city council~~ shall report any change in their employment status that could give rise to a conflict of interest under this chapter.

(d) Activities That Occur After Termination of Employment or Office: No former public official or public employee shall seek or obtain employment concerning matters upon which he or she took any~~official~~ action during his or her service with the city for six months following termination of office or employment if such action, occurred less than four years prior to seeking or obtaining employment, involved an exercise of discretion by the public official or public employee and provided direct benefit to the employer, including but not limited to a contract, lease, employment or regulatory approval. This provision may be waived by the city council or the city manager.

(e) Participation of Former Officials or Employees: No former public official or public employee shall appear before, or participate in, a city board, commission, task force or similar body on which he or she was a member or served directly as an employee concerning any matter or on which he or she took official action during his or her service with the city for twelve months following termination of office or employment. This prohibition may be waived by the city council by appointment or vote. This prohibition shall not apply to persons who appear before the city in their capacity as an elected official following termination of their office or employment with the city.

(f) Participation in Litigation After Termination: No former public official shall engage in any action or litigation in which the city is involved on behalf of any other person or entity, if the action or litigation involves a matter upon which the person took official action during his or her service with the city for twelve months following termination of service with the city.

2-7-~~7~~6 Employment of Relatives.

(a) No public official or public employee shall appoint, hire, or advocate the appointment or hiring by the city any person who is his or her relative. In the event that an employee is concerned that the employee's decision to appoint, hire or advocate the appointment or hiring by the city a person who is the employee's relative may cause an appearance of violating this section, the employee may request that the city manager make such decision on the employee's behalf. Council-appointed officers may request the city council to make such an appointment or hiring decision on their behalf.

(b) The city may enter into transactions with companies, corporations or other business organizations that employ a relative of a city public official or public employee~~,~~ provided that:

(1) The public official or public employee does not participate in the decision making that leads to hiring the company, corporation, or other business organization that employs his or her relative; or

(2) The business organization is a publicly-traded corporation that provides its services or products to the city on nondiscriminatory terms justified by the market facts and circumstances of each transaction; or

(3) The company, corporation, or business organization has been doing business with the city for at least one year prior to the date the city official's or employee's relative became employed by the company, corporation or other business organization, and the city official's or employee's relative is not directly employed upon matters involving the city and does not have his or her compensation tied in any manner to the success of the company, corporation, or other business organization, or its ability to obtain business or earn compensation from the city.

2-7-~~8~~7 Representing Others Before the City Prohibited.

(a) City Council Members Barred From Representing Others: No city council member shall appear on behalf of himself or herself, or another person, before the city council or any city board, commission, task force or similar body. A city council member may be affiliated with a firm appearing on behalf of or employed by another person concerning any transaction with the city before such a body if the council member discloses the situation and recuses himself or herself pursuant to section 2-7-10, "Disclosure and Recusal Procedure," B.R.C. 1981. This prohibition shall not apply when a city council

member is appointed by a majority vote of the council to represent the council before a board or commission.

(b) Board, Commission or Task Force Members Barred From Representing Others: An appointee to a city board, commission, task force or similar body may appear or be affiliated with a firm appearing concerning any transaction with the city under the following circumstances:

(1) An appointee may appear on his or her own behalf before the body of which he or she is a member to represent his or her personal interests, if the appointee discloses the situation and recuses himself or herself pursuant to section 2-7-10, "Disclosure and Recusal Procedure," B.R.C. 1981, or before the city council;

(2) An appointee may appear on behalf of another person before any city body except the ~~city council or the~~ body of which the appointee is a member, except with respect to a matter that has or may come before the board or commission on which he or she serves;

(3) A firm with which an appointee is affiliated may not appear on behalf of or be employed by another person concerning any transaction before the body of which the appointee is a member unless the appointee discloses the situation and recuses himself or herself pursuant to Section 2-7-10, "Disclosure and Recusal Procedure," B.R.C. 1981.

(c) ~~City~~ Public Employees Barred From Representing Others: No public~~city~~ employee shall appear on behalf of or be employed by another person concerning any transaction with the city or before the city council or any city board, commission, task force or similar body. A~~n~~ public employee may appear before such a body on his or her own behalf or on behalf of such employee's spouse, parent, or child. Nothing in this chapter shall be deemed to prohibit the city manager from establishing additional policies and regulations to prevent conflicts of interest between ~~city~~ public employees and the city.

(d) City Council Members and Municipal Court: No city council member who is an attorney shall appear on behalf of or be employed by another person or be affiliated with a firm appearing on behalf of or employed by another person concerning any matter before the municipal court.

(e) ~~City~~Public Employees and Municipal Court: No ~~city~~public employee who is an attorney shall appear on behalf of or be employed by another person or be affiliated with a firm that appears on behalf of or is employed by another person concerning any matter before the municipal court. A non-attorney employee may appear before the municipal court on his or her own behalf, and an employee other than a municipal court judge may appear on behalf of such employee's spouse, parent, or child to the extent otherwise allowed by law. This authority is intended to allow employees to assist family members in matters before the municipal court to the extent permitted by law but not to promote the unauthorized practice of law.

(f) Board, Commission, or Task Force Member and Municipal Court: An appointee to a city board, commission, task force or similar body may appear before the municipal court and may be affiliated with a firm appearing before the municipal court.

(g) Consent to Sue: No public official~~city council member or appointee to any city board, commission, task force or similar body~~ shall ~~be a party or~~ by himself or herself or as an affiliate of a firm appear on behalf of a party in a civil law suit in which the city is an adverse party, unless the public official~~member or appointee~~ first obtains the consent of the city council.

2-7-~~9~~8 ~~Appearances of Impropriety Discouraged~~Expectations.

(a) These expectations~~guidelines~~ are intended to establish ethical standards~~goals and principles~~ to guide~~help~~ public officials and public employees~~city council members, employees, and appointees to a city board, commission, task force or similar body~~ in the execution of their offices in a manner that will reflect well on the city and promote ~~to determine if their actions may cause an appearance of impropriety that will undermine~~ the public's trust in local government.

(b) ~~Violations of this section shall not constitute a violation of this chapter.~~ Compliance with this section will not constitute a defense for violation of another subsection or section of this chapter. Violation of this section may be considered as the basis for censure of a public official, or in the most serious cases, removal of a board or commission member. Violation of this section may be the basis of disciplinary action, or in the most serious cases, termination of a public employee.

(c) A public official~~city council member, employee, or appointee to a city board, commission, task force or similar body~~ who determines that his or her actions may be considered to be in violation of this section~~cause an appearance of impropriety~~ should consider disclosure and discussion of the potential violation in a public meeting before the council, board, commission, task force or similar body on which the person serves.

(d) A public official whose participation in a matter would violate this section shall ~~, but is not required to, disclose and~~ recuse herself or himself as prescribed by section 2-7-9~~10~~, "Disclosure and Recusal Procedure," B.R.C. 1981., ~~in the following circumstances:~~

~~(1) If the person is an employee of a state or federal government entity with a substantial interest in any transaction with the city;~~

~~(2) If the person has a close friend with a substantial interest in any transaction with the city, and the council member, appointee, or employee believes that the friendship would prevent such person from acting impartially with regard to the particular transaction;~~

~~(3) If the person has an interest in any transaction with the city that is personal or private in nature that would cause a reasonable person in the community to question the objectivity of the city council member, employee, or appointee to a city board, or commission;~~

~~(4) If the person is called upon to act in a quasi-judicial capacity in a decision regarding any of the situations described in paragraphs (c)(1), (c)(2), and (c)(3) of this section; or~~

~~(5) If the person owns or leases real property within six hundred feet from a parcel of property that is the subject of a transaction with the City upon which he or she must make a decision, and is not required to receive official notice of a quasi-judicial action of the City.~~

(e) A public official or public employee shall:

(1) Strive at all times to serve the best interests of the city regardless of his or her personal interest.

(2) Perform duties with honesty, care, diligence, professionalism, impartiality and integrity.

(3) Strive for the highest ethical standards to sustain the trust and confidence of the public they serve, not just the minimum required to meet legal or procedural requirements.

(4) Use sound judgment to make the best possible decisions for the city, taking into consideration all available information, circumstances and resources.

(5) Act within the boundaries of his or her authority as defined by the city charter and code.

(6) Treat colleagues and members of the public professionally and with courtesy.

(7) Disclose personal or professional relationships with any company or individual who has or is seeking to have a business relationship with the city, if the official or employee has any authority to exercise discretion over the business relationship.

(8) Disclose any benefit he or she will receive from any matter requiring the exercise of discretion by the officer or employee.

(9) Use city resources, facilities and equipment only for city purposes, except for reasonable incidental personal use that does not interfere with city business.

(10) Disclose waste, fraud, abuse and corruption to appropriate authorities.

(f) A public official or public employee shall not:

(1) Advocate or support any action or activity that violates a law or regulatory requirement.

(2) Use his or her position or decision-making authority for his or her benefit.

(3) Expend city funds for his or her personal use or benefit.

(4) Misrepresent known facts in any issue involving city business.

(5) Exercise authority or discretion in any matter in which he or she will benefit as a result of that exercise of authority or discretion.

(6) Use city resources, facilities or equipment for personal profit, for outside business interests or to access any inappropriate material, except if viewing such material is a necessary and proper part of their duties.

(7) Participate in any decision to appoint, hire, promote, discipline or discharge a relative for any position with the city.

(8) Supervise a relative in the performance of the relative's official powers or duties.

(9) Compel or induce a subordinate municipal officer or employee to make, or promise to make, any political contribution, whether by gift of money, service or other thing of value.

(10) Act or decline to act in relation to appointing, hiring or promoting, discharging, disciplining, or in any manner changing the official rank, status or compensation of any employee, or an applicant for a position, including appointment to a board or commission, on the basis of the giving or withholding or neglecting to make any contribution of money or service or any other valuable thing for any political purpose.

(11) Solicit or accept anything of value from anyone doing business with the city.

(12) Solicit or accept employment from anyone doing business with the city, unless the official or employee completely withdraws from city activity regarding the party offering employment ~~and the withdrawal is approved by the city council for members of the council, boards or commissions and by the city manager for employees~~.

(13) Use his or her public position to obtain ***a*** benefit for the official or employee, a family member, or anyone with whom the official or employee has a business or employment relationship.

(14) Vote, authorize, recommend, or in any other way use his or her position to secure approval of a contract (including employment or personal services) in which the official or employee, a family member, or anyone with whom the official or employee has a business or employment relationship, has an interest.

(15) Use, or authorize the use of, his or her title, the name "City of Boulder," or the city's logo in a manner that suggests impropriety, favoritism, or bias by the city or the official or employee.

(16) Use, or authorize the use of, his or her title, the name "City of Boulder," or the city's logo in a manner that suggests or implies that the city supports or opposes a candidate or ballot measure, except that public officials may identify themselves and their position as public officials supporting or opposing candidates or ballot measures.

(17) Use, or authorize the use of, his or her title, the name "City of Boulder," or the city's logo in for personal profit or advantage.

(18) Use city resources, facilities or equipment to support or oppose any political candidate or ballot measure.

2-7-9~~10~~ Disclosure and Recusal Procedure.

(a) Disclosure and Recusal: No person with an ~~conflict of~~ interest prohibited pursuant to ~~sub~~section 2-7-2~~(a)~~, B.R.C. 1981, and no person described in subsection 2-7-7~~8~~(a) or (b), B.R.C. 1981, shall fail to give written notice of the interest described in such section or subsection to the city council or the city board, commission, task force or similar body of which the person is a member and the city manager as soon as reasonably possible after the interest has arisen. However, no written notice is required if such person discloses the conflict of interest on the record of a public meeting of the city council or the city board, commission, task force or similar body of which the person is a member. The interested council member, employee, or appointee shall thereafter:

…

2-7-10~~1~~ Enforcement.

…

2-7-11~~2~~ Sanctions and Remedies for Violation.

…

(c) Sanction Recommendations: If the party conducting an investigation pursuant to section 2-7-10~~1~~, "Enforcement," B.R.C. 1981, finds that a city council member or an appointee to a city board, commission, task force or similar body, or employee has violated any provision of this chapter, the investigator shall provide its findings and recommendations

to the city manager or city council, as appropriate, who or which in turn may take any of the following actions:

(1) In the case of a city council member, a motion of censure;

(2) In the case of a ~~city~~ public employee, a motion for censure or a recommendation that the employee's appointing authority consider disciplining or discharging the employee;

(3) In the case of a member of a board or commission r~~R~~emoval as provided in subsection (b) of this section; or

(4) As an alternative or in addition to the sanctions imposed herein, the city council may resolve that any person or entity causing, inducing, or soliciting a public official or public employee to violate this chapter may not be involved in any transaction with the City, including but not limited to the award of any city contract, grant, loan or any other thing of value for a period of twelve months or that any such contract, grant, loan or thing of value be terminated, repaid or forfeited.

(d) Civil Remedies: Any person incurring actual monetary damage as a direct and proximate result of a violation of section 2-7-2, "Prohibited Acts," B.R.C. 1981 or section 2-7-3, "Duty to Maintain the Confidentiality of Privileged Information," B.R.C. 1981 ~~affected by a city transaction~~ may commence a civil action in the District Court in and for the County of Boulder for equitable relief to enforce the provisions of this chapter upon a showing of willful violation of any provision of this chapter. Before filing such an action, the person shall present the claim to the city attorney to investigate in accordance with subsection 2-7-11(c), B.R.C. 1981. The city attorney or appointed special council shall have sixty days to act thereon. No civil action in district court pursuant to this subsection may be commenced later than twelve months after a violation of this chapter is alleged to have occurred.

(e) Criminal Sanctions: The city attorney, or special counsel authorized to act on behalf of the city attorney, acting on behalf of the people of the City, may prosecute any violation of section 2-7-2, "Prohibited Acts," B.R.C. 1981 or section 2-7-3, "Duty to Maintain the Confidentiality of Privileged Information," B.R.C. 1981 ~~this chapter~~ in municipal court in the same manner that other municipal offenses are prosecuted.

~~(f) Defense: It shall be a defense to any charge of a violation of this chapter if the city council member, employee, or appointee to a city board, commission, task force or similar body obtained an advisory opinion pursuant to section 2-7-13, "Advisory Opinions and Outside Counsel Appointment," B.R.C. 1981, and was acting in accordance with the advice provided thereby.~~

2-7-1~~3~~2 ~~Advisory Opinions and Outside Counsel Appointment~~Role of the City Attorney.

(a) ~~City Attorney to Provide Advisory Opinions:~~ Any city council member, employee, or appointee to a city board, commission, task force or similar body may request an advisory opinion of the city attorney whenever a question arises as to the applicability of this chapter to a particular situation. ~~The city attorney's advisory opinion may provide a specific defense from prosecution as set forth in section 2-7-12, "Sanctions And Remedies For Violation," B.R.C. 1981.~~

(b) Appointment of Outside Counsel: If the city attorney has a conflict of interest or a matter arise in which the city attorney believes that a reasonable person would question his or her objectivity~~a significant controversy arises under this chapter~~, the city attorney shall~~may~~ appoint a neutral outside counsel to ~~assist in resolving~~investigate the issue and make a recommendation.

2-7-143 Exemptions From Chapter.

…

2-7-14 Definitions

"Benefit" shall mean anything of value accruing to an official or employee. A benefit shall not include any situation in which the official, employee or family member has only a remote interest. An official or employee is deemed to have received a benefit if any of the following receive a benefit:

(1) A Family Member;

(2) Any person or business entity with whom a contractual relationship exists with the official or employee;

(3) Any business entity in which the official or employee is an officer or director; or

(4) Any business entity in which the official or employee has a stock, legal ownership, or beneficial ownership of at least five (5) percent of the total stock or total legal and beneficial ownership, or which is controlled or owned directly or indirectly by the official or employee.

"Family Member" shall mean a spouse, domesti c partner, partner in a civil union, child, and whether related through adoption or marriage, a parent, brother or sister.

"Public Official" shall mean any elected or appointed city official, including city council members and members of boards and commissions.

"Remote Interest" shall mean any interest which is incidental to the contract or transaction and shall include:

(1) A position as a non-salaried director, officer or employee of a non-profit corporation or organization;

(2) Less than five (5) percent of the total stock or total legal and beneficial ownership in a business entity;

(3) A position of employment held by a family member which is not a director, officer, manager or supervisor in a business entity;

(4) A position of employment held by a family member which does not directly exercise decision making authority affecting the contract or transaction; or

(5) A position in a representative capacity such as a receiver, trustee or administrator.

2-7-15 ~~Definitions.~~ Examples of Violations

The examples in this paragraph are intended to provide guidance for the implementation of these rules. These are examples only; behavior not listed here also can violate these rules.

The following acts would constitute a violation of this chapter:

(a) A person lies to a constituent in violation of paragraph 2-7-8(f)(4), B.R.C. 1981.

(b) A person favors a personal friend when awarding a city contract in violation of paragraph 2-7-8(f)(13), B.R.C. 1981.

~~(c) A person is rude to a constituent in violation of paragraph 2-7-8(e)(2), B.R.C. 1981.~~

(c) A person fails to disclose a professional relationship with a firm seeking to do business with the city in violation of paragraph 2-7-8(e)(7), B.R.C. 1981.

(d) A person fails to disclose owning stock in a company involved in a matter that requires the exercise of discretion by the person in violation of paragraph 2-7-8(e)(8), B.R.C. 1981.

(e) A person uses a city computer to operate a personal business in violation of paragraph 2-7-8(e)(11), B.R.C. 1981.

(f) A person uses a city phone for a political campaign in violation of paragraph 2-7-8(f)(18), B.R.C. 1981.

(g) A person fails to disclose fraud by a public employee in violation of paragraph 2-7-8(e)(10), B.R.C. 1981.

(h) A person arranges a repaving project that benefits his or her neighborhood in violation of paragraph 2-7-8(f)(2), B.R.C. 1981.

(i) A council member participates in a decision that affects the value of his or her real property in violation of paragraph 2-7-8(f)(2), B.R.C. 1981.

(j) A person uses city photocopies machines to make 100 flyers to advertise a personal business paragraph 2-7-8(f)(3), B.R.C. 1981.

~~(k) A person travelling on business uses city funds to purchase an expensive dinner in violation of paragraph 2-7-8(f)(3), B.R.C. 1981.~~

(k) A person makes verbal attacks against someone who contacted the city for information in violation of paragraph 2-7-8(e)(2), B.R.C. 1981.

(l) A person recommends that his or her department hire his or her niece in violation of paragraph 2-7-8(f)(7), B.R.C. 1981.

(m) A person supervises his or her spouse in violation of paragraph 2-7-8(f)(8), B.R.C. 1981.

(n) A council member seeks a campaign contribution from a public employee in violation of paragraph 2-7-8(f)(9), B.R.C. 1981 .

(o) A supervisor encourages employees to attend a campaign fundraiser for a council member in violation of paragraph 2-7-8(f)(9), B.R.C. 1981.

(p) A supervisor implicitly requires an employee to make a campaign contribution as a condition of receiving a positive evaluation in violation of paragraph 2-7-8(f)(9), B.R.C. 1981.

(q) A person accepts a lunch from a person seeking to do business with the city in violation of paragraph 2-7-8(f)(11), B.R.C. 1981.

(r) A person seeks employment with a contractor whom the person previously hired to work for the city in violation of paragraph 2-7-8(f)(12), B.R.C. 1981.

(s) A person obtains an internship for his or her son with a company doing business with the city in violation of paragraph 2-7-8(f)(13), B.R.C. 1981.

(t) A board member who is an architect participates in a decision in which his or her firm represents the applicant in violation of paragraph 2-7-8(f)(5), B.R.C. 1981.

(u) A board member who is an attorney participates in a decision in which his or her firm represents a party to the transaction being considered in violation of paragraph 2-7-8(f)(5), B.R.C. 1981.

(v) A person endorses a business using his or her city title in violation of paragraph 2-7-8(f)(15), B.R.C. 1981.

~~(w) A board member allows his or her name and title to be used in campaign literature supporting a candidate in violation of paragraph 2-7-8(f)(16), B.R.C. 1981.~~

(w) A person solicits work for his or her off-duty business, by advertising his or her work as a city of Boulder employee in violation of paragraph 2-7-8(f)(20), B.R.C. 1981.

(x) A council member solicits business by relying upon his or her position as a city council member in violation of paragraph 2-7-8(f)(20), B.R.C. 1981.

2-7-15 Definitions.

…

~~"Conflict of interest" shall mean any situation in which a city council member, an appointee to a city board, commission, task force or similar body, or a city employee:~~

~~(a) Has a substantial interest in any transaction with the City;~~

~~(b) Has a relative with a substantial interest in any transaction with the City;~~

~~(c) Has a substantial interest as an affiliate of a firm with a substantial interest in any transaction with the City;~~

~~(d) Has a substantial interest as an affiliate of a firm appearing on behalf of or employed by a person with a substantial interest in any transaction with the City;~~

~~(e) Is an officer of an organization that has taken an official position on any transaction with the City, unless service on the board of the organization is required by city code, rule or contract;~~

~~(f) Is on the board of directors of an organization that is substantially affected by a transaction with the City, unless service on the board of the organization is required by city code, rule or contract;~~

~~(g) Is affiliated with a law, accounting, planning, or other professional firm that has substantial interest in any transaction with the City; or~~

~~(h) Is required to receive official notice of a quasi-judicial action from the City.~~

…

~~"Substantial interest" means a situation, including, without limitation, a financial stake in the outcome of a decision in which, considering all of the circumstances, would tend to influence the decision of a reasonable person faced with making the same decision.~~

~~"Transaction" means a contract of any kind; any sale or lease of any interest in land, material, supplies, or services; or any granting of a development right, any planning, zoning or land use or review process that may precede granting of a development right, license, permit, or application. A transaction does not include any decision which is legislative in nature that affects the entire~~

~~membership of a class or a significant segment of the community in the same manner as the affected official or employee.~~

Section 2. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

Section 3. The City Council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY this 21st day of January, 2014.

.

_____
Mayor

Attest:

_____
City Clerk

READ ON SECOND READING, AND ORDERED PUBLISHED BY TITLE ONLY this 18th day of November, 2014.

.

_____
Mayor

Attest:

_____
City Clerk

READ ON THIRD READING, PASSED, ADOPTED, AND ORDERED PUBLISHED BY TITLE ONLY this 2nd day of December, 2014.

.

_____
Mayor

Attest:

_____
City Clerk

CITY OF BOULDER
CITY COUNCIL AGENDA ITEM

MEETING DATE: November 18, 2014

AGENDA TITLE: Continued Second Reading and consideration of a motion to order published by title only Ordinance No. 7957 amending Title 2, "Government Administration," Chapter 7, "Code Of Conduct," B.R.C. 1981 and setting forth related details.

PRESENTERS:
Tom Carr, City Attorney
David Gehr, Deputy City Attorney

EXECUTIVE SUMMARY
On January 21, 2014, council considered and passed on first reading extensive proposed changes to the city's code of conduct. These changes were developed based on council direction given at study sessions on October 9 and October 23, 2012. Council made no changes on first reading. After first reading, Council Members Matthew Appelbaum and Macon Cowles posted questions on the council hotline. The second reading memorandum addressed those questions (Attachment B). On February 18, 2014, Council considered the proposed ordinance on second reading. Staff requested Council direction on thirteen questions. Council provided direction on each issue and directed staff to modify the ordinance and bring a proposed revised ordinance back for a continued second reading. The questions and council direction were recorded in the council minutes.

STAFF RECOMMENDATION

Suggested Motion Language:
Staff requests Council consideration of this matter and action in the form of the following motion:

Motion to approve on second reading Ordinance No. 7957 amending Title 2, "Government Administration," Chapter 7, "Code Of Conduct," B.R.C. 1981.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic:
  None identified.
- Environmental:
  None identified
- Social:
  Boulder's community values support an honest, ethical and transparent local government. The intent of the proposed ordinance is to revise the city's ethics code to be more accessible through clarity. The proposed ordinance would strengthen the sanctions for dishonest behavior, while at the same time clarifying what is acceptable and appropriate behavior for city elected officials, employees and appointed volunteers.

OTHER IMPACTS

- Fiscal:
  None identified.
- Staff Time:
  None identified.

BACKGROUND

At the February 18, 2014 council meeting staff posed thirteen questions to council. Council provided feedback on each of the questions as well as other issues identified by council members. The proposed ordinance includes changes to address feedback from council. The following section includes each question, a summary of Council's direction and the proposed ordinance language.[1]

ANALYSIS

1. Should discounts be included expressly as gifts?

The code does not currently expressly include a discount as a gift. Council members agreed that discounts should be included. The proposed change in Section 2-7-4(a) is as follows:

(a) Gifts Prohibited: No public official or public employee or relative of such employee or official shall accept anything of value including, without limitation, a gift, a favor, <u>a discount</u> or a promise of future employment if:

2. Should Council be informed before a member takes paid travel?

Council members supported a provision requiring council members to inform the Council before the member accepts paid travel. This change allows for additional

[1] The quotations included in this memorandum include only the changes made on continued second reading. The proposed ordinance includes all changes from the existing code.

transparency in light of another proposed change to remove the restriction that previously allowed travel to be paid only by governments or governmentally related organizations. The purpose of the disclosure would be to allow the Council to identify potential issues associated with certain paid travel. The Council recognized, however, that it is not always practical for a member to provide notification before travelling, because many trips are arranged with relatively short notice. Council also recognized that this information could be provided to other members outside of a scheduled meeting, by posting a message on the council "hotline." This requirement also applies to members of boards and commissions. The provision requires only that the member "inform" the council. There is no requirement that council approve the travel, which would require a council meeting.

3. Should city officials be permitted to accept paid travel from for-profit corporations?

Staff's original recommendation was to expand paid travel only to include travel paid for by not-for-profit corporations. Council recognized, however, that the tax status of a corporation was not necessarily related to whether it would be appropriate for the organization to pay for travel. The proposed ordinance instead includes other practical restrictions on travel that do not relate to the benefactor's tax status. The travel provision, revised to reflect Council direction in response to questions two and three is in Section 2-7-4(b)(5) as follows:

(5) Reasonable expenses ~~paid for by other governments or governmentally related organizations~~ for attendance at a convention, fact-finding mission or trip, or other meeting if the person is scheduled to deliver a speech, make a presentation, participate in a panel, or represent the city provided that if travel expenses are paid:

(A) The travel is for a legitimate city purpose;

(B) The travel arrangements are appropriate to that purpose;

(C) The expenses paid are for a time period that is no longer than reasonably necessary to accomplish the business that is its purpose;

(D) The public official or public employee who will be traveling is not currently, was not in the recent past, and will not in the reasonably foreseeable future, be in a position to take direct official action with respect to the donor;

(E) Prior to travelling, if practicable, the public official informs the city council or the employee informs the city manager of the name of the party paying for the travel expenses and the reason for the travel; and

(F) After completing the travel, the public official reports compliance of the first four conditions to the city council and the public employee reports compliance with the first four conditions to the city manager.

4. Should there be a time limitation on the exclusion from future employment because a council member or staff member took "official action" relating to the potential employer.

Council members expressed concern that an action taken many years previously could preclude a person from accepting employment. There also was concern that the term "official action" is vague and could be read to encompass a broad range of activities that should not bar future employment. Council directed staff to propose time limits both associated with how long an action should disqualify a person from seeking employment and how long after leaving the city a person should be disqualified.

5. Should the prohibition on employment be longer than six months?

Council members did not express support for extending the prohibition on future employment beyond six months. Council also directed staff to limit the scope of the activities that would result in a prohibition on future employment to areas in which the official or employee exercised some level of discretion.

The proposed revised language addressing Council's responses to questions four and five is in Section 2-7-5(d) as follows:

(d) Activities That Occur After Termination of Employment or Office: No former public official or public employee shall seek or obtain employment concerning matters upon which he or she took any ~~official~~ action during his or her service with the city for six months following termination of office or employment if such action, occurred less than four years prior to seeking or obtaining employment, involved an exercise of discretion by the public official or public employee and provided direct benefit to the employer, including but not limited to a contract, lease, employment or regulatory approval. This provision may be waived by the city council or the city manager.

6. Should the prohibition on suing the city exclude certain types of litigation?

Council members expressed concern that the provision prohibited a council member or member of a board or commission from suing the city as a party to litigation. Council directed staff to remove that prohibition, but to retain the prohibition on acting as an attorney suing the city. The revised provision is in section 2-7-7(g) as follows:

(g) Consent to Sue: No public official shall ~~be a party or~~ by himself or herself or as an affiliate of a firm appear on behalf of a party in a civil law suit in which the city is an adverse party, unless the public official first obtains the consent of the city council.

7. Should the code clarify the meaning of direct and indirect benefits?

Council members expressed concern that the term "indirect benefit" was too amorphous to allow for clear decision-making. Council directed staff to redraft Section 2-7-8(e)(8) to clarify the requirement. Staff proposes simplifying the proposed section to clarify that a person must disclose any benefit that he or she will receive from a matter requiring the exercise of his or her discretion. Staff also proposes that the code include a definition of "benefit." The proposed redrafted Section 2-7-8(e)(8) and the new Section 2-7-14, which includes definitions of "benefit" and related terms are as follows:

(8) Disclose any ~~direct or indirect~~ ~~financial or material~~ benefit ~~to himself or herself, a relative, or any private organization in which he or she is deemed to have an interest in~~ he or she will receive from any matter requiring the exercise of discretion by the officer or employee.

* * *

"Benefit" shall mean anything of value accruing to an official or employee. A benefit shall not include any situation in which the official or employee has only a remote interest. An official or employee is deemed to have received a benefit if any of the following receive a benefit:

(1) A Family Member;

(2) Any person or business entity with whom a contractual relationship exists with the official or employee;

(3) Any business entity in which the official or employee is an officer or director; or

(4) Any business entity in which the official or employee has a stock, legal ownership, or beneficial ownership of at least five (5) percent of the total stock or total legal and beneficial ownership, or which is controlled or owned directly or indirectly by the official or employee.

"Family Member" shall mean a spouse, domestic partner, partner in a civil union, child, and whether related through adoption or marriage, a parent, brother or sister.

"Public Official" shall mean any elected or appointed city official, including city council members and members of boards and commissions.

"Remote Interest" shall mean any interest which is incidental to the contract or transaction and shall include:

(1) A position as a non-salaried director, officer or employee of a non-profit corporation or organization;

(2) Less than five (5) percent of the total stock or total legal and beneficial ownership in a business entity;

(3) A position of employment held by a family member which is not a director, officer, manager or supervisor in a business entity;

(4) A position of employment held by a family member which does not directly exercise decision making authority affecting the contract or transaction; or

(5) A position in a representative capacity such as a receiver, trustee or administrator.

8. Should the code include a prohibition on solicitation of employment?

The original proposed provision required disclosure of solicitation or acceptance of employment and approval by Council or the City Manager. Council expressed concern that a person might not be comfortable with disclosing the fact that he or she is looking for employment. Staff recommends, based on Council's discussion that the provision requiring approval be deleted. An individual would be required to withdraw from any activity relating to the potential employer. The proposed language in Section 2-7-8(f)(12) is as follows:

(12) Solicit or accept employment from anyone doing business with the city, unless the official or employee completely withdraws from city activity regarding the party offering employment ~~and the withdrawal is approved by the city council for members of the council, boards or commissions and by the city manager for employees~~.

9. Should the code discourage rudeness to constituents?

Council expressed concern that that example involving rudeness was vague and could lead to potential city liability. Staff agrees and proposes eliminating this example, which was found in section 2-7-15(c). In addition, Council noted the scope of the civil remedies in section 2-7-11(d). Staff recommends that civil remedies be limited to individuals who have suffered actual monetary damages as a result of either a prohibited act or the release of confidential information. The proposed revisions to sections 2-7-11(d) are as follows:

(d) Civil Remedies: Any person <u>incurring actual monetary damage as a direct and proximate result of a violation of section 2-7-2, "Prohibited Acts," B.R.C. 1981 or section 2-7-3, "Duty to Maintain the Confidentiality of Privileged Information," B.R.C. 1981</u> ~~affected by a city transaction may~~ commence a civil action in the District Court in and for the County of Boulder for equitable relief to enforce the provisions of this chapter upon a showing of willful violation of any provision of this chapter. Before filing such an action, the person shall present the claim to the city attorney to investigate in accordance with subsection 2-7-11(c),

B.R.C. 1981. The city attorney or appointed special council shall have sixty days to act thereon. No civil action in district court pursuant to this subsection may be commenced later than twelve months after a violation of this chapter is alleged to have occurred.

10. Should the code prohibit the use of a city cell phone for campaign activities?

City policy and state law prohibits the use of a city cell phone for campaign purposes. Staff recommends no change to section 2-7-15(g).

11. Is buying an expensive dinner using city funds for personal benefit?

Council members noted that the term "expensive" is very subjective and that the city has per diem limits that regulate effectively spending on travel. Staff recommends deletion of section 2-7-15(k)

12. Should the code exempt certain meals from the gift prohibition?

Council members expressed concern about the requirement in Section 2-7-4(b)(7) that an event be "open to the public" to qualify for the $150 exemption. Council noted that there are meetings, that are important for council members to attend, that are not open to the public. Staff recommends deleting the "open to the public" requirement. Council also supported an exemption to allow council members to accept a single ticket to a sporting event, concert or other event to promote the relationship between the city and the organization hosting the event. The proposed revisions to Sections 2-7-4(b)(7) and (8) are as follows:

(7) A single unsolicited ticket given to a city council member and valued at not in excess of $150.00 to attend events ~~open to the public~~ on behalf of the city, such as awards dinners, nonprofit organization banquets and seminars, provided that:

(A) The ticket is offered only to the council member and has no resale value; and

(B) The ticket is not offered by a commercial vendor who sells or wishes to sell services or products to the city; and

~~*(C) The ticket is not for a sporting event.*~~

(8) A single unsolicited ticket given to a council member and valued at not in excess of $150.00 in each calendar year to attend a sporting event, concert or other event provided by a governmental entity or nonprofit organization, if the event is sponsored by the governmental entity or nonprofit organization, and the purpose of attending the event is to promote the relationship between the city and the other governmental entity or nonprofit organization.

13. Should board or commission members be permitted to use their title in endorsements?

Council directed that this prohibition be removed to allow members of boards and commissions to identify themselves and their title in supporting or opposing candidates or ballot measures. This also requires the deletion of the example in Section 2-7-15(w). The revised section 2-7-8(f)(16) is as follows:

(16) Use, or authorize the use of, his or her title, the name "City of Boulder," or the city's logo in a manner that suggests or implies that the city supports or opposes a candidate or ballot measure, except that ~~council members~~ public officials may identify themselves and their position as ~~individual council members~~ public officials supporting or opposing candidates or ballot measures.

Attachments

Attachment A - Proposed Ordinance
Attachment B - Second Reading Packet for February 18, 2014 Meeting

Attachment C

Amend Section 2-7-14 as follows:

2-7-14 Definitions

"Benefit" shall mean anything of value accruing to an official or employee. A benefit shall not include any situation in which the official, employee or family member has only a remote interest. A benefit does not include a thing of value that accrues to the entire membership of a class or a significant segment of the community in a similar manner as the affected public official or public employee. An official or employee is deemed to have received a benefit if any of the following receive a benefit:

(1) A Family Member;

(2) Any person or business entity with whom a contractual relationship exists with the official or employee;

(3) Any business entity in which the official or employee is an officer or director; or

(4) Any business entity in which the official or employee has a stock, legal ownership, or beneficial ownership of at least five (5) percent of the total stock or total legal and beneficial ownership, or which is controlled or owned directly or indirectly by the official or employee.

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CITY OF BOULDER
CITY COUNCIL AGENDA ITEM

MEETING DATE: December 2, 2014

AGENDA TITLE
Second reading and consideration of a motion to adopt Ordinance No. 8014 approving supplemental appropriations to the 2014 Budget.

Consideration of a motion to adjourn from the Boulder City Council and convene as the Central Area General Improvement District Board of Directors

PRESENTERS
Jane S. Brautigam, City Manager
Bob Eichem, Chief Financial Officer
Cheryl Pattelli, Director of Finance
Peggy Bunzli, Budget Officer
Maria Diaz, Budget Analyst

EXECUTIVE SUMMARY
As described in the *Budget Philosophy and Process* section of the annual budget document, each year at least two supplemental ordinances are presented to City Council for review and approval. Council receives what is usually the first ordinance, the **Carryover and First Budget Supplemental**, in April/May. In years where new initiatives are launched after annual budget approval (such as Recreational Marijuana and the new Transportation tax), or where other circumstances require (such as flood recovery), additional supplementals may be brought to council throughout the year. Council then receives another ordinance, usually **the Final Budget Supplemental**, in November/December. This is the final budget supplemental being presented to council for the 2014 budget.

The supplemental ordinances adjust only the current year budget and are considered "one-time" adjustments. As a result, they have no direct or immediate impact on the following year's budget. In contrast, the city assigns budget requests with "ongoing" or multi-year impacts only to the annual budget process (budget planning for the coming fiscal year) and not to either budget supplemental.

This packet includes budget supplemental "one-time" line items that represent new budgeted amounts for 2014. A proposed ordinance is provided as **Attachment A** to this packet. Additional information on different types of requests is provided under the *analysis* section of this memo. Narrative information on each supplemental request was included at first reading in the Nov. 18, 2014 agenda, item 3G.

STAFF RECOMMENDATION

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to adopt Ordinance No. 8014 approving supplemental appropriations to the 2014 Budget.

Consideration of a motion to adjourn from the Boulder City Council and convene as the Central Area General Improvement District Board of Directors.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

This supplemental ordinance appropriates funding for a variety of citywide projects and services that positively affect economic, environmental or social sustainability in the community.

OTHER IMPACTS

- Fiscal:
  In the **General Fund** this ordinance will appropriate $1,611,943 from additional revenue, $392,538 from fund balance reserves, and $2,123,721 from fund balance. It also includes increase in revenue only of $21,500.

  In **restricted funds**, this ordinance will appropriate $1,067,375 from additional revenue and $3,016,129 from fund balance. It also includes increase in revenue only of $743,343.

- Staff time for this process is allocated in the Budget Division's regular annual work plan.

ANALYSIS

Types of Requests

The following requests provide examples of General Fund supplemental appropriations from various types of fund balance:

- Actuarial adjustment for Police and Fire Pension plans (fund balance)
- Allocation of Education Excise Tax dollars to educational institutions (fund balance reserves from restricted revenue source)
- Costs associated with 2013 flood recovery (fund balance reserves).

The following requests provide examples of Restricted Fund supplemental appropriations from fund balance:

- One-time capital costs, unknown at time of 2014 budget approval (fund balance)
- Costs associated with 2013 flood recovery (fund balance reserves).

The following requests provide examples of supplemental appropriations from new revenue:

- Appropriation for program costs from wildland fire reimbursements (General Fund)
- Appropriation for additional program funding from grant revenue (multiple funds).

A third category of supplemental appropriation is a negative appropriation, an example of which is reduced appropriation due to reduced grant funding.

This packet also includes appropriation requests for transfers between funds, an example of which is for interfund loan repayments.

Finally, a number of adjustments are made in this final supplemental ordinance to meet accounting requirements or for interest transfers.

2013 Flood

The following supplemental requests, relating to 2013 Flood recovery work and totaling $1,608,000 were submitted:

- Community Planning and Sustainability, fixed-term Flood Recovery Coordinator - $77,000
- Public Works Projects Coordinator - $66,000
- Water Utility, infrastructure repair - $765,000
- Wastewater Utility, infrastructure repair - $700,000

New revenues from city insurance proceeds of $199,145 and FEMA reimbursements of $1,017,625 are also included in this packet. In many cases, the recovery costs have already been incurred and appropriation requested from reserves, therefore as reimbursement revenues comes in, these revenues are simply being allocated back to the funds from which the costs were paid to replenish reserves, and adjustments are not needed here. In a few cases, increased appropriation is needed to increase budgets which had not yet been adjusted. Those adjustments relating to the flood reimbursement revenues are noted as *Appropriation from Additional Revenue*.

Supplement Request Related to Sunshine Transmission Line Replacement

During the summer of 2013 several water transmission mains experienced failures that were repaired and revealed the need to replace certain pipe segments sooner than anticipated. Of immediate concern is the 26” main between Sunshine Hydroelectric Facility and 4th & Mapleton. This main was installed in 1946 and carries about half of the City’s treated water on an annual basis. After analysis and prioritization, a parallel replacement with a new 30” line between 4th and Mapleton and the existing 30” line east of Sunshine Hydroelectric Facility is scheduled to start in December 2014. Money already budgeted in the Capital Improvement Program (CIP) for rehabilitation/inspection of the upper 30” section of main between the Betasso Water Treatment Facility and the Sunshine Hydroelectric Facility has been re-prioritized to this lower 26” section. Based on the engineer’s cost estimate this amount was originally thought to be enough to complete the work, however, the low bid came in 60 percent over the engineer’s cost estimate. The spread on the bids was from 60 percent over the $1,000,000 cost estimate to 150

percent over the estimate, and is indicative of the current volatility in construction pricing. This adjustment to base is needed to complete this priority work, in order to then move on to work on the other transmission mains in need of attention in 2015 and beyond.

Overview of Total Requests

In common usage in city meetings and materials, the April/May and November/December budget supplementals are also referred to as the **First Adjustment to Base** and **Second Adjustment to Base**, respectively. The current year's council-approved budget is the "base" in the term Adjustment to Base (ATB).

In total, the city recommends $8,211,705 in appropriations, of which $2,679,318 come from new revenues and $5,532,388 from fund balance. The Nov. 18, 2014 agenda, item 3G includes a detailed narrative of each budget supplemental request in Attachment B, a summary table of the supplemental requests in Attachment C, and a schedule reflecting the impact of the supplemental appropriations for 2014 on the projected fund balance for each fund in Attachment D.

PUBLIC AND COUNCIL FEEDBACK

There were no questions from the public at this meeting.

ATTACHMENT

A. Ordinance No. 8014 relating to the supplemental appropriations to the 2014 Budget

Attachment A

ORDINANCE NO. 8014

AN ORDINANCE RELATING TO THE FINANCIAL AFFAIRS OF THE CITY OF BOULDER, COLORADO, MAKING SUPPLEMENTAL APPROPRIATIONS FOR THE FISCAL YEAR ENDING DECEMBER 31, 2014 SETTING FORTH DETAILS IN RELATION TO THE FOREGOING.

WHEREAS, Section 102 of the Charter of the City of Boulder provides that: "At any time after the passage of the annual appropriation ordinance and after at least one week's public notice, the council may transfer unused balances appropriated for one purpose to another purpose, and may by ordinance appropriate available revenues not included in the annual budget;" and

WHEREAS, the City Council now desires to make certain supplemental appropriations for purposes not provided for in the 2014 annual budget; and,

WHEREAS, required public notice has been given;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO, that the following amounts are appropriated from additional projected revenues and from unused fund balances to the listed funds:

Section 1. General Fund

Appropriation from Fund Balance	$2,123,721
Appropriation from Fund Balance - Reserves	392,538
Appropriation from Additional Revenue	1,611,943
Increase in Revenue Only	21,500

Section 2. Capital Development Fund

Increase in Revenue Only	516,550

Section 3. Planning & Development Services

Appropriation from Additional Revenue	1,500

Section 4. .25 Cent Sales Tax Fund (1995 Ballot Issue)

Appropriation from Additional Revenue	163,378
Negative Appropriation - Additional Revenue	(7,988)

Section 5. Library Fund

Appropriation from Fund Balance	1,947
Appropriation from Additional Revenue	94,152

Section 6. Recreation Activity Fund

Appropriation from Additional Revenue	40,480

Section 7. Open Space Fund

Appropriation from Additional Revenue	30,474

Section 8. Airport Fund

Appropriation from Fund Balance	25,000

Section 9. Transportation Fund

Appropriation from Additional Revenue	320,276
Increase in Revenue Only	63,057

Section 10. Community Development Block Grant Fund

Appropriation from Additional Revenue	36,531

Section 11. HOME Fund

Appropriation from Additional Revenue	148,752

Section 12. Boulder Junction Improvement Fund

Appropriation from Additional Revenue	7,805

Section 13. Water Utility Fund

Appropriation from Fund Balance	1,776,000

Section 14. Wastewater Utility Fund

Appropriation from Fund Balance	700,000

Section 15. Stormwater Utility Fund

Appropriation from Additional Revenue	45,000

Section 16. Telecommunications Fund

Appropriation from Fund Balance	18,182
Appropriation from Additional Revenue	187,014
Increase in Revenue Only	152,986

Section 17. Worker Compensation Insurance Fund

Appropriation from Fund Balance	200,000

Section 18. Compensated Absences Fund

Appropriation from Fund Balance	295,000

Section 19. Fleet Replacement Fund

Increase in Revenue Only	10,750

Section 20. The City Council finds that this ordinance is necessary to protect the public health, safety, and welfare of the residents of the City and covers matters of local concern.

Section 21. If any part or parts hereof are for any reason held to be invalid, such shall not affect the remaining portion of this ordinance.

Section 22. The Council deems it appropriate that this ordinance be published by title only and order that copies of this ordinance be made available in the Office of the City Clerk for public inspection and acquisition.

Attachment A

INTRODUCED, READ, ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY this 18th day of November, 2014.

_____
Mayor

Attest:

_____
City Clerk

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED PUBLISHED BY TITLE this 2nd day of December, 2014.

_____
Mayor

Attest:

_____
City Clerk

CENTRAL AREA GENERAL IMPROVEMENT DISTRICT (CAGID)
BOARD OF DIRECTORS AGENDA ITEM

MEETING DATE: December 2, 2014

AGENDA TITLE
Consideration of a motion to adopt a resolution amending the 2014 Downtown Commercial District Fund (formerly CAGID Fund) Budget.

Consideration of a motion to adjourn from the CAGID Board of Directors and reconvene as the Boulder City Council.

PRESENTERS
Jane S. Brautigam, City Manager
Bob Eichem, Chief Financial Officer
Cheryl Pattelli, Director of Finance
Peggy Bunzli, Budget Officer
Maria Diaz, Budget Analyst

EXECUTIVE SUMMARY
This budget supplemental resolution is the second to be presented to City Council in 2014 for the Downtown Commercial District (DCD) Fund (formerly CAGID Fund) Budget. All supplementals adjust only the 2014 budget and are considered "one-time" adjustments. As a result, they have no direct or immediate impact on the following year's budget. In contrast, the city assigns budget requests with "ongoing" or multi-year impacts only to the annual budget process (budget planning for the coming fiscal year) and not to the budget supplemental resolution.

A proposed resolution is provided as **Attachment A** to this packet. The resolution contains a request for supplemental appropriations from fund balance. A detailed description of the request is included in **Attachment B. Attachment C** shows the impact the supplemental will have on the Downtown Commercial District fund balance.

STAFF RECOMMENDATION

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to adopt a resolution approving a supplemental appropriation to the 2014 Downtown Commercial District Fund (formerly CAGID Fund) Budget.

Motion to adjourn from the CAGID Board of Directors and reconvene as the Boulder City Council.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

This supplemental resolution appropriates funding for capital projects and ongoing operations that positively affect economic, environmental or social sustainability in the community.

OTHER IMPACTS

- Fiscal: This resolution will appropriate $25,000 from fund balance.

- Staff time for this process is allocated in the Budget Division's regular annual work plan.

BOARD AND COMMISSION FEEDBACK

The Downtown Management Commission supports these supplemental requests.

ATTACHMENTS

A. Proposed Resolution amending the 2014 DCD Fund Budget
B. Narrative description of supplemental appropriations
C. 2014 DCD Fund Activity Summary

RESOLUTION NO. 270

A RESOLUTION RELATING TO THE FINANCIAL AFFAIRS OF THE CITY OF BOULDER DOWNTOWN COMMERCIAL DISTRICT FUND (FORMERLY KNOWN AS THE CENTRAL AREA GENERAL IMPROVEMENT DISTRICT FUND), MAKING A SUPPLEMENTAL APPROPRIATION FOR THE FISCAL YEAR ENDING DECEMBER 31, 2014, AND SETTING FORTH DETAILS IN RELATION THERETO.

WHEREAS, the District desires to make fund balance transfers to continue and complete projects previously authorized and approved; and

WHEREAS, the District also desires to make certain supplemental appropriations for purposes not provided for in the 2014 Annual Appropriation Resolution:

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL, ACTING AS THE BOARD OF DIRECTORS OF THE CENTRAL AREA GENERAL IMPROVEMENT DISTRICT, THAT THE FOLLOWING BE ACCOMPLISHED:

Section 1.

Appropriation from Fund Balance	$25,000

INTRODUCED, READ, PASSED AND ADOPTED this 2nd day of December, 2014.

_____
Chair

Attest:

_____
Secretary

DEFINITIONS AND REQUEST NARRATIVE
2nd BUDGET SUPPLEMENTAL OF 2014

DEFINITIONS

Budget Supplementals

Budget Supplemental from Fund Balance
Adjustments for new appropriation from a specific fund's available fund balance.

Budget Supplemental from Fund Balance Reserve
Adjustments for new appropriation from a specific fund's available fund balance where use is limited for specific purposes, typically due to legal restrictions or management assignment.

Budget Supplemental from Additional Revenue

Grants – Budget supplementals from grant revenues are required throughout the year since either the grant was not anticipated and was therefore not incorporated into the original budget, or because the grant amount actually received was more than the amount specified in the original budget.

Miscellaneous – This category includes annual unanticipated funds received for city programs and services, including items such as donations, fundraisers, wildland fire costs or cooperative agreements between municipalities. In addition, beginning in 2007, reimbursements for some services (e.g. insurance proceeds, off-duty police officer services, city-sponsored training programs) are now officially recognized as miscellaneous revenues instead of reducing expenditures. Best practices accounting and reporting standards require these revenues to be reflected through the formal appropriation process.

Transfers to/from Other Funds
Transfers between funds requiring City Council approval.

Budget Adjustments Necessitated by Accounting Requirements
Adjustments required based on generally accepted accounting and reporting requirements that occur during the final adjustments to base.

Negative Appropriations
Adjustments reducing approved appropriations based on identified reductions in revenue sources (e.g. grant funding reductions).

BUDGET SUPPLEMENTAL DETAILS BY FUND

DOWNTOWN COMMERCIAL DISTRICT (FORMERLY CAGID) FUND

Budget Supplemental(s) From Fund Balance

Downtown University Hill Management – AMPS – $25,000

This request appropriates funds for the CAGID portion of 2014 consulting costs for the Access Management and Parking Strategy (AMPS) project. The 2014 consulting will include work on: a best practices report and peer city research; ongoing communication strategy support; project evaluation criteria; implementation of a Park Plus program that does parking and TDM scenario development; and a request for proposal for the replacement of the city's garage access system and associated technologies.

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2014 FUND ACTIVITY SUMMARY
CARRYOVER AND 2ND BUDGET SUPPLEMENTAL OF 2014

	At January 1, 2014			Carryover & 1st Budget Supplemental		2nd Budget Supplemental		Projected Dec 31, 2014
FUND	Unreserved Fund Balance	Original Estimated Revenues (Including Xfers In)	Original Appropriations (Including Xfers Out)	Increase in Estimated Revenues	Appropriations (Including Xfers Out)	Increase in Estimated Revenues	Appropriations (Including Xfers Out)	Fund Balance
Downtown Commercial District Fund (540)	5,497,477	8,079,963	7,027,956	0	1,364,849	0	25,000	5,184,635

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C I T Y O F B O U L D E R
CITY COUNCIL AGENDA ITEM

MEETING DATE: December 2, 2014

AGENDA TITLE:
Introduction, first reading and consideration of a motion to order published by title only an ordinance amending Title 9, "Land Use Code," B.R.C. 1981, to create an additional method of property valuation for the determination of whether proposed work on a property triggers upgrades to lighting, landscaping, site access and non-conforming drive-throughs under the Land Use Code.

PRESENTERS:
David Driskell, Executive Director of Community Planning and Sustainability
Susan Richstone, Deputy Director of Community Planning and Sustainability
Charles Ferro, Land Use Review Manager
Karl Guiler, Senior Planner/Code Amendment Specialist
David Gehr, Deputy City Attorney
Hella Pannewig, Assistant City Attorney

EXECUTIVE SUMMARY

In efforts to implement recommended actions of the Economic Sustainability Strategy, adopted by City Council on Oct. 29, 2013, and to continually update the Land Use Code to implement the Boulder Valley Comprehensive Plan (BVCP) and achieve high quality design results, staff is proposing the following change:

> Create an additional method of property valuation for the determination of whether proposed work on a property triggers upgrades to lighting, landscaping, site access and non-conforming drive-throughs under the Land Use Code.

The change is proposed as a way to remove regulatory barriers to reinvestment in existing buildings. As part of the outreach for the Economic Sustainability Strategy it was learned that some property owners have hesitated to make ordinary improvements to their buildings based on the concern that certain zoning requirements (e.g., upgrades to parking lot landscaping, outdoor lighting etc.) can be triggered based on a modestly sized renovation or tenant improvement projects. Owners have indicated that the reason for this is the Boulder County Assessor's relatively low value of buildings as compared to property value. The current code includes zoning thresholds or triggers for upgrades relative to the Boulder County assessed value of buildings. The proposed change would enable owners to submit a fair market value as

determined by a real estate appraiser licensed in Colorado as an alternative. This approach is consistent with how properties are evaluated for the purposes of improving properties located in the floodplain.

The proposed Land Use Code change is found within the attached draft ordinance (**Attachment A**). This code change was passed on first reading on May 20, 2014 when it was included with the proposed change to the density calculations, which is not proceeding at this time. Given the amount of time that has transpired, the proposal is being resent as a first reading item.

STAFF RECOMMENDATION
Staff requests council consideration of this matter and action in the form of the following motion:

Suggested Motion Language:
Motion to introduce on first reading and order published by title only an ordinance amending Title 9, "Land Use Code," B.R.C. 1981, in particular, to create an additional method of property valuation for the determination of whether proposed work on a property triggers upgrades to lighting, landscaping, site access and non-conforming drive-throughs under the Land Use Code.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS
- Economic: Adding the option to determine actual building value from a licensed professional to the land use code would remove potential impediments to reinvestment in properties based on low county assessor values created for tax purposes and encourage reinvestment and rehabilitation of buildings.
- Environmental: No anticipated impacts.
- Social: No anticipated impacts.

OTHER IMPACTS
- Fiscal: None identified.
- Staff time: The proposed code changes are within normal staff work plans.

BOARD AND COMMISSION FEEDBACK
Planning Board
The board reviewed the proposed ordinance on May 1, 2014 and recommended approval of the ordinance on a 4-2 vote (see motion below). Audio and complete meeting minutes from the May 1, 2014 meeting can be found on the Planning Board's website at www.bouldercolorado.gov/boards-commissions/planning-board.

The motions were as follows:
***J. Putnam**, seconded by **B. Bowen**, moved that the Planning Board recommend approval to the City Council of an ordinance implementing recommended actions of the Economic Sustainability Strategy by amending Title 9, "Land Use Code," B.R.C. 1981, in particular:*

1. *Updating the land use regulations that require site improvements and upgrades if a project exceeds a certain percentage of the value of any existing structures on the property by allowing the value of existing structures to be established through a professional appraisal of the fair market value of such structures (Action 3.6, ESS).*

*On a subsidiary motion to amend the main motion **J. Gerstle,** seconded by **L. May**, the Planning Board voted 4-2 (**B. Bowen** and **J. Putnam** opposed, **A. Brockett** absent) to recommend that if a private appraisal is used in this process, that information shall be provided to the County Assessor.*

*The main motion, as amended, passed 4-2 (**B. Bowen** and **J. Putnam** opposed, **A. Brockett** absent).*

Planning Board members Bowen and Putnam, despite proposing the original motion, voted against it because of the amendment to the motion requiring a referral of any appraisal to the county.

PUBLIC FEEDBACK
Staff has received little written public feedback on the proposed change.

BACKGROUND
City Council adopted the Economic Sustainability Strategy on Oct. 29, 2013. The Economic Sustainability Strategy is a cross-cutting and "place-based" approach to economic vitality. It seeks to create vibrant, amenity-rich business districts that vary in their focus and intensity, and offer environments that support key industry clusters, retain talented workers and enhance a unique and sustainable "Boulder" quality of life.

In 2012, city staff, along with the University of Colorado Leeds Business Research Division and the Boulder Economic Council, conducted a primary employer study identifying the issues, trends and needs of Boulder's primary employers relative to the city's existing industrial and commercial space. In Boulder, "primary employers" are defined as companies that receive at least fifty percent of their revenue from outside Boulder County, thus bringing in a significant amount of "new money" into the Boulder economy. The results of this study are found at www.bouldercolorado.gov/pages/primary-employer-study. The strategies that have come out of this process help to prioritize the action items, which would be updated each year based on resources available (city work plan and budget). The recommended actions of the Economic Sustainability Strategy are informed by the input relieved as part of this process.

ANALYSIS

Valuation Code Change:
The following code change is intended to implement recommended Action 3.6 of the Economic Sustainability Strategy:

> *Action 3.6, page 17, Economic Sustainability Strategy - Update the land use regulations for required site improvements and upgrades by changing how the assessed value is calculated by allowing the option of using the professionally appraised fair market value of the structure.*

The Land Use Code ties certain site improvement requirements, such as landscaping and outdoor lighting upgrades, for properties that are being redeveloped to the size of an expansion or value of the planned improvements relative to the value of existing structures on the site. For instance, certain site improvements like landscaping and outdoor lighting upgrades would be required if

the value of a project exceeds a specified percentage of the value of the existing structure on the site. Oftentimes, the extent of required upgrades is dependent on this percentage. The web links below show the applicable sections where valuations are used and the thresholds that determine the level of upgrade:

- ⇨ Site Access Control (see section 9-9-5, B.R.C. 1981)
- ⇨ Landscaping (see section 9-9-12(b), B.R.C. 1981)
- ⇨ Outdoor lighting (see section 9-9-16(c), B.R. C. 1981)
- ⇨ Nonconformance standards (see section 9-10-2, B.R.C. 1981)

With the exception of 'Site Access Control' which is based on a specific project to determine if site access would need to be modified, the other code sections, including the city's floodplain regulations, require cumulative valuations. For the code sections listed above, assessed value is limited to actual Boulder County assessed value as the comparative figure to the development project cost whereas the floodplain section of the Land Use Code allows the option to also use fair market appraisals. The fair market value determined by an appraiser is used to determine whether the thresholds for improvements are required under the city's floodplain regulations. These can be accessed at the following web link: floodplain regulations concerning valuation

The proposed code change would apply the same allowance for the floodplain regulations to the four code sections above. The reasons this issue was identified is because some customers have pointed out that the value assessed by the County Assessor does not accurately represent the fair market value of a structure as the Assessor assesses the value of a structure for tax purposes while, in reality, the fair market value of a structure is typically higher. This has led to inconsistent property improvements over time.

Staff finds that it is appropriate to allow this alternative method of valuation, because city codes are already considered aggressive in what is required from a qualitative perspective. Even minor changes to a building may trigger expensive site upgrades that can become cost prohibitive and may discourage building retrofits. The site improvements and adjustments may not be proportionate to the level of work proposed for the building when assessing against the Boulder County Assessor figures. Of greatest concern is that such standards may discourage ordinary upkeep and maintenance of buildings and thus, can make leasing difficult.

Staff has been working with property owners to better understand the issue. A local developer/property manager has provided some examples of where building values (see **Attachment B**), created for tax purposes, is accessed at a low value relative to the overall property value – in some cases only around 2 percent of the total land value. With these low accessed values for buildings, the trigger for more expensive improvements on a site is often easily triggered. If expensive site improvements become required for relatively modest upgrades to buildings, improvements may be deferred or canceled.

Therefore, staff has proposed the following new language that would add this assessment figure as an option to the applicable sections discussed above:

> *For purposes of this paragraph (1), the applicant may demonstrate the value of the existing structure by submitting, in the discretion of the applicant, either the actual value*

assessed by the Boulder County Assessor or the fair market value determined by a real estate appraiser licensed in Colorado.

Attachment A includes the specific sections with the proposed language within their context.

Planning Board made a motion to adopt the proposed change above, but added a requirement that appraisals be forwarded to the county for consideration. Staff contacted the Boulder County Assessor directly and the Assessor indicated that they would support the proposed requirement to send professional appraisals to their office in efforts to improve their property data. Staff is not averse to transmitting the appraisals to the county as information is already routinely transmitted to the county, including but not limited to building permit and geographic information system data. This type of information is shared as a part of our regular administrative business processes. . However, staff does not recommend that the transmittal of property appraisal information be codified as it is unnecessary from a zoning implementation perspective. Therefore, no change to the ordinance language has been proposed to reflect such a requirement. If the proposed change is adopted, staff will begin sending fair market appraisals to the county as recommended by Planning Board and as supported by the assessors' office as a part of our regular business processes.

STAFF FINDINGS AND RECOMMENDATION:
Staff recommends that the City Council adopt the proposed ordinance at time of second reading based on the following conclusions:

- The proposed change would be appropriate to help deal with the challenge of high land costs and barriers to redevelopment/reinvestment;
- The proposed change would be consistent with how valuations are calculated per the flood regulations, and
- The proposed change would be consistent with Economic Sustainability Strategy recommendations.

ATTACHMENTS:

A. Draft ordinance
B. Tax assessment figures

ORDINANCE NO. 8018

AN ORDINANCE AMENDING TITLE 9, "LAND USE CODE," B.R.C. 1981, TO ADD A VALUATION METHOD FOR EXISTING STRUCTURES FOR DETERMINATION OF UPGRADE REQUIREMENTS UNDER TITLE 9, B.R.C. 1981, AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. Section 9-9-5, "Site Access Control," B.R.C. 1981, is amended to read:

9-9-5 Site Access Control.

(a) Access Control: Vehicular access to property from the public right-of-way shall be controlled in such a manner as to protect the traffic-carrying capacity and safety of the street upon which the property abuts and access is taken, ensuring that the public use and purpose of public rights-of-way is unimpaired as well as to protect the value of the public infrastructure and adjacent property. The requirements of this section apply to all land uses, including single-family residential land uses, as follows:

(1) For all uses, except single-family residential, the standards shall be met prior to a final inspection for any building permit for new development; redevelopment exceeding twenty-five percent of the ~~Boulder County Assessor's actual~~ value of the existing structure; or the addition of a dwelling unit. For purposes of this paragraph (1), the applicant shall demonstrate the value of the existing structure by submitting, at the discretion of the applicant, either the actual value assessed by the Boulder County Assessor's Office or the fair market value determined by a real estate appraiser licensed in Colorado.

(2) For single-family residential uses, the standards of this section shall be met prior to a final inspection for any building permit for new development; the demolition of a principal structure; or the conversion of an attached garage or carport to a use other than use as a parking space.

(b) Access for Properties Subject to Annexation: Each parcel of land under a single ownership at the time of its annexation will be reviewed in terms of access as one parcel (regardless of subsequent sales of a portion) unless the property is subdivided at the time of its annexation.

(c) Standards and Criteria for Site Accesses and Curb Cuts: Any access or curb cut to public rights-of-way shall be designed in accordance with the City of Boulder Design and Construction Standards and the following standards and criteria:

(1) Number of Access Points Permitted: One access point or curb cut per property will be permitted, unless a site plan or traffic study, approved by the city manager, demonstrates that additional access points and curb cuts are required to adequately address accessibility, circulation, and driveway volumes, and only where additional accesses and curb cuts would not impair any public use of any public right-of-way, or create safety or operational problems, or be detrimental to traffic flow on adjacent public streets.

(2) Access Restrictions: On arterial and collector streets, or if necessary for the safe and efficient movement of traffic, all accesses shall be designed and constructed with physical improvements and appropriate traffic control measures to assist or restrict turning movements, including, without limitation, acceleration or deceleration lanes, access islands, street medians, and signage, as may be required of the development if the city manager finds that they are necessary to preserve the safety or the traffic-carrying capacity of the existing street. The city manager shall determine the length and degree of the required access restriction measures for the property.

(3) Residential Access to Arterial and Collector Streets Restricted: No residential structures shall have direct access onto an arterial. However, if no alternative street access is possible, an access may be permitted subject to the incorporation of any design standards determined to be necessary by the city manager to preserve the safety and the traffic-carrying capacity of the arterial or collector.

(4) Access From Lowest Category Street Required: A property that has frontage on more than one street, alley or public access shall locate its access or curb cut on the lowest category street, alley or public access frontage. If more than one access point or curb cut is necessary, an additional access or curb cut will be permitted only where the proposed access or curb cut satisfies the requirements in this section.

(5) Property Right to Access: If a property cannot be served by any access point or curb cut that satisfies this section, the city manager will designate the access point or curb cut for the subject property based on optimal traffic safety.

(6) Multiple Access Points for Single-Family Residential: The city manager will permit multiple access points on the same street for single-family residential lots upon finding that there is at least one hundred linear feet of lot frontage adjacent to the front yard on such street, the area has a limited amount of pedestrian activity because of the low density character, and there is enough on-street parking within three hundred feet of the property to meet the off-street parking needs of such area. The total cumulative width of multiple curb cuts shall not exceed the maximum permitted width of a single curb cut. The minimum spacing between multiple curb cuts on the same property shall not be less than sixty-five feet.

(7) Shared Driveways for Residential Structures: A detached single-family residential lot that does not have frontage on the street from which access is taken may be served by a shared driveway that meets all of the standards and criteria for shared driveways set forth in the City of Boulder Design and Construction Standards.

(8) Minimum Driveway Width: The minimum width of a driveway leading to an off-street parking space shall not be less than nine feet. A driveway, or portion of a driveway, may be located on an adjacent property if an easement is obtained from the impacted property owner. (See figure 9-1 of this section.)

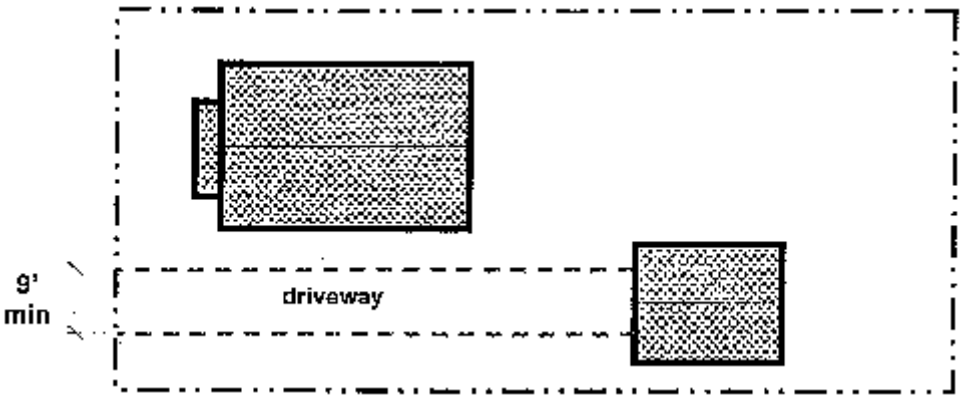

Figure 9-1: Minimum Driveway Width

(9) Exceptions: The requirements of this section may be modified under the provisions of ~~section 9-2-14~~Section 9-2-14, "Site Review," B.R.C. 1981, to provide for safe and reasonable access. Exceptions to this section may be made if the city manager determines that:

(A) The topography, configuration of a lot, or other physical constraints makes taking access from the lowest category street, alley or public access frontage impractical, or the character of the existing area is such that a proposed or existing access to the street, alley or public access frontage is compatible with the access of properties in such area;

(B) The site access and curb cuts would not impair public use of the public right-of-way; create safety or operational problems or be detrimental to traffic flow on adjacent public streets; and

(C) The site access and curb cuts will minimize impacts to the existing on-street parking patterns.

. . .

Section 2. Section 9-9-12, “Landscaping and Screening Standards,” B.R.C. 1981, is amended to read:

9-9-12 Landscaping and Screening Standards.

. . .

(b) Scope: This section and Section 9-9-14, "Parking Lot Landscaping Standards," B.R.C. 1981, apply to all nonresidential and multi-family residential developments unless expressly stated otherwise.

(1) The standards in this section and Sections 9-9-13, "Streetscape Design Standards," and 9-9-14, "Parking Lot Landscaping Standards," B.R.C. 1981, shall be met prior to a final inspection for any building permit for:

(A) New development;

(B) Redevelopment involving expansion of the total building floor area which exceeds twenty-five percent of the ~~Boulder County Assessor's actual~~ value of the existing structure for any use except a property with three or fewer attached dwelling units;

(C) Redevelopment involving the expansion of the total floor area for a property that has three or fewer attached dwelling units, shall meet the landscaping standards as follows:

(i) Redevelopment valued at more than twenty-five percent, but less than fifty percent of the ~~Boulder County Assessor's actual~~ value of the existing structure shall require compliance with the street and alley tree requirements and the trash and parking screening requirements;

(ii) Redevelopment valued at fifty percent or more, but less than seventy-five percent of the ~~Boulder County Assessor's actual~~ value of the existing structure shall require compliance with the street and alley tree requirements and the trash and parking screening requirements and the front yard landscape requirements; and

(iii) Redevelopment valued at seventy-five percent or more of the ~~Boulder County Assessor's actual~~ value of the existing structure shall require compliance with the landscape regulations.

(D) Redevelopment exceeding one hundred percent of the ~~Boulder County Assessor's actual~~ value of the existing structure and not involving expansion of the total building floor area; or

(E) The addition of a dwelling unit.

(F) For purposes of this paragraph (1), the applicant shall demonstrate the value of the existing structure by submitting, at the discretion of the applicant, either the actual value assessed by the Boulder County Assessor's Office or the fair market value determined by a real estate appraiser licensed in Colorado.

(2) When additional parking spaces are provided, or for a change of use where new off-street parking spaces are provided, the provisions of Section 9-9-14, "Parking Lot Landscaping Standards," B.R.C. 1981, shall be applied as follows:

(A) When the number of additional parking spaces that will be provided exceeds twenty-five percent of the number of existing parking spaces on the site, all standards in Section 9-9-14, "Parking Lot Landscaping Standards," B.R.C. 1981, shall be met for the entire parking lot (existing and new portions) prior to the final inspection for a change of use or concurrent with the addition of the parking spaces.

(B) When the number of additional parking spaces that will be provided is less than twenty five percent of the number of existing parking spaces on the site, the standards in Section 9-9-14, "Parking Lot Landscaping Standards," B.R.C. 1981, shall be met for the new portions of the parking lot prior to the final inspection for a change of use or concurrent with the addition of the parking spaces.

. . .

Section 3. Section 9-9-16, "Lighting, Outdoor," B.R.C. 1981, is amended to read:

9-9-16 Lighting, Outdoor.

. . .

(c) Scope: This section shall apply to all exterior lighting, including illumination from outdoor signs that impact the outdoor environment. No person shall install any light fixture unless such fixture meets the requirements of this section.

(1) Conformance at the Time of Building Permit Application: Compliance with the requirements of this chapter shall be required for all new development. The following outdoor lighting improvements shall be installed prior to a final inspection for any building permit for any redevelopment which exceeds the following thresholds:

(A) When development or redevelopment exceeds twenty-five percent of the ~~Boulder County Assessor's actual~~ value of the existing structure, then all existing unshielded exterior light fixtures shall be retrofitted with shielding to prevent light trespass.

(B) When development or redevelopment exceeds fifty percent of the ~~Boulder County Assessor's actual~~ value of the existing structure, then:

(i) All exterior lighting, except existing parking lot lighting, shall be brought into conformance with the requirements of this section; and

(ii) All existing parking lot light fixtures shall be retrofitted with shielding to prevent light trespass.

(C) When development or redevelopment exceeds seventy-five percent of the ~~Boulder County Assessor's actual~~ value of the existing structure, then all exterior lighting fixtures shall be brought into full conformance with the requirements of this section.

(D) For purposes of this paragraph (1), the applicant shall demonstrate the value of the existing structure by submitting, at the discretion of the applicant, either the actual value assessed by the Boulder County Assessor's Office or the fair market value determined by a real estate appraiser licensed in Colorado.

(2) Replacement of Fixtures: If an existing light fixture is removed, it shall only be replaced with a conforming light fixture.

. . .

Section 4. Section 9-10-2, "Continuation or Restoration of Nonconforming Uses and Nonstandard Buildings, Structures and Lots," B.R.C. 1981, is amended to read:

9-10-2 Continuation or Restoration of Nonconforming Uses and Nonstandard Buildings, Structures and Lots.

. . .

(d) Drive-Thru Facilities: A drive-thru facility that was established prior to July 31, 1986, on a property not abutting Canyon Boulevard in the DT zoning districts, and has not expired pursuant to subsection (a) of this section, shall be considered a nonconforming use, and may:

(1) Be renovated or remodeled, by improvements the cumulative total of which increases the structure's fair market value by no more than twenty-five percent of the ~~Boulder County Assessor's actual~~ value of the structure, without meeting the criteria for drive-thru uses in ~~subsection~~ Subsection 9-6-9(c), B.R.C. 1981;

(2) Be renovated or remodeled by improvements the cumulative total of which increases the facility's structure's fair market value by more than twenty-five percent of the ~~Boulder County Assessor's actual~~ value of the structure; or be relocated on site if the development meets the criteria for drive-thru uses in ~~subsection~~ Subsection 9-6-9(c), B.R.C. 1981; or

(3) Be relocated off site or expanded on site, subject to the conditional use requirements for drive-thru uses. For the purposes of this paragraph, "expanded" means creation of an additional drive-thru bay, lane, or teller window.

(4) For purposes of this subsection (d), the applicant shall demonstrate the value of the existing structure by submitting, at the discretion of the applicant, either the actual value assessed by the Boulder County Assessor's Office or the fair market value determined by a real estate appraiser licensed in Colorado.

Section 5. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

Section 6. The City Council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY this 2nd day of December, 2014.

_____
Mayor

Attest:

_____
City Clerk

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED PUBLISHED BY TITLE ONLY this _____ day of _____, 2014.

_____
Mayor

Attest:

_____
City Clerk

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Summary of info from Assessment Information Reports

7-Apr-14

			structure sf	actual value from assessment	% of actual value	structure value psf
Account#: 0004324	1580 Canyon	land		$1,316,000.00	97.79%	
		structure	6528	$29,800.00	2.21%	$4.56
		total		$1,345,800.00	100.00%	
Account#: 0033583	236 Pearl	land		$686,181.00	98.37%	
		structure	1248	$11,400.00	1.63%	$9.13
		total		$697,581.00	100.00%	
Account#: 0069297	2633 30th	land		$314,600.00	38.57%	
		structure	10408	$501,100.00	61.43%	$48.15
		total		$815,700.00	100.00%	

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CITY OF BOULDER
CITY COUNCIL AGENDA ITEM

MEETING DATE: December 2, 2014

AGENDA TITLE
Introduction, first reading and consideration of a motion to order published by title only an ordinance amending Emergency Ordinance No. 7985 to correct the legal description for the annexation area of the property at 2130 Tamarack Avenue.

PRESENTER/S
Jane S. Brautigam, City Manager
David Driskell, Executive Director of Community Planning & Sustainability
Susan Richstone, Deputy Director of Community Planning & Sustainability
Chris Meschuk, Flood Recovery Coordinator – Community Services
Bev Johnson, Annexation Project Manager

EXECUTIVE SUMMARY

The purpose of this item is for City Council to consider the first reading of an ordinance (**Attachment A**) relating to a correction of the legal description for the annexation and initial zoning of the property at 2130 Tamarack Avenue, which was annexed by emergency ordinance on Aug. 5, 2014.

Due to an error in parcel mapping, a portion of the property at 2130 Tamarack Ave was not annexed and assigned initial zoning as a part of Ord. 7985 that was approved by the City Council on Aug. 5, 2014.

The proposed ordinance will correct that error, adding this small portion of land to the previous annexation.

STAFF RECOMMENDATION
Staff requests council consideration of this matter and action in the form of the following motion:

Suggested Motion Language:

1. *Motion to introduce on first reading and order published by title only, an ordinance amending Emergency Ordinance No. 7985 to correct the legal description for the annexation area of the property located at 2130 Tamarack Avenue.*

BACKGROUND
After the September 2013 floods, several homeowners in Boulder County contacted city staff about the possibility of annexing to the city in order to connect to city water and wastewater services. Many homeowners outside the city, especially in enclave areas, experienced damage to their wells or septic systems. In response to these requests, the city put together a special annexation package and offered it to approximately 160 property owners in enclave areas and in the Old Tale Road and Cherryvale Road neighborhoods.

Two properties (2130 Tamarack Av. and 4270 19th St.) were annexed by emergency ordinance in August 2014 because of the poor condition of their well and septic systems.

Following these two emergency annexations, six additional properties chose to proceed with annexation, including the neighboring property to 2130 Tamarack Ave.

During the annexation document preparation process for the neighboring property, located at 2140 Tamarack Ave, it was discovered that both the city and county parcel mapping incorrectly reflected the ownership of a small 1,950 square foot portion of land in the southeast corner of the property at 2130 Tamarack Ave. On Nov. 25, 2014 the applicant for 2140 Tamarack Ave withdrew the application for annexation.

ANALYSIS
Title work and deed research of both the 2130 Tamarack and 2140 Tamarack properties has clarified that the small portion of land had been incorrectly shown to be owned by the property at 2140 Tamarack, when in fact it is within ownership of the property at 2130 Tamarack.

Figure 1 below shows the 2130 Tamarack property as mapped at the time of annexation as shown in red. Figure 2 shows the corrected parcel mapping shown in red.

Figure 1:

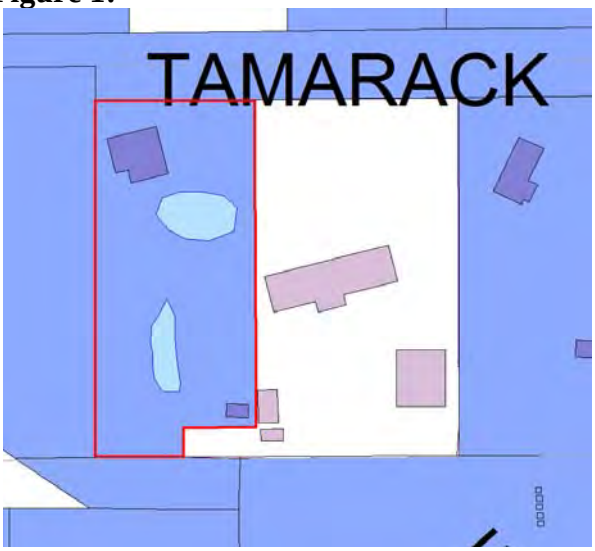
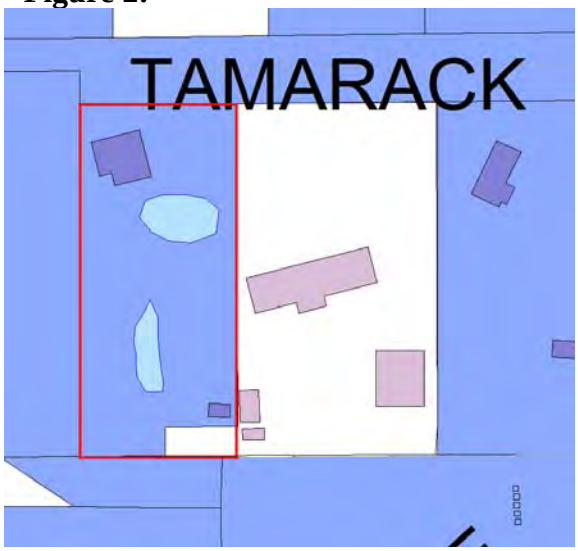


Figure 2:



This ordinance will correct the previous annexation to add the small portion of land that was inadvertenly left out of the original annexation.

In addition, a portion of this area being annexed is within 60 feet of the centerline of Fourmile Canyon Creek. Consistent with the previous annexation and neighborhing annexation, the property owner is dedicating a flood easement for that portion of the property within 60 feet of the creek.

ATTACHMENTS

A. Proposed Ordinance
B. Flood Easement

ORDINANCE NO. _____

AN ORDINANCE AMENDING EMERGENCY ORDINANCE 7985 TO CORRECT THE LEGAL DESCRIPTION FOR THE ANNEXATION AREA OF THE PROPERTY LOCATED AT 2130 TAMARACK AVENUE, AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

A. On August 5, 2014, the City Council adopted Emergency Ordinance 7985 annexing to the City of Boulder approximately 0.97 acres of land generally located at 2130 Tamarack Avenue and more particularly described on **Exhibit A** ("Annexed Property").

B. Lynne Paul Baker and Cindy Lou Baker (the "Owners") are the owners of the Annexed Property.

C. A 1,950 square foot portion of the Owner's property more particularly described on **Exhibit B** ("Property") was inadvertently not included with Emergency Ordinance 7985.

D. The City wishes to amend Emergency Ordinance 7985 so that the Property is incorporated into the area considered to be the Annexed Property.

Section 1. Recitals A and B and Section 1 of Ordinance 7985 are amended to read as follows and Exhibits A and B attached hereto are incorporated into this amendment:

Recital A. The City Council passed a resolution initiating annexation of the enclave located at 2130 Tamarack Avenue ~~described in Exhibit A (the "Property") attached hereto and incorporated herein by this reference,~~ on August 5, 2014.

Recital B. Evidence has been presented to the City Council that the property located at 2130 Tamarack Avenue and more particularly described in Exhibit A and Exhibit B (the "Property") attached hereto and incorporated herein by this reference has been entirely

contained within the boundaries of the City of Boulder and has been so surrounded for at least three years.

Section 1. The territor~~y~~ies more particularly described in Exhibits A and B be, and the same hereby ~~is~~are, annexed to and included within the corporate boundaries of the City of Boulder.

Section 2. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

Section 3. The city council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY this 2nd day of December, 2014.

_____
Mayor

Attest:

_____
City Clerk

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED PUBLISHED BY TITLE ONLY this 20th day of January, 2015.

_____
Mayor

Attest:

_____
City Clerk

LOCATED IN THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH,
RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN,
COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 1

Parcel Description

(PROVIDED BY CLIENT)

THE WEST 140 FEET OF THE FOLLOWING DESCRIBED TRACT:
A TRACT OF LAND IN THE NE 1/4 OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE S 1/4 CORNER OF SAID SECTION 18; THEN N 0°5'30" EAST ALONG THE NORTH–SOUTH CENTERLINE OF SAID SECTION A DISTANCE OF 2,622.72 FEET; THENCE N 89°46'36" EAST, 587.87 FEET TO THE TRUE POINT OF BEGINNING; THENCE N 89°46'36" EAST, 75.00 FEET; THENCE N 0°01'17" EAST, 30.00 FEET; THENCE N 89°46'36" EAST, 382.84 FEET; THENCE N0°02'23" WEST, 286.65 FEET; THENCE S 89°50'00" WEST, 457.53 FEET; THENCE S 0°01'17" WEST, 317.10 FEET TO THE TRUE POINT OF BEGINNING.
COUNTY OF BOULDER, STATE OF COLORADO

I, JOHN B. GUYTON, A LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS PARCEL DESCRIPTION AND ATTACHED EXHIBIT, BEING MADE A PART THEREOF, WERE PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE AT THE REQUEST OF THE CLIENT AND IS NOT INTENDED TO REPRESENT A MONUMENTED LAND SURVEY OR SUBDIVIDE LAND IN VIOLATION OF STATE STATUTE.

COLORADO LICENSED
JOHN BRUCE GUYTON
16406
PROFESSIONAL LAND SURVEYOR
7/01/14

JOHN B. GUYTON
COLORADO P.L.S. #16406
CHAIRMAN/CEO, FLATIRONS, INC.

FSI JOB NO. 14–63,623

JOB NUMBER: 14–63,623
DRAWN BY: E. PRESCOTT
DATE: JUNE 30, 2014

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

Flatirons, Inc.
Surveying, Engineering & Geomatics
655 FOURTH AVE
LONGMONT, CO 80501
PH: (303) 776–1733
FAX: (303) 776–4355
www.FlatironsInc.com

BY:EPRESCOTT FILE:63623–ANNEX–C13.DWG DATE:7/1/2014 3:19 PM

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Exhibit A - Page 2 of 2

Annexation Map

A PARCEL OF LAND, LOCATED IN THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 1

TOTAL AREA = 42,432 SQ FT, OR 0.97 ACRES, MORE OR LESS

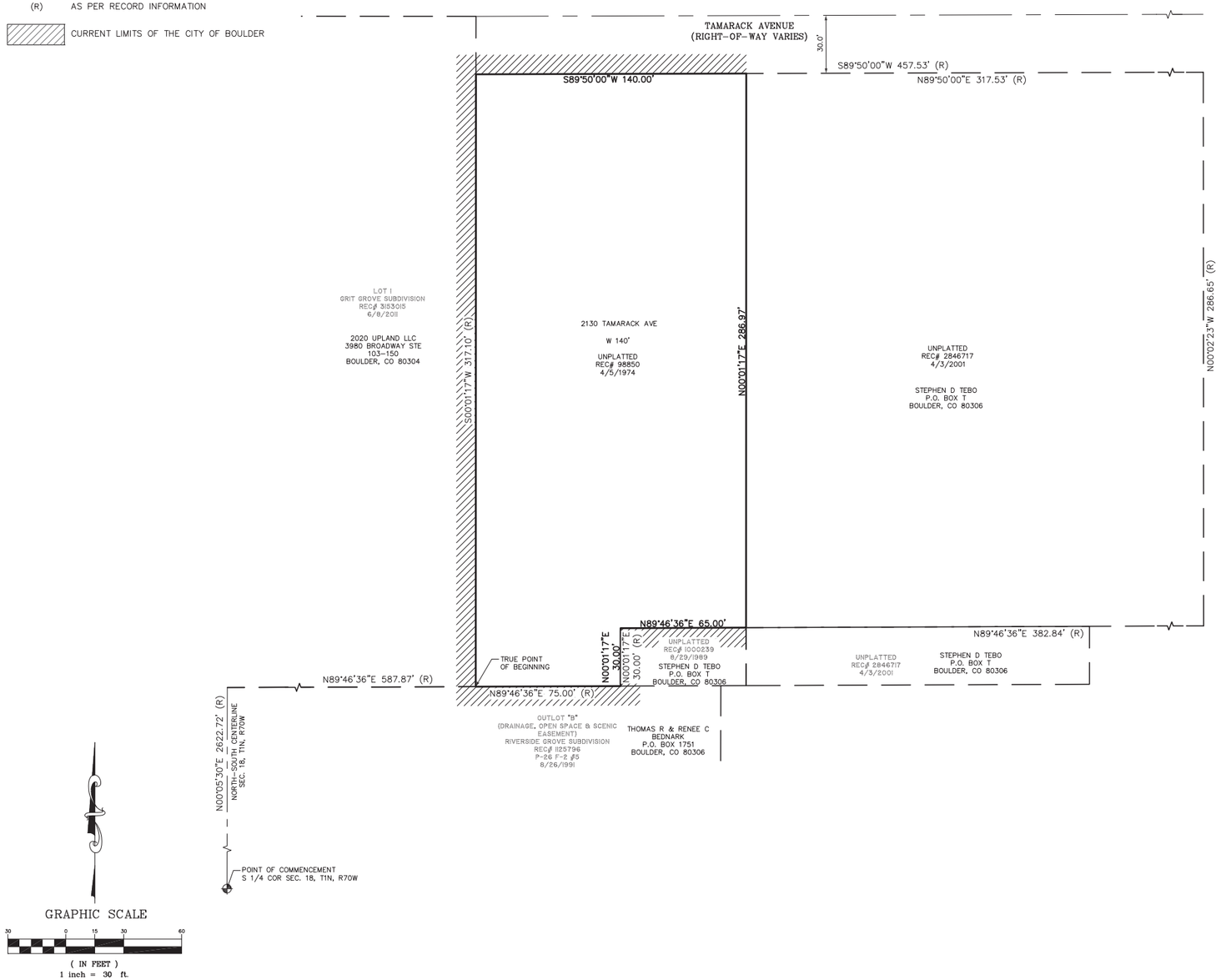
Parcel Description

(PROVIDED BY CLIENT)

THE WEST 140 FEET OF THE FOLLOWING DESCRIBED TRACT:
A TRACT OF LAND IN THE NE 1/4 OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE S 1/4 CORNER OF SAID SECTION 18; THEN N 0°5'30" EAST ALONG THE NORTH–SOUTH CENTERLINE OF SAID SECTION A DISTANCE OF 2,622.72 FEET; THENCE N 89°46'36" EAST, 587.87 FEET TO THE TRUE POINT OF BEGINNING; THENCE N 89°46'36" EAST, 75.00 FEET; THENCE N 0°01'17" EAST, 30.00 FEET; THENCE N 89°46'36" EAST, 382.84 FEET; THENCE N0°02'23" WEST, 286.65 FEET; THENCE S 89°50'00" WEST, 457.53 FEET; THENCE S 0°01'17" WEST, 317.10 FEET TO THE TRUE POINT OF BEGINNING.
COUNTY OF BOULDER, STATE OF COLORADO.

Legend

- ALIQUOT CORNER
- (R) AS PER RECORD INFORMATION
- CURRENT LIMITS OF THE CITY OF BOULDER



Notes

1. THIS ANNEXATION MAP WAS PREPARED WITHOUT THE BENEFIT OF A CURRENT TITLE COMMITMENT OR BINDER. EASEMENTS AND RIGHTS–OF–WAY DISCOVERED IN THE COURSE OF OUR INVESTIGATION ARE SHOWN HEREON. EASEMENTS SUCH AS UNRECORDED EASEMENTS MAY NOT HAVE BEEN DISCOVERED IN OUR SEARCH AND MAY AFFECT THE SUBJECT PROPERTY. IT IS RECOMMENDED THAT THE CLIENT OBTAIN A CURRENT TITLE COMMITMENT OR BINDER TO FURTHER AID IN RESEARCHING EASEMENTS, RIGHTS–OF–WAY AND ENCUMBRANCES THAT MAY AFFECT THE SUBJECT PROPERTY.
2. ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS MAP WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.
3. THE PURPOSE OF THIS MAP IS TO GRAPHICALLY PORTRAY THE RELATIONSHIP OF THE LAND PROPOSED FOR ANNEXATION TO THE CURRENT CITY OF BOULDER LIMITS.
4. ANY PERSON WHO KNOWINGLY REMOVES, ALTERS OR DEFACES ANY PUBLIC LAND SURVEY MONUMENT AND/OR BOUNDARY MONUMENT OR ACCESSORY, COMMITS A CLASS TWO (2) MISDEMEANOR PURSUANT TO STATE STATUTE C.R.S. SEC 18–4–508.
5. THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

Contiguity

TOTAL PERIMETER.....914.07'
1/6TH PERIMETER.....152.35'
PERIMETER CONTIGUOUS TO CITY LIMITS.....627.10'

Surveyor's Certificate

I, JOHN B. GUYTON, A DULY REGISTERED LAND SURVEYOR, LICENSED IN THE STATE OF COLORADO, HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS ANNEXATION MAP OF THE ABOVE DESCRIBED LAND WAS PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE ON JULY 1, 2014 AND THAT AT LEAST 1/6TH OF THE TOTAL PERIMETER OF THAT LAND TO BE ANNEXED IS CONTIGUOUS TO THE EXISTING CITY OF BOULDER LIMITS.

JOHN B. GUYTON
COLORADO P.L.S. #16406
CHAIRMAN/CEO, FLATIRONS, INC.

REVISION	DATE
1 –Revisions per City	–2014–07–08 EP
2	–
3	–
4	–
5	–
6	–
7	–
8	–
9	–

ANNEXATION MAP
PREPARED FOR
CITY OF BOULDER

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Flatirons, Inc.
Surveying, Engineering & Geomatics
www.Flatironsinc.com
655 FOURTH AVE
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3825 IRIS AVE, STE 395
BOULDER, CO 80301
PH: (303) 443–7001
FAX: (303) 443–9830
3660 DOWNING ST
UNIT E
DENVER, CO 80205
PH: (303) 936–6997

COLORADO LICENSED
PROFESSIONAL LAND SURVEYOR
JOHN B. GUYTON
16406
7/8/14
SEAL

JOB NUMBER:	14–63,623
DATE:	07–01–2014
DRAWN BY:	E. PRESCOTT
CHECKED BY:	WW/JK/JZG

SHEET 1 OF 1

BY:EPRESCOTT FILE:63623–ANNEX–C13.DWG DATE:7/8/2014 12:17 PM

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Exhibit B - Page 1 of 2

LOCATED IN THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 1

(PROVIDED BY DEED RECORDED AT RECEPTION NO. 1000239)

A TRACT OF LAND IN THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 18; THENCE N00°05'30" E, ALONG THE NORTH–SOUTH CENTERLINE OF SAID SECTION 18, A DISTANCE OF 2662.72 FEET TO THE CENTER OF SAID SECTION 18; THENCE N89°46'36" E, 587.87 FEET ALONG THE EAST–WEST CENTERLINE OF SAID SECTION 18 TO THE SOUTHWEST CORNER OF THAT TRACT OF LAND DESCRIBED IN A DEED RECORDED ON FILM 849, RECEPTION NUMBER 098850; THENCE N89°46'36" E 75.00 FEET TO THE POINT OF BEGINNING:

THENCE N00°01'17" E, 30.00 FEET; THENCE N89°46'36" E 65.00 FEET TO THE SOUTHEAST CORNER OF SAID TRACT; THENCE S00°01'17" W, 30.00 FEET TO THE EAST–WEST CENTERLINE OF SAID SECTION 18; THENCE S89°46'36"W 65.00 FEET TO THE POINT OF BEGINNING, CONTAINING 1950 SQUARE FEET, MORE OR LESS.

I, JOHN B. GUYTON, A LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS PARCEL DESCRIPTION, BEING MADE A PART THEREOF, WERE PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE AT THE REQUEST OF THE CLIENT AND IS NOT INTENDED TO REPRESENT A MONUMENTED LAND SURVEY OR SUBDIVIDE LAND IN VIOLATION OF STATE STATUTE.

COLORADO JOHN BRUCE GUYTON 16406 11/19/14 PROFESSIONAL LAND SURVEYOR

JOHN B. GUYTON
COLORADO P.L.S. #16406
CHAIRMAN/CEO, FLATIRONS, INC.

FSI JOB NO. 14–64,291

JOB NUMBER: 14–64,291
DRAWN BY: E. PRESCOTT
DATE: NOVEMBER 19, 2014

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

Flatirons, Inc.
Surveying, Engineering & Geomatics
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FAX: (303) 776–4355
www.FlatironsInc.com

BY:EPRESCOTT FILE:64291–ANNEX(2130).DWG DATE:11/19/2014 8:41 AM

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Exhibit B - Page 2 of 2

Annexation Map

A PARCEL OF LAND, LOCATED IN THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 1

TOTAL AREA = 1,950 SQ FT, OR 0.04 ACRES, MORE OR LESS

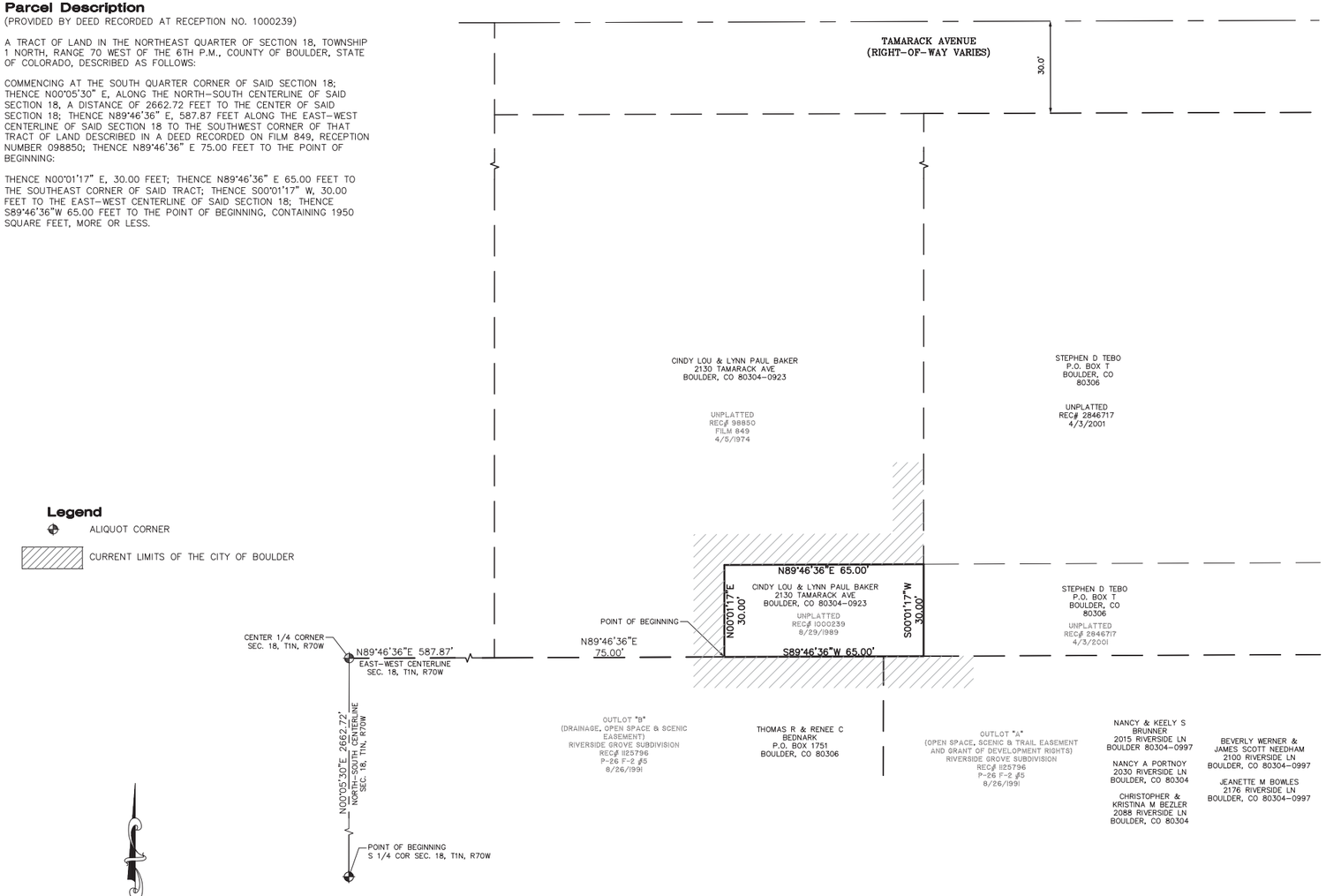
Parcel Description

(PROVIDED BY DEED RECORDED AT RECEPTION NO. 1000239)

A TRACT OF LAND IN THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 18; THENCE N00°05'30" E, ALONG THE NORTH–SOUTH CENTERLINE OF SAID SECTION 18, A DISTANCE OF 2662.72 FEET TO THE CENTER OF SAID SECTION 18; THENCE N89°46'36" E, 587.87 FEET ALONG THE EAST–WEST CENTERLINE OF SAID SECTION 18 TO THE SOUTHWEST CORNER OF THAT TRACT OF LAND DESCRIBED IN A DEED RECORDED ON FILM 849, RECEPTION NUMBER 098850; THENCE N89°46'36" E 75.00 FEET TO THE POINT OF BEGINNING:

THENCE N00°01'17" E, 30.00 FEET; THENCE N89°46'36" E 65.00 FEET TO THE SOUTHEAST CORNER OF SAID TRACT; THENCE S00°01'17" W, 30.00 FEET TO THE EAST–WEST CENTERLINE OF SAID SECTION 18; THENCE S89°46'36"W 65.00 FEET TO THE POINT OF BEGINNING, CONTAINING 1950 SQUARE FEET, MORE OR LESS.



Legend

- ALIQUOT CORNER
- CURRENT LIMITS OF THE CITY OF BOULDER

GRAPHIC SCALE

20 0 10 20 40

(IN FEET)
1 inch = 20 ft.

Notes

1. THIS ANNEXATION MAP WAS PREPARED WITHOUT THE BENEFIT OF A CURRENT TITLE COMMITMENT OR BINDER. EASEMENTS AND RIGHTS–OF–WAY DISCOVERED IN THE COURSE OF OUR INVESTIGATION ARE SHOWN HEREON. EASEMENTS SUCH AS UNRECORDED EASEMENTS MAY NOT HAVE BEEN DISCOVERED IN OUR SEARCH AND MAY AFFECT THE SUBJECT PROPERTY. IT IS RECOMMENDED THAT THE CLIENT OBTAIN A CURRENT TITLE COMMITMENT OR BINDER TO FURTHER AID IN RESEARCHING EASEMENTS, RIGHTS–OF–WAY AND ENCUMBRANCES THAT MAY AFFECT THE SUBJECT PROPERTY.
2. ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS MAP WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.
3. THE PURPOSE OF THIS MAP IS TO GRAPHICALLY PORTRAY THE RELATIONSHIP OF THE LAND PROPOSED FOR ANNEXATION TO THE CURRENT CITY OF BOULDER LIMITS.
4. ANY PERSON WHO KNOWINGLY REMOVES, ALTERS OR DEFACES ANY PUBLIC LAND SURVEY MONUMENT AND/OR BOUNDARY MONUMENT OR ACCESSORY, COMMITS A CLASS TWO (2) MISDEMEANOR PURSUANT TO STATE STATUTE C.R.S. SEC 18–4–508.
5. THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

Contiguity

TOTAL PERIMETER.....190.00'
1/6TH PERIMETER..... 31.67'
PERIMETER CONTIGUOUS TO CITY LIMITS.....160.00'

Surveyor's Certificate

I, JOHN B. GUYTON, A DULY REGISTERED LAND SURVEYOR, LICENSED IN THE STATE OF COLORADO, HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS ANNEXATION MAP OF THE ABOVE DESCRIBED LAND WAS PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE ON NOVEMBER 17, 2014 AND THAT AT LEAST 1/6TH OF THE TOTAL PERIMETER OF THAT LAND TO BE ANNEXED IS CONTIGUOUS TO THE EXISTING CITY OF BOULDER LIMITS.

JOHN B. GUYTON
COLORADO P.L.S. #16406
CHAIRMAN/CEO, FLATIRONS, INC.

REVISION	DATE
1	
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7	
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9	

ANNEXATION MAP
PREPARED FOR
CITY OF BOULDER

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Flatirons, Inc.
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www.Flatironsinc.com
655 FOURTH AVE
LONGMONT, CO 80501
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PH: (303) 443–7001
FAX: (303) 443–9830
3660 DOWNING ST
UNIT E
DENVER, CO 80205
PH: (303) 936–6997

COLORADO LICENSED
JOHN B. GUYTON
16406
11/17/14
PROFESSIONAL LAND SURVEYOR
SEAL

JOB NUMBER:	14–64,291(B)
DATE:	11/17/2014
DRAWN BY:	E. PRESCOTT
CHECKED BY:	JK/WW/JZG

SHEET 1 OF 1

BY:PRESCOTT FILE:64291–ANNEX(2130).DWG DATE:11/17/2014 2:48 PM

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For Administrative Purposes Only
Property Address: 2130 Tamarack Avenue
Grantors: Lynn Paul Baker and Cindy Lou Baker
Grantee: City of Boulder, Colorado
Case#: LUR2014-00047

GRANT OF FLOOD CONTROL AND DRAINAGE EASEMENT

LYNN PAUL BAKER and CINDY LOU BAKER ("Grantors"), whose address is 2130 Tamarack Avenue, Boulder CO 80304, for $1.00 and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey to the CITY OF BOULDER, a Colorado home rule city (the "City"), whose address is 1777 Broadway, Boulder, Colorado 80302, a flood control easement for the purpose of drainage conveyance and control of flood waters and installation and maintenance of improvements necessary to ensure conveyance as determined by the Grantee, together with all rights and privileges as are necessary or incidental to the reasonable and proper use of such easement in and to, over, under and across the following real property, situated in Boulder County, Colorado, to-wit:

See Exhibit A attached

Grantors, for them and for their heirs, successors, agents, lessees, and assigns, do hereby covenant and agree that no permanent structure or improvement shall be placed on said easement by them or their heirs, successors or assigns, and that said use of such easement shall not otherwise be obstructed or interfered with.

Grantors warrant their ability to grant and convey this easement.

The terms of this easement shall run with the land and shall be binding upon and inure to the benefit of the Grantors, their heirs, agents, lessees and assigns, and all other successors to them in interest and shall continue as a servitude running in perpetuity with the property described above.

IN WITNESS WHEREOF, Grantor has caused this instrument to be duly executed as of this 24th day of November, 2014.

[SIGNATURE BLOCKS FOLLOW]

GRANTOR:

By: _____
Lynn Paul Baker

STATE OF COLORADO)
)ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this 24th day of November, 2014, by Lynn Paul Baker.

Witness my hand and official seal.
My commission expires: 4-27-2016

JULIA B. CHASE
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID # 19964003812
MY COMMISSION EXPIRES APRIL 27, 2016

_____
Notary Public

GRANTOR:

By: _____
Cindy Lou Baker

STATE OF COLORADO)
)ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this 24th day of November, 2014, by Cindy Lou Baker.

Witness my hand and official seal.
My commission expires: 4-27-2016

JULIA B. CHASE
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID # 19964003812
MY COMMISSION EXPIRES APRIL 27, 2016

_____
Notary Public

EXHIBIT "A"

LOCATED IN THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 3

EASEMENT NO. 1

AN EASEMENT OVER AND ACROSS A PORTION OF A PARCEL OF LAND AS DESCRIBED IN THE RECORDS OF BOULDER COUNTY ON AUGUST 29, 1989, AT RECEPTION NO. 1000239, LOCATED IN THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE SOUTHERLY LINE OF SAID PARCEL OF LAND, TO BEAR SOUTH 89°46'36" WEST, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

BEGINNING AT THE SOUTHWEST CORNER OF SAID PARCEL OF LAND, THENCE ALONG THE WESTERLY LINE OF SAID PARCEL OF LAND, NORTH 00°01'17" EAST, A DISTANCE OF 7.07 FEET TO A POINT 60 FEET NORTHEASTERLY OF THE CENTERLINE OF FOUR MILE CANYON CREEK;
THENCE DEPARTING SAID WESTERLY LINE AND 60 FEET NORTHEASTERLY OF AND PARALLEL WITH SAID CENTERLINE THE FOLLOWING TWO (2) COURSES:
SOUTH 70°59'06" EAST, A DISTANCE OF 9.74 FEET;
THENCE SOUTH 60°41'23" EAST, A DISTANCE OF 7.83 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID PARCEL OF LAND;
THENCE ALONG SAID SOUTHERLY LINE, SOUTH 89°46'36" WEST, A DISTANCE OF 16.04 FEET TO THE POINT OF BEGINNING.

SAID EASEMENT CONTAINING 63 SQ. FT., MORE OR LESS.

BY:EPRESCOTT FILE:64291-DESC-(B).DWG DATE:11/17/2014 2:51 PM

JOB NUMBER: 14-64,291(B)
DRAWN BY: E. PRESCOTT
DATE: NOVEMBER 17, 2014

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

Flatirons, Inc.
Surveying, Engineering & Geomatics
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PH: (303) 776-1733
FAX: (303) 776-4355
www.FlatironsInc.com

EXHIBIT "A"

LOCATED IN THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO

SHEET 2 OF 3

EASEMENT NO. 2

AN EASEMENT OVER AND ACROSS A PORTION OF A PARCEL OF LAND AS DESCRIBED IN THE RECORDS OF BOULDER COUNTY RECORDED ON AUGUST 29, 1989, AT RECEPTION NO. 1000239, LOCATED IN THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE SOUTHERLY LINE OF SAID PARCEL OF LAND, TO BEAR SOUTH 89°46'36" WEST, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

BEGINNING AT THE SOUTHEAST CORNER OF SAID PARCEL OF LAND,
THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL OF LAND, SOUTH 89°46'36" WEST, A DISTANCE OF 12.16 FEET TO A POINT 60.00 FEET NORTHWESTERLY OF THE CENTERLINE OF FOUR MILE CANYON CREEK;
THENCE DEPARTING SAID SOUTHERLY LINE AND NORTHWESTERLY AND PARALLEL WITH THE CENTERLINE OF FOUR MILE CANYON CREEK, NORTH 76°40'13" EAST, A DISTANCE OF 12.50 FEET TO A POINT ON THE EASTERLY LINE OF SAID PARCEL OF LAND;
THENCE ALONG SAID EASTERLY LINE, SOUTH 00°01'17" WEST, A DISTANCE OF 2.83 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID PARCEL OF LAND AND THE POINT OF BEGINNING;

SAID EASEMENT CONTAINING 17 SQ. FT., MORE OR LESS.

I, JOHN B. GUYTON, A LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THESE EASEMENT DESCRIPTIONS AND ATTACHED EXHIBIT, BEING MADE A PART THEREOF, WERE PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE AT THE REQUEST OF THE CLIENT AND NOT INTENDED TO REPRESENT A MONUMENTED LAND SURVEY OR SUBDIVIDE LAND IN VIOLATION OF STATE STATUTE.

JOHN B. GUYTON
COLORADO P.L.S. #16406 FSI JOB NO. 14-64,291
CHAIRMAN/CEO, FLATIRONS,

JOHN B. GUYTON 16406 11/17/14 COLORADO PROFESSIONAL LAND SURVEYOR

JOB NUMBER: 14-64,291(B)
DRAWN BY: E. PRESCOTT
DATE: NOVEMBER 17, 2014

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

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Surveying, Engineering & Geomatics
655 FOURTH AVE
LONGMONT, CO 80501
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FAX: (303) 776-4355
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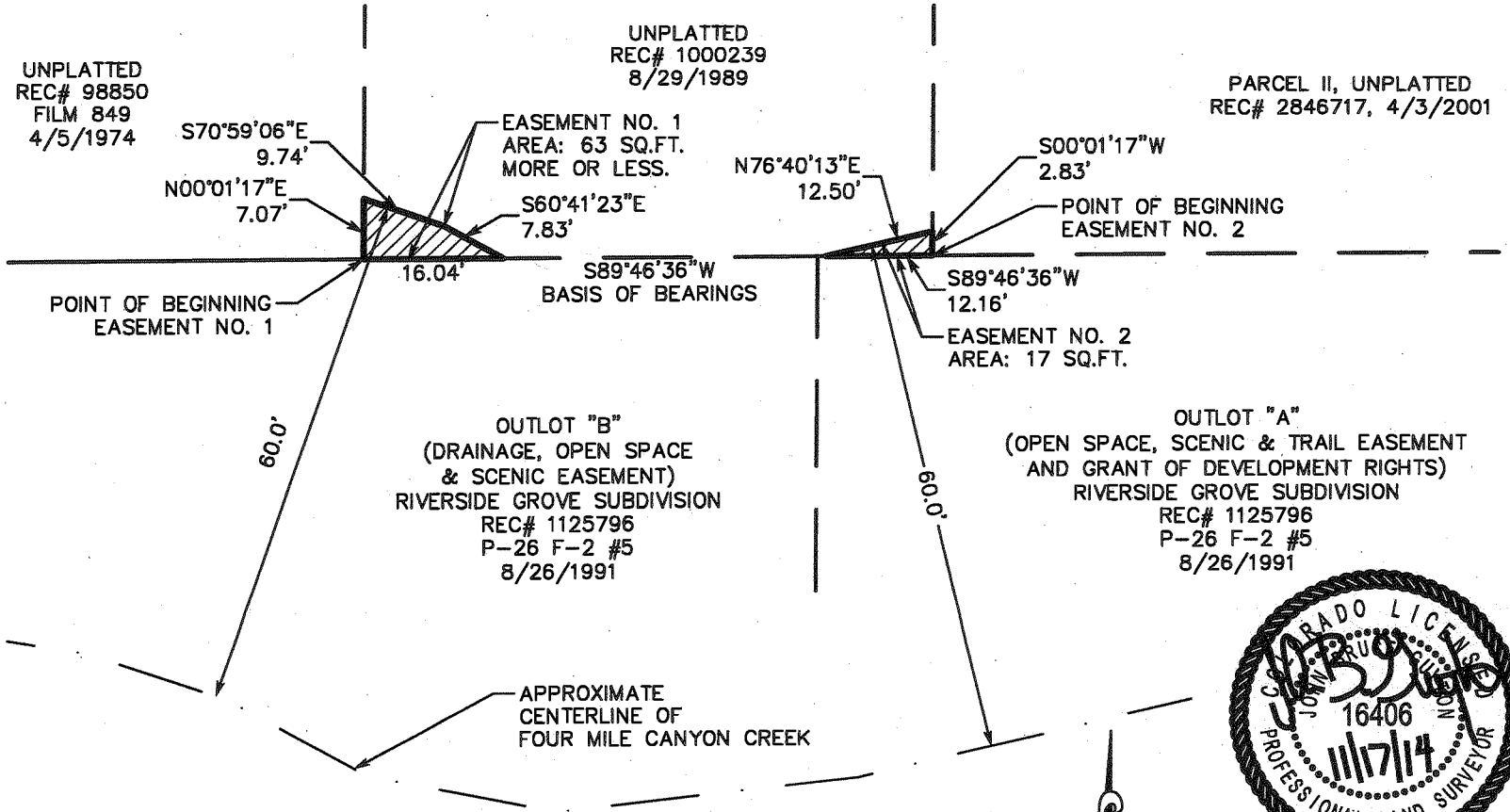
BY:EPRESCOTT FILE:64291-DESC-(B).DWG DATE:11/17/2014 2:51 PM

EXHIBIT "A"

LOCATED IN THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH,
RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN,
COUNTY OF BOULDER, STATE OF COLORADO
SHEET 3 OF 3



JOB NUMBER: 14-64,291(B)
DRAWN BY: E. PRESCOTT
DATE: NOVEMBER 17, 2014

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

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www.FlatironsInc.com

BY:EPRESCOTT FILE:64291-DESC-(B).DWG DATE:11/17/2014 2:52 PM

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CITY OF BOULDER
CITY COUNCIL AGENDA ITEM

MEETING DATE: December 2, 2014

AGENDA TITLE:

Introduction, first reading and consideration of a motion to order published by title only an emergency ordinance amending Chapter 6-16, B.R.C. 1981, amending Sections 6-16-2 "Definitions," and 6-16-3 "License Required" to extend the time for medical marijuana businesses to convert to recreational marijuana businesses from December 31, 2014 to March 31, 2015.

PRESENTERS:
Jane S. Brautigam, City Manager
Tom Carr, City Attorney
David Gehr, Deputy City Attorney
Kathy Haddock, Senior Assistant City Attorney
Mishawn J. Cook, Licensing and Collection Manager

EXECUTIVE SUMMARY

At the council meeting on November 6, 2014, council directed staff to prepare an ordinance extending the time for existing medical marijuana businesses to convert to recreational marijuana businesses. The proposed ordinance would extend the deadline until March 31, 2014. This agenda item introduces the ordinance at first reading. Second reading is scheduled for December 16, 2014. Staff recommends that council consider adopting the proposed ordinance by emergency on December 16, 2014. This will allow the ordinance to be effective before the current provision expires.

STAFF RECOMMENDATION

Introduction, first reading and consideration of a motion to order published by title only an emergency ordinance amending Chapter 6-16, B.R.C. 1981, amending Sections 6-16-2 "Definitions," and 6-16-3 "License Required" to extend the time for medical marijuana

businesses to convert to recreational marijuana businesses from December 31, 2014 to March 31, 2015.

BACKGROUND

On November 6, 2012, voters passed Amendment 64 to the Colorado Constitution, legalizing recreational marijuana. On November 12, 2013, council passed ordinance number 7930 adding Chapter 6-16 to the Boulder Revised Code regulating recreational marijuana in Boulder. Ordinance 7930 allowed only medical marijuana businesses licensed or who had filed to be licensed by October 20, 2013 to convert to recreational businesses. Ordinance 7930 also exempted existing medical marijuana businesses from some of the separation requirements imposed on new recreational marijuana businesses. Until June 1, 2014, only existing medical marijuana businesses were permitted to file for recreational marijuana licenses.

On June 3, 2014, council passed ordinance number 7970 amending Chapters 6-14 and 6-16. The main purpose for ordinance number 7970 was to address issues identified with the medical marijuana and recreational marijuana code. In the original proposed ordinance, staff recommended that the ability for existing medical marijuana businesses to convert terminate as of May 31, 2014. The reason for the recommendation was that as of June 1, 2014, individuals not holding medical marijuana licenses could apply for recreational marijuana licenses. The application requirements are different for new as compared to converted or co-located recreational marijuana businesses. To avoid confusion, staff recommended that as of June 1, 2014 all businesses be subject to the same requirements. Council amended the proposed ordinance to impose a cut off of December 31, 2014. The proposed ordinance would extend that date until March 31, 2015.

ANALYSIS

The conversion does not affect marijuana infused product businesses (MIPs) because Ordinance 7930 licensed all MIPs in Chapter 6-16 only, rather than under both Chapters 6-14 and 6-16. There are six MIPs in the city. Of the remaining medical marijuana businesses, 35 filed to convert or co-locate. There are 21 medical marijuana businesses that have not yet filed an application to convert or co-located. Staff has contacted each of these businesses to remind them of the December 31st deadline and to learn if any of the businesses planned to convert or co-locate. Four applications for conversion are pending. Eight businesses are ineligible, either because of their location or because they already own a recreational marijuana business. One has informed staff that they are primarily interested in medical marijuana so will not convert. Three have informed staff that they will file for conversion by the end of December. Thus, if those three businesses file, there will be only five businesses affected by this legislation.

ATTACHMENT

Attachment A - Proposed Ordinance

ORDINANCE NO. 8020

AN EMERGENCY ORDINANCE AMENDING CHAPTER 6-16, B.R.C. 1981, AMENDING SECTIONS 6-16-2 "DEFINTIONS," AND 6-16-3 "LICENSE REQUIRED" TO EXTEND THE TIME FOR MEDICAL MARIJUANA BUSINESSES TO CONVERT TO RECREATIONAL MARIJUANA BUSINESSES FROM DECEMBER 31, 2014 TO MARCH 31, 2015.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. Additions are indicated by underline and deletions by strikeout. Only the relevant portion of the code is quoted. Omitted language is indicated with asterisks. All language not quoted is unchanged.

Section 2. Section 6-16-2 "Definitions," B.R.C. 1981, is amended as follows:

6-16-2. Definitions.

The following terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

* * *

"Co-located marijuana business" means a medical marijuana wellness center or cultivation facility that held a license from the city on October 22, 2013, and applied for co-location by ~~December 31, 2014~~March 31, 2015, that is permitted by the owner of the building and all applicable laws, to divide the licensed medical marijuana business to allow for both a medical and a recreational marijuana wellness center or cultivation facility as separate business premises with separate licenses from the city within the same footprint and owned by the same person as the medical marijuana wellness center or cultivation facility. The licensees with an ownership or financial interest of either part of a co-located marijuana business may not be changed to be different from the other.

* * *

Section 3. Section 6-16-3 "License Required," B.R.C. 1981, is amended as follows:

6-16-3. License Required.

* * *

(f) Conversion of Licenses to Different Marijuana Business. A license for a marijuana establishment may not be converted to a license for a medical marijuana business. A license for a medical marijuana business that was licensed, open, and operating on October 22, 2013, or that had submitted a complete application for a medical marijuana business on October 22, 2013, may be converted to the same type of marijuana establishment by complying with the requirements of this chapter for a renewal of a marijuana license and paying the application fee specified in Section 4-20-67, "Recreational Marijuana Businesses, " B.R.C. 1981, if it makes application for the conversion by ~~December 31, 2014~~March 31, 2015. The license for the medical marijuana business must be surrendered to the city before the recreational marijuana business license will be issued. The term of the license shall be the same as the existing medical marijuana business license.

(g) Conversion to a Co-located Marijuana Business Within the Footprint of the Medical Marijuana Business. A licensee of a medical marijuana wellness center or cultivation facility may apply for a co-located marijuana business license by ~~December 31, 2014~~March 31, 2015, by submitting an application for a co-located marijuana business on forms approved by the city. At a minimum, the application form shall include a modification of the existing medical marijuana business to conform to the new footprint of the medical marijuana portion of the co-located marijuana business and all components of the application described in Section 6-16-5, "Application, " B.R.C. 1981, determined applicable by the city manager for the recreational

marijuana portion of the co-located marijuana business, and paying the modification of premises fee and operating fee specified in Section 4-20-67, "Recreational Marijuana Businesses, " B.R.C. 1981. The license for the medical marijuana business must be surrendered to the city before the co-located marijuana business license will be issued. The term of the co-located marijuana business license shall be the same as the existing medical marijuana business license. For purposes of separation from other marijuana businesses in Paragraph 6-16-7(e)(2) of this chapter, the co-located medical and recreational marijuana business shall be considered one marijuana business. No co-located medical and recreational marijuana business may be sold separately from the other and must maintain identical ownership at all times.

* * *

Section 3. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

Section 4. The city council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

Section 5. The city council finds this is necessary for the immediate preservation of public peace, health, safety, and property justifying the adoption of this ordinance as an emergency measure. Emergency adoption of this ordinance is necessary to prevent an interruption in the application process. This ordinance shall become effective immediately upon passage at second reading.

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INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY this 2nd day of December, 2014.

_____
Mayor

Attest:

_____
City Clerk

READ ON SECOND READING, PASSED, ADOPTED, AS AN EMERGENCY MEASURE BY TWO-THIRDS OF COUNCIL MEMBERS PRESENT, AND ORDERED PUBLISHED BY TITLE ONLY this 16th day of December, 2014.

_____
Mayor

Attest:

_____
City Clerk

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CITY OF BOULDER
CITY COUNCIL AGENDA ITEM
MEETING DATE: Dec. 2, 2014

AGENDA TITLE

Introduction, first reading and consideration of a motion to order published by title only an ordinance amending the cable television franchise agreement between the City of Boulder and Comcast of Colorado IV, LLC, to extend the term of the agreement by 120 days.

PRESENTERS

Jane S. Brautigam, City Manager
Don Ingle, Director, Information Technologies
Patrick von Keyserling, Communication Director
Debra Kalish, Senior Assistant City Attorney
Carl Castillo, Policy Advisor

EXECUTIVE SUMMARY

The city is party to a non-exclusive franchise agreement with Comcast of Colorado IV, LLC ("Comcast") which allows Comcast to use the city's public rights of way to provide cable television services (the "Existing Franchise," **Attachment A**). This agreement, originally set to expire on Dec. 31, 2011, has twice been extended: first until Dec. 31, 2013 (Ordinance 7785, the "First Franchise Extension," **Attachment B**), and; then until Dec. 31, 2014 (Ordinance 7952, the "Second Franchise Extension," **Attachment C**). The purpose of this agenda item is to approve a third extension for 120 days (**Attachment D**). City staff and Comcast have been working closely to finalize an agreement and are confident that, with this additional time, they will be able to resolve the remaining differences, which relate to the following topics:

- Re-Opener
- Annual Summary of Complaints
- C-SPAN

- Audio Information Network of Colorado
- Cost of City's HD Equipment
- FM Channels
- Biennial Ascertainment Survey
- PEG Channel Utilization
- Web-Based Video on Demand Grant
- Promotion of PEG Channels
- PEG Fees
- Customer Liability for Extension of Lines
- 2HD Channels w/free HD Box: City accepts

FISCAL IMPACTS

The city currently collects an annual franchise fee equal to five percent of Comcast's "gross revenue," as that term is defined in Section 11-6-2 of the Boulder Revised Code. In 2013, this amounted to $1,237,435.91. This revenue is directed to the city's general fund.

The city also collects $.50 per subscriber in public, educational and government ("PEG") access channel fees. Since the discontinuation of Public Channel 54 in 2008, the city has allocated the PEG fees for Educational Channel 22 and for Government Channel 8. In 2013, the PEG revenue generated from these fees amounted to a combined $149,288.56 for both stations. This revenue is limited by federal law to capital costs associated with these access channels.

BACKGROUND

The city last renewed its franchise agreement with Comcast in February 2004. This agreement was set to expire on Dec. 31, 2011. In the winter of 2009, the city requested that Comcast submit a renewal proposal for consideration. Late in the summer of 2010, Comcast instead proposed a two-year extension of the existing franchise agreement, consistent with a proposal it had made to members of Denver's Greater Metro Telecommunication Consortium (GMTC, since renamed the CCUA). The GMTC had asked Comcast to support a regional model agreement and, failing that, for extensions to expiring member franchise agreements until 2013. Such extensions would allow GMTC members to benefit from the renewal of the City and County of Denver's and Aurora's franchise agreement which were scheduled for the end of 2012. Comcast refused to offer a model regional agreement but agreed to the two-year extension. The City of Boulder ultimately agreed that it shared similar interests with GMTC members and approved a two-year extension of the Existing Franchise (**Attachment B**).

On behalf of Comcast, but with input from the city, *Talmey-Drake Research & Strategy, Inc.*, a public opinion research firm in Boulder, conducted a resident survey in November 2009 and again in May 2013. Key findings from that most recent survey were:

- Almost six of ten cable customers (57%) in the City of Boulder say they are either very (21%) or somewhat (36%) satisfied with the cable service they receive, a rating that's down 11 points from 2009. They are most satisfied with the technical quality they receive (74%), followed by the quality of their channel line-up (68%). Like overall satisfaction

with cable, the rating for satisfaction with customer service has also declined, going from 70% in 2009 to 58% today. Additionally, rates have become an increasingly important issue with Boulder customers, as 49% now say the rate they pay for cable is “way too high,” compared to 38% back in 2009.

- When asked to rate the importance of each of the three access channels available to cable customers in Boulder, only one, Channel 8, had a higher positive (59% for “very” or “somewhat”) than negative (40% for “not too” or “not at all”) importance rating. The other two access channels, 22 and 63, did not fare nearly so well.

ANALYSIS

Generally speaking, franchise operators are entitled to renewal unless they have not been meeting the terms of their existing franchise agreements or, for a variety of reasons, will not be able to provide adequate service to meet the cable-related needs of the community in the future. Federal law precludes franchising authorities from imposing requirements related to the provision or content of cable services except as specifically permitted by federal law.

The issues that may be considered in deciding whether to renew the franchise agreement relate primarily to Comcast’s:

- Substantial compliance with the terms of the Existing Franchise;
- Customer service, including signal quality, response to consumer complaints and billing practices;
- Technical ability to provide cable television service;
- Financial ability to provide cable television service; and
- Legal ability to provide cable television service.

The primary foci of franchise negotiations have included:

- The amount and calculation of franchise fees;
- Customer service standards; and
- The provision of Public, Education, and Government (PEG) access channels.

Federal law specifically precludes the city from conditioning franchise renewal upon Comcast’s willingness to address other issues of interest to the community, such as cable service rates, channel programming and programming packages (including the ability to choose particular cable channels, also known as "a la carte service"), or telecommunication services (including Internet or voice over internet protocol (VOIP) services).

Boulder’s Home Rule Charter, at Article VIII, § 108, requires a vote of the electorate to approve any franchises. However, this charter provision has been preempted by federal statutes. *See Qwest v. Boulder*, 151 F. Supp.2d 1236. This means that no election will be required for a renewal of the Comcast franchise agreement.

NEXT STEPS

With this extension approved, staff expects to bring first reading of a new franchise agreement to council for its consideration on March 3, 2015.

ATTACHMENTS:

Attachment A: City of Boulder's Current Franchise Agreement with Comcast
Attachment B: Ordinance 7785, the Franchise Extension
Attachment C: Ordinance 7952, the Second Franchise Extension
Attachment D: Proposed Ordinance w/Form of Third Extension

FRANCHISE AGREEMENT
City of Boulder, Colorado
and
Comcast of Colorado IV, LLC

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FRANCHISE AGREEMENT
BETWEEN THE CITY OF BOULDER, COLORADO
AND COMCAST OF COLORADO IV, LLC

WHEREAS, the Boulder City Council accepted a draft ascertainment report (dated June 19, 2002) as a valid expression of customer concerns regarding current cable service in the City of Boulder ("City") and as a valid expression of future cable-related community needs and interests; and

WHEREAS, the City has determined that any franchise must be subject to the terms and conditions set forth herein in order to serve the public interest; and

WHEREAS, Comcast of Colorado IV, LLC is willing to accept the terms and conditions of this Franchise Agreement, and

WHEREAS, the City has determined that, subject to the terms and conditions set forth herein and the provisions of Chapter 11-6, B.R.C 1981 (The Boulder Cable Code, hereinafter referred to as the "cable ordinance"), and other applicable provisions of the Boulder Revised Code and the Boulder City Charter, granting Comcast of Colorado IV, LLC a non-exclusive franchise pursuant to this Franchise Agreement is consistent with the public interest, and

NOW, THEREFORE, in consideration of the City's issuance of a franchise; Comcast of Colorado IV, LLC's promise to provide cable service to residents of the City under the terms and conditions set forth herein, the promises and undertakings herein; and other good and valuable consideration, the receipt and the adequacy of which is hereby acknowledged,

THE SIGNATORIES HEREBY AGREE AS FOLLOWS.

1. Definitions

Except as otherwise provided herein, the definitions and word usage set forth in Section 11-6-1, B.R C 1981 (The Boulder Cable Code) shall govern this Franchise Agreement. References to any City official or City office also refer to any official or office that succeeds to any or all of the responsibilities of the named official or office, whether by delegation, succession or otherwise. The following definitions shall apply·

1 1 *Applicable Law or Laws* All duly enacted and applicable federal, state and city constitutions, charters, laws, ordinance, codes, rules, regulations and orders, as the same may be adopted or amended from time to time

1 2 *Cable Ordinance* Chapter 11-6, B R.C 1981, as amended from time to time.

1.3 *Cable System or System.* Defined as in the cable ordinance, as of the effective date of this Franchise Agreement, except where the context indicates otherwise, it specifically refers to Franchisee's cable system.

1.4 *Channel* A portion of the electromagnetic frequency spectrum, or a digitally encoded stream of content, which is used in a cable system and capable of delivering a television channel, as television channel is defined by the FCC by regulation. While a channel must be at least capable of delivering a video programming service, a channel is not restricted to the transmission of video programming services

1 5 *Construction, Operation or Repair* Encompass, among other things, installation, extension, maintenance, replacement of components, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, excavation and tree trimming.

1.6 *Franchise Agreement* This Franchise Agreement and any amendments or appendices hereto

1 7 *Franchisee* Comcast of Colorado IV, LLC, a limited liability company company, and its lawful and permitted successors and assigns.

1 8 *Institutional Network or I-net* A communication network which is constructed by Franchisee and which is available only to City authorized users

1 9 *Standard Drop* An aerial connection extending no more than 125 feet from the potential Subscriber's demarcation point to the point nearest the property line on the public right-of-way, or if closer, to the nearest point on the Cable System from which Cable Service can be provided to that Subscriber.

1.10 *Subscriber Network.* Fibers, coaxial cables and the electronic devices required to activate the same that are primarily used in the transmission of programming to residential subscribers.

2. Scope of Franchise; Limits and Reservations

2 1 *Scope.*

2.1 1 A cable system franchise is hereby granted to Franchisee This franchise grants the right, subject to conditions, to construct, operate and repair a cable system in, over, along and under City rights of way within the City of Boulder for the purpose of providing cable service, and for providing an institutional network and other facilities or services for PEG use of the cable

system, commencing on the effective date of this Franchise Agreement, January 1, 2004 through and including December 31, 2011, unless terminated prior to that date in accordance with this Franchise Agreement or applicable law The franchise is subject to, and Franchisee must exercise all rights granted to it in accordance with, this Franchise Agreement and applicable law, including the cable ordinance. This Franchise Agreement and all rights and privileges granted under the franchise are subject to the City's police and other powers However, once the franchise grant is effective, this Franchise Agreement is a contract and except as to those changes which are the result of the City's exercise of its police and other powers, neither party may take any unilateral action which materially changes the explicit mutual promises in this contract. Subject to the foregoing, Franchisee does not waive its right to challenge the lawfulness of any particular amendment to the cable ordinance or any other provision of the City code on the ground that a particular action is in excess of the City's power under Colorado or federal law or violates the Colorado or the United States Constitution

2 1.2 This franchise does not confer rights upon Franchisee other than as expressly provided herein. No privilege or power of eminent domain is bestowed by this grant. All rights and powers of the City now existing or hereafter obtained are reserved except as expressly provided to the contrary in this Franchise Agreement. Nothing passes by implication under this Franchise Agreement Subject to the foregoing, Franchisee shall provide the cable services required hereunder throughout the franchise term and any holdover term, and shall make any cable services it provides over its cable system available to all persons in its franchise area, subject to Section 5.3 1

2.1.3 The franchise shall be interpreted to convey limited rights and interests only as to those City rights of way in which the City has an actual interest and only to the extent and for the purposes set out in this Franchise Agreement The grant of the franchise is not a warranty of title or interest in any right of way; and it does not provide Franchisee any interest in any particular location within the right of way The issuance of the franchise does not deprive the City of any powers, rights or privileges it now has or may later acquire in the future to use, perform work on or to regulate the use of and to control the City's rights of way covered by the franchise, including without limitation the right to perform work on its roadways, rights of way and drainage facilities, by constructing, altering, renewing, paving, widening, grading, blasting or excavating; and the right to build and install systems and facilities, with or without a franchise.

2.1.4 The grant of the franchise shall not become effective unless and until Franchisee has (a) filed an unconditional acceptance of the franchise grant, and (b) made all payments, posted all securities and guarantees, and supplied all information that it is required to supply prior to or upon the effective date of Franchise. If Franchisee fails to satisfy these obligations within thirty days of the ordinance authorizing the City to enter into this Franchise Agreement, the franchise grant shall be deemed rescinded five days after the City notifies

Franchisee in writing the obligations have not been satisfied, unless the obligations have been satisfied before the five day period has expired.

2 2 *Affiliates Must Comply.* Any affiliate of or joint venturer with or partner of Franchisee involved in the management or operation of the cable system in the City that would constitute a cable operator of the cable system is subject to the limitations of, and shall comply with the terms and conditions of, this Franchise Agreement Franchisee shall be fully liable for an act or omission of an affiliate that controls Franchisee or is responsible in any manner for the management of the cable system that results in a breach of this Franchise Agreement or a violation of the cable ordinance, as if the act or omission was Franchisee's act or omission.

2.3 *Conflicts with the Cable Ordinance.* In the event of a conflict between the cable ordinance as it existed on the effective date of this Franchise Agreement, and this Franchise Agreement as of its effective date, the Franchise Agreement shall control except where expressly provided otherwise in this Franchise Agreement However, although the exercise of rights hereunder is subject to the cable ordinance, the cable ordinance is not a contract Nothing in this Section 2 3 prevents Franchisee from challenging a particular amendment to the cable ordinance as an impairment of this Franchise Agreement

2.4 *Relation to Other Provisions of Law.*

2 4 1 The franchise issued and the franchise fee paid hereunder are not in lieu of any other required authorization, fee, charge or tax, unless expressly stated herein. Franchisee, among other things, must obtain all applicable permits, and comply with the conditions thereof, comply with zoning laws, and comply with other City codes, ordinances and regulations governing the construction of the cable system

2 4 2 Franchisee is free to challenge any unilaterally imposed requirement of the City as unlawful and/or in excess of the City's police power, but not on the grounds that it imposes police power requirements over and above this Franchise Agreement

2.4.3 This franchise is only for the provision of cable services. It shall not act as a bar or in any respect prevent imposition of additional or different conditions, including additional fees or authorizations related to the provision of, or the use or occupancy of the rights of way to provide, non-cable services. Nothing in this Section is intended to expand or contract the City's rights, if any, to regulate non-cable services.

2 4.4 The provisions of this Franchise Agreement shall be construed in accordance with Colorado and federal law regarding cable franchises

2 5 *Validity* Both parties waive, as of the effective date of this Franchise Agreement, any claim or defense that any provision of this Franchise Agreement, as it existed on the effective date of this Franchise Agreement, is unenforceable or otherwise invalid or void Neither party waives the right to challenge the validity of any applicable law.

2.6 *Effect of Franchise Acceptance*. By accepting the franchise, Franchisee:

2.6 1 Acknowledges and accepts the City's legal right to issue and enforce the franchise;

2.6 2 Agrees that it will not oppose intervention by the City in any proceeding affecting its cable system, subject to Section 12 2.2,

2 6.3 Accepts and agrees to comply with each and every provision of this Franchise Agreement;

2 6 4. Agrees that it will not claim that any difference between this Franchise Agreement, and the franchise granted by the City to Wide Open West effective October 17, 2000, or between this Franchise Agreement and the interim permit granted by the City to US West effective January 4, 2000, is discriminatory, anti-competitive, or in any way violates any applicable law; provided, however, that Franchisee reserves the right to challenge the US West permit as discriminatory, anti-competitive or otherwise in violation of applicable law if as of December 31, 2004, US West or its successor is operating under the interim permit, and therefore has no requirement to provide cable service within the entire boundaries of the City, nor provide similar levels of capital support as Franchisee for PEG and any institutional network (as defined in the Cable Act) provided by U.S. West or its successors

2.6.5 Agrees that the franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary

2 7 *Franchisee Bears Its Own Costs*. Unless otherwise expressly provided in this Franchise Agreement, all acts that Franchisee is required to perform under this Franchise Agreement or the cable ordinance must be performed at its own expense; provided that nothing contained in this Section 2 7 is intended to restrict or limit Franchisee's rights under applicable law to offset, assess, recover, or pass through costs to subscribers

2 8 *No Waiver*.

2 8.1 The failure of the City or Franchisee on one or more occasions to exercise a right or to require compliance or performance under this Franchise Agreement, the cable ordinance, or any other applicable law, shall not be deemed to constitute a waiver of such right

or a waiver of compliance or performance, unless such right has been specifically waived in writing; provided that nothing in this Section is meant to alter any renewal protections afforded by 47 U.S.C. Section 546 (d) or the operation of any applicable statute of limitations

2.8 2 Waiver of a breach of this Franchise Agreement is not a waiver of any other breach, whether similar or different from that waived. Neither the granting of the franchise nor any provision herein shall constitute a waiver, bar or expansion to the exercise of any governmental right or power of the City, including without limitation the right of eminent domain.

2 9 *No Monetary Recourse.* Without limiting such immunities as the City or other persons may have under applicable law, Franchisee will have no monetary recourse whatsoever against the City or its officials, boards, commissions, agents or employees for any loss, costs, expense or damage arising out of Franchisee's construction, operation or repair of its cable system, or the activities of the City or any entity authorized by the City to use public rights-of-way or other public property.

2 10 *Severability* In the event that a court or agency of competent jurisdiction makes a final judgment that any specific provision of this Franchise Agreement is unenforceable according to its terms, or otherwise void, said provision shall be considered a separate, distinct, and independent part of this Franchise Agreement, and such holding shall not affect the validity and enforceability of all other provisions hereof.

2.11 *Effect of Change in Law.* Subject to Section 2.10, in the event that state or federal laws, rules, or regulations preempt a provision or limit the enforceability of a provision of this Franchise Agreement, then the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required by law. In the event such state or federal law, rule, or regulation is subsequently repealed, rescinded, amended, or otherwise changed, so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City

2.12 *Grant of Other Franchises* In the event that the City enters into a franchise agreement, permit, license, or other authorization with any other person or entity other than Franchisee to enter into the City's rights of way for the purpose of constructing or operating a cable system to provide cable service to any part of the franchise area, in which Franchisee is actually providing cable service under the terms and conditions of this Franchise Agreement or to which it is required to extend cable service under the provisions of this Franchise Agreement, the material provisions thereof shall be reasonably comparable to those contained herein for comparable situations, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law. The City shall not grant a franchise for less than the entire City, unless legally compelled to do so.

3. Transfers

3.1 *No Transfer Without City Approval.* Franchisee agrees that the rights granted to it by the City are personal in nature and held in trust No transfer may occur without the prior consent of the City. An application for a transfer, containing all information and complying with the requirements of applicable law, and the application fee of $5000, which amount shall be refunded if not expended in the review process, must be filed before a request for a transfer will be considered by the City.

3.2 *Application for Transfer to be Considered in Accordance With Cable Ordinance* An application for a transfer will be considered in accordance with the cable ordinance, and the standards set forth therein as of the effective date of this Franchise Agreement shall govern the City's review of the transfer application, subject to amendments the City may adopt to comply with or reflect changes in applicable state and federal law and the specific provisions in Sections 3.3 – 3 5, below. Requests for approval of a transfer will not be unreasonably withheld

3.3 *Mandatory Conditions – Transfers* No transfer application shall be granted unless the proposed transferee:

3 3 1 Agrees in writing that it will abide by and accept the terms of the cable ordinance, this Franchise Agreement and any additional terms and conditions that the City reasonably determines are needed to ensure compliance by the transferee with such Franchise Agreement;

3 3.2 Agrees in writing to assume and be responsible for the obligations and liabilities of Franchisee, known and unknown, under this Franchise Agreement and applicable law;

3 3 3 Provides reasonable performance guarantees to the City that the City considers sufficient and adequate to guarantee the full and faithful performance of all franchise obligations by the proposed transferee,

3.3 4 Agrees in writing that, except as provided in Section 626 of the Cable Act concerning use of previous non-compliance evidence in renewal proceedings following a transfer, approval by the City of the transfer shall not constitute a waiver or release of any rights of the City under this Franchise Agreement or applicable law whether arising before or after the effective date of the transfer; and

3 3 5 Posts all required bonds, securities in a manner to ensure that there is no gap in coverage

3.4 *Change in Control of Franchisee.* No application for a change in the control of Franchisee or its parents will be granted unless·

3.4.1 Franchisee unconditionally reaffirms that it will abide by and accept the terms and conditions of the cable ordinance, this Franchise Agreement and any additional terms and conditions that the City reasonably determines are needed to ensure compliance by Franchisee with such Franchise Agreement;

3 4.2 Franchisee reaffirms that it remains responsible for all of its obligations and liabilities, known and unknown, under the Franchise Agreement and applicable law for all purposes, including but not limited to renewal under Section 626,

3.4.3 Franchisee and the entity that will own and control Franchisee provide reasonable performance guarantees to the City that the City considers sufficient and adequate to guarantee the full and faithful performance of all franchise obligations,

3.4.4 Franchisee and the entity that will own and control Franchisee agree that the approval of the change of control by the City shall not constitute a waiver or release of any rights of the City under this Franchise Agreement or applicable law, whether arising before or after the change of control,

3.4 5 Required bonds, securities and the like must be maintained so that there is no gap in coverage, if there will be any change in the same as a result of the change of control

3.5 *Intra-Corporate Transactions*

3.5.1 The parties find it appropriate to exempt certain intra-corporate transactions from the transfer approval requirement, as permitted by the cable ordinance. No City approval shall be required in connection with any addition, deletion or consolidation of wholly-owned subsidiaries in the ownership chain above Franchisee, so long as the conditions in Section 3 5.2 are met.

3.5 2 To qualify for exemption from transfer approval, the following conditions must be met·

3 5 2.1 Franchisee and the party being added to the chain of control unconditionally reaffirm that Franchisee will abide by and accept the terms and conditions of the cable ordinance and this Franchise Agreement,

3 5.2.2 Franchisee and the party being added to the chain of control reaffirm that Franchisee shall be responsible for all of Franchisee's obligations and liabilities, known and

unknown under the Franchise Agreement and applicable law for all purposes, including but not limited to renewal under Section 626;

3 5.2.3 Required bonds, securities and the like must be maintained so that there is no gap in coverage, if there will be any change in the same as a result of the transaction;

3 5.2.4 The Franchisee and party being added to the chain of control must agree in writing that there shall be no waiver or release of any right of the City (whether such right arises before or after the transaction) under this Franchise Agreement or applicable law, as a result of the transaction; and

3 5 2 5 The party being added to the chain of control must be a wholly-owned subsidiary of Comcast Cable Holdings, LLC, and Comcast Cable Holdings, LLC must agree to guarantee unconditionally the performance of the Franchisee and party being added to the chain of control

4. Franchise Fee

4.1 *Payment to City.* Franchisee shall pay the City a franchise fee in an amount equal to five percent of gross revenues as that term is defined in the cable ordinance as of the effective date of this Franchise Agreement, subject to amendments the City may adopt to comply with changes in applicable state and federal law. Fees or charges collected by Franchisee for PEG, for sales taxes, and for user fees assessed by the FCC, shall not be counted as part of gross revenues Gross revenues shall include revenue received by any entity other than Franchisee where necessary to prevent evasion or avoidance of the obligation to pay franchise fees on all cable services.

4 2 *Cable Modem Fees*

4 2.1 In a Declaratory Ruling and Notice of Proposed Rulemaking released March 15, 2002, the FCC stated that cable modem service is not a cable service under the Communications Act of 1934, as amended, and initiated a rulemaking to, among other things, examine States' and local governments' authority to regulate cable modem service and the scope of the FCC's jurisdiction to regulate cable modem service. If the FCC's ruling that cable modem service is not a cable service is modified in a final, non-appealable decision by the FCC or a court of competent jurisdiction to the extent that cable modem service is determined to be a cable service, then the definition of gross revenues set forth in Section 11-6-2, B R.C 1981, shall include revenues Franchisee receives from providing cable modem services in the franchise area in accordance with the FCC's ruling If payments are made pursuant to this Franchise Agreement as provided for in this Section, this Franchise Agreement will be interpreted to grant rights and authorizations to use and occupy the public rights of way to provide the cable modem service on which the fee is paid.

4 2.2 Nothing in the Franchise Agreement shall be construed as a waiver of any right the City may have to assess a fee on Franchisee's provision of cable modem service consistent with applicable law

4 3 *Not in Lieu of Any Other Assessments, Tax or Fee* The franchise fee is in addition to all other fees, assessments, taxes or payments that Franchisee may be required to pay under applicable law, subject to any limitations set forth in 47 U.S.C. §542.

4.4 *Payments*. Franchise fees shall be paid in accordance with the schedule set forth in the cable ordinance, and late payments shall be subject to the additional charges set forth in the cable ordinance.

4.5 *No Accord or Satisfaction* No acceptance of any payment by the City shall be construed as a release or an accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee under the cable ordinance or for the performance of any other obligation of Franchisee.

4 6 *Payment Records*. Subject to Section 9 of this Franchise Agreement, the City shall have the right, from time to time, and upon reasonable advance written notice, to inspect, audit, copy and review all books and records of Franchisee reasonably necessary to the determination of whether gross revenues and franchise fees have been accurately computed and paid

4.7 *Holdover Term*. During any holding over after the scheduled date for expiration or other termination of the franchise, without the consent of the City, Franchisee shall continue to pay the franchise fee as set forth above, in addition to honoring all other provisions of this Franchise Agreement.

5. Constrnction Provisions

5 1 *Provision of Service: Franchise Area and Charges for Plant Extensions*.

5 1 1 *Franchise Area* Franchisee's franchise area shall be the corporate limits of the City of Boulder, as they may be altered during the franchise term.

5.1.2 Except where Franchisee is unable to obtain required easements or permits and subject to Section 5.1 4, Franchisee shall extend cable service to any residence within the City as of the effective date of this Franchise Agreement upon the request of a potential subscriber at its then-prevailing installation charge for such service. There shall be no charge for extending plant to a point where service can be provided with a standard drop, or (if closer) to a point on the property line of the potential subscriber from which service can be provided to the potential

subscriber. For areas where Franchisee has not extended its cable system as of the effective date of this Franchise Agreement, the foregoing will apply after January 1, 2004.

5.1.3 For non-residential locations in the City and for areas annexed to the City after the effective date of this Franchise Agreement, except where Franchisee is unable to obtain required easements or permits and subject to Section 5.1.4, Franchisee shall provide service upon request at its then-prevailing installation charge, but may charge for any required plant extension as provided in this paragraph. Franchisee shall extend its plant at no charge so that it can provide service with a standard drop where there is either a minimum density of twenty-five residential units per mile or where fifteen commercial locations per mile agree to subscribe to Franchisee's cable service for one year at commercial rates. Where these standards are not satisfied, Franchisee may condition service extensions at the then-prevailing charge upon the person or persons requesting service agreeing to pay a *pro rata* share of the cost of extending the plant to a point where service can be provided with a standard drop For purposes of this subsection, in areas where Franchisee has not constructed cable system lines as of the effective date of this Franchise Agreement, each dwelling unit within a multiple dwelling unit ("MDU") will count as a residential unit if and only if Franchisee can obtain access to the MDU on reasonable terms and conditions. Notwithstanding the foregoing, Franchisee may charge any potential subscriber located in a mall or strip mall for any line extension greater than 100' required to cross a parking lot to provide cable service.

5 1 4 Franchisee is not required to provide cable service to any

5.1 4.1 occupant of a mall or strip mall as set forth in Section 5.1.3 where such occupant is unwilling to pay its portion of any applicable line extension costs,

5.1 4.2 commercial occupant of commercial structures above the first floor, where inside wiring necessary to provide the cable service is not already present, or where the owner or occupant is unwilling to install or pay for the inside wiring necessary to provide the cable service,

5.1 4.3 occupant of unlawful dwelling units, or

5.1.4 4 potential subscriber in a building where Franchisee is denied access

5.1 5 Franchisee must extend its plant so that service may be provided to the subscriber at the lowest cost to the subscriber that meets Franchisee's technical standards unless a subscriber directs otherwise If Franchisee contends that it cannot obtain the easements necessary to provide service to a particular location, Franchisee shall have the burden of proving that it cannot obtain those easements

5 1.6 Nothing in this Section 5 1 shall be construed to prohibit experimental or "test bed" services being extended to a segment of the community during the period of the experiment

5.1.7 Except as lawful rate orders may otherwise provide, the "then-prevailing installation charge" is the lowest lawful charge that would apply at any given time to a particular class of users For example, if free installation is then being provided for installations involving aerial drops of 125 feet or less, any person requesting cable service that could be served by an aerial drop of 125 feet or less and anyone to whom Franchisee is required to extend services under Sections 5.1.1 and 5 1 2 could take advantage of that installation offer Similarly, if Franchisee has established a lawful fee for installations that recovers additional costs for sidewalk and other pavement cuts which is charged to persons throughout the City, that charge may be applied on a non-discriminatory basis. If applicable law permits, nothing in this Franchise Agreement prohibits Franchisee from establishing separate charges for separate classes of drops, such as, for example, underground and aerial drops, so long as drop costs are treated consistently. Notwithstanding the foregoing, Franchisee may not charge for a drop crossing a paved portion of the roadway, not to exceed sixty feet, to provide service, except for good cause shown to the City

5.1.8 Where electric and telephone service is currently above ground, but a subscriber or potential subscriber requests to locate its cable drop underground, Franchisee shall locate the drop underground, but in addition to the then-prevailing installation charge, Franchisee may charge the subscriber for the actual difference in cost of installing the underground, rather than an aerial drop, including the costs, if any, of any easement necessary for such underground cable drop

5.1 9 Franchisee shall construct and extend its cable system to low income areas at least as quickly as it is extended to higher income areas.

5.2 *Construction Standards* Franchisee agrees that:

5.2.1 The construction, operation, and repair of the cable system shall be governed by the cable ordinance, and in all events shall be performed in accordance with all applicable laws. In addition, without limiting the foregoing, at a minimum, Franchisee shall comply with its Manual of Construction Procedures in effect as of the date of the Franchise Agreement, or such other manual as the City may accept in lieu thereof, IEEE standards, the National Electric Code, the National Electrical Safety Code and any other applicable safety codes. The most stringent applicable code or standard will apply in the event of any conflict (except insofar as that standard, if followed, would result in a system that could not meet requirements of federal, state or local law)

5 2.2 Subject to this Section 5.2.2, whenever feasible, Franchisee shall install its cable system underground in order to avoid damage from the unique wind storms to which the City is subject Franchisee shall, at no cost to the City or adjacent subscribers, underground its cable system when poles to which Franchisee's facilities are attached are no longer in use for electrical or telephone plant; provided, however, that Franchisee waives no right to reimbursement from any funds raised for undergrounding pursuant to C.R.S. §29-8-101, *et seq.* Franchisee does not waive the right to claim the City is obligated to raise funds pursuant to C R.S. §29-8-101, *et seq.* for any particular undergrounding project. Franchisee shall exercise its best efforts to protect its cable system from flood hazards, by undergrounding creek crossings and burying them deeply enough and with sufficient protection to avoid damage in a 100-year flood event But all of Franchisee's cable system as of the effective date of this Franchise Agreement is acceptable until portions are replaced, when the criteria of this Section shall apply to the replaced portions.

5.2 3 Franchisee shall install, locate, relocate and remove its cable system in accordance with the cable ordinance and all other applicable laws, including, without limitation, all lawful street cut fees Franchisee shall not place or maintain its cable system, including any poles or other structures, in public rights of way or on private property except in strict accordance with the requirements of the cable ordinance and all other applicable laws.

5.2 4 Franchisee shall restore and replace public and private property that is disturbed or damaged during the construction, operation, maintenance or repair of the cable system within the times and in the manner provided in the cable ordinance Franchisee shall compensate any entity, only to the extent of any injury or damage caused by Franchisee, whose person or property is damaged by Franchisee, or any contractor, subcontractor or agent of Franchisee in the course of the construction, operation, maintenance or repair of the cable system where the property is not fully restored by Franchisee This Section is not meant to alter the tort liability, if any, of Franchisee to third parties, or of any contractor or subcontractor to third parties or to Franchisee

5 2 5 In an emergency, or where the cable system creates or is contributing to an imminent danger to public health, safety, or property, the City may remove, relay, or relocate any or all parts of the cable system without prior notice; however, the City will make reasonable efforts to provide prior notice The City is not responsible for any loss or expense associated with its removal, relaying or relocation of Franchisee's cable system under this Section, nor is it responsible for restoring the property to its prior condition after the emergency.

5 3 *Continuity of Service.*

5.3 1 Subject to the provisions of Section 5 1, concerning line extensions, it is the right of each subscriber in the City to receive all available cable services from Franchisee as long as the subscriber's financial and other obligations to Franchisee are satisfied. Nothing in this Section

shall limit the right of Franchisee to deny cable service for non-payment of previously provided cable services, refusal to pay any required deposit, theft of cable service, damage to Franchisee's equipment, or abusive and/or threatening behavior toward Franchisee's employees or representatives Abusive behavior includes, but is not limited to, use of fighting words or behavior taken by the customer that creates a risk or a reasonable expectation that Franchisee's employee may be harmed. In the event a customer complains to the City that Franchisee has unreasonably denied cable service, (a) Franchisee will inform the City of the precise nature of the situation; (b) the City will provide the customer an opportunity to submit a response to the allegations, and (c) Franchisee will allow for a determination by the City as to whether or not the customer shall continue to be denied service. The City's consent to withhold service from an abusive customer will not be unreasonably withheld.

5.3.2 Franchisee shall ensure that all subscribers receive continuous uninterrupted cable service At the City's request, Franchisee shall operate its system for a temporary period (the "transition period") following the termination of its franchise or any transfer, as necessary to maintain service to subscribers, and shall cooperate with the City to assure an orderly transition from it to another entity. The transition period shall be no longer than the reasonable period required to select another entity and to build a replacement system, and shall not be longer than thirty-six months, unless extended by the City for good cause. During the transition period, Franchisee will continue to be obligated to comply with the terms and conditions of this Franchise Agreement and applicable laws

5.3.3 The City shall be entitled to, at its option, operate the cable system or designate another entity to operate the system or revoke the franchise, if.

5.3.3 1 Franchisee, for any twenty-four hour period, willfully and without cause, refuses to provide cable service in accordance with this Franchise Agreement over a substantial portion of the City;

5.3.3 2 Franchisee abandons its system.

5 3 4 Nothing in this Section 5 3 shall be read to limit any rights the City may have to purchase the cable system.

5 4 *Rights Upon Franchise Termination or Revocation.* If the City revokes the franchise, or the franchise otherwise terminates, the City shall have the following rights, in addition to the rights specified in this Franchise Agreement or under applicable law·

5.4.1 The City may require Franchisee to remove its facilities and equipment at Franchisee's expense. If Franchisee fails to do so within a reasonable period of time, the City may have the removal done at Franchisee's expense, subject to any right of abandonment that may be provided for under applicable law.

5.4 2 In the event of a lawful non-renewal of the franchise, if the City acquires ownership of the cable system or effects a transfer of ownership of the cable system to another person, any such acquisition or transfer shall be at fair market value, with no value assigned to the franchise itself In the event of a lawful revocation, if the City acquires ownership of the cable system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be at an equitable price. The terms "equitable price" and "fair market value" shall be interpreted in accordance with 47 U S.C §547.

5 5 *Notice of Use.* At least annually Franchisee will notify the City of any agreements for third parties to use of its poles and conduits. Copies of agreements for use of Franchisee's conduits or poles in public rights of way will be made available for review upon the City's request subject to any confidentiality restrictions in such agreements.

5 6 *Contractors and Subcontractors* Franchisee shall be responsible for the acts and omissions of all of its contractors and subcontractors as if the work were performed by Franchisee itself, and shall ensure that all work is performed in compliance with and shall correct such acts or omissions that violate this Franchise Agreement, or any ordinance, law and regulation of the City, and shall be jointly and severably liable for all damages and correcting all damages by them as if Franchisee performed that work itself Franchisee shall ensure that each contractor and subcontractor complies with the requirements of this Franchise Agreement and any ordinance and regulation of the City in the course of constructing, operating, maintaining and repairing the cable system This Section is not meant to alter the tort liability, if any, of Franchisee to third parties, or of any contractor or subcontractor to third parties or to Franchisee. Franchisee shall ensure that any contractor or subcontractor used for work on construction, operation, or repair of the cable system is properly licensed under laws of the State of Colorado and all applicable City ordinances. Each contractor or subcontractor shall have the same obligations with respect to its work as Franchisee would have under this Franchise Agreement and applicable law if the work were performed by Franchisee. Franchisee shall institute procedures adequate to ensure that the work performed by its contractors and subcontractors complies with the requirements of this Franchise Agreement and any applicable laws.

6. System Facilities, Equipment, and Services

6.1 *System Capabilities.*

6 1 1 Franchisee shall maintain an activated two-way capable cable system so that all active components on the subscriber network have a rating of no less than 860 MHZ and all passive components have a rating of no less than 1 GHz.

6 1.2 Franchisee will maintain a fiber to the node architecture, with an average node size of no greater than 1,500 subscribers per node Franchisee reserves the right to change node size in accordance with industry standards.

6.1.3 The entire cable system must be two-way activated and must include the facilities and equipment (except customer premises equipment) required to provide broadband interactive cable services.

6.1 4 Franchisee shall maintain a redundant fiber optic link or equivalent technology between the Denver headend and the Boulder secondary hubsite in order to prevent catastrophic service outages to the entire Boulder franchise area due to vandalism, storm damage, construction related breaks, or other interruptions in one of the fiber trunk pathways. If equivalent technology is used, the link must have all the characteristics, including without limitation the reliability, scalability, upgradeability, ease of upgradeability and scalability, capacity and security that would be afforded by a dedicated fiber optic link

6.1 5 There must be reliable, continuous, auto-start back-up power at the headend. Back-up power shall also be provided at each node as activated through the use of backup power supplies that are suitably sized and located so as to carry their individual loads for a minimum of three hours. In addition, to the extent technically possible, cable system active components shall be designed to parallel the power company grid such that a loss of power at a particular active component would likely be accompanied by a loss of power to the majority of homes served by that component of the cable system

6 1.6 The cable system must include the facilities and equipment required to provide full system status monitoring of power supplies at the nodes as activated The status monitoring equipment must, at a minimum, permit Franchisee to identify where and when power outages affecting the node have occurred, and when and where the cable system has switched to battery back-up power supplies.

6.1.7 Franchisee must install and maintain facilities and equipment (including without limitation modulators, antennae, amplifiers and other electronics) that permit and are capable of passing through the signals received at the headend without substantial alteration or deterioration (thus, for example, the system shall include components such that a signal received at the headend in color may be received by a subscriber in color, and a stereo signal in stereo). Facilities and equipment shall be installed and operated so that subscribers can receive closed-captioning and secondary audio. Any program-related data encoded in vertical or horizontal blanking intervals, secondary audio signals, and closed-captioned signals must be available to all customers who subscribe to the services associated with such signals.

6.1.8 Franchisee shall comply with all applicable laws concerning system compatibility with subscribers' consumer electronics equipment. Franchisee shall provide the facilities and equipment necessary to make its services (including its customer services) reasonably accessible to persons with disabilities. For example, Franchisee should employ TTY or similar technologies to permit communication between the hearing-impaired community and cable system representatives

6.1.9 The system facilities and equipment must be capable of continuous twenty-four hour daily operation, without severe material degradation of signal, except during extremely inclement weather, or immediately following extraordinary storms which adversely affect utility services or which damage major cable system components

6.1.10 The cable system must utilize facilities and equipment generally used in high-quality, reliable, systems of similar design (except where inconsistent with the specific requirements of this Franchise Agreement). The cable system must have the level of reliability required to support a high-quality, broadband information service

6.1 11 Franchisee shall provide as-built maps of the cable system, without notation of electronic components, in a publicly available electronic format compatible with City geographic information systems and other City data systems The City shall assert protection of confidential commercial data from disclosure under the Colorado Public Records Act, Section 24-72-204, C R.S.

6 2 *Transmission Technologies*. Franchisee may use any transmission technology (as that term is defined in federal law), provided that the cable system is constructed and maintained so that it will have characteristics that in all relevant respects meet or exceed the characteristics of the cable system described in Section 6.1. Franchisee affirms that it has constructed a cable system that meets or exceeds all the requirements of Section 6.1 If City determines that Franchisee has not constructed the cable system as required by Section 6.1 or has failed to maintain the cable system as required by Section 6.1, and the City determines that the cable system does not or is not likely to satisfy Section 6.1, the City may declare a breach of the franchise, and, in addition to exercising any other remedy available to it, order Franchisee to upgrade the cable system by a time specified by the City, and require such securities as are necessary to ensure the work is timely performed, unless the City determines that the cable system as actually constructed meets or exceeds the following characteristics: (a) the cable system must be highly reliable compared to the most modern cable systems being constructed; (b) the cable system must have adequate, initial activated capacity and be designed so that it can deliver additional bandwidth to and from each subscriber, without substantial delay or construction; (c) the cable system must be able to respond to changing subscriber needs and interests with the minimum delay or disruption, (d) the cable system must be designed so that power outages affect, to the extent possible, only those subscribers who are not receiving power at their home, and (e) the cable system must be designed so that the amount of required maintenance, and

the mean time to repair, is minimized.

6 3 *Emergency Alert System.* Within six months of City's written request, at City's cost, Franchisee must install and maintain an emergency alert system that can override audio and video on all channels to provide an emergency alert that reaches only the City of Boulder, while continuing to allow participation in regional and national emergency alert systems If such a system is installed at the request of the City, the City agrees that it shall assume all risks associated with operating its EAS and shall be solely responsible for all liability arising out of operating the Boulder-specific EAS The City will operate the Boulder specific EAS in accordance with all applicable state and federal law The system must be designed and maintained so that local officials designated by the City can activate the system remotely without the assistance of Franchisee, using a telephone and secure password or by such other technical means as the City may approve. The system must be designed and maintained so that the designated officials, from a touch-tone telephone, can activate a pre-recorded text message, and at such officials' option, an accompanying live audio voice message for up to two minutes. The City and Franchisee shall meet periodically to discuss operational procedures for use of the emergency alert system As part of those discussions, the parties may agree on alternative capabilities and activation procedures for the emergency alert system In addition, Franchisee shall provide emergency capabilities required under other applicable laws

6.4 *Parental Controls.* In addition to satisfying any obligations that it has under applicable law to provide parental control devices, or otherwise block programming on the cable system, Franchisee shall ensure that any system for ordering movies or other pay-per-view programming is designed, through use of systems such as PIN number systems, to prevent children from ordering programming without parental consent. Franchisee shall avoid the use of channels 3 and 4 for analog preview channels that advertise adult programming

6 5 *Support Equipment and Facilities.*

6.5 1 Franchisee must have sufficient trucks, tools, testing equipment, monitoring devices and other equipment and facilities and the trained and skilled personnel required so that Franchisee complies with each and every requirement of applicable law, including applicable customer service requirements, technical standards, maintenance standards and requirements for responding to system outages This includes the facilities, equipment and staff required to (a) properly test the system and conduct an ongoing and active program of preventive maintenance and quality control; and (b) be able to quickly respond to customer complaints and resolve system problems

6.5 2 Franchisee must install and maintain equipment necessary to measure its performance with applicable customer services standards that the City may adopt from time to time; except that Franchisee may obtain relief temporarily from this requirement if it shows that

(a) it has a high level of subscriber satisfaction; (b) there are alternative, adequate ways to review its performance; or (c) for other good cause shown.

6.5.3 Franchisee must ensure that its headend has adequate space, and is otherwise properly designed in order to accommodate the equipment and facilities necessary to meet its obligations under this Franchise Agreement.

6.6 *Technical Standards*. The cable system must meet or exceed the technical standards set forth in 47 C.F.R. §76.601 and any other applicable standards, as amended from time to time, provided that nothing in this provision is intended to permit the City to exercise any authority that it is prohibited from exercising under applicable federal law

6 7 *Future Upgrades* It is Franchisee's responsibility to make such improvements to its cable system as are necessary so that the cable system performs as promised as subscribers to services are added.

6 8 *Testing Requirements*.

6.8.1 Franchisee shall perform acceptance tests on each upgraded and newly constructed area prior to subscriber connection. The tests must demonstrate that the system components are operating as expected and that there is no signal degradation on PEG channels from origination points to subscribers. Franchisee shall have the obligation, without further notice from City, to take corrective action if any segment is not operating as expected

6.8 2 Franchisee conducts the semi-annual performance testing required by the FCC in January/February and July/August of each year. If the City gives notice to Franchisee by December 15 prior to the winter test period or by June 15 prior to the summer test period, the City may observe Franchisee's Proof-of-Performance test required by the FCC. Franchisee shall provide the proof of performance test results promptly to the City upon request.

6.9 *Inspection* The City shall have the right to inspect the cable system during and after its construction to ensure compliance with the cable ordinance, this Franchise Agreement, and applicable law, and may require Franchisee to perform additional tests based on the City's investigation of cable system performance or on subscriber complaints.

6 10 *Interconnection*.

6 10 1 Franchisee shall, in accordance with this subsection, interconnect the access channels of the cable system with any other contiguous cable system upon the directive of the City. Interconnection of channels may be done by direct cable connection, microwave link, satellite or other appropriate methods. The City shall not direct interconnection except under circumstances where it can

be accomplished without undue burden or excessive costs to the subscribers. Franchisee shall not be required to interconnect with a cable system unless the operator of that system is willing to do so and pays for its own cost of constructing and maintaining the interconnect up to the demarcation point. Franchisee shall continue the interconnections with systems serving Boulder County as of the effective date of this Franchise Agreement.

6.10.2 Franchisee shall only be required to interconnect access channels with another cable or open video system in the City in the event that the City determines in its sole discretion that it would be economically burdensome to its subscribers to construct and maintain return lines directly from the origination point(s) of the access channel(s) versus interconnecting with Franchisee In the event Franchisee receives a directive from the City to interconnect with another cable or open video system in the City, Franchisee shall immediately initiate negotiations with the other affected cable or open video system or systems and shall report to the City the results of such negotiations no later than sixty days after such initiation. The receiving cable or open video system shall be responsible for Franchisee's costs in constructing and maintaining the interconnect. If the parties cannot reach agreement on the terms of the interconnect, including compensation and timing, the dispute shall be submitted to the City for determination and resolution. Additionally, Franchisee shall only be required to interconnect with a receiving cable or open video system if the receiving cable or open video system is providing similar support for access as required of Franchisee pursuant to this Franchise Agreement This obligation shall continue until the City determines that it is no longer economically burdensome to its subscribers for other affected cable system or systems to construct and maintain lines directly from the origination link of the access channels

6.11 *Free Cable Service to Certain Facilities.* Franchisee shall, at no cost to the City, continue to provide one outlet of Basic Service and Expanded Basic Service to all City owned and occupied buildings, and public libraries where such service is provided as of the effective date of this Franchise Agreement, as shown on Exhibit A In addition, Franchisee shall provide, at no cost to the City or other entity, one outlet of Basic and Expanded Basic Service to owned or leased and occupied City buildings, schools and libraries not included on Exhibit A, upon request if the drop line from the feeder cable to such building does not exceed a standard drop, or if the City or other entity agrees to pay the incremental cost of such drop line in excess of a standard drop For purposes of the previous sentence, "school" means all State-accredited K-12 public and private schools Outlets of Basic and Expanded Basic Service provided in accordance with this subsection may be used to distribute cable services throughout such buildings; provided such distribution can be accomplished without causing cable system disruption and signal leakage and general technical standards are maintained. Such outlets may only be used for lawful purposes. Except as shown on Exhibit A, this obligation to provide free cable service shall not extend to public areas of City buildings where Franchisee would normally enter into a commercial contract to provide such cable service (*e g*, golf courses, airport restaurants and concourses, and recreation center work-out facilities)

6 12 *Provision of Broad Categories of Services.* This paragraph shall be interpreted consistent with the limitations set forth in 47 U.S C §544(b)(2)(B). In addition to such other service requirements as may be contained in this agreement, Franchisec agrees to provide at least twelve locally-available FM radio stations, or if lower, the number of locally available FM radio stations from which Franchisee can obtain retransmission consent at no cost (the term costs refers to a payment made to an FM station for the right to carry the station's signal, and does not include copyright payments that may be required). The availability of FM radio service on the cable system shall be publicized, and the channel line-up of such FM stations shall be included in all channel lineup publications.

6 13 *Uses of System.* Upon request, Franchisee shall advise the City of all active uses of the system, for both entertainment and other purposes, such as data transmission, local area networks, and voice transmission. Nothing in this Section 6 shall be construed to convey any regulatory power to the City. If Franchisee believes that City is exceeding its franchise authority with such a request, Franchisee may seek appropriate redress.

7. Channels and Facilities for PEG Use

7 1 *PEG Use*

7 1 1 Franchisee shall activate and make available public, educational and governmental ("PEG") channels to each subscriber on the subscriber network as specified in this Section 7. The channels provided under this Section are subject to Franchisee's rights to use the channels for the provision of services when they are not being used for their intended purposes

7 1 2 The management of the PEG channels is the responsibility of the City. The City may designate an entity or entities to manage all or any part of the PEG channels (The entity or entities so designated are referred to as a "designated access provider"). The City may designate designated access providers; it may designate channels provided under this Franchise Agreement for public, educational, government or combined PEG use. Nothing herein shall prevent a designated access provider from allowing PEG capacity designated for a particular PEG use to be used for other PEG uses.

7 1.3 PEG channels shall be provided on the basic service tier (except as the City and Franchisee may otherwise agree), or if there is no basic service tier, as part of the service provided to any subscriber. If channel choices are selected by a menu, PEG channels must be displayed equally as prominently as commercial channel choices offered by Franchisee It is the responsibility of the designated access providers to provide the necessary channel information to Franchisee or its designated menu programmer in a timely manner If it is technically feasible, at City's cost, Franchisee will also allow PEG program information to be displayed on any menu

listings offered by Franchisee that include such detail of commercial channels, provided that Franchisee directly controls such menu listings or can cause such listings to be included. In such event, it will be the responsibility of the designated access providers to provide the program information to Franchisee or its designated menu programmer in a timely manner.

7 1 4 It is the responsibility of Franchisee to transmit PEG signals from points designated by the City, and to deliver them without alteration in content or material degradation in quality to each subscriber, in a form and manner so that the subscriber may receive the signals without additional equipment or cost beyond that required to receive the level of cable services to which the subscriber has subscribed.

7 1.5 Except as expressly permitted by applicable law, Franchisee shall not exercise any editorial control over the content of communications on the designated PEG channels (except for such communications as Franchise may produce and cablecast on such channels). Subject to all other limitations of this Franchise Agreement, the PEG channels may be used for any communication, in any form, the full signal provided must be carried

7 1.6 PEG channels may not be used to cablecast anything prohibited by federal law. PEG channels may not be used to cablecast commercial matter. "Commercial matter" means time sold or used to propose a commercial transaction or for the express purpose of selling a commercial product or service. Nothing in this Section prevents the levy of a fee to defray costs of the City or a designated access entity associated with the operation, activation or maintenance of PEG channels, facilities and equipment By way of example and not limitation, the parties do not intend to limit sponsorship announcements comparable to those that might be carried on a non-commercial broadcast station, or to prevent schools from charging course fees, and then delivering the course via the PEG channels; or to solicit financial support for the provision of PEG access by designated access providers and for charitable, educational or governmental purposes The City agrees that it will not use or authorize use of its designated educational and governmental access channels for any for-profit, commercial purposes by the City or third parties Franchisee shall have the right to audit the use of such facilities to ensure compliance with this paragraph, which shall be reasonably construed in accordance with Franchisee's practices in other Denver-area jurisdictions Use by City enterprise funds and agencies is not "for profit" or "commercial" solely because the enterprise or agency has more revenues than expenses, or because the activity in which it is engaged is provided on a for-profit basis by private entities in other communities or the City. Nothing prevents the City from authorizing charges to users or viewers to pay for such non-commercial services, such as fees for instructional programming or charges to recover the cost of special use equipment, or as the City may be required to charge under applicable law

7 1 7 *Access Channels.*

7 1 7.1 Subject to the provisions of Sections 7 1.9.2 – 7.1 9 9, on and after the effective date of this Franchise Agreement, Franchisee shall provide four downstream 6 MHz PEG channels· one public access channel, one educational access channel and two local government access channels. The City may require Franchisee to activate an additional 6 MHz channel for PEG use, up to a total maximum of five channels under the procedures specified below.

7 1 7 2 If a designated access provider believes that additional PEG channels are needed, the designated access provider may file a request with the City Manager The City Manager will determine whether additional PEG channels should be activated, considering, among other factors, the following the community's needs and interests, the utilization of the existing channels, the plans of designated access providers for utilizing the additional channels, the interest of the community in additional PEG use of the cable system, whether it is feasible for designated access providers to achieve their goals by clustering PEG programming into blocks of time so that the channel space can be compatibly shared between multiple designated access providers, whether several designated access providers should combine their programming onto a single access channel, and the impact of the activation of the additional channels on existing programming

7.1.7.3 Should the City Manager in his or her sole discretion find that activation of additional channels is justified, then the City Manager shall provide his/her decision in writing, and Franchisee shall activate the channels within ninety days of receiving the decision. Franchisee may appeal the decision of the City Manager to the City Council within thirty days of the date of the City Manager's decision, and if it does so, may delay activation of the channels The City Council, after reviewing the decision of the City Manager, and after a public hearing, may in its discretion approve, modify or reject the decision of the City Manager in its sole discretion If the City Council orders Franchisee to activate additional channels, the channels shall be activated within sixty days of the date the City Council makes its decision. The decision shall be final and unappealable.

7 1.7.4 Franchisee and the City agree that it is their mutual goal to effectively and efficiently use PEG channels. Franchisee shall be permitted to use underutilized time on PEG channels, as provided below.

7.1 7.5 If Franchisee believes that any PEG channel has underutilized time, it may file a request with the City Manager to use that time In response to the request, the City Manager will consider a combination of factors, including without limitation the community's needs and interests, the utilization of the existing channels, the plans of the designated access provider for utilizing the channels (including whether the underutilized capacity is being used for intermittent programming that could otherwise not be easily provided on the same basis), if the channels are being underutilized, the reasons for underutilization, whether it is feasible for the designated access providers to achieve their goals by clustering PEG programming into blocks of time so that the channel space can be compatibly shared between multiple designated access providers, whether

several designated access providers should combine their programming onto a single access channel, and whether Franchisee is in full compliance with its PEG obligations.

7.1 7 6 The City Manager shall render a decision regarding the request for utilization within sixty days of receiving the request Should the City Manager find, in his or her sole discretion, that a PEG channel or a portion of a PEG channel may be used by Franchisee, then Franchisee may begin using such time ninety days after receipt of the decision. Franchisee's request shall not be unreasonably denied Any permission granted pursuant to this subsection for use of a PEG channel or a portion thereof shall be considered temporary.

7.1.7.7 At such time as a designated access provider believes that it wishes to utilize the PEG channel time currently used by Franchisee pursuant to this subsection, a designated access provider may request that the City Manager return such channel or portion of the channel for PEG use In response to the request, the City Manager will consider a combination of factors, including without limitation the community's needs and interests, the utilization of the existing channels, the plans of the designated access provider for utilizing the channels, the impact of Franchisee use on PEG use of the cable system, whether it is feasible for the designated access providers to achieve their goals by clustering PEG programming into blocks of time so that the channel space can be compatibly shared between multiple designated access providers, and whether several designated access providers should combine their programming onto a single access channel

7.1.7 8 The City Manager shall render his/her decision regarding the matter within sixty days of receiving the request. Should the City Manager find in his or her sole discretion that the PEG channel or portion of the PEG channel should be returned for PEG use, then Franchisee shall surrender the channel or portion of the channel, as directed, within ninety days of receiving the decision. The designated access provider's request shall not be unreasonably denied.

7.1.7 9 The decision of the City Manager shall be final and unappealable as to both Franchisee and designated access providers. Franchisee may not request a return of a channel, or any portion of a channel within two years of the initial activation of the PEG channels required by Section 7 The City Manager may deny Franchisee the right to utilize all or a portion of a PEG channel, or revoke on thirty days notice an authorization to utilize all or a portion of a PEG channel if Franchisee is not in full compliance with its PEG obligations.

7 1.7.10 In addition to the maximum five channels required above, (a) if Franchisee does not carry C-SPAN as part of its commercial service, and C-SPAN is available for carriage, Franchisee will provide an additional PEG channel for the carriage of C-SPAN. If technically feasible, Franchisee will downlink and insert C-SPAN on the appropriate PEG channel; (b) if Franchisee does not carry C-SPAN2 as part of its commercial service, and C-SPAN2 is available for carriage, Franchisee will provide an additional PEG channel for the carriage of C-SPAN2 If technically feasible, Franchisee will downlink and insert C-SPAN2 on the appropriate

PEG channel, and (c) if Franchisee does not carry the Radio Reading Service of the Rockies as part of its commercial service, and it is available for carriage, Franchisee will provide an FM band PEG channel for carriage of the service. Any additional PEG channels provided under this Section 7.1 7.10 (a) or (b) will be offered on the Basic or Expanded Basic Service tier.

7.1 7.11 Franchisee and the City will cooperate to help promote the use and viewership of the PEG channels. Consistent with this cooperative approach, except where required by federal law, Franchisee shall not change PEG channel locations without advance notice to the City Franchisee will also cooperate with other cable systems and open video systems in the City to attempt to develop uniform channel locations for the PEG channels If Franchisee determines that a change to a PEG channel assignment is necessary, it shall provide the City with a minimum of sixty days notice, and use its best efforts to provide 120 days notice, prior to the time that public, educational, and governmental access channel designations are changed Franchisee shall pay all costs associated with replacing or adjusting equipment, as necessary for the channel redesignation In addition, Franchisee shall pay the reasonable cost of replacing materials and supplies, changing signs and remarketing the channels up to a maximum of fifty cents ($0 50) per subscriber per channel changed. Any such amounts paid by Franchisee may be added, at Franchisee's discretion and in accordance with the applicable FCC regulations, to the price of cable services and collected from such subscribers as "external costs" as such term is required by applicable law. Franchisee, at Franchisee's expense, shall place the City's notices of the channel change on its regular monthly billings, upon the City's request.

7.2 *Return Lines for PEG Use.*

7 2.1 Franchisee shall maintain the activated upstream links set forth in Exhibit B. Franchisee agrees that it will provide and maintain activated capacity to enable transmission of a second PEG channel from each of the PEG facilities located at 1000 Canyon Blvd and 2590 Walnut

7.2 2 The City or any designated access provider may upgrade the connections at its cost. The City shall provide Franchisee of its intent to upgrade its connections in writing. Franchisee shall provide reasonable access to and space at its facilities to accommodate the PEG return line upgrade. The City may use the PEG capital funds provided in this Franchise Agreement for any such upgrade costs. Franchisee shall upgrade such requested connections in a timely manner

7 2.3 If the headend is moved or replaced, Franchisee shall transfer the link(s) to the new location (including, without limitation, moving terminal equipment and splicing fiber, as necessary)

7 2.4 The City may request that Franchisee construct new return lines for PEG use. Such return lines shall be constructed at the City's cost, however, the City may use the PEG capital

funds provided in this Franchise Agreement for any such costs. Franchisee shall construct such requested return lines in a timely manner.

7.3 *Support for PEG Access.*

7 3 1 Franchisee shall continue to collect and remit the current $ 0.50 (50 cents) per month per residential and commercial subscriber until a new rate is made effective as set forth below. Following City Council decision, made by motion, Franchisee shall provide the City with up to $0 75 (75 cents) per month per residential and commercial subscriber for PEG use, capital facilities and equipment support. Any change in the amount of this support will become effective sixty days after Franchisee receives written notice of the City's Council decision Additional increases may be required by ordinance (including a mandatory public hearing) no sooner than 42 months after the effective date of this Franchise Agreement, to an amount over $0 75 (75 cents), but in no event will the amount exceed a total of $1 00 (one dollar) per residential and commercial subscriber per month and such amount must be applicable to all franchised cable operators in the City. Any change in the amount of this support will become effective sixty days after Franchisee receives written notice of the City Council's decision. No fees shall be charged on gratis accounts. The City shall be solely responsible for all liability to any third party arising out of the City's use of PEG use capital funds that will be collected and paid to the City in accordance with this Section. Any payment under this Section shall be due on a quarterly basis, payable concurrently with franchise fees for such quarter

7.4 *Miscellaneous PEG Requirements*

7.4 1 Upon reasonable advance notice, but no more often than once per calendar year, Franchisee will provide the City with an insert space in subscribers' cable bills to promote PEG programming. Franchisee shall provide the City with the printing specifications for the inserts. The City shall be responsible for the content and printing costs of the insert, and for the cost of shipping the printed inserts to Franchisee's billing agent. The City shall only pay incremental mailing costs if the City's insert results in an increase to the standard mailing costs normally incurred by Franchisee in sending its subscriber billing statements. In addition, Franchisee shall use reasonable efforts to accommodate PEG promotional spots received from the City on a reasonable basis in Franchisee's cross-channel ad avails, up to a maximum of 100 30-60 spots per year. Any such ad avails provided for PEG promotional spots shall be at no cost to the City or its designated access providers.

7 4 2 If Franchisee makes changes to its cable system that necessitate modifications to PEG facilities and equipment (including without limitation the upstream paths), Franchisee shall provide any additional facilities or equipment necessary to implement such modifications within thirty days of the date that the system changes are made, so that PEG facilities and equipment may be used and operated as intended, including, among other things, so that live and taped communications can be produced and cablecast efficiently to subscribers By way of example, and

not limitation, should Franchisee cease delivery of all signals in an analog format to subscribers, it will provide the facilities and equipment necessary so that PEG signals can be delivered in a digital format

7.4.3 Any downstream and upstream PEG Channels provided pursuant to this Section may be further subdivided, compressed or decompressed at the sole discretion and sole expense of a designated access provider As a condition of Franchisee's allowing such use, the designated access provider must fully cooperate with Franchisee in order not to cause any perceptible adverse effect on the performance of Franchisee's cable system, and shall take no action causing Franchisee to be unable to satisfy the performance requirements specified by this Franchise Agreement.

7.4.4 Except as otherwise provided in this Franchise Agreement, the channels provided for PEG use (except as expressly provided with respect to the I-net) shall be at Franchisee's cost

7.5 *Costs Not Franchise Fees* The parties agree that any cost to Franchisee associated with providing any support for PEG use required under this Franchise Agreement (including the provision of the I-Net) and payments made outside this Franchise Agreement for PEG and I-Net support, if any, are not a franchise fee within the meaning of 47 U.S.C. §542 and fall within one or more of the exceptions listed in 47 U S.C. § 542(g)(2)

8. Institutional Network

8 1 *Institutional Network* Franchisee agrees that it will construct an institutional network ("I-net") in accordance with the Cable Act, as requested by the City, at its actual incremental construction costs. Additionally, the parties may reach an agreement as to Franchisee's maintenance of the City's I-net. The parties agree that the City may use PEG capital funds provided pursuant to Section 7 3.1 to pay Franchisee for I-net capital costs directly related to an I-net built by Franchisee PEG capital funds collected and paid to the City pursuant to Section 7 3 1 may be used to construct the I-net only if Franchisee constructs the I-net.

9. Operation and Reporting Provisions

9.1 *Open Books and Records.* Without limiting its obligations under Section 2, Franchisee agrees that it will collect and make available books and records for inspection and copying by the City in accordance with the cable ordinance as it existed as of the effective date of this Franchise Agreement Franchisee shall be responsible for collecting the information and producing it.

9.2 *Time for Production.* Books and records shall be produced to the City at the Boulder Municipal Building, or such other location as the parties may agree. If Franchisee objects to a request for books and records, it must nonetheless produce the books and records requested, unless the City agrees that they need not be produced, or a court of competent jurisdiction rules otherwise Notwithstanding any provision of the cable ordinance, if documents are too voluminous or for security reasons cannot be produced at the Boulder Municipal Building or mutually agreeable location within the City, then Franchisee may produce the material at another central location, provided it also agrees to pay the additional reasonable travel costs incurred by the City to access the materials. The parties agree that any amounts paid are not a franchise fee within the meaning of 47 U.S C § 542 and fall within one of the exceptions thereto

9.3 *Reports Required.* Franchisee shall file the reports that it is required to provide under the cable ordinance as of the effective date of this Franchise Agreement.

9 4 *Records Maintained.* Franchisee shall maintain the records required by the cable ordinance as of the effective date of this Franchise Agreement Franchisee shall maintain records. required by the cable ordinance; required to prepare all reports required under the cable ordinance; and sufficient to demonstrate whether or not Franchisee has complied with its obligations under this Franchise Agreement or applicable law. Records shall be kept for at least three years.

9.5 *Relation to Privacy Rights.* Franchisee shall take all steps required, if any, to ensure that it is able to provide the City all information which must be provided or may be requested under this Franchise Agreement, including without limitation by providing appropriate subscriber privacy notices. Nothing in this Section 9 5 shall be read to require Franchisee to violate 47 U.S.C. § 551. Franchisee shall be responsible for redacting any data that federal law prevents it from providing to the City

10. Customer Service Standards

10.1 *Standards* Franchisee shall meet or exceed the customer service standards of the cable ordinance and applicable law. In the event of a conflict among standards, the stricter standard shall apply.

10 2 *Ascertainment of Programming and Customer Satisfaction* Upon the request of the City, but no more often than every two years, Franchisee shall, at the sole expense of Franchisee, undertake a survey of community views of cable operations in the City including without limitation programming, response to community needs, satisfaction and dissatisfaction with cable services offered by Franchisee, and customer service Franchisee shall consult and cooperate with the City in developing and implementing an ascertainment methodology. The final form and content of the survey shall be as mutually agreed upon by Franchisee and the City Franchisee shall provide the results of such survey to the City within two months after completing the survey. Upon request,

Franchisee shall also provide a copy of results from any other survey of subscribers in the City conducted independently by Franchisee within the previous year. Any survey results conducted within the City which are intended for external publication shall also be provided to the City. Nothing herein shall be construed to limit the right of the City to conduct its own surveys at its own expense. Nothing in this Section shall be construed as requiring the renegotiation of this Franchise Agreement. Any such survey conducted may include subscribers from other communities in addition to the City, provided that the City's results are displayed separately.

11. Rate Regulation

The City may regulate Franchisee's rates and charges as provided by applicable law. All rates that are subject to regulation by the City must be reasonable and, except as applicable law provides otherwise, can only be changed with the prior approval of the City

12. Insurance; Surety; Indemnification

12.1 *Insurance Required.* Franchisee agrees to maintain adequate insurance throughout the entire length of the franchise period as required by the cable ordinance as of the effective date of this Franchise Agreement

12 2 *Indemnification.*

12 2 1 Franchisee shall, at its sole cost and expense, except for the City's liability as described in Section 6 3, indemnify, hold harmless, and faithfully defend the City, its officials, boards, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the construction, maintenance, or operation of its cable system by Franchisee, its employees, affiliates or agents, copyright infringements or a failure by Franchisee to secure consents from the owners, authorized distributors, or Franchisees of programs to be delivered by the cable system, the conduct of Franchisee's business in the City; or in any way arising out of Franchisee's enjoyment or exercise of the franchise granted hereunder, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by applicable law or this Franchise Agreement, except in cases where liability is. (a) solely caused by the gross negligence of the person or persons covered by the indemnity, or (b) results from programming contributed or produced by the City and transmitted over the cable system.

12 2 2 Without limiting the foregoing, Franchisee shall, at its sole cost and expense, fully indemnify, defend, and hold harmless the City, and its officers, agents, and employees from and against any and all claims, suits, actions, liability, and judgments for damages or otherwise subject to Section 638 of the Cable Act, 47 U.S C. § 558, arising out of or alleged to arise out of the construction, operation, maintenance or repair of its system by Franchisee, its employees, affiliates

or agents, including without limitation any claim against Franchisee for invasion of the right of privacy, defamation of any person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark, or patent, or of any other right of any person, firm, or corporation. This indemnity does not apply to intervention by the City in regulatory proceedings brought by Franchisee or to the programming carried on any channel set aside for public, educational, or government use, or channels leased pursuant to 47 U S C. § 532, unless Franchisee was in any respect engaged in determining the editorial content of the program, or adopts a policy of pre-screening programming for the purported purpose of banning or regulating indecent or obscene programming, and except for programming contributed or produced by Franchisee

12.2 3 The indemnity provision includes, but is not limited to, the City's reasonable attorneys' fees consented to by Franchisee and payment for any labor and expenses of the city attorney's office at the going rate for legal services in Boulder County. Such consent shall not be unreasonably withheld

12 3 *No Limit of Liability.* The provisions of this Section 12 shall not be construed to limit the liability of Franchisee for damages

13. Performance Guarantees and Remedies

13 1 *Letter of Credit.*

13 1 1 In satisfaction of the security fund requirements of the cable ordinance, Paragraph 11-6-13(a)(1), B.R.C. 1981, as the same existed on the effective date of this Franchise Agreement, Franchisee shall provide a letter of credit in the amount of $100,000 prior to the effective date of this Franchise, and shall maintain that letter of credit throughout the franchise term The letter of credit shall be in a form satisfactory to the City Attorney, (including without limitation specification of venue in Boulder), and with a financial institution satisfactory to the City The City may require Franchisee to increase the amount of the letter of credit once every three years to reflect increases in the U S City Average of the Consumer Price Index The letter of credit set forth in the Greater Metro Telecommunications Consortium franchise may be used to satisfy this requirement, as long as the Consortium agrees to procedures acceptable to the City for draws on such letter of credit The City may draw upon the letter of credit for the reasons and after providing the notice specified in the cable ordinance as it existed as of the effective date of this Franchise Agreement Franchisee's recourse, in the event Franchisee believes any taking of security funds is improper, will be through legal action after the security has been drawn upon, pursuant to the provisions of Section 13 1 3

13.1.2 Franchisee shall provide proof that the letter of credit complies with this Franchise Agreement and with all requirements of the cable ordinance

13 1.3 Franchisee agrees that it shall not attempt, through litigation or otherwise, to prevent or inhibit the City from drawing on the letter of credit Franchisee shall have the right to appeal to the Boulder City Council for reimbursement in the event that it believes that the letter of credit was drawn upon improperly. Franchisee shall also have the right of a de novo court appeal if it believes the letter of credit has not been properly drawn in accordance with this Franchise Agreement Any funds that the City erroneously or wrongfully withdraws from the letter of credit shall be returned to Franchisee with interest from the date of withdrawal at a rate equal to the prime rate of interest as quoted by the Bank of New York within thirty business days of a final determination that the withdrawal was in error or wrongful.

13 2 *Material Term.* The letter of credit is a material term of this Franchise Agreement.

13.3 *Remedies.* In addition to any other remedies available at law or equity, the City may apply any one of the following remedies in the event Franchisee violates this Franchise Agreement or applicable law.

13 3.1 Revoke the franchise pursuant to the procedures specified in Section 13.5. Provided that, any amendments to the cable ordinance or the quasi-judicial procedures of the City, codified at Chapter 1-3, B.R.C. 1981, must provide the same level of due process as is provided under the procedures provided for under the cable ordinance and quasi-judicial procedures as the same existed on the effective date of this Franchise Agreement

13.3.2 In addition to or instead of any other remedy, seek legal or equitable relief from any court of competent jurisdiction

13.3.3 Obtain liquidated damages as provided herein

13.4 *Liquidated Damages* Because Franchisee's failure to comply with provisions of this Franchise Agreement will result in injury to the City, and because it will be difficult to estimate the extent of such injury, the City and Franchisee agree to the following liquidated damages for the following violations, which represent both parties' best estimate of the damages to the City resulting from the specified injury. To maintain that estimate, the parties agree that the liquidated damage amounts are in 2003 dollars as of the effective date of this Franchise Agreement (inflated by the US City Average of the Consumer Price Index), and shall be increased each year by the full amount of the increase in the U S. City Average of the Consumer Price Index, once inflation from the effective date of this Franchise Agreement has exceeded twenty percent Thus, treating 2003 as the base year, indexed as 100, the liquidated damages shall be increased in the first year when the index reaches 120, and once every year after that year as each annual increase becomes available.

13 4.1 For transferring the franchise without approval $1,000/day for each violation for each day the violation continues.

13.4.2 For failure to comply with requirements for public, educational, and governmental use of the System: $250/day for each violation for each day the violation continues

13.4 3 For violation of customer service standards· $150 per violation, except for violations of applicable customer service standards for which Franchisee's compliance is not measured in terms of its response to individual customers, $250 a month for any period during which it fails to meet applicable performance standards

13.4.4 For all other material violations of this Franchise Agreement for which actual damages may not be ascertainable: $100/day for each violation for each day the violation continues

13 4.5 The City may impose liquidated damages as provided in this Section 13.4 5 Within fifteen days of the date of a notice of violation is sent to Franchisee, Franchisee may request, in writing, a public hearing before the City Council, pursuant to the procedures specified in the cable ordinance. The City may impose liquidated damages, accruing from the date of notice of the violation after the hearing unless it finds that (a) there was no violation; or (b) damages should not be imposed. Any amendments to the quasi-judicial procedures of the City, codified at Chapter 1-3, B.R.C. 1981, must provide the same level of due process as is provided under the procedures provided for under the quasi-judicial procedures as the same existed on the effective date of the Franchise Agreement. Nothing herein prevents Franchisee from raising a defense to the imposition of liquidated damages from the date of violation based upon laches, waiver, statute of limitations, or any other similar defense. Franchisee may appeal any imposition of liquidated damages to a court of competent jurisdiction

13 5 *Procedures Prior to Revoking the Franchise.*

13 5.1 The City shall have the right to revoke the franchise for the reasons specified in the cable ordinance as of the effective date of this Franchise Agreement, and in Section 13 5 of this Franchise Agreement, pursuant to the revocation procedures specified in the cable ordinance Provided that, any amendments to the cable ordinance must provide the same level of due process as is provided under the procedures provided for under the cable ordinance as the same existed on the effective date of this Franchise Agreement. Prior to initiating a revocation action, the City shall provide Franchisee with a detailed written notice of any franchise violation upon which it proposes to take action, and a sixty day period within which Franchisee may: (a) demonstrate that a violation does not exist or cure an alleged violation, or (b) if the nature of the violation prevents correction of the violation within sixty 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 City of such plan of action, or (c) show that the defect in performance should be excused. However, in any case involving repeated violations, the time period allowed for cure

may be reasonably reduced at the election of the City, and revocation proceedings shall follow the process set forth at Section 11-6-12(d), B.R.C. 1981, as amended.

13.5.2 If Franchisee fails to disprove or correct the violation within sixty days to the City's satisfaction or, in the case of a violation which cannot be corrected in sixty days, if Franchisee has failed to initiate a reasonable plan of corrective action and to correct the violation within a time satisfactory to the City, then the City may declare Franchisee in default, which declaration must be in writing In the event that the City declares Franchisee in default, the City shall have the right to exercise any other rights and remedies afforded to the City in law or equity.

13 5.3 At any time after fifteen days of sending the written declaration of default to Franchisee, the City may revoke the franchise However, within fifteen days of the date the declaration is sent to Franchisee, Franchisee may request, in writing, a public hearing before the City Council pursuant to the procedures specified in the cable ordinance. If Franchisee requests the hearing, Franchise may not be revoked until after the hearing is conducted. The City may revoke after hearing unless it finds that (a) there was no default; or (b) the default has been fully cured, or there is a timetable for cure satisfactory to the City. Provided that, any amendments to the cable ordinance or the quasi-judicial procedures of the City, codified at Chapter 1-3, B.R.C. 1981, must provide the same level of due process as is provided under the procedures provided for under the cable ordinance and quasi-judicial procedures as the same existed on the effective date of this Franchise Agreement Franchisee shall have the right to appeal the revocation to a court of competent jurisdiction

13 6 *Revocation or Termination of Franchise* In addition to all other rights of the City under this Franchise Agreement, the City shall have the right to revoke the franchise· For the reasons specified in the cable ordinance as of the effective date of this Franchise Agreement; for a felony conviction for defrauding or attempting to defraud the City or subscribers; if Franchisee abandons the cable system, or, for any 24 hour period, willfully refuses to provide service to the City or any substantial portion of the City in accordance with this Franchise Agreement; and as otherwise provided herein.

13 7 *Remedies Cumulative*. All remedies under the cable ordinance and this Franchise Agreement are cumulative unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall the exercise of a remedy or the payment of liquidated damages or penalties relieve Franchisee of its obligations to comply with this Franchise Agreement Remedies may be used singly or in combination; in addition, the City may exercise any rights it has at law or equity at any time Except that, the City is not entitled to recover damages for the same injury under two separate Sections where doing so would result in a double recovery

13 8 *Relation to Insurance and Indemnity Requirements*. Recovery by the City of any amounts under insurance, the construction/performance bond, the letter of credit, or otherwise does not limit Franchisee's duty to indemnify the City in any way; nor shall such recovery relieve Franchisee of its obligations under this Franchise Agreement, limit the amounts owed to the City, or in any respect prevent the City from exercising any other right or remedy it may have

14. No Evasion

Franchisee shall not take any action to evade any provision of this Franchise Agreement or the cable ordinance This provision shall be read to prohibit, among other things, Franchisee requiring any subscriber to waive any right (including without limitation privacy rights) as a condition of obtaining service, but this provision shall not be deemed to prohibit reasonable mandatory arbitration clauses as a condition of subscription.

15. Rights of Individuals Protected

No cable, line, wire, amplifier, converter, or other piece of equipment owned or controlled by Franchisee shall be installed by Franchisee inside a dwelling or other occupied structure without first securing the written permission of the owner of the property involved, except in those cases where Franchisee is permitted by federal or state law to install such facilities and equipment inside the structure without permission.

16. Miscellaneous Provisions

16.1 *Compliance With Laws*. Franchisee and the City shall comply with all applicable laws and regulations as they become effective, unless otherwise stated herein.

16 2 *Governing Law*. This Franchise Agreement shall be governed in all respects by the laws of the State of Colorado.

16 3 *Force Majeure*. Franchisee shall not be deemed in default with provisions of this Franchise Agreement where performance was rendered impossible by war, acts of terrorism, or riots, civil disturbances, unforeseeable shortage of materials or qualified labor, withholding of necessary permits and authorizations, strikes, floods, or other natural catastrophes beyond Franchisee's control, and the franchise shall not be revoked or Franchisee penalized for such non-compliance, provided that Franchisee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with this Franchise Agreement without unduly endangering the health, safety, and integrity of Franchisee's employees or property, or the health, safety, and integrity of the public, public rights of way, public property, or private property.

16 4 *Notices* Unless otherwise expressly stated herein, notices required under this Franchise Agreement shall be faxed or mailed first class, postage prepaid, to the addressees below. Each party may change its designee by providing written notice to the other party

16.4 1 Notices to Franchisee shall be mailed to:

Comcast of Colorado IV, LLC
ATTN Local Government Affairs
8000 E. Iliff Ave.
Denver, Colorado 80231

With a copy to.

Comcast of Colorado IV, LLC
Attn. Legal Department
1500 Market Street
Philadelphia, PA 19102

16 4.2 Notices to City shall be mailed to.

City Manager
Post Office Box 791
Boulder, Colorado 80306

16.5 *Calculation of Time*. Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required hereunder and a period of time or duration for the completion thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of duration/time.

16.6 *Time of Essence, Maintenance of Records of Essence*. In determining whether Franchisee has substantially complied with this Franchise Agreement, the parties agree that time is of the essence to this Franchise Agreement. The maintenance of records and provision of reports in accordance with this Franchise Agreement is also of the essence to this Franchise Agreement

16 7 *Captions*. The captions and headings of this Franchise Agreement are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this Franchise Agreement

16.8 *Entire Franchise Agreement*. This Franchise Agreement represents the entire Franchise Agreement between the parties.

16 9 *Counterparts*. This Franchise Agreement may be executed in counterparts

16.10 *Effective Date*. The effective date of this Agreement shall be January 1, 2004.

AGREED TO THIS 11 DAY OF February, 2004.

City of Boulder

By: _____
City Manager

ATTEST:

_____
City Clerk on behalf of the
Director of Finance and Record

APPROVED AS TO FORM:

_____
City Attorney

COMCAST OF COLORADO IV, LLC

By: _____
Mary White, Senior Vice President

ACCEPTANCE

Comcast of Colorado IV, LLC hereby accepts unconditionally and agrees to be bound by all the terms and conditions of this Franchise Agreement, dated this 4th day of February, 2004, as granted by the Boulder City Council.

By: _____

STATE OF Colorado)
) ss.
COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me, a Notary Public, this 4th day of February, 2004, by Mary White, SVP

Witness my hand and official seal

_____
Notary Public

My commission expires: 1/31/2007

(seal)

GLENN E. WALKER
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires Jan 31, 2007

EXHIBIT A

LIST OF LOCATIONS RECEIVING FREE CABLE SERVICE

Offices located at	
Municipal Building	1777 Broadway
Park Central Building	1739 Broadway
New Britain Building	1101 Arapahoe
Atrium Building	1300 Canyon
Main Library Building	1000 Canyon Blvd
Boulder Municipal Courts	6th & Canyon
Public Works Administrative Center	5050 East Pearl
Public Safety Building	1805 33rd
Spruce Pool and Youth Services Building	2160 Spruce
Parks & Recreation Administrative Offices	3198 Broadway
Parks Maintenance	5200 East Pearl
East Boulder Community Center	660 Sioux
West Senior Center	909 Arapahoe
Carnegie Branch Library	1125 Pine Street
Meadows Branch Library	4800 Baseline
Reynolds Branch Library	3595 Table Mesa Drive
Municipal Channel 8	1000 Canyon Blvd
Dairy Center for the Arts	2590 Walnut St
Fire Station #1	2441 13th St
Fire Station #2	2225 Baseline Rd
Fire Station #3	1585 30th St
Fire Station #4	4100 Darley
Fire Station #5	4365 19th
Fire Station #6	5145 N 63rd
Fire Station #7	1380 55th
North Boulder Recreation Center	3170 Broadway
South Boulder Recreation Center	1360 Gillespie

EXHIBIT B

RETURN LINES

1) 1000 Canyon Blvd to Comcast Boulder headend (33rd & Walnut)
   technology fiber, modulatoı provıded and maıntaıned by Comcast
   use sole use ıs upstream transmıssıon of PEG sıgnal

2) 1777 Broadway to 1000 Canyon Blvd
   technology. coax, mod/demod provıded and maıntaıned by Comcast
   use ıelay of programmıng oııgınatıng ın Cıty Councıl Chambeıs

3) 1805 33ıd to Comcast Bouldeı headend (33rd & Walnut)
   technology. coax, modulator provıded and maıntaıned by Comcast
   use x5 year on test basıs, desıgned as back up to maın PEG facılıty
   at 1000 Canyon ın event of emergency that shuts down maın studıo

4) 2590 Walnut to Comcast Boulder headend (33rd & Walnut)
   technology fiber, modulator provıded and maıntaıned by Comcast
   use upstream carrıage of PEG sıgnal

5) CU stadıum to Comcast Boulder headend (33rd & Walnut)
   technology' coax, modulator provıded and maıntaıned by Comcast
   use upstream carrıage of educatıonal access programmıng

6) 6500 E Arapahoe to Comcast Boulder headend
   technology coax, modulator provıded and maıntaıned by Comcast
   use upstream carrıage of school dıstrıct board meetıngs to Comcast Bouldeı headend for ınseıtıon on Goveınment channel

ORDINANCE NO. 7785

AN ORDINANCE AMENDING THE CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN THE CITY OF BOULDER AND COMCAST OF COLORADO IV, LLC, TO EXTEND THE TERM OF THE FRANCHISE; AND SETTING FORTH RELATED DETAILS.

The City Council finds that:

A. On February 3, 2004, the Boulder City Council ("City") adopted Ordinance No. 7324 approving the grant of a nonexclusive franchise to Comcast of Colorado IV, LLC ("Comcast") for its construction and operation of a cable television system within the City (the "Franchise").

B. Comcast has preserved its right of renewal by timely filing a request with the City to activate the formal process for renewing the Franchise pursuant to the provisions of the Cable Communications Policy Act of 1984 ("Cable Act").

C. The existing Franchise will expire on December 31, 2011, unless it is extended.

D. City staff and Comcast representatives have discussed the renewal of the Franchise. Each has agreed that its interests will be served by extending the existing Franchise for two years.

E. The city council, having been advised of the benefits of extending the existing Franchise, is agreeable to extending the term of the Franchise until December 31, 2013, and amending the Franchise Agreement accordingly.

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

Section 1. The city council adopts, approves, and authorizes the city manager to enter into the Comcast franchise extension, entitled "Amendment to the Franchise Agreement Between the City of Boulder, Colorado and Comcast of Colorado IV, LLC Dated January 1, 2004," attached as Exhibit A and incorporated by this reference, extending the term of the Franchise until December 31, 2013. The city manager is authorized to approve any minor changes as may be necessary prior to final execution by the parties.

Section 2. Except as specifically modified hereby, the Franchise shall remain in full force and effect.

Section 3. Neither party waives any right which it enjoys under law as a result of agreeing to this Franchise extension, and Comcast shall not be required to file any additional request or document in order to preserve its right of renewal under Section 626 of the Cable Act.

Section 4. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

Section 5. The city council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY this 1st day of March 2011.

Mayor

Attest:

City Clerk on behalf of the
Director of Finance and Record

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED PUBLISHED BY TITLE ONLY this 3rd day of May 2011.

Mayor

Attest:

City Clerk on behalf of the
Director of Finance and Record

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EXHIBIT A

AMENDMENT TO THE FRANCHISE AGREEMENT BETWEEN THE CITY OF BOULDER, COLORADO AND COMCAST OF COLORADO IV, LLC DATED JANUARY 1, 2004

This Amendment is made as of the _____ day of _____, 2011, by and between the City of Boulder, Colorado, a Colorado home rule city ("City"), and Comcast of Colorado IV, LLC ("Comcast"). Hereinafter the City and Comcast may be referred to individually as a "Party" or collectively as the "Parties."

A. The Parties entered into a Franchise Agreement dated January 1, 2004, to permit Comcast to construct, operate, and repair a cable system in, over, along, and under City rights of way within the City for the purpose of providing cable service, and for providing an institutional network and other facilities or services for PEG use of the cable system from January 1, 2004, through and including December 31, 2011 (the "Franchise Agreement").

B. The Parties wish to amend the terms of the Franchise Agreement by extending the scope of the Franchise Agreement for an additional two years through and including December 31, 2013.

NOW THEREFORE, in consideration of the promises and obligations set forth below, the parties agree to amend the Franchise Agreement as follows:

1. The second sentence of Section 2, subsection1, paragraph 1 of the Franchise Agreement is replaced by the following sentence, to read:

> 2.1.1 ...This franchise grants the right, subject to conditions, to construct, operate and repair a cable system in, over, along and under City rights of way within the City of Boulder for the purpose of providing cable service, and for providing an institutional network and other facilities or services for PEG use of the cable system from January 1, 2004, through and including December 31, 2013.

2. By this amendment the Parties agree to extend the term of the Franchise Agreement through December 31, 2013. Comcast shall provide the City with a certificate of insurance evidencing coverage each year during the extended term of the Franchise Agreement.

3. Except as amended herein, the Franchise Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have set their hands to this Amendment on the day and year above first written.

[SIGNATURE PAGE FOLLOWS]

COMCAST OF COLORADO IV, LLC

By: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

Acknowledged before me, a notary public, this _____ day of _____ 2011, by _____, as _____ for Comcast of Colorado IV, LLC.

Witness my hand and official seal.
My commission expires:

_____
Notary Public

(SEAL)

CITY OF BOULDER

_____
City Manager

ATTEST:

_____
City Clerk on behalf of the
Director of Finance and Record

APPROVED AS TO FORM:

_____
City Attorney's Office

ORDINANCE NO. 7952

AN ORDINANCE AMENDING THE CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN THE CITY OF BOULDER AND COMCAST OF COLORADO IV, LLC, TO EXTEND THE TERM OF THE FRANCHISE; AND SETTING FORTH RELATED DETAILS.

The City Council finds that:

A. On February 3, 2004, the Boulder City Council ("City") adopted Ordinance No. 7324 approving the grant of a nonexclusive franchise to Comcast of Colorado IV, LLC ("Comcast") for its construction and operation of a cable television system within the City (the "Franchise").

B. Comcast has preserved its right of renewal by timely filing a request with the City to activate the formal process for renewing the Franchise pursuant to the provisions of the Cable Communications Policy Act of 1984 ("Cable Act").

C. The existing Franchise was scheduled to expire on December 31, 2011.

D. On March 1, 2011, the City adopted Ordinance No. 7785 authorizing the city manager to enter into a two-year Franchise extension agreement with Comcast, since executed, to make the existing Franchise scheduled to expire on December 31, 2013.

D. City staff and Comcast representatives have discussed the renewal of the Franchise. Each has agreed that its interests will be served by extending the existing Franchise for one additional year.

E. The City Council, having been advised of the benefits of extending the existing Franchise, is agreeable to extending the term of the Franchise until December 31, 2014, and amending the Franchise Agreement accordingly.

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

Section 1. The City Council adopts, approves, and authorizes the city manager to enter into the Comcast franchise extension, entitled "Second Amendment to the Franchise Agreement Between the City of Boulder, Colorado and Comcast of Colorado IV, LLC Dated January 1, 2004," attached as Exhibit A and incorporated by this reference, extending the term of the

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Franchise until December 31, 2014. The city manager is authorized to approve any minor changes as may be necessary prior to final execution by the parties.

Section 2. Except as specifically modified hereby, the Franchise shall remain in full force and effect.

Section 3. Neither party waives any right which it enjoys under law as a result of agreeing to this Franchise extension, and Comcast shall not be required to file any additional request or document in order to preserve its right of renewal under Section 626 of the Cable Act.

Section 4. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

Section 5. The City Council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY this 3rd day of December 2013.

Mayor

Attest:

City Clerk - Deputy

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READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED PUBLISHED BY TITLE ONLY this 17th day of December, 2013.

Mayor

Attest:

City Clerk
Deputy

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ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN THE CITY OF BOULDER AND COMCAST OF COLORADO IV, LLC, TO EXTEND THE TERM OF THE FRANCHISE; AND SETTING FORTH RELATED DETAILS.

The City Council finds that:

A. On February 3, 2004, the Boulder City Council ("City") adopted Ordinance No. 7324 approving the grant of a nonexclusive franchise to Comcast of Colorado IV, LLC ("Comcast") for its construction and operation of a cable television system within the City (the "Franchise").

B. Comcast has preserved its right of renewal by timely filing a request with the City to activate the formal process for renewing the Franchise pursuant to the provisions of the Cable Communications Policy Act of 1984 ("Cable Act").

C. The existing Franchise was scheduled to expire on December 31, 2011.

D. On March 1, 2011, the City adopted Ordinance No. 7785 authorizing the city manager to enter into a two-year Franchise extension agreement with Comcast, since executed, to make the existing Franchise scheduled to expire on December 31, 2013.

E. On Dec. 17, 2013, the City adopted Ordinance No. 7952, authorizing the city manager to enter into a one-year Franchise extension agreement with Comcast, since executed, to make the existing Franchise scheduled to expire on December 31, 2014.

F. City staff and Comcast representatives have discussed the renewal of the Franchise. Each has agreed that its interests will be served by extending the existing Franchise for an additional one hundred twenty days, scheduled to expire on April 30, 2015.

G. The City Council, having been advised of the benefits of extending the existing Franchise, is agreeable to extending the term of the Franchise through and until April 30, 2015, and amending the Franchise Agreement accordingly.

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

Section 1. The City Council adopts, approves, and authorizes the city manager to enter into the Comcast franchise extension, entitled "Third Amendment to the Franchise Agreement Between the City of Boulder, Colorado and Comcast of Colorado IV, LLC," attached as Exhibit

A and incorporated by this reference, extending the term of the Franchise through and until April 30, 2015. The city manager is authorized to approve any minor changes as may be necessary prior to final execution by the parties.

Section 2. Except as specifically modified hereby, the Franchise shall remain in full force and effect.

Section 3. Neither party waives any right which it enjoys under law as a result of agreeing to this Franchise extension, and Comcast shall not be required to file any additional request or document in order to preserve its right of renewal under Section 626 of the Cable Act.

Section 4. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

Section 5. The City Council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY this 2nd day of December 2014.

Mayor

Attest:

City Clerk

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED PUBLISHED BY TITLE ONLY this _____ day of December, 2014.

.

_____
Mayor

Attest:

_____
City Clerk

THIRD AMENDMENT TO FRANCHISE AGREEMENT
Between

City of Boulder, Colorado
and
Comcast of Colorado IV, LLC

This Third Amendment is made as of the ____ day of December, 2014, by and between the City of Boulder, Colorado, a Colorado home rule city ("City"), and Comcast of Colorado IV, LLC ("Comcast" or "Franchisee").

A. The City and Comcast entered into Franchise Agreement for the operation of a cable system within the city of Boulder dated February 11, 2004 ("Franchise Agreement").

B. The Franchise Agreement was set to expire on December 31, 2011.

C. Comcast provided the city with the option to delay the renewal and extend the term of the Franchise Agreement for two years. The City approved a two-year extension of the Franchise Agreement on June 13, 2011, by Ordinance 7785, for the period through and including December 31, 2013.

D. The City again approved an extension of the Franchise Agreement on December 17, 2013, by Ordinance 7952, for the period through and including December 31, 2014.

E. The City and Comcast are currently negotiating a new franchise agreement, but do not expect to reach agreement before the current extension expires.

F. By this Third Amendment, the parties agree to extend the term of the Franchise Agreement for the period through and including April 30, 2015.

NOW THEREFORE, in consideration of the promises and obligations set forth below, the parties agree to extend the term of the Franchise Agreement as follows:

1. The second sentence of Section 2, subsection 1, paragraph 1 of the Franchise Agreement is replaced by the following sentence, to read:

> 2.1.1 This franchise grants the right, subject to conditions, to construct, operate and repair a cable system in, over, along and under City rights of way within the City of Boulder for the purpose of providing cable service, and for providing an institutional network and other facilities or services for PEG use of the cable system, commencing on the effective date of this Franchise Agreement, January 1, 2004, through and including April 30, 2015.

2. Except as amended herein, the Franchise Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have set their hands to this Second Amendment on the day and year above first written.

COMCAST OF COLORADO IV, LLC

By: _____
Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me, a Notary Public, this _____ day of _____, 2014, by _____.

Witness my hand and official seal.

My commission expires: _____

(seal)

_____
Notary Public

CITY OF BOULDER

_____
City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney's Office

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CITY OF BOULDER
CITY COUNCIL AGENDA ITEM

MEETING DATE: December 2, 2014

AGENDA TITLE
Consideration of the following items related to the annexation and initial zoning of the properties identified as 1950 Riverside Drive, 4415 Garnet Lane, 1085 Gapter Road, 2200 Emerald Road and 2350 Norwood Avenue:

1. A resolution finding the annexation petition for each property in compliance with state statutes and establishing January 20, 2015 as the date for a public hearing and

2. Introduction, first reading and consideration of a motion to order published by title only, five ordinances annexing the properties with an initial zoning as follows:

   a. 1950 Riverside Dr.
   Proposed Zoning: Residential-Estate
   Applicant/Owner: Seana Grady
   b. 4415 Garnet Ln. and a portion of the Garnet Lane right-of-way
   Proposed Zoning: Residential-Estate
   Applicant/Owner: Frank Alexander
   c. 1085 Gapter Rd.
   Proposed Zoning: Residential-Rural 2
   Applicant/Owner: Silvano and Elvira Deluca
   d. 2200 Emerald Rd.
   Proposed Zoning: Residential-Rural 1
   Applicant/Owner: Stephen and Amy Carpenter
   e. 2350 Norwood Av.
   Proposed Zoning: Residential-Estate
   Applicant/Owner: Norwood Garden, LLC

PRESENTER/S
Jane S. Brautigam, City Manager
David Driskell, Executive Director of Community Planning & Sustainability
Susan Richstone, Deputy Director of Community Planning & Sustainability
Chris Meschuk, Flood Recovery Coordinator – Community Services
Bev Johnson, Annexation Project Manager

EXECUTIVE SUMMARY

The purpose of this item is for City Council to consider the first reading of five ordinances (**Attachment A**) relating to the annexation and intial zoning of the following five properties:

Location:	**1950 Riverside Av. (LUR2014-00059)**
Size of Tract:	48,282 sq. ft. (1.11 ac)
Zoning:	Boulder County Rural Residential and proposed city designation of Residential-Estate (RE)
BVCP:	Low Density Residential/Open Space - Other
NBSP:	Estate Residential

Location:	**4415 Garnet Ln. (LUR2014-00061)**
Size of Tract:	45,711 sq. ft. (1.05 ac)
Zoning:	Boulder County Rural Residential and proposed city designation of Residential-Estate (RE)
BVCP:	Low Density Residential/Open Space - Other
NBSP:	Estate Residential

Location:	**1085 Gapter Rd. (LUR2014-00064)**
Size of Tract:	53,403 sq. ft. (1.23 ac)
Zoning:	Boulder County Rural Residential and proposed city designation of Residential Rural 2 (RR-2)
BVCP:	Very Low Density Residential/Open Space-Other

Location:	**2200 Emerald Rd. (LUR2014-00065)**
Size of Tract:	54,851 sq. ft. (1.26 ac)
Zoning:	Boulder County Rural Residential and proposed city designation of Residential Rural 1 (RR-1)
BVCP:	Very Low Density Residential/Open Space-Other
NBSP:	Rural Residential

Location:	**2350 Norwood Av. (LUR2014-00066)**
Size of Tract:	65,507 sq. ft. (1.50 ac)
Zoning:	Boulder County Rural Residential and proposed city designation of Residential-Estate (RE)
BVCP:	Very Low Density Residential
NBSP:	Estate Residential

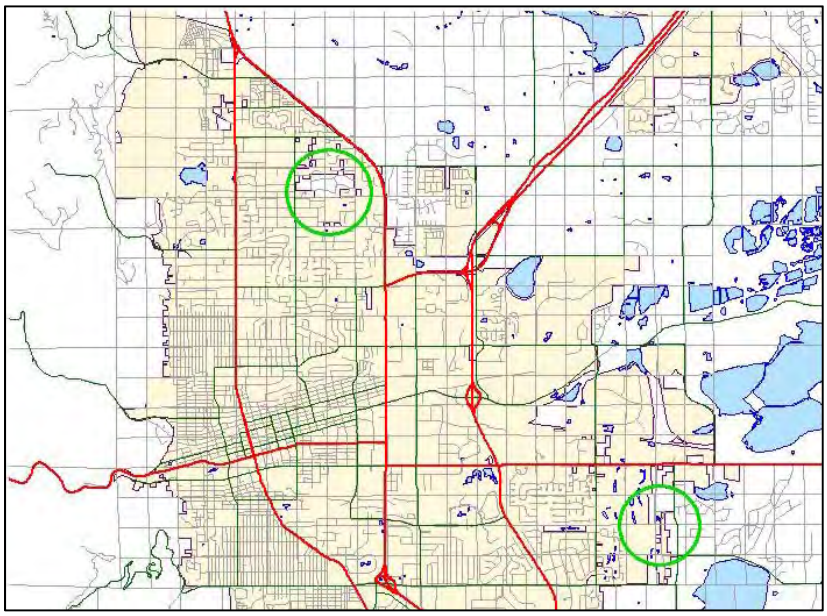
Per the state's annexation statutes,, City Council is asked to consider the attached annexation resolutions as provided in **Attachment B.** The proposed annexation resolutions initiate the annexation proceedings, find substantial compliance of each annexation petition with Section 31-12-107(1), C.R.S. and set a hearing date not less than 30 days or more than 60 days after the date of each resolution. The purpose of the subsequent hearing is to determine whether the proposed annexations comply with state law and other annexation requirements.

Staff finds that the requested zoning for the subject properties is consistent with city policies and with the zoning of neighboring city lots surrounding the properties.

The ordinances to annex the properties are provided for first reading in **Attachment A.** The petitions are in **Attachment C**. The annexation maps are in **Attachment D** and the conditions of annexation are set forth in the Annexation Agreements in **Attachment E.**

On November 6, 2014, Planning Board voted unanimously (6-0, J. Gerstle recused) to recommend approval of the proposed Annexation and Initial Zoning applications. The staff memorandum to Planning Board and the audio of the proceedings related to the Planning Board's review are available on the city website at the following link:
https://bouldercolorado.gov/boards-commissions/planning-board

Figure 1: General Location of Subject Properties (circled in green)



The property owner at 2140 Tamarack Ave. withdrew the application for annexation on Nov. 25, 2014 and is no longer being considered.

Key Issue Identification

1. Annexation: Is the proposal consistent with Colorado State Statutes on Annexation, as well as city Boulder Valley Comprehensive Plan (BVCP) policies and the North Boulder Subcommunity Plan (as applicable)?

2. Initial Zoning: Is the proposed zoning, pursuant to land use code subsection 9-5-2(c)(1)(A), B.R.C. 1981, appropriate as the initial zoning of the subject properties?

STAFF RECOMMENDATION
Staff requests council consideration of this matter and action in the form of the following motions:

Suggested Motion Language:

1. *Motion to approve the proposed resolutions finding the annexation petitions in compliance with state statutes and establishing January 20, 2015 as the date for a public hearing.*

2. *Motion to introduce on first reading and order published by title only, five ordinances to annex:*

   a. *1950 Riverside Av. with an initial zoning classification of Residential Estate,*
   b. *4415 Garnet Ln. with an initial zoning classification of Residential Estate,*
   c. *1085 Gapter Rd. with an initial zoning classification of Residential Rural 2,*
   d. *2200 Emerald Rd. with an initial zoning classification of Residential Rural 1, and*
   e. *2350 Norwood Av. with an initial zoning classification of Residential Estate.*

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic: It is in the interest of the city to annex properties in county enclaves and along the edge of the city to improve efficiency in city service provision.
- Environmental: There are environmental benefits of having properties connected to city water and sewer, specifically, the avoidance of the potential environmental and public health impacts of failed septic systems and contaminated wells.
- Social: The provision of safe and reliable public water and sewer is a benefit to every community member and the general public.

OTHER IMPACTS

- Fiscal: City services are existing and available to this site. City property taxes will be paid once the properties are annexed. Landowners of four properties will finance payment of city utility connection fees through a 10-year payment plan offered by the city.
- Staff time: The annexation application has been processed through a special offer to landowners where the administrative fees were waived ($6,580 per property). General fund revenues have been allocated to provide the staff time to process the applications.

BOARD AND COMMISSION FEEDBACK

Annexations are subject to a city Planning Board recommendation prior to City Council action. The Planning Board hearing was held on Nov. 6, 2014. Three members of the community spoke at the public hearing. All speakers were residents of the Githens Acres neighborhood and expressed concerns regarding the city's policy and practice of acquiring Silver Lake Ditch rights, and one speaker spoke regarding the history of the Garnet Lane street closure and the agreement to remain closed.

Planning Board made the following motions:

On a motion by **J. Putnam**, seconded by **B. Bowen**, the Planning Board voted 6-0 (**J. Gerstle** recused) to recommend that City Council approve the six proposed annexations subject to the annexation conditions in the

respective annexation agreements attached to the staff memorandum with initial zoning of RR-1, RR-2, or RE as specifically proposed for each property in the staff memo with the exception that the Planning Board takes no position regarding acquiring rights of first refusal for ditch rights and recommends that City Council specifically consider that issue.

On a motion by **B. Bowen**, seconded by **J. Putnam**, the Planning Board voted 6-0 (**J. Gerstle** recused) to recommend that the city recognize the cultural, historical, natural and civic value of the ditch systems and advocate for their preservation.

On a motion by **L. May**, seconded by **L. Payton**, the Planning Board voted 2-4 (**L. May** and **L. Payton** in support, **J. Gerstle** recused) to register concerns about how, through the annexation process, the city obtains first right of refusal to purchase ditch shares. The motion failed. The board members who voted against the motion expressed concern that the recommendation was outside their area of expertise and core competence, and that the issue is more within the purview of the Water Resources Advisory Board and City Council.

Information regarding the Silver Lake Ditch and the city's settlement agreement with the ditch company can be found at the end of the Analysis section.

PUBLIC FEEDBACK

All notice requirements of section 9-4-3, "Public Notice Requirements," B.R.C. 1981 have been met. Compliance with these requirements included public notice in the form of written notification mailed to all property owners within 600 feet of the subject property, and a sign posted on the property for at least 10 days prior to the public hearing as required. Feedback was received from six community members regarding acquisition of Silver Lake Ditch rights and annexation of Garnet Lane. One applicant submitted comments. All comments are included in **Attachment G**.

BACKGROUND

After the September 2013 floods, several homeowners in Boulder County contacted city staff about the possibility of annexing to the city in order to connect to city water and wastewater services. Many homeowners outside the city, especially in enclave areas, experienced damage to their wells or septic systems. In response to these requests, staff put together a special annexation package and offered it to approximately 160 property owners in enclave areas and in the Old Tale Road and Cherryvale Road neighborhoods.

Annexations are very staff resource intensive and, therefore, have a significant fee to recover the costs. City staff, with the support of City Council offered to waive the annexation administration fee ($6,580 per household) to support flood recovery efforts and help people recover, with the understanding that these applications would be processed as a group annexation to streamline staff resources. In addition to fee and excise tax waivers, the city offered to finance most of the costs related to water and wastewater utility connection. Residents choosing to annex under this offer have three options:

A) Connect to city utilities shortly upon annexation and pay the city back in full,
B) Connect to city utilities shortly upon annexation and finance all or part of the connection costs through the city, or
C) Annex now and defer connection and payment to some future time (redevelopment or sale of home or failure of onsite wastewater system). (Note: No applicants are completely deferring connection)

Approximately eight property owners showed interest in moving forward, some because of damage to their well and septic systems. Two properties (2130 Tamarack Av. and 4270 19th St.) were annexed by emergency ordinance in August 2014 because of the condition of their well and septic systems. One property owner (2140

Tamarack Av.) withdrew their petition on Nov. 25, 2014. The remaining five properties are the subject of the current request for annexation.

ANALYSIS

1. Existing Conditions

a. 1950 Riverside Av. and 4415 Garnet Ln.

These two properties are located in North Boulder immediately adjacent to, but not within, the Githens Acres county enclave (see Figure 1). Both properties are currently developed with a single family residence and have the potential to subdivide and add two additional units each.

Figure 1: 1950 Riverside Av. and 4415 Garnet Ln. - Existing Conditions

The proposed zoning for these properties is Residential-Estate (RE), which allows 2.9 units per acre, and is consistent with the BVCP land use designation of Low Density Residential (2-6 units per acre) on both properties (Figure 2). Both parcels have an Open Space – Other land use designation[1] on a portion of the properties. The Open Space-Other designation is intended to protect the natural qualities of the Wonderland Creek drainageway, however Wonderland Creek is not located on either property[2]

1 "Open Space–Other" land use designations were given to certain private properties, prior to 1981, that the city and county would like to preserve for open space purposes through various preservation methods including but not limited to intergovernmental agreements, dedications or acquisitions. Open Space designations indicate that the long-term use of the land is planned to serve one or more open space functions. In the case of the subject properties, the OS-O designation is intended to help preserve the natural qualities of the drainageway and to prevent further encroachment on the floodplain.

2 This discrepancy is due to an error in the original digital mapping of the land use map.

Figure 2: 1950 Riverside Av. and 4415 Garnet Ln. - Land Use Designations

Neither property is in the regulated floodplain. However, because a portion of 1950 Riverside Av. is within 60 ft. of the creek, an access and flood maintenance easement for Wonderland Creek is being dedicated. A utility easement for the existing sewer line along the south side of both properties will also be dedicated.

Garnet Lane is currently under Boulder County jurisdiction. Boulder County staff has requested that the city annex the portion of the road that fronts 4415 Garnet Ln. and the property to the north since the road will service properties within the city. City staff is recommending annexation of this portion of the road. The portion of the road proposed for annexation includes an existing road barrier that was erected by the county over 20 years ago to prevent cut-through traffic in Githens Acres between 19th and 26th streets. The closure was erected in response to a neighborhood request to address traffic and safety concerns in their neighborhood.

The concern that this road barrier may be removed once the road is in the city has been a primary concern of the Githens Acres neighborhood over the years and a factor in their past decision not to annex. The city has stated that while it will not guarantee permanent closure of this road as a condition of annexation (which the neighborhood has requested in the past), staff has no intention of removing the barrier in the near future.

b. 1085 Gapter Rd.

This property is located in the Gapter Road neighborhood (Figure 3). The proposed zoning of the site is Rural Residential, which is consistent with the BVCP land use designation of Very Low Density Residential.

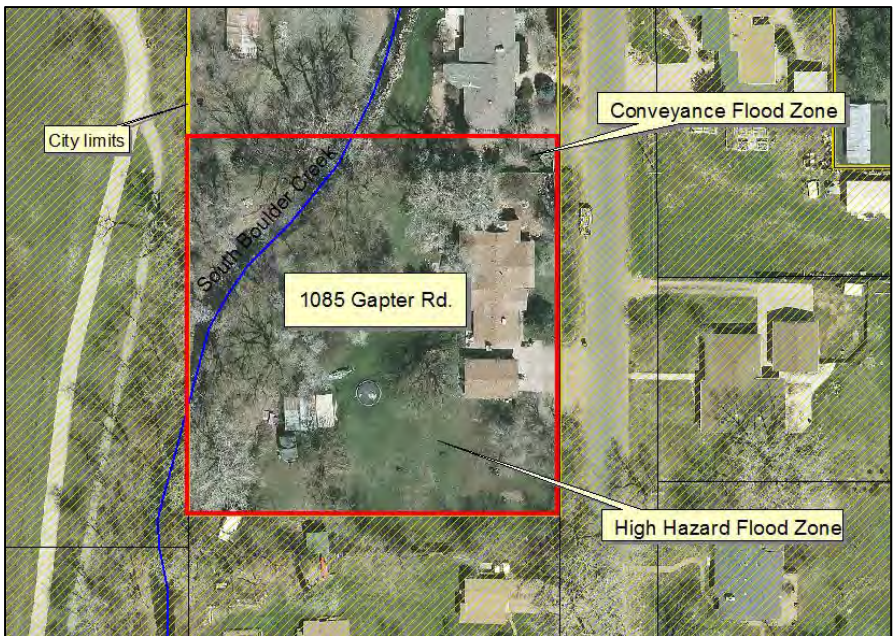


Figure 3: 1085 Gapter Rd.

South Boulder Creek runs through the property and the property is entirely within the conveyance and high hazard flood zones (Figure 4). The existing home on the property is within the high hazard flood zone and was severely damaged from the September 2013 floods. Once in the city, the landowner will be prohibited from expanding, enlarging, or making substantial modifications to the home (Boulder Revised Code, Subsection 9-3-5d). A flood maintenance easement of 60 ft. to either side of the centerline of the creek is being dedicated to the city.

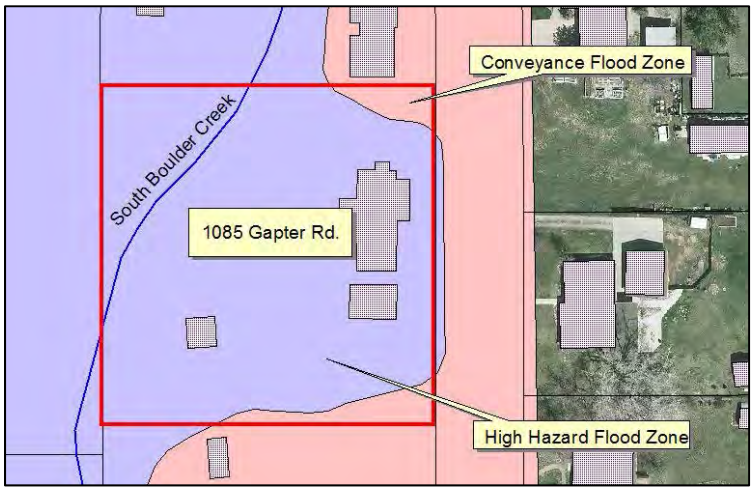


Figure 4: 1085 Gapter Rd. Flood Zones

c. 2200 Emerald Rd.

This property is located in the Githens Acres enclave and is surrounded on three sides by properties also under county jurisdiction. The property is developed with a single family residence. The proposed zoning for this property is Residential-Rural 1 (RR-1), which is consistent with the BVCP land use designation of Very Low Density Residential. The parcel has an Open Space – Other land use designation running through it which, similar to the above properties, does not correspond with the location of Wonderland Creek to the south of the property (Figure 5). A flood maintenance easement over the portion of the property within 60 ft. of the centerline of the creek is being dedicated. The

property has no subdivision potential because of the size of the lot and the proposed zoning. In addition, roughly ½ of the property is in the conveyance and high hazard flood zone (Figure 6).

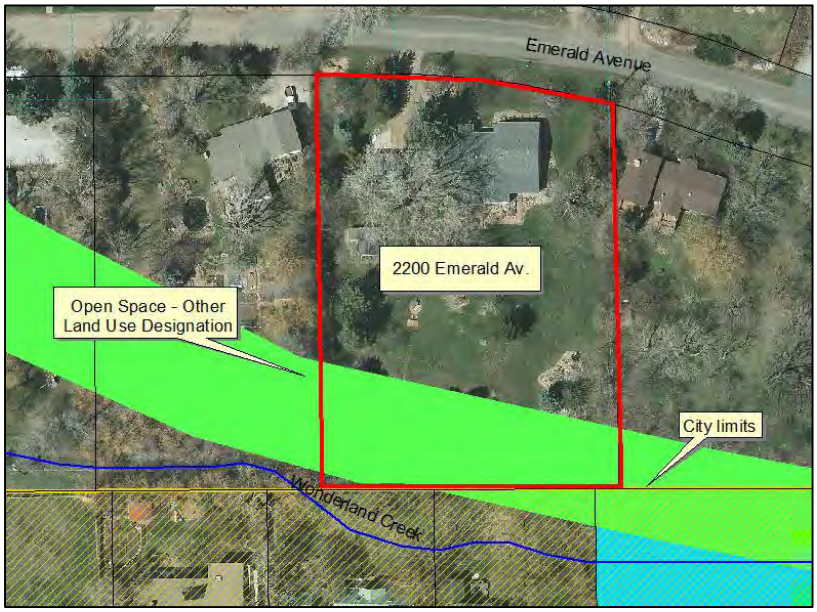


Figure 5: 2200 Emerald Rd.

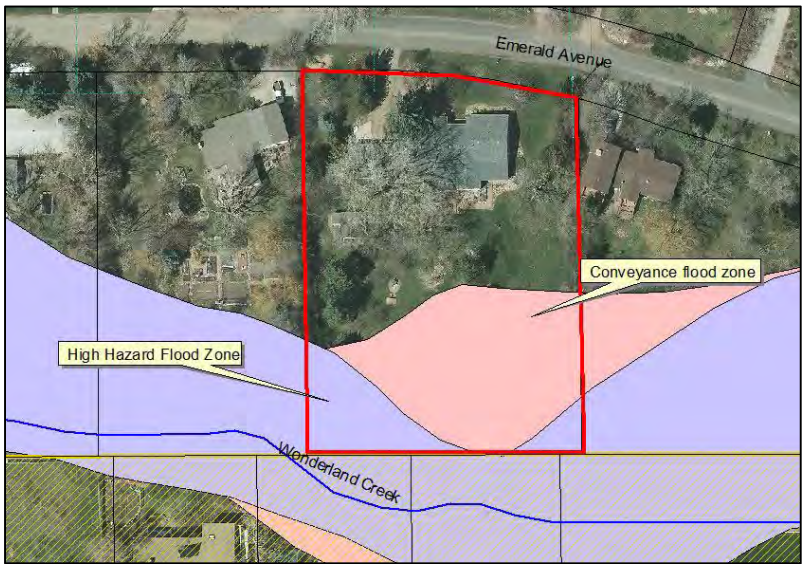


Figure 6: 2200 Emerald Rd. flood zones

d. 2350 Norwood Av.

This property is located in North Boulder across the street from Centennial Middle School. A single family residence is located on the property. The septic system on the property is currently inoperable; therefore, no one is living at the residence. A 30 ft. wide right-of-way along the entire north side of the property is being dedicated. The right-of-way area is currently within the city limits (Figure 7).

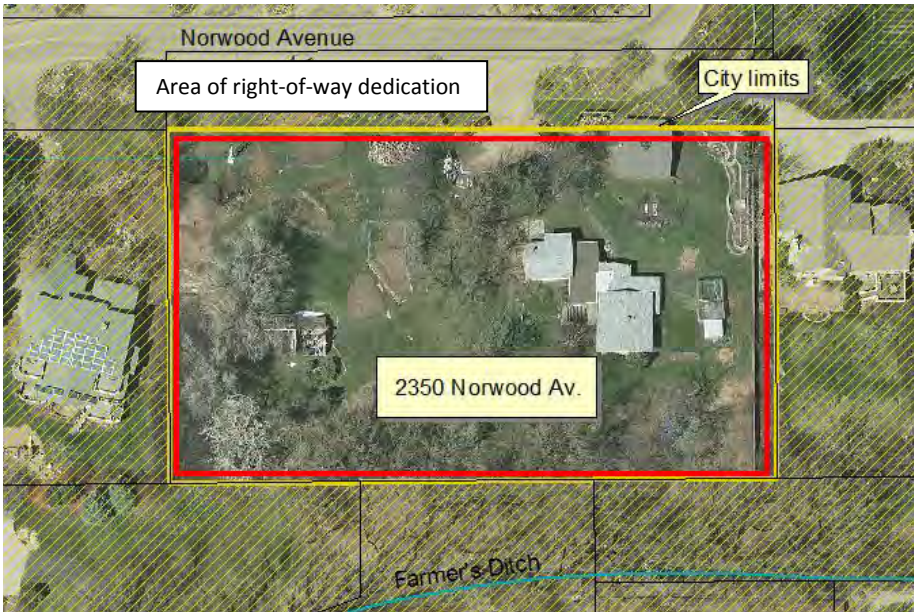


Figure 7: 2350 Norwood Av.

The Transportation Master Plan and North Boulder Subcommunity Plan shows a pedestrian connection through the property between Norwood Avenue and 23rd Street (see green dashed line in Figure 8). The city is requesting a 16 foot wide easement along the western edge and a portion of the southern edge of the property for the purpose of a multi-use path connection between Norwood and 23rd St. 16 feet is the standard width for an easement in order to construct a 12' wide multi-use path, with 2' shoulders, as indicated in the city's Design and Construction Standards. The property owner has offered to dedicate in fee a 4 ft. wide right-of-way instead of a 16 ft. wide easement, however, that would not meet the city's standards or provide adequate width for a multi-use path. The annexation agreement states that property owner will be required to construct this path at the time of redevelopment. For additional information see an attached letter from the applicant in **Attachment H.**

Figure 8: 2350 Norwood Av. – Proposed Multi-use Path Connection

2. Future Development Potential

The following properties have future development potential under the respective proposed zoning and have agreed to provide community benefit in the form of two times the cash in-lieu contribution as set forth in the

city's inclusionary zoning ordinance to the Housing Trust Fund for any additional units on the properties at the time of building permit, consistent with the City of Boulder Guidelines for Annexation Agreements which were endorsed by Planning Board and City Council in 2002 and which outline general guidelines for city staff, landowners, Planning Board and City Council in future individual annexation negotiations, addressing, in particular, community benefit requirements to be shown upon annexation.

1950 Riverside Av. - 2 additional units
Size of Tract: 48,282 sq. ft. (1.11 ac)
Proposed Zoning: Residential-Estate (RE)

4415 Garnet Ln. 2 additional units
Size of Tract: 45,711 sq. ft. (1.05 ac)
Proposed Zoning: Residential-Estate (RE)

2350 Norwood Av. 2 additional units
Size of Tract: 53,200 sq. ft. (1.22 ac)
Proposed Zoning: Residential-Estate (RE)

3. Key Issues:

a. Is the proposed annexation consistent with state statutes pertaining to the annexation of a property into the City of Boulder?

Annexations must comply with the Municipal Annexation Act of 1965, section 31-12-101, *et. seq.*, C.R.S. Staff has reviewed the annexation petitions for compliance with section 31-12-104, section 31-12-105, 31-12-106, and 31-12-107 C.R.S., as applicable, and finds the applications are each consistent with the statutory requirements.

Four of the five properties are developed with a single residential dwelling unit and are part of Boulder County enclaves that have been entirely contained within the outer boundaries of the City of Boulder for at least three years. The right-of- way to be annexed with 4415 Garnet Ln. is also part of a Boulder County enclave. One property (1085 Gapter Rd.) is developed with a single family residential dwelling unit but is not an enclave. The property meets the eligibility requirement of having at least 1/6 contiguity with the city limits. Four of the five properties are located in North Boulder. The five properties indicated in Figure 9 have been enclaves since at least 2000. All municipal territory surrounding the enclaves was annexed in compliance with section 30 of article II Colorado constitution. Therefore, these properties meet the statutory requirements and are eligible for annexation as enclaves.

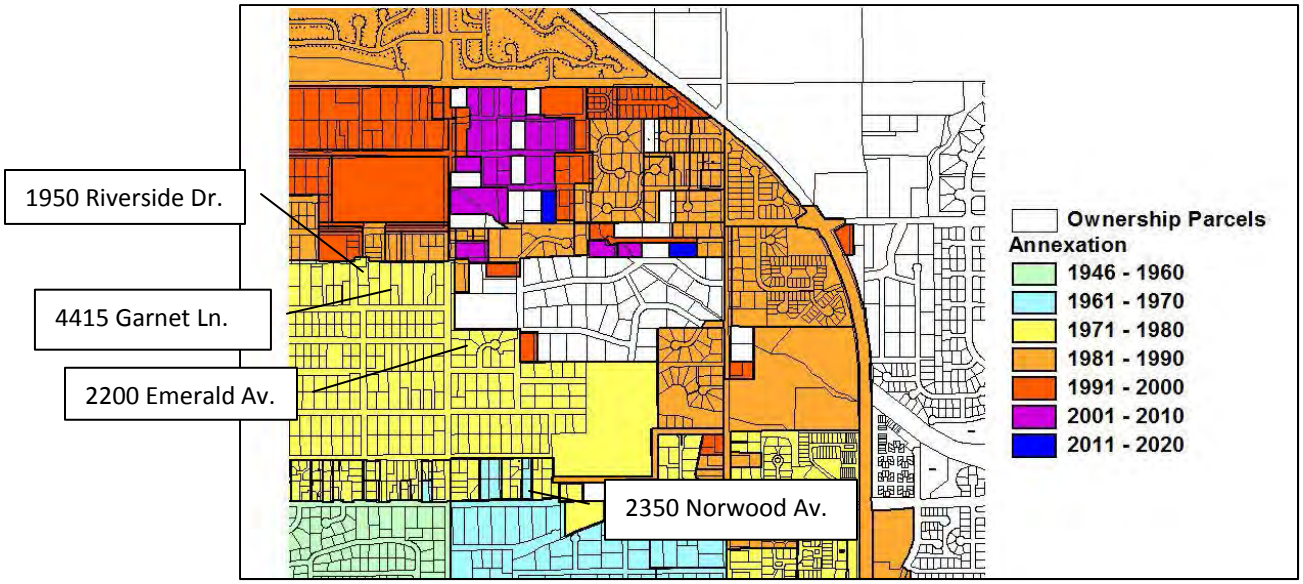


Figure 9

1085 Gapter Rd. (Figure 10) is not an enclave, but is also at least 1/6 contiguous with the city limits.

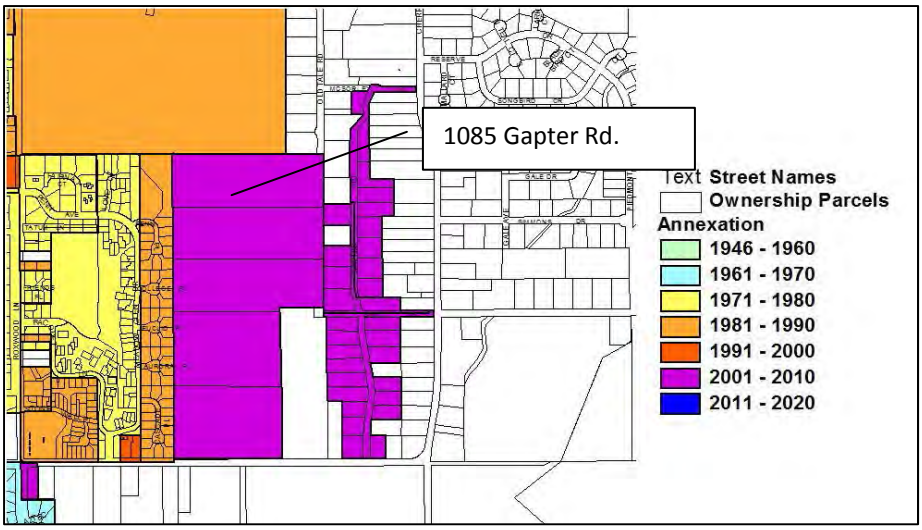


Figure 10

Consistent with state law, the landowners of more than 50 percent of the area to be annexed, excluding public streets, have petitioned to annex. Each such petition was filed with the City Clerk. There is a community interest in annexation of each property proposed for annexation and the City of Boulder. None of the properties proposed to be annexed are included in another annexation proceeding involving a municipality other than the City of Boulder.

Water and sewer services are available to serve four of the five properties. Sewer services are available to serve 2200 Emerald, but water is not available at this time for that property because of its location in the Githens Acres enclave where there are no water mains in the streets.

Four of the subject properties are not in the municipal subdistrict of the Northern Colorado Water Conservancy District (NCWCD). One property is neither in the subdistrict or the district. Petitions for inclusion in the district and subdistrict have been filed with the NCWCD office.

The subject properties would continue to be served by the Boulder Valley School District.

Finally, these annexations do not have the effect of extending the municipal boundary more than three miles in any direction from any point of the City of Boulder's boundary in any one year.

b. Is the proposed annexation consistent with the Boulder Valley Comprehensive Plan?

Land Use Designation. The proposed zoning on all the properties is consistent with the BVCP land use designations (see page 2 for proposed zoning and current land use designations).

BVCP Policies
Annexation of land must be consistent with the following policies shown in ***bold italic***, with consistency of the proposed annexation following:

1.18 Growth Requirements. The overall effect of urban growth must add significant value to the community, improving quality of life. The city will require development and redevelopment as a whole to provide significant community benefits and to maintain or improve environmental quality as a precondition for further housing and community growth.

The community, environmental, and public health quality will be enhanced with the annexation of these properties, with the requirement for use of city water and sewer services and to eliminate the potential for failing septic systems on residential properties. In addition, the properties with further development potential will be providing community benefit in the form of two times the cash in-lieu contribution as set forth in the city's inclusionary zoning ordinance to the Housing Trust Fund for any additional units on the properties at the time of building permit as well as the following:

1. 1950 Riverside Av. – flood and utility easements
2. 4415 Garnet Ln. – ditch and utility easements
3. 2350 Norwood Av. – right-of-way dedication and multi-use path easement

1.24 Annexation. The applicable policies (a, b, c and e) in regard to annexation to be pursued by the city are:

a) Annexation will be required before adequate facilities and services are furnished.

Full city services will be available to the subject properties with annexation. Water service will not be available to 2200 Emerald until water mains are constructed in the Githens Acres enclave.

b) The city will actively pursue annexation of county enclaves, Area II properties along the western boundary, and other fully developed Area II properties. County enclave means an unincorporated area of land entirely contained within the outer boundary of the city. Terms of annexation will be based on the amount of development potential as described in (c), (d), and (e) of this policy.

These properties are either part of an existing county enclave or in fully developed Area II neighborhoods, thus annexation of the properties would further this policy.

c) Annexation of existing substantially developed areas will be offered in a manner and on terms and conditions that respect existing lifestyles and densities. The city will expect these areas to be brought to city standards only where necessary to protect the health and safety of the residents of the subject area or of the city. The city, in developing annexation plans of reasonable cost, may phase new facilities and services. The county, which now has jurisdiction over these areas, will be

a supportive partner with the city in annexation efforts to the extent the county supports the terms and conditions being proposed.

The proposed zoning of all the properties will reflect the existing development pattern most appropriate for their respective neighborhoods. Upon annexation, Three of the five properties will connect to both city water and sewer as per city standards and discontinue use of well and septic systems on the properties. Two properties (1085 Gapter Rd. and 2200 Emerald Av.) will connect only to city sewer. 4415 Garnet Ln. is already on city sewer and will connect to city water. Under the annexation agreement, all properties (except 2200 Emerald Av.) must connect to both water and sewer if the property is sold.

e) Annexation of substantially developed properties that allows for some additional residential units or commercial square footage will be required to demonstrate community benefit commensurate with their impacts. Further, annexations that resolve an issue of public health without creating additional development impacts should be encouraged.

Three of the five properties are large enough to subdivide into at least two lots under the proposed zoning. The Planning Board and City Council approved the "Guidelines for Annexation Agreements" in June 2002 which outline the community benefit requirements for substantially developed residential properties. Consistent with these policies, the annexation agreements for the subject properties will be required to pay two times the cash in-lieu contribution as set forth in the city's inclusionary zoning ordinance to the Housing Trust Fund for any additional units on the properties at the time of building permit.

4. Irrigation Ditch Considerations

In general, applicants who choose to annex to the city are required to connect to city water service if available. Once an annexation is complete and a property owner subsequently applies for water service, code provisions[3] describe the process for potential sale to the city of any water or irrigation ditch rights associated with the property. In addition to the city code, such rights are also subject to separate agreements between the city and the ditch company if applicable (agreements take precedence over the code in the event of conflicts). A 2009 agreement between the Silver Lake Ditch Company and the city (the "2009 Settlement Agreement") describes the specific process for potential sale of Silver Lake Ditch rights to the city during certain property transactions such as annexations.

Three of the applicants for annexation described herein involve Silver Lake Ditch rights and one involves Farmers Ditch water rights. The 2009 Settlement Agreement applies to the properties with Silver Lake Ditch Rights, and the code provisions apply for the Farmers Ditch rights as described above.

At the Planning Board hearing on November 6, 2014, concerns were raised during the public comment period about the city's policy of requiring a landowner to grant the option to purchase Silver Lake Ditch rights to the city at the time of the first Transfer of ownership as a condition of annexation. Planning Board members discussed the concern and made a recommendation that City Council specifically consider that issue in its evaluation of the annexation agreements.

To clarify the Silver Lake Ditch requirements relative to the discussion during the Planning Board meeting, the 2009 Settlement Agreement provides that all Silver Lake Ditch shareholders that voluntarily annex to the city are only required to grant an option to purchase ditch rights to the city at the time the property is transferred outside of specified family members. The 2009 Settlement Agreement actually prohibits the city from requiring a landowner to sell or grant the city a first right of refusal of Silver Lake Ditch rights as a

3 Section 11-1-19, Boulder Revised Code, 1981, "Water and Ditch Rights"

condition of annexation. Whenever the city does exercise an option to purchase according to the terms of the agreement, the city agrees to lease water attributable to the Silver Lake Ditch shares back to the current owner for up to 20 years. What this means for the three annexation applicants with Silver Lake Ditch rights is that if they sell their property outside of specified family members at some point in the future, they would be required to offer their ditch rights to the city for purchase and the new owners would have the option for a 20-year water lease under the agreement. Otherwise, there is no change to the ownership of Silver Lake Ditch rights as a result of this annexation.

As a further point of general clarification, the city code does not automatically require transfer of water or ditch rights as a condition of connecting to city water service. An applicant for connection to city water service has the option of offering to sell the rights to the city or keeping the rights and signing a first right of refusal with the city. If the ditch rights are retained by the property owner at the time of connection, the code specifies a reduction in the outdoor water budget of the related property. This requirement is intended to fairly allocate water supply to municipal customers, particularly during times of drought when outdoor watering restrictions have been employed by the city. A similar reduction of water available for outdoor irrigation (attributable to the Silver Lake Ditch shares) is imposed on Silver Lake Ditch shareholders pursuant to the 2009 Settlement Agreement.

The irrigation ditches that run through the city are historic features of the landscape and serve many important functions that align with Boulder's community values. The code provisions and the 2009 Settlement Agreement are intended to preserve the continued operation of the ditches and reflect the city's water supply needs during drought periods.

ATTACHMENTS

A. Proposed Ordinances
B. Proposed Resolutions
C. Applicants Annexation Petitions
D. Annexation Maps
E. Annexation Agreements
F. Guidelines for Annexation Agreements
G. Public Comment
H. Letter from Marilyn Jorrie regarding 2350 Norwood Av.

ORDINANCE NO. _____

AN ORDINANCE ANNEXING TO THE CITY OF BOULDER APPROXIMATELY 0.97 ACRES OF LAND GENERALLY LOCATED AT 1950 RIVERSIDE AVENUE, WITH AN INITIAL ZONING CLASSIFICATION OF RESIDENTIAL – ESTATE (RE) AS DESCRIBED IN CHAPTER 9-5, "MODULAR ZONE SYSTEM," B.R.C. 1981; AMENDING THE ZONING DISTRICT MAP FORMING A PART OF SAID CHAPTER TO INCLUDE THE PROPERTY IN THE ABOVE-MENTIONED ZONING DISTRICT, AND SETTING FORTH RELATED DETAILS.

THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO FINDS:

A. Seana Grady is the owner of the parcel which is generally known as 1950 Riverside Avenue and comprises the real property more particularly described in Exhibit A (the "Property").

B. The owner of 100% of the area proposed for annexation, excluding streets and alleys, has petitioned for annexation of the Property with an initial zoning of Residential – Estate (RE); the Property is not embraced within any city, city and county, or incorporated town; and the Property abuts and is contiguous to the City of Boulder by at least one-sixth of its perimeter.

C. A community of interest exists between the Property proposed for annexation and the City of Boulder, the Property is urban or will be urbanized in the near future, and the Property is integrated or capable of being integrated with the City of Boulder.

D. The Property does not include any area included in another annexation proceeding involving a city other than the City of Boulder.

E. This annexation will not result in the detachment of the area from one school district and the attachment of same to another school district.

F. This annexation will not have the effect of extending the City of Boulder's boundaries any further than three miles from any point of the existing city boundaries.

G. The Property does not include any area which is the same or substantially the same area in which an election for the annexation to the City of Boulder was held within twelve months preceding the filing of the above petition.

H. The Planning Board duly proposed that the Property be annexed to the City of Boulder and that the zoning district map adopted by the City Council be amended to zone and include the Property in the Residential – Estate (RE) zoning district, as provided in Chapter 9-5, "Modular Zone System," B.R.C. 1981.

I. A public hearing on the proposed annexation and initial zoning of the Property annexed and zoned hereby was duly held before the City Council on January 20, 2015.

J. The initial zoning designation of Residential – Estate (RE) for the Property is consistent with the Boulder Valley Comprehensive Plan and bears a substantial relation to and will enhance the general welfare of the Property and of the residents of the City of Boulder.

K. The City Council has jurisdiction and the legal authority to annex and zone the Property.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. The territory more particularly described in Exhibit A is hereby annexed to and included within the corporate boundaries of the City of Boulder.

Section 2. Chapter 9-5, "Modular Zone System," B.R.C. 1981, and the zoning district map forming a part thereof, be, and the same hereby are, amended to include the Property within the Residential – Estate (RE) zoning district.

Section 3. The City Council adopts the recitals in this ordinance and incorporates them herein by this reference.

Section 4. The City Council approves any variations or modifications to the Boulder Revised Code or other City ordinances that are in the agreement associated with this annexation.

Section 5. The City Council authorizes the city manager to implement the terms of the agreements associated with this annexation.

Section 6. The annexation and zoning of the Property is necessary for the protection of the public health, safety, and welfare.

Section 7. The City Council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY this 2nd day of December, 2014.

_____
Mayor

Attest:

_____
City Clerk

READ ON SECOND READING, ADOPTED AND ORDERED PUBLISHED BY TITLE ONLY this 20th day of January, 2015.

_____
Mayor

Attest:

_____
City Clerk

EXHIBIT A TO ORDINANCE (Page 1 of 2)

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 1

PARCEL DESCRIPTION
(1950 RIVERSIDE)
(PER DEED RECORDED AT RECEPTION NO. 2793806)

A TRACT OF LAND IN SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., DESCRIBED AS FOLLOWS:
BEGINNING AT THE SOUTH 1/4 CORNER OF SAID SECTION 18; THENCE NORTH 0°05'30" EAST ALONG THE NORTH–SOUTH CENTERLINE OF SAID SECTION 18, A DISTANCE OF 2,002.09 FEET; THENCE NORTH 89°11'30" EAST A DISTANCE OF 180.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 89°11'30" EAST, A DISTANCE OF 150.00' TO THE WEST LINE OF A TRACT DESCRIBED IN THE WARRANTY DEED IN BOOK 1042 AT PAGE 308 OF THE BOULDER COUNTY RECORDS; THENCE NORTH 0°05'30" EAST AND PARALLEL TO THE NORTH–SOUTH CENTER LINE OF SAID SECTION 18, A DISTANCE OF 281.46 FEET; THENCE SOUTH 89°53'00" WEST, A DISTANCE OF 150.0 FEET; THENCE SOUTH 0°05'30"WEST, A DISTANCE OF 283.27 FEET, TO THE TRUE POINT OF BEGINNING.

ALSO KNOWN AS:

A TRACT OF LAND SITUATE IN THE EAST 1/2 OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., DESCRIBED AS FOLLOWS: THE EAST 1/2 OF THE FOLLOWING DESCRIBED TRACT OF LAND; BEGINNING AT THE SOUTH 1/4 CORNER OF SAID SECTION 18; THENCE NORTH 0°05'30" EAST ALONG THE NORTH–SOUTH CENTER LINE OF SAID SECTION 18, 2,002.09 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 89°11'30" EAST, 330.0 FEET MORE OR LESS, TO THE WEST LINE OF THAT CERTAIN TRACT DESCRIBED IN THE WARRANTY DEED IN BOOK 1042 AT PAGE 308 OF THE BOULDER COUNTY RECORDS; THENCE NORTH 0°05'30" EAST AND PARALLEL TO THE NORTH–SOUTH CENTERLINE OF SAID SECTION 18, 281.46 FEET; THENCE SOUTH 89°53' WEST, 330.0 FEET; THENCE SOUTH 0°05'30" WEST ALONG THE NORTH–SOUTH CENTERLINE OF SAID SECTION 18, 281.46 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING; EXCEPT THE WEST 30 FEET THEREOF RESERVED FOR ROAD PURPOSES,
COUNTY OF BOULDER, STATE OF COLORADO.

I, JOHN B. GUYTON, A LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS PARCEL DESCRIPTION AND ATTACHED EXHIBIT, BEING MADE A PART THEREOF, WERE PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE AT THE REQUEST OF THE CLIENT AND IS NOT INTENDED TO REPRESENT A MONUMENTED LAND SURVEY OR SUBDIVIDE LAND IN VIOLATION OF STATE STATUTE.

COLORADO LICENSED PROFESSIONAL LAND SURVEYOR JOHN BRUCE GUYTON 16406 9/22/14

JOHN B. GUYTON
COLORADO P.L.S. #16406 FSI JOB NO. 14–64,206
CHAIRMAN/CEO, FLATIRONS, INC.

JOB NUMBER: 14–64,206
DRAWN BY: E. PRESCOTT
DATE: SEPTEMBER 22, 2014

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

Flatirons, Inc.
Surveying, Engineering & Geomatics
655 FOURTH AVE
LONGMONT, CO 80501
PH: (303) 776–1733
FAX: (303) 776–4355
www.FlatironsInc.com

BY:EPRESCOTT FILE:64206–ANNEX–C13.DWG DATE:9/22/2014 10:16 AM

EXHIBIT A TO ORDINANCE (Page 2 of 2)
ANNEXATION MAP

A PARCEL OF LAND, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 1

TOTAL AREA = 42,354 SQ FT, OR 0.97 ACRES, MORE OR LESS

Parcel Description

(PER DEED RECORDED AT RECEPTION NO. 2793806)

A TRACT OF LAND IN SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., DESCRIBED AS FOLLOWS:
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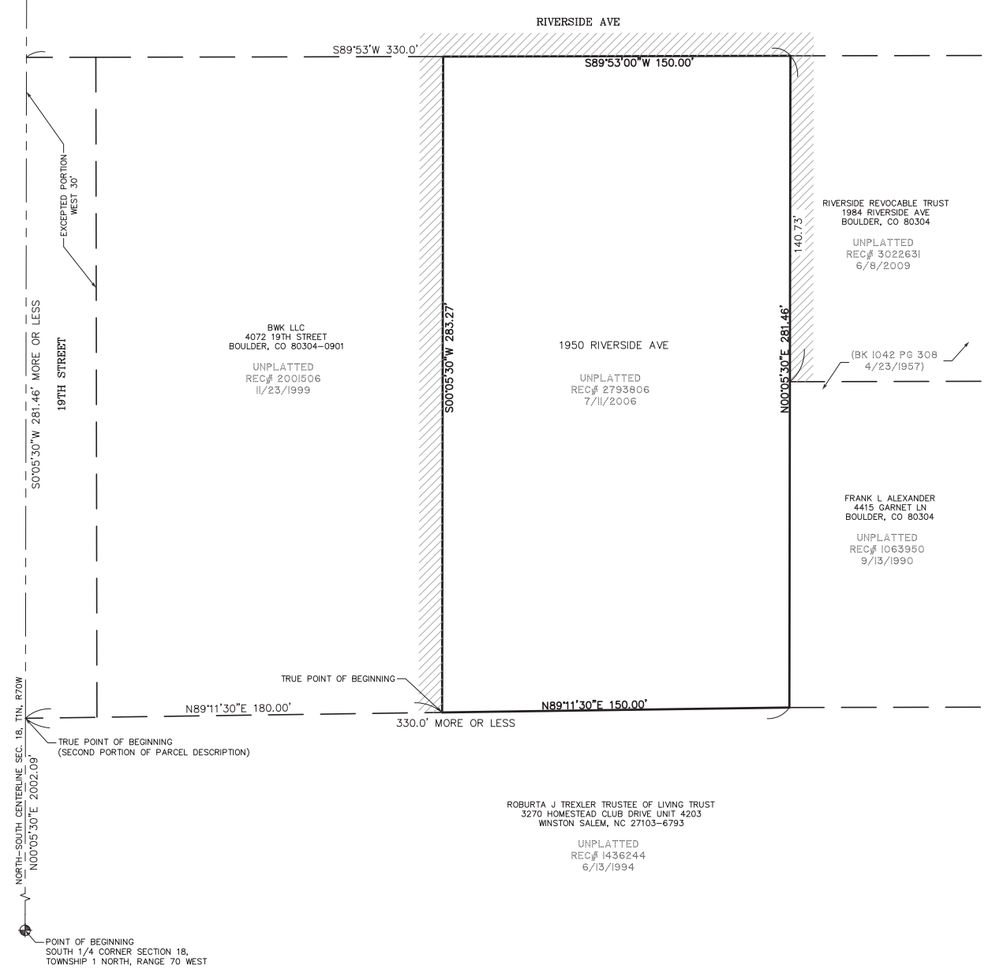
COUNTY OF BOULDER, STATE OF COLORADO.

Legend

ALIQUOT MONUMENT

CURRENT LIMITS OF THE CITY OF BOULDER



GRAPHIC SCALE

20 0 10 20 40

(IN FEET)
1 inch = 20 ft.

Notes

1. THIS ANNEXATION MAP WAS PREPARED WITHOUT THE BENEFIT OF A CURRENT TITLE COMMITMENT OR BINDER. EASEMENTS AND RIGHTS–OF–WAY DISCOVERED IN THE COURSE OF OUR INVESTIGATION ARE SHOWN HEREON. EASEMENTS SUCH AS UNRECORDED EASEMENTS MAY NOT HAVE BEEN DISCOVERED IN OUR SEARCH AND MAY AFFECT THE SUBJECT PROPERTY. IT IS RECOMMENDED THAT THE CLIENT OBTAIN A CURRENT TITLE COMMITMENT OR BINDER TO FURTHER AID IN RESEARCHING EASEMENTS, RIGHTS–OF–WAY AND ENCUMBRANCES THAT MAY AFFECT THE SUBJECT PROPERTY.
2. ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS MAP WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.
3. THE PURPOSE OF THIS MAP IS TO GRAPHICALLY PORTRAY THE RELATIONSHIP OF THE LAND PROPOSED FOR ANNEXATION TO THE CURRENT CITY OF BOULDER LIMITS.
4. ANY PERSON WHO KNOWINGLY REMOVES, ALTERS OR DEFACES ANY PUBLIC LAND SURVEY MONUMENT AND/OR BOUNDARY MONUMENT OR ACCESSORY, COMMITS A CLASS TWO (2) MISDEMEANOR PURSUANT TO STATE STATUTE C.R.S. SEC 18–4–508. WHOEVER WILLFULLY DESTROYS, DEFACES, CHANGES, OR REMOVES TO ANOTHER PLACE ANY SECTION CORNER, QUARTER–SECTION CORNER, OR MEANDER POST, ON ANY GOVERNMENT LINE OF SURVEY, OR WILLFULLY CUTS DOWN ANY WITNESS TREE OR ANY TREE BLAZED TO MARK THE LINE OF A GOVERNMENT SURVEY, OR WILLFULLY DEFACES, CHANGES, OR REMOVES ANY MONUMENT OR BENCH MARK OF ANY GOVERNMENT SURVEY, SHALL BE FINED UNDER THIS TITLE OR IMPRISONED NOT MORE THAN SIX MONTHS, OR BOTH. 18 U.S.C. § 1858.
5. THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

Contiguity

TOTAL PERIMETER.....864.75'
1/6TH PERIMETER.....144.13'
PERIMETER CONTIGUOUS TO CITY LIMITS.....574.00'

Surveyor's Certificate

I, JOHN B. GUYTON, A DULY REGISTERED LAND SURVEYOR, LICENSED IN THE STATE OF COLORADO, HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS ANNEXATION MAP OF THE ABOVE DESCRIBED LAND WAS PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE ON AUGUST 19, 2014 AND THAT AT LEAST 1/6TH OF THE TOTAL PERIMETER OF THAT LAND TO BE ANNEXED IS CONTIGUOUS TO THE EXISTING CITY OF BOULDER LIMITS.

JOHN B. GUYTON
COLORADO P.L.S. #16406
CHAIRMAN/CEO, FLATIRONS, INC.

REVISION	DATE
1	
2	
3	
4	
5	
6	
7	
8	
9	

ANNEXATION MAP
PREPARED FOR
CITY OF BOULDER

COPYRIGHT 2014 FLATIRONS, INC.

Flatirons, Inc.
Surveying, Engineering & Geomatics
www.Flatironsinc.com
655 FOURTH AVE
LONGMONT, CO 80501
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FAX: (303) 776–4355
3825 IRIS AVE, STE 395
BOULDER, CO 80301
PH: (303) 443–7001
FAX: (303) 443–9830
3660 DOWNING ST
UNIT E
DENVER, CO 80205
PH: (303) 936–6997

COLORADO LICENSED
16406
8/19/14
PROFESSIONAL LAND SURVEYOR

JOB NUMBER: 14–64,206
DATE: 08–19–2014
DRAWN BY: E. PRESCOTT
CHECKED BY: JZG/WW/JK

SHEET 1 OF 1

BY:EPRESCOTT FILE:64206–ANNEX–C13.DWG DATE:8/19/2014 11:45 AM

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ORDINANCE NO. _____

AN ORDINANCE ANNEXING TO THE CITY OF BOULDER APPROXIMATELY 1.45 ACRES OF LAND GENERALLY LOCATED AT 4415 GARNET LANE WHICH INCLUDES A PORTION OF GARNET LANE, WITH AN INITIAL ZONING CLASSIFICATION OF RESIDENTIAL – ESTATE (RE) AS DESCRIBED IN CHAPTER 9-5, "MODULAR ZONE SYSTEM," B.R.C. 1981; AMENDING THE ZONING DISTRICT MAP FORMING A PART OF SAID CHAPTER TO INCLUDE THE PROPERTY IN THE ABOVE-MENTIONED ZONING DISTRICT, AND SETTING FORTH RELATED DETAILS.

THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO FINDS:

A. Frank Lyon Alexander is the owner of the parcel which is generally known as 4415 Garnet Lane. Boulder County is the owner of a portion of Garnet Lane right-of-way adjacent to and near the parcel generally known as 4415 Garnet Lane. The property of 4415 Garnet Lane and a portion of Garnet Lane right-of-way are to be annexed herein and are more particularly described in Exhibit A (the "Property").

B. The owner of 100% of the area proposed for annexation, excluding streets and alleys, has petitioned for annexation of the Property with an initial zoning classification of Residential – Estate (RE); the Property is not embraced within any city, city and county, or incorporated town; and the Property abuts and is contiguous to the City of Boulder by at least one-sixth of its perimeter.

C. A community of interest exists between the Property proposed for annexation and the City of Boulder, the Property is urban or will be urbanized in the near future, and the Property is integrated with or capable of being integrated with the City of Boulder.

D. The Property does not include any area included in another annexation proceeding involving a city other than the City of Boulder.

E. This annexation will not result in the detachment of the area from one school district and the attachment of same to another school district.

F. This annexation will not have the effect of extending the City of Boulder's boundaries any further than three miles from any point of the existing city boundaries.

G. The Property does not include any area which is the same or substantially the same area in which an election for the annexation to the City of Boulder was held within twelve months preceding the filing of the above petition.

H. The Planning Board duly proposed that the Property be annexed to the City of Boulder and that the zoning district map adopted by the City Council be amended to zone and include the Property in the Residential – Estate (RE) zoning district, as provided in Chapter 9-5, "Modular Zone System," B.R.C. 1981.

I. A public hearing on the proposed annexation and initial zoning of the Property annexed and zoned hereby was duly held before the City Council on January 20, 2015.

J. The initial zoning designation of Residential – Estate (RE) for the Property is consistent with the Boulder Valley Comprehensive Plan and bears a substantial relation to and will enhance the general welfare of the Property and of the residents of the City of Boulder.

K. The City Council has jurisdiction and the legal authority to annex and zone the Property.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. The territory more particularly described in Exhibit A is hereby annexed to and included within the corporate boundaries of the City of Boulder.

Section 2. Chapter 9-5, "Modular Zone System," B.R.C. 1981, and the zoning district map forming a part thereof, be, and the same hereby are, amended to include the Property within the Residential – Estate (RE) zoning district.

Section 3. The City Council adopts the recitals in this ordinance and incorporates them herein by this reference.

Section 4. The City Council approves any variations or modifications to the Boulder Revised Code or other City ordinances that are in the agreement associated with this annexation.

Section 5. The City Council authorizes the city manager to implement the terms of the agreements associated with this annexation.

Section 6. The annexation and zoning of the Property is necessary for the protection of the public health, safety, and welfare.

Section 7. The City Council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY this 2nd day of December, 2014.

_____
Mayor

Attest:

_____
City Clerk

READ ON SECOND READING, ADOPTED AND ORDERED PUBLISHED BY TITLE ONLY this 20th day of January, 2015.

_____
Mayor

Attest:

_____
City Clerk

EXHIBIT A TO ORDINANCE (Page 1 of 2)

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 1

PARCEL DESCRIPTION

(4415 GARNET LANE)
(PREPARED BY FLATIRONS, INC. AT THE REQUEST OF THE CLIENT)

A PARCEL OF LAND AS DESCRIBED IN THE RECORDS OF BOULDER COUNTY AT RECEPTION NO. 3046074, DATED DECEMBER 3, 2009, A PORTION OF GARNET LANE, AND A PORTION OF RIVERSIDE AVENUE, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE NORTH–SOUTH CENTERLINE LINE OF SAID SECTION 18 TO BEAR NORTH 00°05'30" EAST, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

BEGINNING AT THE NORTHWEST CORNER OF LOT 6, BLOCK 5, GITHENS ACRES AS RECORDED IN THE RECORDS OF BOULDER COUNTY AT RECEPTION NO. 90542553, DATED JUNE 30, 1954,
THENCE ALONG THE WESTERLY LINE OF SAID LOT 6, SOUTH 00°01'40" WEST, A DISTANCE OF 250.84 FEET;
THENCE DEPARTING SAID WESTERLY LINE, SOUTH 40°07'31" WEST, A DISTANCE OF 93.15 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL OF LAND AS RECORDED AT RECEPTION NO. 3046074;
THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL OF LAND, SOUTH 89°11'30" WEST, A DISTANCE OF 333.07 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL OF LAND;
THENCE ALONG THE WESTERLY LINE OF SAID PARCEL OF LAND, NORTH 00°05'30" EAST, A DISTANCE OF 136.74 FEET TO THE NORTHWEST CORNER OF SAID PARCEL OF LAND;
THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL OF LAND THE FOLLOWING THREE (3) COURSES:
NORTH 89°53'00" EAST, 28.46 FEET;
THENCE NORTH 00°09'50" WEST, A DISTANCE OF 0.75 FEET;
THENCE NORTH 89°22'15" EAST, A DISTANCE OF 301.52 FEET TO THE SOUTHEAST CORNER OF A PARCEL OF LAND AS DESCRIBED IN THE RECORDS OF BOULDER COUNTY AT RECEPTION NO. 3022631, DATED JUNE 8, 2009;
THENCE ALONG THE EASTERLY LINE OF SAID PARCEL OF LAND AS DESCRIBED AT RECEPTION NO. 3022631, NORTH 00°05'30" EAST, A DISTANCE OF 141.27 FEET TO THE NORTHEAST CORNER OF SAID PARCEL OF LAND AS DESCRIBED AT RECEPTION NO. 3022631;
THENCE ALONG SAID EASTERLY LINE EXTENDED, NORTH 00°05'30" EAST, A DISTANCE OF 41.75 FEET TO THE NORTHERLY LINE OF SAID LOT 6, EXTENDED WESTERLY;
THENCE ALONG SAID NORTHERLY LINE EXTENDED, ALSO BEING A SOUTHERLY LINE OF RIVERSIDE GROVE SUBDIVISION AS RECORDED IN THE RECORDS OF BOULDER COUNTY AT RECEPTION NO. 1125796, DATED AUGUST 26, 1991, NORTH 87°21'27" EAST, A DISTANCE OF 62.79 FEET TO THE NORTHWEST CORNER OF SAID LOT 6, AND THE POINT OF BEGINNING.

SAID PARCEL CONTAINING 63,123 SQ.FT. OR 1.45 ACRES, MORE OR LESS.

I, JOHN B. GUYTON, A LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS PARCEL DESCRIPTION AND ATTACHED EXHIBIT, BEING MADE A PART THEREOF, WERE PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE AT THE REQUEST OF THE CLIENT AND IS NOT INTENDED TO REPRESENT A MONUMENTED LAND SURVEY OR SUBDIVIDE LAND IN VIOLATION OF STATE STATUTE.

JOHN B. GUYTON
COLORADO P.L.S. #16406 FSI JOB NO. 14–64,203
CHAIRMAN/CEO, FLATIRONS, INC.

JOHN BRADFORD GUYTON
16406
9/22/14
PROFESSIONAL LAND SURVEYOR

JOB NUMBER: 14–64,203
DRAWN BY: E. PRESCOTT
DATE: SEPTEMBER 22, 2014

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www.FlatironsInc.com

BY:EPRESCOTT FILE:64203-ANNEX-C13.DWG DATE:9/22/2014 10:29 AM

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EXHIBIT A TO ORDINANCE (Page 2 of 2)
ANNEXATION MAP

A PARCEL OF LAND, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 1

TOTAL AREA = 63,123 SQ FT, OR 1.45 ACRES, MORE OR LESS

Parcel Description

(PREPARED BY FLATIRONS, INC. AT THE REQUEST OF THE CLIENT)

A PARCEL OF LAND AS DESCRIBED IN THE RECORDS OF BOULDER COUNTY AT RECEPTION NO. 3046074, DATED DECEMBER 3, 2009, A PORTION OF GARNET LANE, AND A PORTION OF RIVERSIDE AVENUE, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE NORTH–SOUTH CENTERLINE OF SAID SECTION 18 TO BEAR NORTH 00°05'30" EAST, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

BEGINNING AT THE NORTHWEST CORNER OF LOT 6, BLOCK 5, GITHENS ACRES AS RECORDED IN THE RECORDS OF BOULDER COUNTY AT RECEPTION NO. 90542553, DATED JUNE 30, 1954, THENCE ALONG THE WESTERLY LINE OF SAID LOT 6, SOUTH 00°01'40" WEST, A DISTANCE OF 250.84 FEET;
THENCE DEPARTING SAID WESTERLY LINE, SOUTH 40°07'31" WEST, A DISTANCE OF 93.15 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL OF LAND AS RECORDED AT RECEPTION NO. 3046074;
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SAID PARCEL CONTAINING 63,123 SQ.FT. OR 1.45 ACRES, MORE OR LESS.

Legend

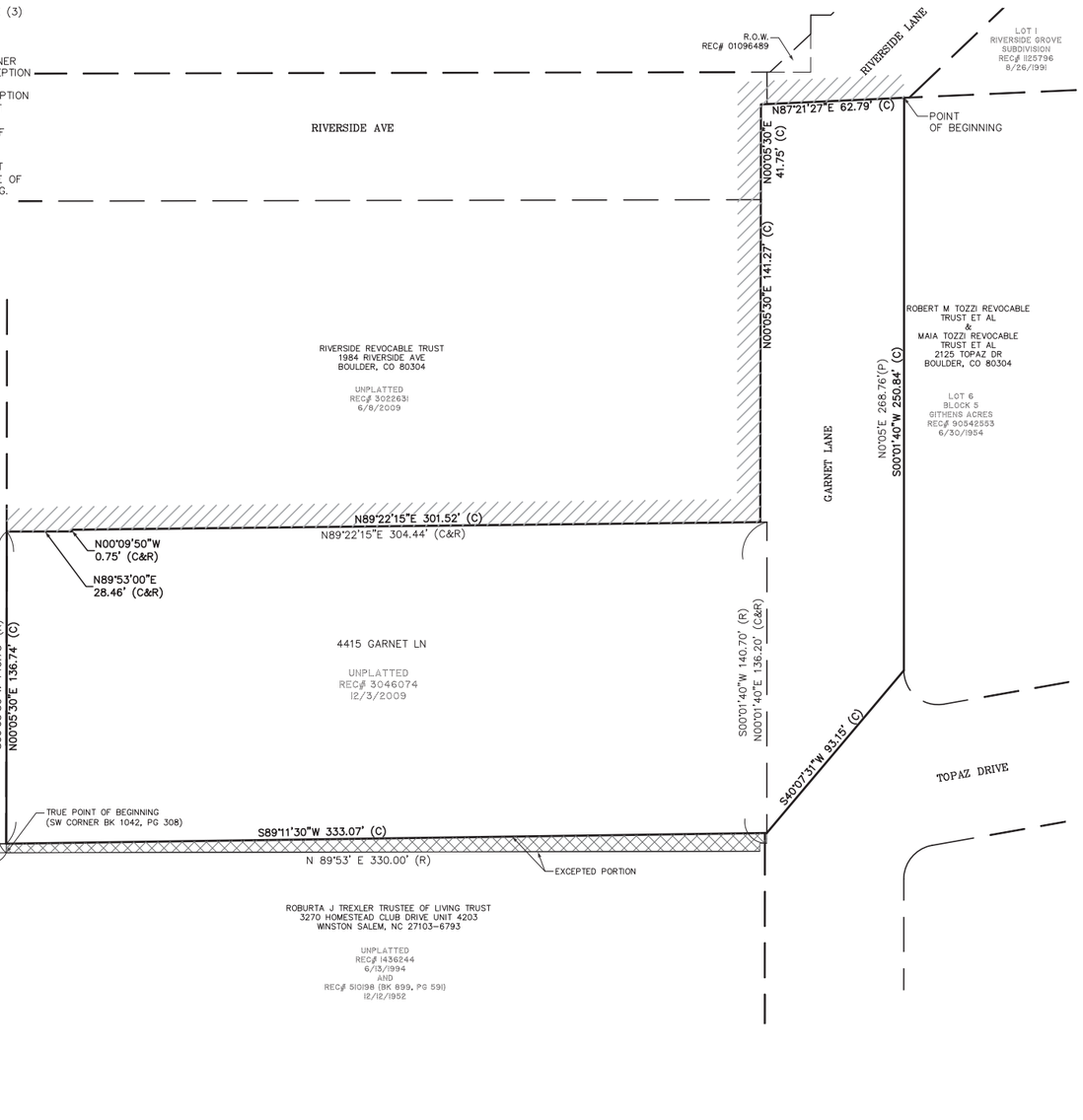
(C) CALCULATED FROM RECORD

(R) AS PER RECORD INFORMATION

(P) AS PER THE PLAT OF GITHENS ACRES REC# 90542553

CURRENT LIMITS OF THE CITY OF BOULDER

EXCEPTED PORTION (BK 899, PG 591), PER DEED RECORDED AT REC# 3046074



Notes

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Contiguity

TOTAL PERIMETER.....1390.34'
1/6TH PERIMETER.....231.72'
PERIMETER CONTIGUOUS TO CITY LIMITS.....576.54'

Surveyor's Certificate

I, JOHN B. GUYTON, A DULY REGISTERED LAND SURVEYOR, LICENSED IN THE STATE OF COLORADO, HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS ANNEXATION MAP OF THE ABOVE DESCRIBED LAND WAS PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE ON SEPTEMBER 8, 2014 AND THAT AT LEAST 1/6TH OF THE TOTAL PERIMETER OF THAT LAND TO BE ANNEXED IS CONTIGUOUS TO THE EXISTING CITY OF BOULDER LIMITS.

JOHN B. GUYTON
COLORADO P.L.S. #16406
CHAIRMAN/CEO, FLATIRONS, INC.

REVISION	DATE
1 – Added a portion of Garnet Ln.	2014–09–09 EP
2	–
3	–
4	–
5	–
6	–
7	–
8	–
9	–

ANNEXATION MAP
PREPARED FOR
CITY OF BOULDER

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3660 DOWNING ST
UNIT E
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PH: (303) 936–6997

COLORADO LICENSED
16406
9.9.14
PROFESSIONAL LAND SURVEYOR
SEAL

JOB NUMBER:	14–64,203
DATE:	9–2–2014
DRAWN BY:	E. PRESCOTT
CHECKED BY:	JK/WW/ZG

SHEET 1 OF 1

BY:EPRESCOTT FILE:64203–ANNEX–C13.DWG DATE:9/9/2014 9:06 AM

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ORDINANCE NO. _____

AN ORDINANCE ANNEXING TO THE CITY OF BOULDER APPROXIMATELY 1.16 ACRES OF LAND GENERALLY LOCATED AT 1085 GAPTER ROAD, WITH AN INITIAL ZONING CLASSIFICATION OF RESIDENTIAL – RURAL 2 (RR-2) AS DESCRIBED IN CHAPTER 9-5, "MODULAR ZONE SYSTEM," B.R.C. 1981; AMENDING THE ZONING DISTRICT MAP FORMING A PART OF SAID CHAPTER TO INCLUDE THE PROPERTY IN THE ABOVE-MENTIONED ZONING DISTRICT, AND SETTING FORTH RELATED DETAILS.

THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO FINDS:

A. Silvano De Luca and Elvira G. De Luca are the owners of the parcel which is generally known as 1085 Gapter Road and comprises the real property more particularly described as Lot 13, Gapter Subdivision, County of Boulder, State of Colorado (the "Property") and as shown on the attached Exhibit A.

B. The owners of 100% of the area proposed for annexation, excluding streets and alleys, have petitioned for annexation of the Property with an initial zoning classification of Residential – Rural 2 (RR-2); the Property is not embraced within any city, city and county, or incorporated town; and the Property abuts and is contiguous to the City of Boulder by at least one-sixth of its perimeter.

C. A community of interest exists between the Property proposed for annexation and the City of Boulder, the Property is urban or will be urbanized in the near future, and the Property is integrated or capable of being integrated with the City of Boulder.

D. The Property does not include any area included in another annexation proceeding involving a city other than the City of Boulder.

E. This annexation will not result in the detachment of the area from one school district and the attachment of same to another school district.

F. This annexation will not have the effect of extending the City of Boulder's boundaries any further than three miles from any point of the existing city boundaries.

G. The Property does not include any area which is the same or substantially the same area in which an election for the annexation to the City of Boulder was held within twelve months preceding the filing of the above petition.

H. The Planning Board duly proposed that the Property be annexed to the City of Boulder and that the zoning district map adopted by the City Council be amended to zone and include the Property in the Residential – Rural 2 (RR-2) zoning district, as provided in Chapter 9-5, "Modular Zone System," B.R.C. 1981.

I. A public hearing on the proposed annexation and initial zoning of the Property annexed and zoned hereby was duly held before the City Council on January 20, 2015.

J. The initial zoning designation of Residential – Rural 2 (RR-2) for the Property is consistent with the Boulder Valley Comprehensive Plan, and bears a substantial relation to and will enhance the general welfare of the Property and of the residents of the City of Boulder.

K. The City Council has jurisdiction and the legal authority to annex and zone the Property.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. The territory more particularly described as Lot 13, Gapter Subdivision, County of Boulder, State of Colorado is hereby annexed to and included within the corporate boundaries of the City of Boulder.

Section 2. Chapter 9-5, "Modular Zone System," B.R.C. 1981, and the zoning district map forming a part thereof, be, and the same hereby are, amended to include the Property within the Residential – Rural 2 (RR-2) zoning district.

Section 3. The City Council adopts the recitals in this ordinance and incorporates them herein by this reference.

Section 4. The City Council approves any variations or modifications to the Boulder Revised Code or other City ordinances that are in the agreement associated with this annexation.

Section 5. The City Council authorizes the city manager to implement the terms of the agreements associated with this annexation.

Section 6. The annexation and zoning of the Property is necessary for the protection of the public health, safety, and welfare.

Section 7. The City Council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY this 2nd day of December, 2014.

_____
Mayor

Attest:

_____
City Clerk

READ ON SECOND READING, ADOPTED AND ORDERED PUBLISHED BY TITLE ONLY this 20th day of January, 2015.

_____
Mayor

Attest:

_____
City Clerk

EXHIBIT A TO ORDINANCE (Page 1 of 1)

ANNEXATION MAP

LOT 13, GAPTER SUBDIVISION, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO

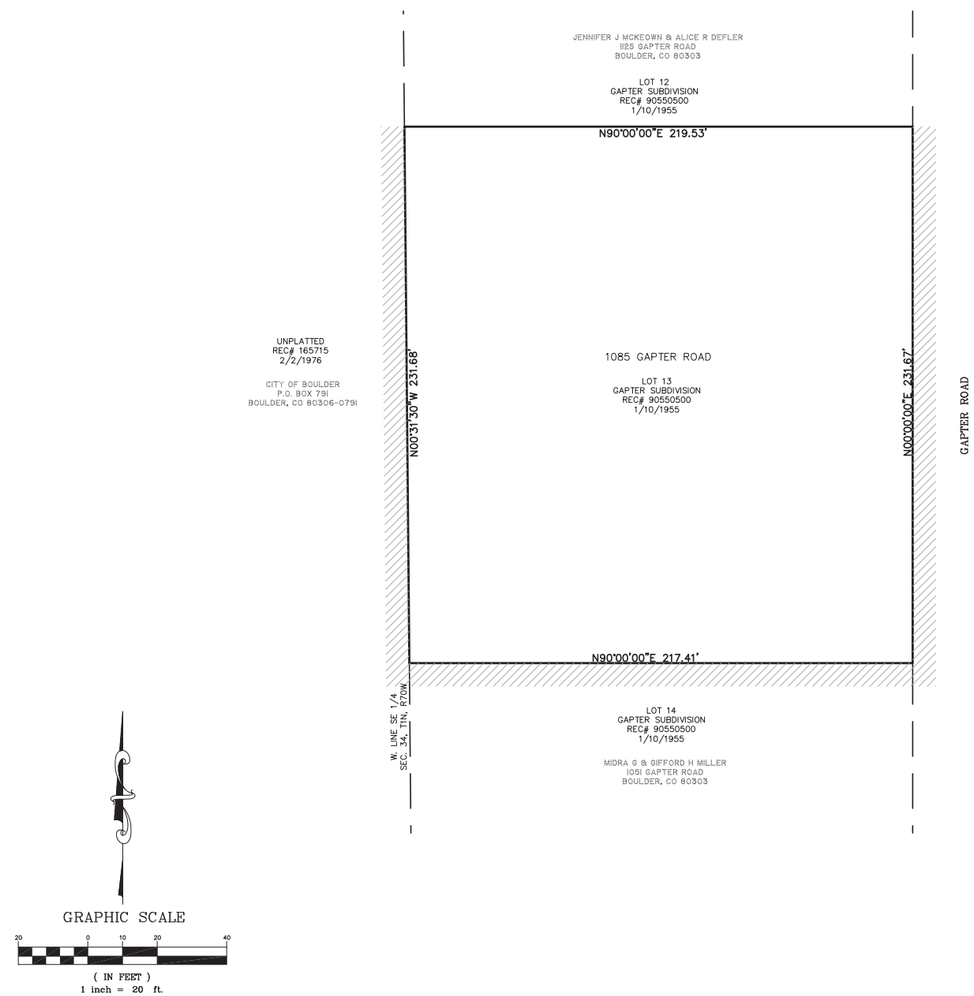
SHEET 1 OF 1

TOTAL AREA = 50,613 SQ FT, OR 1.16 ACRES, MORE OR LESS

Parcel Description
(PROVIDED BY CLIENT)

LOT 13,
GAPTER SUBDIVISION,
COUNTY OF BOULDER,
STATE OF COLORADO.

Legend
CURRENT LIMITS OF THE CITY OF BOULDER



Notes
1. THIS ANNEXATION MAP WAS PREPARED WITHOUT THE BENEFIT OF A CURRENT TITLE COMMITMENT OR BINDER. EASEMENTS AND RIGHTS-OF-WAY DISCOVERED IN THE COURSE OF OUR INVESTIGATION ARE SHOWN HEREON. EASEMENTS SUCH AS UNRECORDED EASEMENTS MAY NOT HAVE BEEN DISCOVERED IN OUR SEARCH AND MAY AFFECT THE SUBJECT PROPERTY. IT IS RECOMMENDED THAT THE CLIENT OBTAIN A CURRENT TITLE COMMITMENT OR BINDER TO FURTHER AID IN RESEARCHING EASEMENTS, RIGHTS-OF-WAY AND ENCUMBRANCES THAT MAY AFFECT THE SUBJECT PROPERTY.
2. ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS MAP WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.
3. THE PURPOSE OF THIS MAP IS TO GRAPHICALLY PORTRAY THE RELATIONSHIP OF THE LAND PROPOSED FOR ANNEXATION TO THE CURRENT CITY OF BOULDER LIMITS.
4. ANY PERSON WHO KNOWINGLY REMOVES, ALTERS OR DEFACES ANY PUBLIC LAND SURVEY MONUMENT AND/OR BOUNDARY MONUMENT OR ACCESSORY, COMMITS A CLASS TWO (2) MISDEMEANOR PURSUANT TO STATE STATUTE C.R.S. SEC 18-4-508. WHOEVER WILLFULLY DESTROYS, DEFACES, CHANGES, OR REMOVES TO ANOTHER PLACE ANY SECTION CORNER, QUARTER-SECTION CORNER, OR MEANDER POST, ON ANY GOVERNMENT LINE OF SURVEY, OR WILLFULLY CUTS DOWN ANY WITNESS TREE OR ANY TREE BLAZED TO MARK THE LINE OF A GOVERNMENT SURVEY, OR WILLFULLY DEFACES, CHANGES, OR REMOVES ANY MONUMENT OR BENCH MARK OF ANY GOVERNMENT SURVEY, SHALL BE FINED UNDER THIS TITLE OR IMPRISONED NOT MORE THAN SIX MONTHS, OR BOTH. 18 U.S.C. § 1858.
5. THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

Contiguity
TOTAL PERIMETER.....900.29'
1/6TH PERIMETER.....150.05'
PERIMETER CONTIGUOUS TO CITY LIMITS.....680.76'

Surveyor's Certificate
I, JOHN B. GUYTON, A DULY REGISTERED LAND SURVEYOR, LICENSED IN THE STATE OF COLORADO, HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS ANNEXATION MAP OF THE ABOVE DESCRIBED LAND WAS PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE ON AUGUST 19, 2014 AND THAT AT LEAST 1/6TH OF THE TOTAL PERIMETER OF THAT LAND TO BE ANNEXED IS CONTIGUOUS TO THE EXISTING CITY OF BOULDER LIMITS.

JOHN B. GUYTON
COLORADO P.L.S. #16406
CHAIRMAN/CEO, FLATIRONS, INC.

REVISION	DATE
1	
2	
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9	

ANNEXATION MAP
PREPARED FOR
CITY OF BOULDER

COPYRIGHT 2014 FLATIRONS, INC.

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655 FOURTH AVE.
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BOULDER, CO 80301
PH: (303) 443-7001
FAX: (303) 443-9830
3660 DOWNING ST
UNIT E
DENVER, CO 80205
PH: (303) 936-6997

COLORADO LICENSED
JOHN B. GUYTON
16406
8/19/14
PROFESSIONAL LAND SURVEYOR
SEAL

JOB NUMBER:	14-64,205
DATE:	08-19-2014
DRAWN BY:	E.PRESCOTT
CHECKED BY:	JZG/WW/JK

SHEET 1 OF 1

BY:EPRESCOTT FILE:64205-ANNEX-C13.DWG DATE:8/19/2014 1:46 PM

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ORDINANCE NO. _____

AN ORDINANCE ANNEXING TO THE CITY OF BOULDER APPROXIMATELY 1.26 ACRES OF LAND GENERALLY LOCATED AT 2200 EMERALD ROAD, WITH AN INITIAL ZONING CLASSIFICATION OF RESIDENTIAL – RURAL 1 (RR-1) AS DESCRIBED IN CHAPTER 9-5, "MODULAR ZONE SYSTEM," B.R.C. 1981; AMENDING THE ZONING DISTRICT MAP FORMING A PART OF SAID CHAPTER TO INCLUDE THE PROPERTY IN THE ABOVE-MENTIONED ZONING DISTRICT, AND SETTING FORTH RELATED DETAILS.

THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO FINDS:

A. Amy J. Carpenter and Stephen R. Carpenter are the owners of the parcel which is generally known as 2200 Emerald Road and comprises the real property more particularly described as Lot 3, Block 6, Githens Acres, County of Boulder, State of Colorado (the "Property") and as shown on the attached Exhibit A.

B. The owners of 100% of the area proposed for annexation, excluding streets and alleys, have petitioned for annexation of the Property with an initial zoning classification of Residential – Rural 1 (RR-1); the Property is not embraced within any city, city and county, or incorporated town; and the Property abuts and is contiguous to the City of Boulder by at least one-sixth of its perimeter.

C. A community of interest exists between the Property proposed for annexation and the City of Boulder, the Property is urban or will be urbanized in the near future, and the Property is integrated or capable of being integrated with the City of Boulder.

D. The Property does not include any area included in another annexation proceeding involving a city other than the City of Boulder.

E. This annexation will not result in the detachment of the area from one school district and the attachment of same to another school district.

F. This annexation will not have the effect of extending the City of Boulder's boundaries any further than three miles from any point of the existing city boundaries.

G. The Property does not include any area which is the same or substantially the same area in which an election for the annexation to the City of Boulder was held within twelve months preceding the filing of the above petition.

H. The Planning Board duly proposed that the Property be annexed to the City of Boulder and that the zoning district map adopted by the City Council be amended to zone and include the Property in the Residential – Rural 1 (RR-1) zoning district, as provided in Chapter 9-5, "Modular Zone System," B.R.C. 1981.

I. A public hearing on the proposed annexation and initial zoning of the Property annexed and zoned hereby was duly held before the City Council on January 20, 2015.

J. The initial zoning designation of Residential – Rural 1 (RR-1) for the Property is consistent with the Boulder Valley Comprehensive Plan, and bears a substantial relation to and will enhance the general welfare of the Property and of the residents of the City of Boulder.

K. The City Council has jurisdiction and the legal authority to annex and zone the Property.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. The territory more particularly described as Lot 3, Block 6, Githens Acres, County of Boulder, State of Colorado is hereby annexed to and included within the corporate boundaries of the City of Boulder.

Section 2. Chapter 9-5, "Modular Zone System," B.R.C. 1981, and the zoning district map forming a part thereof, be, and the same hereby are, amended to include the Property within the Residential – Rural 1 (RR-1) zoning district.

Section 3. The City Council adopts the recitals in this ordinance and incorporates them herein by this reference.

Section 4. The City Council approves any variations or modifications to the Boulder Revised Code or other City ordinances that are in the agreement associated with this annexation.

Section 5. The City Council authorizes the city manager to implement the terms of the agreements associated with this annexation.

Section 6. The annexation and zoning of the Property is necessary for the protection of the public health, safety, and welfare.

Section 7. The City Council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY this 2nd day of December, 2014.

_____
Mayor

Attest:

_____
City Clerk

READ ON SECOND READING, ADOPTED AND ORDERED PUBLISHED BY TITLE ONLY this 20th day of January, 2015.

_____
Mayor

Attest:

_____
City Clerk

EXHIBIT A TO ORDINANCE (Page 1 of 1)

ANNEXATION MAP

LOT 6, BLOCK 6, GITHENS ACRES SUBDIVISION, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 1

TOTAL AREA = 54,803 SQ FT, OR 1.26 ACRES, MORE OR LESS

Parcel Description
(PROVIDED BY CLIENT)

LOT 3, BLOCK 6,
GITHENS ACRES
COUNTY OF BOULDER,
STATE OF COLORADO

Legend

CURRENT LIMITS OF THE CITY OF BOULDER

GRAPHIC SCALE

30 0 15 30 60

(IN FEET)
1 inch = 30 ft.

Notes

1. THIS ANNEXATION MAP WAS PREPARED WITHOUT THE BENEFIT OF A CURRENT TITLE COMMITMENT OR BINDER. EASEMENTS AND RIGHTS-OF-WAY DISCOVERED IN THE COURSE OF OUR INVESTIGATION ARE SHOWN HEREON. EASEMENTS SUCH AS UNRECORDED EASEMENTS MAY NOT HAVE BEEN DISCOVERED IN OUR SEARCH AND MAY AFFECT THE SUBJECT PROPERTY. IT IS RECOMMENDED THAT THE CLIENT OBTAIN A CURRENT TITLE COMMITMENT OR BINDER TO FURTHER AID IN RESEARCHING EASEMENTS, RIGHTS-OF-WAY AND ENCUMBRANCES THAT MAY AFFECT THE SUBJECT PROPERTY.
2. ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS MAP WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.
3. THE PURPOSE OF THIS MAP IS TO GRAPHICALLY PORTRAY THE RELATIONSHIP OF THE LAND PROPOSED FOR ANNEXATION TO THE CURRENT CITY OF BOULDER LIMITS.
4. ANY PERSON WHO KNOWINGLY REMOVES, ALTERS OR DEFACES ANY PUBLIC LAND SURVEY MONUMENT AND/OR BOUNDARY MONUMENT OR ACCESSORY, COMMITS A CLASS TWO (2) MISDEMEANOR PURSUANT TO STATE STATUTE C.R.S. SEC 18-4-508. WHOEVER WILLFULLY DESTROYS, DEFACES, CHANGES, OR REMOVES TO ANOTHER PLACE ANY SECTION CORNER, QUARTER-SECTION CORNER, OR MEANDER POST, ON ANY GOVERNMENT LINE OF SURVEY, OR WILLFULLY CUTS DOWN ANY WITNESS TREE OR ANY TREE BLAZED TO MARK THE LINE OF A GOVERNMENT SURVEY, OR WILLFULLY DEFACES, CHANGES, OR REMOVES ANY MONUMENT OR BENCH MARK OF ANY GOVERNMENT SURVEY, SHALL BE FINED UNDER THIS TITLE OR IMPRISONED NOT MORE THAN SIX MONTHS, OR BOTH. 18 U.S.C. § 1858.
5. THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

Contiguity

TOTAL PERIMETER	942.43'
1/6TH PERIMETER	157.07'
PERIMETER CONTIGUOUS TO CITY LIMITS	197.39'

Surveyor's Certificate

I, JOHN B. GUYTON, A DULY REGISTERED LAND SURVEYOR, LICENSED IN THE STATE OF COLORADO, HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS ANNEXATION MAP OF THE ABOVE DESCRIBED LAND WAS PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE ON AUGUST 20, 2014 AND THAT AT LEAST 1/6TH OF THE TOTAL PERIMETER OF THAT LAND TO BE ANNEXED IS CONTIGUOUS TO THE EXISTING CITY OF BOULDER LIMITS.

JOHN B. GUYTON
COLORADO P.L.S. #16406
CHAIRMAN/CEO, FLATIRONS, INC.

REVISION	DATE
1	
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4	
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6	
7	
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9	

ANNEXATION MAP
PREPARED FOR
CITY OF BOULDER

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FAX: (303) 443-9830
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UNIT E
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PH: (303) 936-6997

COLORADO LICENSED
16406
JOHN B. GUYTON
PROFESSIONAL LAND SURVEYOR

JOB NUMBER:	14-64,204
DATE:	08-25-2014
DRAWN BY:	E. PRESCOTT
CHECKED BY:	JK/WW/JZG

SHEET 1 OF 1

BY:EPRESCOTT FILE:64204-ANNEX-C13.DWG DATE:8/25/2014 1:33 PM

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ORDINANCE NO. _____

AN ORDINANCE ANNEXING TO THE CITY OF BOULDER APPROXIMATELY 1.22 ACRES OF LAND GENERALLY LOCATED AT 2350 NORWOOD AVENUE, WITH AN INITIAL ZONING CLASSIFICATION OF RESIDENTIAL – ESTATE (RE) AS DESCRIBED IN CHAPTER 9-5, "MODULAR ZONE SYSTEM," B.R.C. 1981; AMENDING THE ZONING DISTRICT MAP FORMING A PART OF SAID CHAPTER TO INCLUDE THE PROPERTY IN THE ABOVE-MENTIONED ZONING DISTRICT, AND SETTING FORTH RELATED DETAILS.

THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO FINDS:

A. Norwood Garden LLC, a Colorado limited liability company, is the owner of the parcel which is generally known as 2350 Norwood Avenue and comprises the real property more particularly described in Exhibit A (the "Property").

B. The owner of 100% of the area proposed for annexation, excluding streets and alleys, has petitioned for annexation of the Property with an initial zoning classification of Residential – Estate (RE); the Property is not embraced within any city, city and county, or incorporated town; and the Property abuts and is contiguous to the City of Boulder by at least one-sixth of its perimeter.

C. A community of interest exists between the Property proposed for annexation and the City of Boulder, the Property is urban or will be urbanized in the near future, and the Property is integrated or capable of being integrated with the City of Boulder.

D. The Property does not include any area included in another annexation proceeding involving a city other than the City of Boulder.

E. This annexation will not result in the detachment of the area from one school district and the attachment of same to another school district.

F. This annexation will not have the effect of extending the City of Boulder's boundaries any further than three miles from any point of the existing city boundaries.

G. The Property does not include any area which is the same or substantially the same area in which an election for the annexation to the City of Boulder was held within twelve months preceding the filing of the above petition.

H. The Planning Board duly proposed that the Property be annexed to the City of Boulder and that the zoning district map adopted by the City Council be amended to zone and include the Property in the Residential – Estate (RE) zoning district, as provided in Chapter 9-5, "Modular Zone System," B.R.C. 1981.

I. A public hearing on the proposed annexation and initial zoning of the Property annexed and zoned hereby was duly held before the City Council on January 20, 2015.

J. The initial zoning designation of Residential – Estate (RE) for the Property is consistent with the Boulder Valley Comprehensive Plan, and bears a substantial relation to and will enhance the general welfare of the Property and of the residents of the City of Boulder.

K. The City Council has jurisdiction and the legal authority to annex and zone the Property.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. The territory more particularly described in Exhibit A is hereby annexed to and included within the corporate boundaries of the City of Boulder.

Section 2. Chapter 9-5, "Modular Zone System," B.R.C. 1981, and the zoning district map forming a part thereof, be, and the same hereby are, amended to include the Property within the Residential – Estate (RE) zoning district.

Section 3. The City Council adopts the recitals in this ordinance and incorporates them herein by this reference.

Section 4. The City Council approves any variations or modifications to the Boulder Revised Code or other City ordinances that are in the agreement associated with this annexation.

Section 5. The City Council authorizes the city manager to implement the terms of the agreements associated with this annexation.

Section 6. The annexation and zoning of the Property is necessary for the protection of the public health, safety, and welfare.

Section 7. The City Council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY this 2nd day of December, 2014.

_____
Mayor

Attest:

_____
City Clerk

READ ON SECOND READING, ADOPTED AND ORDERED PUBLISHED BY TITLE ONLY this 20th day of January, 2015.

_____
Mayor

Attest:

_____
City Clerk

EXHIBIT A TO ORDINANCE (Page 1 of 2)

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH,
RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN,
COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 1

PARCEL DESCRIPTION
(PROVIDED BY DEED RECORDED AT RECEPTION NO. 099395)

THAT PORTION OF THE SE1/4 SE1/4 OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF SAID SECTION 18, A DISTANCE OF 959.24 FEET WESTERLY FROM THE SOUTHEAST CORNER OF SAID SECTION 18; THENCE NORTHERLY AND AT RIGHT ANGLES TO THE SOUTH LINE OF SAID SECTION 18 A DISTANCE OF 210.00 FEET; THENCE EASTERLY, PARALLEL WITH THE SOUTH LINE OF SAID SECTION 18, TO A POINT ON THE EAST LINE OF THE SW 1/4 SE 1/4 SE 1/4 OF SAID SECTION 18; THENCE SOUTHERLY ALONG THE EAST LINE OF THE SW 1/4 SE 1/4 SE 1/4 OF SAID SECTION 18, TO THE SOUTHEAST CORNER OF THE SW 1/4 SE 1/4 SE 1/4 OF SAID SECTION 18; THENCE WESTERLY ALONG THE SOUTH LINE OF SAID SECTION 18, TO THE PLACE OF BEGINNING.
EXCEPT THE NORTHERLY 30' THEREOF (PER THE DIRECTION OF THE CLIENT).

I, JOHN B. GUYTON, A LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS PARCEL DESCRIPTION AND ATTACHED EXHIBIT, BEING MADE A PART THEREOF, WERE PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE AT THE REQUEST OF THE CLIENT AND IS NOT INTENDED TO REPRESENT A MONUMENTED LAND SURVEY OR SUBDIVIDE LAND IN VIOLATION OF STATE STATUTE.

COLORADO LICENSED
JOHN BRUCE GUYTON
16406
10/13/14
PROFESSIONAL LAND SURVEYOR

JOHN B. GUYTON
COLORADO P.L.S. #16406
CHAIRMAN/CEO, FLATIRONS, INC.

FSI JOB NO. 14-64,592

JOB NUMBER: 14-64,592
DRAWN BY: E. PRESCOTT
DATE: OCTOBER 13, 2014

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

Flatirons, Inc.
Surveying, Engineering & Geomatics
655 FOURTH AVE
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PH: (303) 776-1733
FAX: (303) 776-4355
www.FlatironsInc.com

BY:EPRESCOTT FILE:64592-ANNEX-C13.DWG DATE:10/13/2014 10:41 AM

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EXHIBIT A TO ORDINANCE (Page 2 of 2)
ANNEXATION MAP

A PARCEL OF LAND, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 1

TOTAL AREA = 53,019 SQ FT, OR 1.22 ACRES, MORE OR LESS

Parcel Description

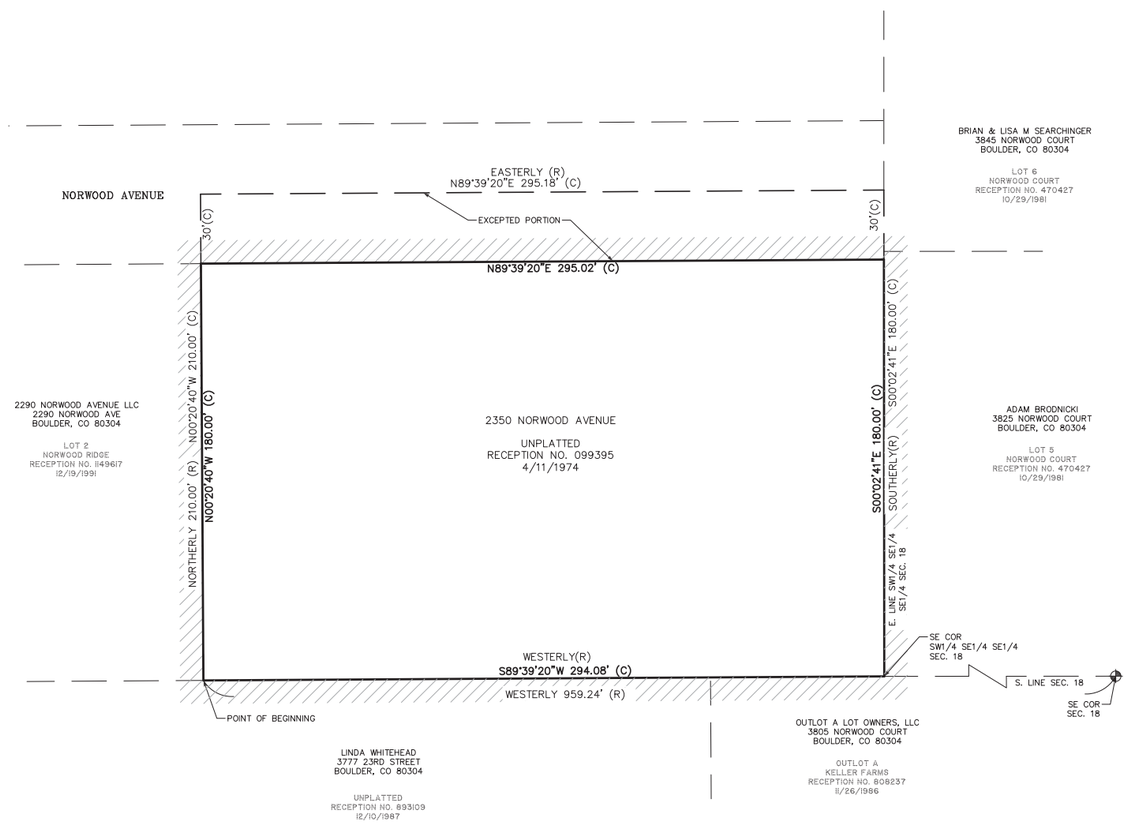
(PROVIDED BY DEED RECORDED AT RECEPTION NO. 099395)

THAT PORTION OF THE SE1/4 SE1/4 OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF SAID SECTION 18, A DISTANCE OF 959.24 FEET WESTERLY FROM THE SOUTHEAST CORNER OF SAID SECTION 18; THENCE NORTHERLY AND AT RIGHT ANGLES TO THE SOUTH LINE OF SAID SECTION 18 A DISTANCE OF 210.00 FEET; THENCE EASTERLY, PARALLEL WITH THE SOUTH LINE OF SAID SECTION 18, TO A POINT ON THE EAST LINE OF THE SW 1/4 SE 1/4 SE 1/4 OF SAID SECTION 18; THENCE SOUTHERLY ALONG THE EAST LINE OF THE SW 1/4 SE 1/4 SE 1/4 OF SAID SECTION 18, TO THE SOUTHEAST CORNER OF THE SW 1/4 SE 1/4 SE 1/4 OF SAID SECTION 18; THENCE WESTERLY ALONG THE SOUTH LINE OF SAID SECTION 18, TO THE PLACE OF BEGINNING.
EXCEPT THE NORTHERLY 30' THEREOF (PER THE DIRECTION OF CLIENT).

Legend

- FOUND ALIQUOT MONUMENT AS DESCRIBED
- (C) CALCULATED FROM RECORD INFORMATION (SEE NOTE 7)
- (R) AS PER RECORD INFORMATION DEED RECORDED AT RECEPTION NO. 099395
- CURRENT LIMITS OF THE CITY OF BOULDER



GRAPHIC SCALE

30 0 15 30 60

(IN FEET)
1 inch = 30 ft.

Notes

1. THIS ANNEXATION MAP WAS PREPARED WITHOUT THE BENEFIT OF A CURRENT TITLE COMMITMENT OR BINDER. EASEMENTS AND RIGHTS-OF-WAY DISCOVERED IN THE COURSE OF OUR INVESTIGATION ARE SHOWN HEREON. EASEMENTS SUCH AS UNRECORDED EASEMENTS MAY NOT HAVE BEEN DISCOVERED IN OUR SEARCH AND MAY AFFECT THE SUBJECT PROPERTY. IT IS RECOMMENDED THAT THE CLIENT OBTAIN A CURRENT TITLE COMMITMENT OR BINDER TO FURTHER AID IN RESEARCHING EASEMENTS, RIGHTS-OF-WAY AND ENCUMBRANCES THAT MAY AFFECT THE SUBJECT PROPERTY.
2. ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS MAP WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.
3. THE PURPOSE OF THIS MAP IS TO GRAPHICALLY PORTRAY THE RELATIONSHIP OF THE LAND PROPOSED FOR ANNEXATION TO THE CURRENT CITY OF BOULDER LIMITS.
4. ANY PERSON WHO KNOWINGLY REMOVES, ALTERS OR DEFACES ANY PUBLIC LAND SURVEY MONUMENT AND/OR BOUNDARY MONUMENT OR ACCESSORY, COMMITS A CLASS TWO (2) MISDEMEANOR PURSUANT TO STATE STATUTE C.R.S. SEC 18-4-508. WHOEVER WILLFULLY DESTROYS, DEFACES, CHANGES, OR REMOVES TO ANOTHER PLACE ANY SECTION CORNER, QUARTER-SECTION CORNER, OR MEANDER POST, ON ANY GOVERNMENT LINE OF SURVEY, OR WILLFULLY CUTS DOWN ANY WITNESS TREE OR ANY TREE BLAZED TO MARK THE LINE OF A GOVERNMENT SURVEY, OR WILLFULLY DEFACES, CHANGES, OR REMOVES ANY MONUMENT OR BENCH MARK OF ANY GOVERNMENT SURVEY, SHALL BE FINED UNDER THIS TITLE OR IMPRISONED NOT MORE THAN SIX MONTHS, OR BOTH. 18 U.S.C. § 1858.
5. THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.
6. PARCEL DESCRIPTION HEREON IS GRAPHICALLY DEPICTED BASED ON DEED RECORDED WITH THE BOULDER COUNTY CLERK AND RECORDER RECORDED ON APRIL 11, 1974, AT RECEPTION NUMBER 099395.
7. BEARINGS AND DISTANCES SHOWN AS CALCULATED ARE PER THE LAND SURVEY PLAT DEPOSITED IN THE BOULDER COUNTY LAND USE AT LS-98-0226.

Contiguity

TOTAL PERIMETER..... 949.10'
1/6TH PERIMETER..... 158.18'
PERIMETER CONTIGUOUS TO CITY LIMITS..... 949.10'

Surveyor's Certificate

I, JOHN B. GUYTON, A DULY REGISTERED LAND SURVEYOR, LICENSED IN THE STATE OF COLORADO, HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS ANNEXATION MAP OF THE ABOVE DESCRIBED LAND WAS PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE ON OCTOBER 13, 2014 AND THAT AT LEAST 1/6TH OF THE TOTAL PERIMETER OF THAT LAND TO BE ANNEXED IS CONTIGUOUS TO THE EXISTING CITY OF BOULDER LIMITS.

JOHN B. GUYTON
COLORADO P.L.S. #16406
CHAIRMAN/CEO, FLATIRONS, INC.

REVISION	DATE
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9	

ANNEXATION MAP
PREPARED FOR
CITY OF BOULDER

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Flatirons, Inc.
Surveying, Engineering & Geomatics
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655 FOURTH AVE
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PH: (303) 776-1733
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3825 IRIS AVE, STE 395
BOULDER, CO 80301
PH: (303) 443-7001
FAX: (303) 443-9830
3660 DOWNING ST
UNIT E
DENVER, CO 80205
PH: (303) 936-6997

COLORADO LICENSED
16406
10/13/14
PROFESSIONAL LAND SURVEYOR
SEAL

JOB NUMBER:	14-64,592
DATE:	10-13-2014
DRAWN BY:	E. PRESCOTT
CHECKED BY:	JK/WW/JZG

SHEET 1 OF 1

BY:EPRESCOTT FILE:64592-ANNEX-C13.DWG DATE:10/13/2014 10:43 AM

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RESOLUTION NO. 1149

A RESOLUTION TO DETERMINE THAT THE PETITION TO ANNEX APPROXIMATELY 0.97 ACRES OF LAND GENERALLY LOCATED AT 1950 RIVERSIDE AVENUE IS IN COMPLIANCE WITH SECTION 31-12-107(1), C.R.S. AND TO SET A HEARING TO DETERMINE COMPLIANCE WITH OTHER STATUTORY ANNEXATION REQUIREMENTS.

A. The City Council of the City of Boulder, Colorado, hereby finds that the Petition to Annex the property more particularly described in Exhibit A, attached hereto and incorporated herein by reference, is in compliance with Section 31-12-107(1), C.R.S., as amended;

B. The City Council of the City of Boulder, Colorado, finds that the following requirements have been met:

i. Landowners of more than fifty percent of the area, excluding public streets and alleys, meeting the requirements of Sections 31-12-104 and 31-12-105, C.R.S., as amended, have petitioned the City of Boulder for annexation of such territory;

ii. The Petition has been filed with the City Clerk;

iii. The Petition alleges it is desirable and necessary that such area be annexed to the City of Boulder;

iv. The Petition alleges that the requirements of Sections 31-12-104 and 31-12-105, C.R.S., as amended, exist or have been met;

v. The Petition contains a request that the City of Boulder approve the annexation of the area proposed to be annexed;

vi. The Petition alleges that signers of the Petition comprise more than fifty percent of the landowners in the area and own more than fifty percent of the area proposed to be annexed exclusive of streets and alleys;

vii. The Petition contains signatures of such landowners;

viii. The Petition contains the mailing address of each signer;

ix. The Petition contains the legal description of the land owned by each signer;

x. The Petition contains the date of signing of each signature; and

xi. The Petition contains the affidavit of each circulator of such Petition, that each signature therein is the signature of the person whose name it purports to be.

C. Four copies of an annexation map accompanied the Petition and contained the following information:

i. A written legal description of the boundaries of the area proposed to be annexed;

ii. A map showing the boundary of the area proposed to be annexed;

iii. Within the annexation boundary map, a showing of the location of each ownership tract in unplatted land and, if part or all of the area is platted, the boundaries and the plat numbers of plots or of lots and blocks; and

iv. A drawing of the contiguous boundary of the City of Boulder next to the boundary of the area proposed to be annexed and the contiguous boundary of any other municipality abutting the area proposed to be annexed.

D. All signatures on the Petition have been dated no more than one hundred eighty days prior to the date of filing the Petition with the City Clerk;

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO, THAT:

A hearing will be held to determine whether the requirements delineated in Sections 31-12-104 and 31-12-105, C.R.S., as amended, have been met and whether an election is required under Section 31-12-107(2), C.R.S. The hearing will be held at 6 p.m. on January 20, 2015, at 1777 Broadway, Boulder, Colorado.

INTRODUCED, READ, PASSED, AND ADOPTED this 2nd day of December, 2014.

_____
Mayor

Attest:

_____
City Clerk

EXHIBIT A TO RESOLUTION (Page 1 of 1)

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 1

PARCEL DESCRIPTION
(1950 RIVERSIDE)
(PER DEED RECORDED AT RECEPTION NO. 2793806)

A TRACT OF LAND IN SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., DESCRIBED AS FOLLOWS:
BEGINNING AT THE SOUTH 1/4 CORNER OF SAID SECTION 18; THENCE NORTH 0°05'30" EAST ALONG THE NORTH–SOUTH CENTERLINE OF SAID SECTION 18, A DISTANCE OF 2,002.09 FEET; THENCE NORTH 89°11'30" EAST A DISTANCE OF 180.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 89°11'30" EAST, A DISTANCE OF 150.00' TO THE WEST LINE OF A TRACT DESCRIBED IN THE WARRANTY DEED IN BOOK 1042 AT PAGE 308 OF THE BOULDER COUNTY RECORDS; THENCE NORTH 0°05'30" EAST AND PARALLEL TO THE NORTH–SOUTH CENTER LINE OF SAID SECTION 18, A DISTANCE OF 281.46 FEET; THENCE SOUTH 89°53'00" WEST, A DISTANCE OF 150.0 FEET; THENCE SOUTH 0°05'30"WEST, A DISTANCE OF 283.27 FEET, TO THE TRUE POINT OF BEGINNING.

ALSO KNOWN AS:

A TRACT OF LAND SITUATE IN THE EAST 1/2 OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., DESCRIBED AS FOLLOWS: THE EAST 1/2 OF THE FOLLOWING DESCRIBED TRACT OF LAND; BEGINNING AT THE SOUTH 1/4 CORNER OF SAID SECTION 18; THENCE NORTH 0°05'30" EAST ALONG THE NORTH–SOUTH CENTER LINE OF SAID SECTION 18, 2,002.09 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 89°11'30" EAST, 330.0 FEET MORE OR LESS, TO THE WEST LINE OF THAT CERTAIN TRACT DESCRIBED IN THE WARRANTY DEED IN BOOK 1042 AT PAGE 308 OF THE BOULDER COUNTY RECORDS; THENCE NORTH 0°05'30" EAST AND PARALLEL TO THE NORTH–SOUTH CENTERLINE OF SAID SECTION 18, 281.46 FEET; THENCE SOUTH 89°53' WEST, 330.0 FEET; THENCE SOUTH 0°05'30" WEST ALONG THE NORTH–SOUTH CENTERLINE OF SAID SECTION 18, 281.46 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING; EXCEPT THE WEST 30 FEET THEREOF RESERVED FOR ROAD PURPOSES,
COUNTY OF BOULDER, STATE OF COLORADO.

I, JOHN B. GUYTON, A LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS PARCEL DESCRIPTION AND ATTACHED EXHIBIT, BEING MADE A PART THEREOF, WERE PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE AT THE REQUEST OF THE CLIENT AND IS NOT INTENDED TO REPRESENT A MONUMENTED LAND SURVEY OR SUBDIVIDE LAND IN VIOLATION OF STATE STATUTE.

COLORADO LICENSED JOHN BRUCE GUYTON 16406 9/22/14 PROFESSIONAL LAND SURVEYOR

JOHN B. GUYTON
COLORADO P.L.S. #16406 FSI JOB NO. 14–64,206
CHAIRMAN/CEO, FLATIRONS, INC.

JOB NUMBER: 14–64,206
DRAWN BY: E. PRESCOTT
DATE: SEPTEMBER 22, 2014

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

Flatirons, Inc.
Surveying, Engineering & Geomatics
655 FOURTH AVE
LONGMONT, CO 80501
PH: (303) 776–1733
FAX: (303) 776–4355
www.FlatironsInc.com

BY:EPRESCOTT FILE:64206–ANNEX–C13.DWG DATE:9/22/2014 10:16 AM

RESOLUTION NO. 1150

A RESOLUTION TO DETERMINE THAT THE PETITION TO ANNEX APPROXIMATELY 1.45 ACRES OF LAND GENERALLY LOCATED AT 4415 GARNET LANE IS IN COMPLIANCE WITH SECTION 31-12-107(1), C.R.S. AND TO SET A HEARING TO DETERMINE COMPLIANCE WITH OTHER STATUTORY ANNEXATION REQUIREMENTS.

A. The City Council of the City of Boulder, Colorado, hereby finds that the Petition to Annex the property more particularly described in Exhibit A, attached hereto and incorporated herein by reference, is in compliance with Section 31-12-107(1), C.R.S., as amended;

B. The City Council of the City of Boulder, Colorado, finds that the following requirements have been met:

i. Landowners of more than fifty percent of the area, excluding public streets and alleys, meeting the requirements of Sections 31-12-104 and 31-12-105, C.R.S., as amended, have petitioned the City of Boulder for annexation of such territory;

ii. The Petition has been filed with the City Clerk;

iii. The Petition alleges it is desirable and necessary that such area be annexed to the City of Boulder;

iv. The Petition alleges that the requirements of Sections 31-12-104 and 31-12-105, C.R.S., as amended, exist or have been met;

v. The Petition contains a request that the City of Boulder approve the annexation of the area proposed to be annexed;

vi. The Petition alleges that signers of the Petition comprise more than fifty percent of the landowners in the area and own more than fifty percent of the area proposed to be annexed exclusive of streets and alleys;

vii. The Petition contains signatures of such landowners;

viii. The Petition contains the mailing address of each signer;

ix. The Petition contains the legal description of the land owned by each signer;

x. The Petition contains the date of signing of each signature; and

xi. The Petition contains the affidavit of each circulator of such Petition, that each signature therein is the signature of the person whose name it purports to be.

C. Four copies of an annexation map accompanied the Petition and contained the following information:

i. A written legal description of the boundaries of the area proposed to be annexed;

ii. A map showing the boundary of the area proposed to be annexed;

iii. Within the annexation boundary map, a showing of the location of each ownership tract in unplatted land and, if part or all of the area is platted, the boundaries and the plat numbers of plots or of lots and blocks; and

iv. A drawing of the contiguous boundary of the City of Boulder next to the boundary of the area proposed to be annexed and the contiguous boundary of any other municipality abutting the area proposed to be annexed.

D. All signatures on the Petition have been dated no more than one hundred eighty days prior to the date of filing the Petition with the City Clerk;

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO, THAT:

A hearing will be held to determine whether the requirements delineated in Sections 31-12-104 and 31-12-105, C.R.S., as amended, have been met and whether an election is required under Section 31-12-107(2), C.R.S. The hearing will be held at 6 p.m. on January 20, 2015, at 1777 Broadway, Boulder, Colorado.

INTRODUCED, READ, PASSED, AND ADOPTED this 2nd day of December, 2014.

_____
Mayor

Attest:

_____
City Clerk

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EXHIBIT A TO RESOLUTION (Page 1 of 1)

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 1

PARCEL DESCRIPTION

(4415 GARNET LANE)
(PREPARED BY FLATIRONS, INC. AT THE REQUEST OF THE CLIENT)

A PARCEL OF LAND AS DESCRIBED IN THE RECORDS OF BOULDER COUNTY AT RECEPTION NO. 3046074, DATED DECEMBER 3, 2009, A PORTION OF GARNET LANE, AND A PORTION OF RIVERSIDE AVENUE, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE NORTH–SOUTH CENTERLINE LINE OF SAID SECTION 18 TO BEAR NORTH 00°05'30" EAST, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

BEGINNING AT THE NORTHWEST CORNER OF LOT 6, BLOCK 5, GITHENS ACRES AS RECORDED IN THE RECORDS OF BOULDER COUNTY AT RECEPTION NO. 90542553, DATED JUNE 30, 1954,
THENCE ALONG THE WESTERLY LINE OF SAID LOT 6, SOUTH 00°01'40" WEST, A DISTANCE OF 250.84 FEET;
THENCE DEPARTING SAID WESTERLY LINE, SOUTH 40°07'31" WEST, A DISTANCE OF 93.15 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL OF LAND AS RECORDED AT RECEPTION NO. 3046074;
THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL OF LAND, SOUTH 89°11'30" WEST, A DISTANCE OF 333.07 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL OF LAND;
THENCE ALONG THE WESTERLY LINE OF SAID PARCEL OF LAND, NORTH 00°05'30" EAST, A DISTANCE OF 136.74 FEET TO THE NORTHWEST CORNER OF SAID PARCEL OF LAND;
THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL OF LAND THE FOLLOWING THREE (3) COURSES:
NORTH 89°53'00" EAST, 28.46 FEET;
THENCE NORTH 00°09'50" WEST, A DISTANCE OF 0.75 FEET;
THENCE NORTH 89°22'15" EAST, A DISTANCE OF 301.52 FEET TO THE SOUTHEAST CORNER OF A PARCEL OF LAND AS DESCRIBED IN THE RECORDS OF BOULDER COUNTY AT RECEPTION NO. 3022631, DATED JUNE 8, 2009;
THENCE ALONG THE EASTERLY LINE OF SAID PARCEL OF LAND AS DESCRIBED AT RECEPTION NO. 3022631, NORTH 00°05'30" EAST, A DISTANCE OF 141.27 FEET TO THE NORTHEAST CORNER OF SAID PARCEL OF LAND AS DESCRIBED AT RECEPTION NO. 3022631;
THENCE ALONG SAID EASTERLY LINE EXTENDED, NORTH 00°05'30" EAST, A DISTANCE OF 41.75 FEET TO THE NORTHERLY LINE OF SAID LOT 6, EXTENDED WESTERLY;
THENCE ALONG SAID NORTHERLY LINE EXTENDED, ALSO BEING A SOUTHERLY LINE OF RIVERSIDE GROVE SUBDIVISION AS RECORDED IN THE RECORDS OF BOULDER COUNTY AT RECEPTION NO. 1125796, DATED AUGUST 26, 1991, NORTH 87°21'27" EAST, A DISTANCE OF 62.79 FEET TO THE NORTHWEST CORNER OF SAID LOT 6, AND THE POINT OF BEGINNING.

SAID PARCEL CONTAINING 63,123 SQ.FT. OR 1.45 ACRES, MORE OR LESS.

I, JOHN B. GUYTON, A LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS PARCEL DESCRIPTION AND ATTACHED EXHIBIT, BEING MADE A PART THEREOF, WERE PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE AT THE REQUEST OF THE CLIENT AND IS NOT INTENDED TO REPRESENT A MONUMENTED LAND SURVEY OR SUBDIVIDE LAND IN VIOLATION OF STATE STATUTE.

JOHN B. GUYTON
COLORADO P.L.S. #16406 FSI JOB NO. 14–64,203
CHAIRMAN/CEO, FLATIRONS, INC.

JOHN BRADFORD GUYTON
16406
9/22/14
PROFESSIONAL LAND SURVEYOR

JOB NUMBER: 14–64,203
DRAWN BY: E. PRESCOTT
DATE: SEPTEMBER 22, 2014

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

Flatirons, Inc.
Surveying, Engineering & Geomatics
655 FOURTH AVE
LONGMONT, CO 80501
PH: (303) 776–1733
FAX: (303) 776–4355
www.FlatironsInc.com

BY:EPRESCOTT FILE:64203-ANNEX-C13.DWG DATE:9/22/2014 10:29 AM

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RESOLUTION NO. 1151

A RESOLUTION TO DETERMINE THAT THE PETITION TO ANNEX APPROXIMATELY 1.16 ACRES OF LAND GENERALLY LOCATED AT 1085 GAPTER ROAD IS IN COMPLIANCE WITH SECTION 31-12-107(1), C.R.S. AND TO SET A HEARING TO DETERMINE COMPLIANCE WITH OTHER STATUTORY ANNEXATION REQUIREMENTS.

A. The City Council of the City of Boulder, Colorado, hereby finds that the Petition to Annex the property more particularly described as Lot 13, Gapter Subdivision, County of Boulder, State of Colorado, is in compliance with Section 31-12-107(1), C.R.S., as amended;

B. The City Council of the City of Boulder, Colorado, finds that the following requirements have been met:

i. Landowners of more than fifty percent of the area, excluding public streets and alleys, meeting the requirements of Sections 31-12-104 and 31-12-105, C.R.S., as amended, have petitioned the City of Boulder for annexation of such territory;

ii. The Petition has been filed with the City Clerk;

iii. The Petition alleges it is desirable and necessary that such area be annexed to the City of Boulder;

iv. The Petition alleges that the requirements of Sections 31-12-104 and 31-12-105, C.R.S., as amended, exist or have been met;

v. The Petition contains a request that the City of Boulder approve the annexation of the area proposed to be annexed;

vi. The Petition alleges that signers of the Petition comprise more than fifty percent of the landowners in the area and own more than fifty percent of the area proposed to be annexed exclusive of streets and alleys;

vii. The Petition contains signatures of such landowners;

viii. The Petition contains the mailing address of each signer;

ix. The Petition contains the legal description of the land owned by each signer;

x. The Petition contains the date of signing of each signature; and

xi. The Petition contains the affidavit of each circulator of such Petition, that each signature therein is the signature of the person whose name it purports to be.

C. Four copies of an annexation map accompanied the Petition and contained the following information:

i. A written legal description of the boundaries of the area proposed to be annexed;

ii. A map showing the boundary of the area proposed to be annexed;

iii. Within the annexation boundary map, a showing of the location of each ownership tract in unplatted land and, if part or all of the area is platted, the boundaries and the plat numbers of plots or of lots and blocks; and

iv. A drawing of the contiguous boundary of the City of Boulder next to the boundary of the area proposed to be annexed and the contiguous boundary of any other municipality abutting the area proposed to be annexed.

D. All signatures on the Petition have been dated no more than one hundred eighty days prior to the date of filing the Petition with the City Clerk;

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO, THAT:

A hearing will be held to determine whether the requirements delineated in Sections 31-12-104 and 31-12-105, C.R.S., as amended, have been met and whether an election is required under Section 31-12-107(2), C.R.S. The hearing will be held at 6 p.m. on January 20, 2015, at 1777 Broadway, Boulder, Colorado.

INTRODUCED, READ, PASSED, AND ADOPTED this 2nd day of December, 2014.

_____
Mayor

Attest:

_____
City Clerk

RESOLUTION NO. 1152

A RESOLUTION TO DETERMINE THAT THE PETITION TO ANNEX APPROXIMATELY 1.26 ACRES OF LAND GENERALLY LOCATED AT 2200 EMERALD ROAD IS IN COMPLIANCE WITH SECTION 31-12-107(1), C.R.S. AND TO SET A HEARING TO DETERMINE COMPLIANCE WITH OTHER STATUTORY ANNEXATION REQUIREMENTS.

A. The City Council of the City of Boulder, Colorado, hereby finds that the Petition to Annex the property more particularly described as Lot 3, Block 6, Githens Acres, County of Boulder, State of Colorado, is in compliance with Section 31-12-107(1), C.R.S., as amended;

B. The City Council of the City of Boulder, Colorado, finds that the following requirements have been met:

i. Landowners of more than fifty percent of the area, excluding public streets and alleys, meeting the requirements of Sections 31-12-104 and 31-12-105, C.R.S., as amended, have petitioned the City of Boulder for annexation of such territory;

ii. The Petition has been filed with the City Clerk;

iii. The Petition alleges it is desirable and necessary that such area be annexed to the City of Boulder;

iv. The Petition alleges that the requirements of Sections 31-12-104 and 31-12-105, C.R.S., as amended, exist or have been met;

v. The Petition contains a request that the City of Boulder approve the annexation of the area proposed to be annexed;

vi. The Petition alleges that signers of the Petition comprise more than fifty percent of the landowners in the area and own more than fifty percent of the area proposed to be annexed exclusive of streets and alleys;

vii. The Petition contains signatures of such landowners;

viii. The Petition contains the mailing address of each signer;

ix. The Petition contains the legal description of the land owned by each signer;

x. The Petition contains the date of signing of each signature; and

xi. The Petition contains the affidavit of each circulator of such Petition, that each signature therein is the signature of the person whose name it purports to be.

C. Four copies of an annexation map accompanied the Petition and contained the following information:

i. A written legal description of the boundaries of the area proposed to be annexed;

ii. A map showing the boundary of the area proposed to be annexed;

iii. Within the annexation boundary map, a showing of the location of each ownership tract in unplatted land and, if part or all of the area is platted, the boundaries and the plat numbers of plots or of lots and blocks; and

iv. A drawing of the contiguous boundary of the City of Boulder next to the boundary of the area proposed to be annexed and the contiguous boundary of any other municipality abutting the area proposed to be annexed.

D. All signatures on the Petition have been dated no more than one hundred eighty days prior to the date of filing the Petition with the City Clerk;

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO, THAT:

A hearing will be held to determine whether the requirements delineated in Sections 31-12-104 and 31-12-105, C.R.S., as amended, have been met and whether an election is required under Section 31-12-107(2), C.R.S. The hearing will be held at 6 p.m. on January 20, 2015, at 1777 Broadway, Boulder, Colorado.

INTRODUCED, READ, PASSED, AND ADOPTED this 2nd day of December, 2014.

_____
Mayor

Attest:

_____
City Clerk

RESOLUTION NO. 1153

A RESOLUTION TO DETERMINE THAT THE PETITION TO ANNEX APPROXIMATELY 1.22 ACRES OF LAND GENERALLY LOCATED AT 2350 NORWOOD AVENUE IS IN COMPLIANCE WITH SECTION 31-12-107(1), C.R.S. AND TO SET A HEARING TO DETERMINE COMPLIANCE WITH OTHER STATUTORY ANNEXATION REQUIREMENTS.

A. The City Council of the City of Boulder, Colorado, hereby finds that the Petition to Annex the property more particularly described in Exhibit A, attached hereto and incorporated herein by reference, is in compliance with Section 31-12-107(1), C.R.S., as amended;

B. The City Council of the City of Boulder, Colorado, finds that the following requirements have been met:

i. Landowners of more than fifty percent of the area, excluding public streets and alleys, meeting the requirements of Sections 31-12-104 and 31-12-105, C.R.S., as amended, have petitioned the City of Boulder for annexation of such territory;

ii. The Petition has been filed with the City Clerk;

iii. The Petition alleges it is desirable and necessary that such area be annexed to the City of Boulder;

iv. The Petition alleges that the requirements of Sections 31-12-104 and 31-12-105, C.R.S., as amended, exist or have been met;

v. The Petition contains a request that the City of Boulder approve the annexation of the area proposed to be annexed;

vi. The Petition alleges that signers of the Petition comprise more than fifty percent of the landowners in the area and own more than fifty percent of the area proposed to be annexed exclusive of streets and alleys;

vii. The Petition contains signatures of such landowners;

viii. The Petition contains the mailing address of each signer;

ix. The Petition contains the legal description of the land owned by each signer;

x. The Petition contains the date of signing of each signature; and

xi. The Petition contains the affidavit of each circulator of such Petition, that each signature therein is the signature of the person whose name it purports to be.

C. Four copies of an annexation map accompanied the Petition and contained the following information:

i. A written legal description of the boundaries of the area proposed to be annexed;

ii. A map showing the boundary of the area proposed to be annexed;

iii. Within the annexation boundary map, a showing of the location of each ownership tract in unplatted land and, if part or all of the area is platted, the boundaries and the plat numbers of plots or of lots and blocks; and

iv. A drawing of the contiguous boundary of the City of Boulder next to the boundary of the area proposed to be annexed and the contiguous boundary of any other municipality abutting the area proposed to be annexed.

D. All signatures on the Petition have been dated no more than one hundred eighty days prior to the date of filing the Petition with the City Clerk;

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO, THAT:

A hearing will be held to determine whether the requirements delineated in Sections 31-12-104 and 31-12-105, C.R.S., as amended, have been met and whether an election is required under Section 31-12-107(2), C.R.S. The hearing will be held at 6 p.m. on January 20, 2015, at 1777 Broadway, Boulder, Colorado.

INTRODUCED, READ, PASSED, AND ADOPTED this 2nd day of December, 2014.

_____
Mayor

Attest:

_____
City Clerk

EXHIBIT A TO RESOLUTION (Page 1 of 1)

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH,
RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN,
COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 1

PARCEL DESCRIPTION
(PROVIDED BY DEED RECORDED AT RECEPTION NO. 099395)

THAT PORTION OF THE SE1/4 SE1/4 OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF SAID SECTION 18, A DISTANCE OF 959.24 FEET WESTERLY FROM THE SOUTHEAST CORNER OF SAID SECTION 18; THENCE NORTHERLY AND AT RIGHT ANGLES TO THE SOUTH LINE OF SAID SECTION 18 A DISTANCE OF 210.00 FEET; THENCE EASTERLY, PARALLEL WITH THE SOUTH LINE OF SAID SECTION 18, TO A POINT ON THE EAST LINE OF THE SW 1/4 SE 1/4 SE 1/4 OF SAID SECTION 18; THENCE SOUTHERLY ALONG THE EAST LINE OF THE SW 1/4 SE 1/4 SE 1/4 OF SAID SECTION 18, TO THE SOUTHEAST CORNER OF THE SW 1/4 SE 1/4 SE 1/4 OF SAID SECTION 18; THENCE WESTERLY ALONG THE SOUTH LINE OF SAID SECTION 18, TO THE PLACE OF BEGINNING.
EXCEPT THE NORTHERLY 30' THEREOF (PER THE DIRECTION OF THE CLIENT).

I, JOHN B. GUYTON, A LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS PARCEL DESCRIPTION AND ATTACHED EXHIBIT, BEING MADE A PART THEREOF, WERE PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE AT THE REQUEST OF THE CLIENT AND IS NOT INTENDED TO REPRESENT A MONUMENTED LAND SURVEY OR SUBDIVIDE LAND IN VIOLATION OF STATE STATUTE.

COLORADO LICENSED
JOHN BRUCE GUYTON
16406
10/13/14
PROFESSIONAL LAND SURVEYOR

JOHN B. GUYTON
COLORADO P.L.S. #16406
CHAIRMAN/CEO, FLATIRONS, INC.

FSI JOB NO. 14-64,592

JOB NUMBER: 14-64,592
DRAWN BY: E. PRESCOTT
DATE: OCTOBER 13, 2014

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

Flatirons, Inc.
Surveying, Engineering & Geomatics
655 FOURTH AVE
LONGMONT, CO 80501
PH: (303) 776-1733
FAX: (303) 776-4355
www.FlatironsInc.com

BY:EPRESCOTT FILE:64592-ANNEX-C13.DWG DATE:10/13/2014 10:41 AM

CITY OF BOULDER
CITY CLERK'S OFFICE
CENTRAL RECORDS
2014 JUL 22 PM 2:08

RECEIVED
JUN 11 2014

ANNEXATION PETITION

Submit with your application.

Annexation Information

Location of property to be annexed: 1950 Riverside Ave

Legal Description: House

Size of property: 1 acre Requested Zoning: ER

Impact Report

If the area proposed for annexation is more than ten acres in size, an annexation impact report as required by state law (31-12-105.5, C.R.S.) must be submitted to the Planning Department prior to the first reading of the ordinance annexing the subject property by City Council. The Board of County Commissioners may waive this requirement. If so, a letter from the Board must be submitted to the Planning Department.

Districts

Please check those districts in which the property proposed for annexation is included:

✓ Boulder Valley School District

_____ St. Vrain School District

_____ Boulder Rural fire District

_____ Cherryvale Fire District

_____ Left Hand Water District

_____ Other (list)

_____

_____

Property Owners

List below all owners or lienholders of the property proposed for annexation (please print):

1. Seana Grady
2.
3.
4.

Give to: Chris Meschuk.

ANNEXATION PETITION

Signature of petitioners requesting annexation of property to the city of Boulder, Colorado	Date of signature of each petitioner	Mailing address of each petitioner	Description of property included within the area proposed for annexation owned by each person signing this petition. (Attach separate sheet, if necessary).
[signature]	6-11-14	1950 Riverside Ave Boulder, CO 80304	1 House / Residence on one acre

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NICHOLAS JAMES CLINE
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20144008538
MY COMMISSION EXPIRES FEBRUARY 21, 2018

CIRCULATOR'S AFFIDAVIT

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

Seana Grady,
being first duly sworn, upon ~~oath deposes~~ and says that she/he was the circulator of the above and foregoing petition and that the signatures on said petition are the signatures of the persons whose names they purport to be.

Circulator

Subscribed and sworn to before me this 11th day of June, A.D. 2014.

Witness my hand and official seal. My commission expires: Feb 21st 2018.

Notary Public

CIRCULATOR'S AFFIDAVIT

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

_____,
being first duly sworn, upon oath deposes and says that she/he was the circulator of the above and foregoing petition and that the signatures on said petition are the signatures of the persons whose names they purport to be.

Circulator

Subscribed and sworn to before me this_____day of _____, A.D. 20_____.

Witness my hand and official seal. My commission expires:_____.

Notary Public

CITY OF BOULDER
CITY CLERK'S OFFICE
CENTRAL RECORDS

2014 JUL 22 PM 2:08

ANNEXATION PETITION

Submit with your application.

Annexation Information

Location of property to be annexed: 4415 GARNET LANE BOULDER, CO 80304

Legal Description: _____

Size of property: 1.04 ACRES Requested Zoning: RE

Impact Report

If the area proposed for annexation is more than ten acres in size, an annexation impact report as required by state law (31-12-105.5, C.R.S.) must be submitted to the Planning Department prior to the first reading of the ordinance annexing the subject property by City Council. The Board of County Commissioners may waive this requirement. If so, a letter from the Board must be submitted to the Planning Department.

Districts

Please check those districts in which the property proposed for annexation is included:

- ✓ Boulder Valley School District
- _____ St. Vrain School District
- _____ Boulder Rural fire District
- _____ Cherryvale Fire District
- _____ Left Hand Water District
- _____ Other (list)

Property Owners

List below all owners or lienholders of the property proposed for annexation (please print):

1. FRANK L. ALEXANDER (303) 519-8365, frank.l.alexander@gmail.com
2. _____
3. _____
4. _____

ANNEXATION PETITION

Signature of petitioners requesting annexation of property to the city of Boulder, Colorado	Date of signature of each petitioner	Mailing address of each petitioner	Description of property included within the area proposed for annexation owned by each person signing this petition. (Attach separate sheet, if necessary).
Chad L. Alexander	06.20.2014	4415 GARNET LANE BOULDER, CO 80304	

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CIRCULATOR'S AFFIDAVIT

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

FRANK LYON ALEXANDER,
being first duly sworn, upon oath deposes and says that she/he was the circulator of the above and foregoing petition and that the signatures on said petition are the signatures of the persons whose names they purport to be.

FRANK LYON ALEXANDER
Circulator

Subscribed and sworn to before me this 20th day of June, A.D. 2014.

Witness my hand and official seal. My commission expires: 02/10/2018.

Geneva Z. Bailey
Notary Public

NOTARY PUBLIC
GENEVA Z.
BAILEY
STATE OF COLORADO

CIRCULATOR'S AFFIDAVIT

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

_____,
being first duly sworn, upon oath deposes and says that she/he was the circulator of the above and foregoing petition and that the signatures on said petition are the signatures of the persons whose names they purport to be.

_____
Circulator

Subscribed and sworn to before me this_____day of _____, A.D. 20_____.

Witness my hand and official seal. My commission expires:_____.

_____
Notary Public

CITY OF BOULDER
CITY CLERK'S OFFICE
CENTRAL RECORDS

2014 JUL 22 PM 2:08

ANNEXATION PETITION

Submit with your application.

Annexation Information

Location of property to be annexed: 1085 GAPTER RD - BOULDER 80303

Legal Description: _____

Size of property: _____ Requested Zoning: _____

Impact Report

If the area proposed for annexation is more than ten acres in size, an annexation impact report as required by state law (31-12-105.5, C.R.S.) must be submitted to the Planning Department prior to the first reading of the ordinance annexing the subject property by City Council. The Board of County Commissioners may waive this requirement. If so, a letter from the Board must be submitted to the Planning Department.

Districts

Please check those districts in which the property proposed for annexation is included:

✓ Boulder Valley School District

_____ St. Vrain School District

_____ Boulder Rural fire District

_____ Cherryvale Fire District

_____ Left Hand Water District

_____ Other (list)

_____

_____

Property Owners

List below all owners or lienholders of the property proposed for annexation (please print):

1. SILVANO DELUCA
2. ELVIRA G. DELUCA
3. CHASE BANK
4. FIRST BANK

ANNEXATION PETITION

Signature of petitioners requesting annexation of property to the city of Boulder, Colorado	Date of signature of each petitioner	Mailing address of each petitioner	Description of property included within the area proposed for annexation owned by each person signing this petition. (Attach separate sheet, if necessary).
[illegible]	7.3.14	1085 GAPTER RD BOULDER, CO 80303	
Shina DeLuce	7.3.14	1085 GAPTER RD BOULDER, CO 80303	

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CIRCULATOR'S AFFIDAVIT

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

Silvano DeLuca ~~and Elvira DeLuca~~ MG,
being first duly sworn, upon oath deposes and says that she/he was the circulator of the above and foregoing petition and that the signatures on said petition are the signatures of the persons whose names they purport to be.

~~Elvira DeLuca~~ MG
Circulator

Subscribed and sworn to before me this 3rd day of July, A.D. 20 14.

Witness my hand and official seal. My commission expires: 9.20.2016.

ANDREA J GUENTHER
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20124060448
MY COMMISSION EXPIRES 9/20/2016

Notary Public

CIRCULATOR'S AFFIDAVIT

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

Elvira DeLuca,
being first duly sworn, upon oath deposes and says that she/he was the circulator of the above and foregoing petition and that the signatures on said petition are the signatures of the persons whose names they purport to be.

Elvira De Luca
Circulator

Subscribed and sworn to before me this 3rd day of July, A.D. 20 14.

Witness my hand and official seal. My commission expires: 9.20.2016.

ANDREA J GUENTHER
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20124060448
MY COMMISSION EXPIRES 9/20/2016

Notary Public

CITY OF BOULDER
CITY CLERK'S OFFICE
CENTRAL RECORDS

2014 JUL 22 PM 2:08

ANNEXATION PETITION
Submit with your application.

Annexation Information

Location of property to be annexed: 2200 Emerald Rd, Boulder, CO

Legal Description: Lot 3, Block 6, Githens Acres

Size of property: 1.25 Acres Requested Zoning: _____

Impact Report

If the area proposed for annexation is more than ten acres in size, an annexation impact report as required by state law (31-12-105.5, C.R.S.) must be submitted to the Planning Department prior to the first reading of the ordinance annexing the subject property by City Council. The Board of County Commissioners may waive this requirement. If so, a letter from the Board must be submitted to the Planning Department.

Districts

Please check those districts in which the property proposed for annexation is included:

X Boulder Valley School District

_____ St. Vrain School District

_____ Boulder Rural fire District

_____ Cherryvale Fire District

_____ Left Hand Water District

_____ Other (list)

_____

_____

Property Owners

List below all owners or lienholders of the property proposed for annexation (please print):

1. Stephen and Amy Carpenter
2. _____
3. _____
4. _____

ANNEXATION PETITION

Signature of petitioners requesting annexation of property to the city of Boulder, Colorado	Date of signature of each petitioner	Mailing address of each petitioner	Description of property included within the area proposed for annexation owned by each person signing this petition. (Attach separate sheet, if necessary).
[illegible]	6-30-14	1550 Poplar Ave Boulder, CO 80304	Lot 3, Block 6, Gilthens Acres
[illegible]	6.30.14	1550 Poplar Ave Boulder CO 80304	"

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CIRCULATOR'S AFFIDAVIT

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

Stephen Carpenter,

being first duly sworn, upon oath deposes and says that she/he was the circulator of the above and foregoing petition and that the signatures on said petition are the signatures of the persons whose names they purport to be.

Circulator

Subscribed and sworn to before me this 30th day of June, A.D. 2014.

Witness my hand and official seal. My commission expires: 11/8/2017.

EDY A. URKEN
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20134070410
MY COMMISSION EXPIRES 11/08/2017

Notary Public

CIRCULATOR'S AFFIDAVIT

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

Amy J. Carpenter,

being first duly sworn, upon oath deposes and says that she/he was the circulator of the above and foregoing petition and that the signatures on said petition are the signatures of the persons whose names they purport to be.

Circulator

Subscribed and sworn to before me this 30th day of June, A.D. 2014.

Witness my hand and official seal. My commission expires: 11/8/2017.

EDY A. URKEN
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20134070410
MY COMMISSION EXPIRES 11/08/2017

Notary Public

CITY OF BOULDER
CITY CLERK'S OFFICE
CENTRAL RECORDS
2014 JUL 22 PM 2:08

ANNEXATION PETITION

Submit with your application.

Annexation Information

Location of property to be annexed: 2326, 2350, 2364, 2372 Norwood

Legal Description: Tract 3517 Sec 18 T1N70

Size of property: 1.25 ac Requested Zoning: ER *

* group housing?

Impact Report

If the area proposed for annexation is more than ten acres in size, an annexation impact report as required by state law (31-12-105.5, C.R.S.) must be submitted to the Planning Department prior to the first reading of the ordinance annexing the subject property by City Council. The Board of County Commissioners may waive this requirement. If so, a letter from the Board must be submitted to the Planning Department.

Districts

Please check those districts in which the property proposed for annexation is included:

- ✓ Boulder Valley School District
- ___ St. Vrain School District
- ✓ Boulder Rural fire District
- ___ Cherryvale Fire District
- ___ Left Hand Water District
- ✓ Other (list) Northern Colo.

Property Owners

List below all owners or lienholders of the property proposed for annexation (please print):

1. Norwood Garden LLC
2. Colo. Bus. Bank
3. Brielyn Jarrie
4. ___

Please Note:

No person shall petition to the city of Boulder for annexation of any real property until he has first read and thereafter follows these instructions in the execution of the within petition:

1. Every person signing the within annexation petition must personally insert the information required on the signature page(s) attached to the petition.

2. The person or persons who circulate the within petition must witness the signatures of every person signing this petition and so certify by executing the affidavit attached on the last page of this petition.

3. The following definitions of terms shall be applicable throughout this petition and every subsequent step of the annexation proceeding commenced pursuant to this petition:

   a. Landowner: means the owner in fee of any undivided interest in a given parcel of land. If the mineral estate has been severed, the landowner is the owner in fee of an individual interest in the surface estate and not the owner in fee of an individual interest in the mineral estate. In the case of multiple landowners, such as tenants in common or joint tenants, only one such landowner need petition for annexation, and the signature of one such landowner shall be sufficient, provided however, that said signing landowner had become liable for taxes in the last preceding calendar year or is exempt by law from payment of taxes, and provide further, that no other owner in fee of an individual interest of the same property objects to the annexation of the said property within 14 days after the filing of the annexation petition by submitting a written statement of his objections to the City Council.

      A purchaser of real property shall be deemed a landowner for the purpose of an annexation petition if:

      (1) The said purchaser is purchasing the land pursuant to a written contract duly recorded, and

      (2) The said purchaser has paid the taxes thereon for the next preceding tax year.

      A corporation, non-profit, owning land shall be deemed a landowner, and the same persons authorized to convey land for the corporation shall sign the within petition on behalf of such corporation.

   b. Nonresident Landowner: means any person owning property in the area proposed to be annexed, who is not a qualified elector as herein below defined, and who is at least eighteen (18) years of age as attested to by a sworn affidavit.

   c. Identical Ownership: means a situation where each owner has exactly the same degree of interest in a separate parcel of two or more parcels of land.

   d. Contiguous: means that one-sixth of the boundary of the territory proposed for annexation and the city limits must coincide. Contiguity as referred to in this petition or subsequent annexation proceedings is not affected by the existence of a platted street or alley, public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway between the city limits of the city of Boulder and the territory to be annexed.

4. This petition must be filed with the City Clerk of the city of Boulder.

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ANNEXATION PETITION

Signature of petitioners requesting annexation of property to the city of Boulder, Colorado	Date of signature of each petitioner	Mailing address of each petitioner	Description of property included within the area proposed for annexation owned by each person signing this petition. (Attach separate sheet, if necessary).
Marilyn Jarvie	6/12/2014	Box 4116 Boulder, Co. 80306	Tract 2517 Sec. 18 T1N R70 2326, 2350, 2364, 2372 Norwood Ave. 80304

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9. That at least four copies of an annexation map setting forth with reasonable certainty a written legal description of the boundaries of the area proposed to be annexed, a delineation of the outer boundaries of the above described territory, and the location of each ownership, tract and/or the boundaries and the plat numbers of plats and lots and blocks, the portion of the boundary contiguous with the existing city limits of the city of Boulder, and the dimensions of said contiguous boundary, all upon a material and of a size suitable for recording or filing with the City Clerk of the city of Boulder, and the dimensions of said contiguous boundary, all upon a material and of a size suitable for recording or filing with the City Clerk of the city of Boulder, accompany, have been attached hereto and hereby constitute a part of this petition.

10. That the above described territory is not presently a part of any incorporated city, city and county, or town.

11. That the above area described will (not) result in the detachment of area from any school district and the attachment of the same to another school district (and the resolution of school board of the district to which the area will be attached approving this annexation request).

CIRCULATOR'S AFFIDAVIT

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

MARILYN JORRIE,
being first duly sworn, upon oath deposes and says that she/he was the circulator of the above and foregoing petition and that the signatures on said petition are the signatures of the persons whose names they purport to be.

Circulator

Subscribed and sworn to before me this 12th day of June, A.D. 2014.

Witness my hand and official seal. My commission expires: 11/8/2017.

EDY A. URKEN
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20134070410
MY COMMISSION EXPIRES 11/08/2017

Notary Public

CIRCULATOR'S AFFIDAVIT

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

_____,
being first duly sworn, upon oath deposes and says that she/he was the circulator of the above and foregoing petition and that the signatures on said petition are the signatures of the persons whose names they purport to be.

Circulator

Subscribed and sworn to before me this_____day of _____, A.D. 20_____.

Witness my hand and official seal. My commission expires:_____.

Notary Public

SIGN POSTING REQUIREMENTS
APPLICANT'S ACKNOWLEDGMENT FORM

Required for Certain Land Use Review, Administrative Review, and Technical Document Review Applications

CITY CODE REQUIREMENT FOR SIGN POSTING OF LAND USE REVIEW APPLICATIONS - Excerpt of Section 9-4-3(c), B.R.C. 1981: Public Notice of Application: The city manager will provide the following public notice of a development review application:

(1) Posting: After receiving such application, the manager will cause the property for which the application is filed to be posted with a notice indicating that a development review application has been made, the type of review requested, and that interested persons may obtain more detailed information from the planning department. The notice shall meet the following standards:

(A) The notice shall be place on weatherproof signs that have been provided by the City and placed on the property that is the subject of the application.

(B) All such notice shall be posted no later than ten days after the date the application is filed to ensure that notice is posted early in the development review process.

(C) The signs shall be placed along each abutting street, perpendicular to the direction of travel, in a manner that makes them clearly visible to neighboring residents and passers-by. At least one sign shall be posted on each street frontage.

(D) The signs shall remain in place during the period leading up to a decision by the approving authority, but not less than ten days.

(E) On or before the date that the approving authority is scheduled to make a decision on the application the city manager will require the applicant to certify in writing that required notice was posted according to the requirements of this section.

I, MARILYN JORKIE, am filing a Land Use Review or Technical Document Review
(PRINT NAME OF APPLICANT OR CONTACT PERSON)

application [on behalf of the property owner(s) NORWOOD GARDEN LLC, for property located
(PRINT NAME OF OWNER(S) IF OTHER THAN APPLICANT/CONTACT)

at 2326/2330/2364/2372, I have read the city's sign posting requirements above and acknowledge and
(PRINT PROPERTY ADDRESS OR LOCATION)

agree to the following: Norwood Ave. 80304

1. I understand that I must use the sign(s) that the city will provide to me at the time that I file my application. The sign(s) will include information about my application and property location to provide required public notice.

2. I am responsible for ensuring that the sign(s) is posted on the property described above in such a way that meets the requirements of Section 9-4-3(c), B.R.C. 1981 (listed above), including visibility of the sign(s) and time and duration of the sign(s) posting, and including reposting any signs that are removed, damaged, or otherwise displaced from the site. As necessary, I shall obtain a replacement sign(s) from the city for reposting.

3. I understand that certain future changes to my application, including but not limited to, changes to the project description or adding a review type, may require that I post a new sign(s). The city will notify me if such a reposting is required and provide me with a necessary replacement sign(s).

4. I understand that failing to provide the public notice by sign posting required by the city's land use regulation may result in a delay in the city's issuing a decision or a legal challenge of any issued decision.

Marilyn Jorkie — 6-12-2014
NAME OF APPLICANT OR CONTACT PERSON — DATE

Please keep a copy of this signed form for your reference. If you have any questions about the sign posting requirements or to obtain a replacement sign, please call 303-441-1880.

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ANNEXATION MAP

A PARCEL OF LAND, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 1

TOTAL AREA = 42,354 SQ FT, OR 0.97 ACRES, MORE OR LESS

Parcel Description

(PER DEED RECORDED AT RECEPTION NO. 2793806)

A TRACT OF LAND IN SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., DESCRIBED AS FOLLOWS:
BEGINNING AT THE SOUTH 1/4 CORNER OF SAID SECTION 18; THENCE NORTH 0°05'30" EAST ALONG THE NORTH–SOUTH CENTERLINE OF SAID SECTION 18, A DISTANCE OF 2,002.09 FEET; THENCE NORTH 89°11'30" EAST A DISTANCE OF 180.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 89°11'30" EAST, A DISTANCE OF 150.00' TO THE WEST LINE OF A TRACT DESCRIBED IN THE WARRANTY DEED IN BOOK 1042 AT PAGE 308 OF THE BOULDER COUNTY RECORDS; THENCE NORTH 0°05'30" EAST AND PARALLEL TO THE NORTH–SOUTH CENTER LINE OF SAID SECTION 18, A DISTANCE OF 281.46 FEET; THENCE SOUTH 89°53'00" WEST, A DISTANCE OF 150.0 FEET; THENCE SOUTH 0°05'30"WEST, A DISTANCE OF 283.27 FEET, TO THE TRUE POINT OF BEGINNING.

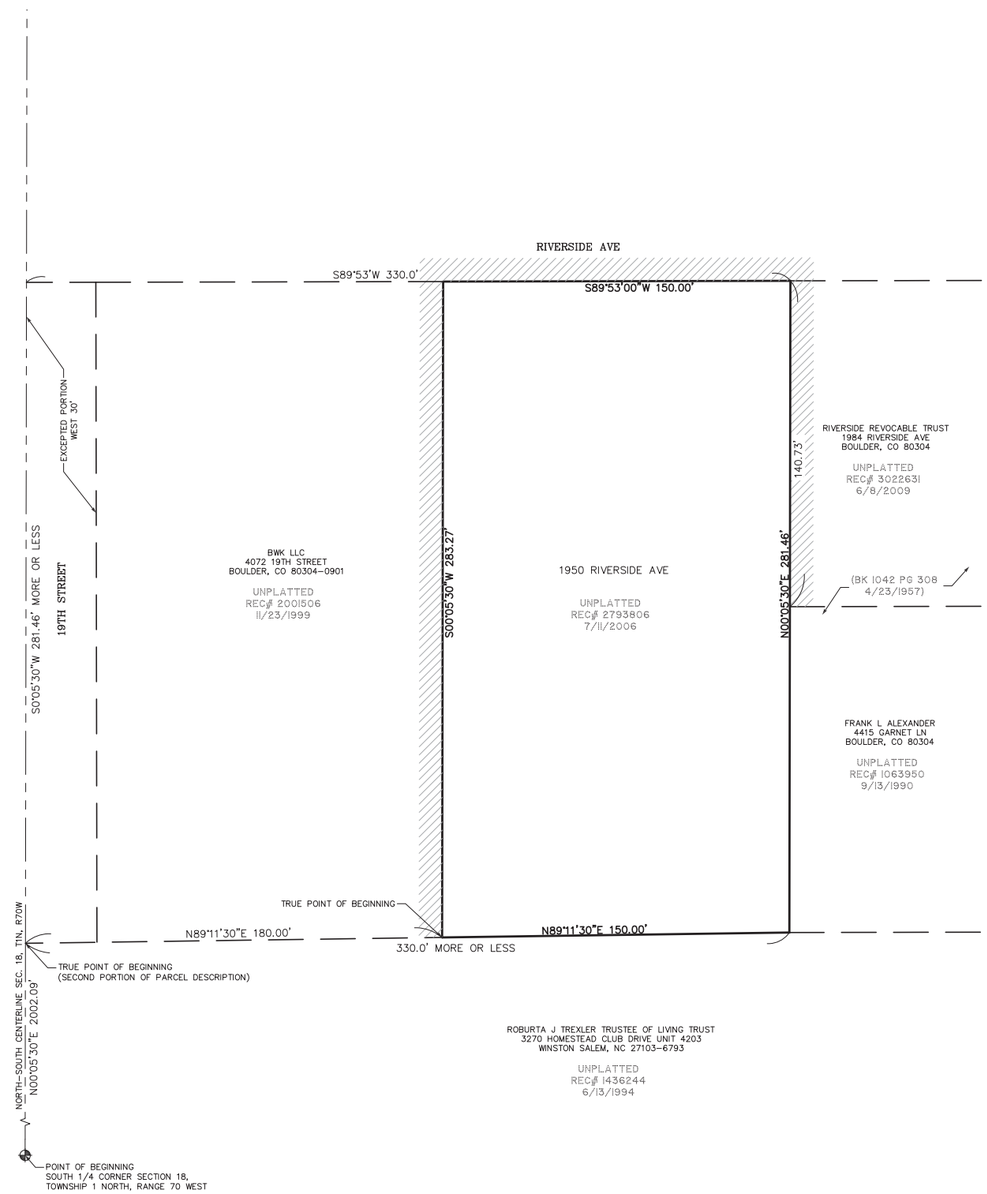
ALSO KNOWN AS:

A TRACT OF LAND SITUATE IN THE EAST 1/2 OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., DESCRIBED AS FOLLOWS: THE EAST 1/2 OF THE FOLLOWING DESCRIBED TRACT OF LAND; BEGINNING AT THE SOUTH 1/4 CORNER OF SAID SECTION 18; THENCE NORTH 0°05'30" EAST ALONG THE NORTH–SOUTH CENTER LINE OF SAID SECTION 18, 2,002.09 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 89°11'30" EAST, 330.0 FEET MORE OR LESS, TO THE WEST LINE OF THAT CERTAIN TRACT DESCRIBED IN THE WARRANTY DEED IN BOOK 1042 AT PAGE 308 OF THE BOULDER COUNTY RECORDS; THENCE NORTH 0°05'30" EAST AND PARALLEL TO THE NORTH–SOUTH CENTERLINE OF SAID SECTION 18, 281.46 FEET; THENCE SOUTH 89°53' WEST, 330.0 FEET; THENCE SOUTH 0°05'30" WEST ALONG THE NORTH–SOUTH CENTERLINE OF SAID SECTION 18, 281.46 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING; EXCEPT THE WEST 30 FEET THEREOF RESERVED FOR ROAD PURPOSES,
COUNTY OF BOULDER, STATE OF COLORADO.

Legend

ALIQUOT MONUMENT

CURRENT LIMITS OF THE CITY OF BOULDER



GRAPHIC SCALE

20 0 10 20 40

(IN FEET)
1 inch = 20 ft.

Notes

1. THIS ANNEXATION MAP WAS PREPARED WITHOUT THE BENEFIT OF A CURRENT TITLE COMMITMENT OR BINDER. EASEMENTS AND RIGHTS–OF–WAY DISCOVERED IN THE COURSE OF OUR INVESTIGATION ARE SHOWN HEREON. EASEMENTS SUCH AS UNRECORDED EASEMENTS MAY NOT HAVE BEEN DISCOVERED IN OUR SEARCH AND MAY AFFECT THE SUBJECT PROPERTY. IT IS RECOMMENDED THAT THE CLIENT OBTAIN A CURRENT TITLE COMMITMENT OR BINDER TO FURTHER AID IN RESEARCHING EASEMENTS, RIGHTS–OF–WAY AND ENCUMBRANCES THAT MAY AFFECT THE SUBJECT PROPERTY.
2. ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS MAP WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.
3. THE PURPOSE OF THIS MAP IS TO GRAPHICALLY PORTRAY THE RELATIONSHIP OF THE LAND PROPOSED FOR ANNEXATION TO THE CURRENT CITY OF BOULDER LIMITS.
4. ANY PERSON WHO KNOWINGLY REMOVES, ALTERS OR DEFACES ANY PUBLIC LAND SURVEY MONUMENT AND/OR BOUNDARY MONUMENT OR ACCESSORY, COMMITS A CLASS TWO (2) MISDEMEANOR PURSUANT TO STATE STATUTE C.R.S. SEC 18–4–508. WHOEVER WILLFULLY DESTROYS, DEFACES, CHANGES, OR REMOVES TO ANOTHER PLACE ANY SECTION CORNER, QUARTER–SECTION CORNER, OR MEANDER POST, ON ANY GOVERNMENT LINE OF SURVEY, OR WILLFULLY CUTS DOWN ANY WITNESS TREE OR ANY TREE BLAZED TO MARK THE LINE OF A GOVERNMENT SURVEY, OR WILLFULLY DEFACES, CHANGES, OR REMOVES ANY MONUMENT OR BENCH MARK OF ANY GOVERNMENT SURVEY, SHALL BE FINED UNDER THIS TITLE OR IMPRISONED NOT MORE THAN SIX MONTHS, OR BOTH. 18 U.S.C. § 1858.
5. THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

Contiguity

TOTAL PERIMETER.....864.75'
1/6TH PERIMETER.....144.13'
PERIMETER CONTIGUOUS TO CITY LIMITS.....574.00'

Surveyor's Certificate

I, JOHN B. GUYTON, A DULY REGISTERED LAND SURVEYOR, LICENSED IN THE STATE OF COLORADO, HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS ANNEXATION MAP OF THE ABOVE DESCRIBED LAND WAS PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE ON AUGUST 19, 2014 AND THAT AT LEAST 1/6TH OF THE TOTAL PERIMETER OF THAT LAND TO BE ANNEXED IS CONTIGUOUS TO THE EXISTING CITY OF BOULDER LIMITS.

JOHN B. GUYTON
COLORADO P.L.S. #16406
CHAIRMAN/CEO, FLATIRONS, INC.

DATE	REVISION
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ANNEXATION MAP
PREPARED FOR
CITY OF BOULDER

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BOULDER, CO 80301
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FAX: (303) 443–9830
3660 DOWNING ST
UNIT E
DENVER, CO 80205
PH: (303) 936–6997

COLORADO LICENSED
16406
PROFESSIONAL LAND SURVEYOR
8/19/14

JOB NUMBER:
14–64,206
DATE:
08–19–2014
DRAWN BY:
E. PRESCOTT
CHECKED BY:
JZG/WW/JK

SHEET 1 OF 1

BY:EPRESCOTT FILE:64206–ANNEX–C13.DWG DATE:8/19/2014 11:45 AM

ANNEXATION MAP

A PARCEL OF LAND, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 1

TOTAL AREA = 63,123 SQ FT, OR 1.45 ACRES, MORE OR LESS

Parcel Description

(PREPARED BY FLATIRONS, INC. AT THE REQUEST OF THE CLIENT)

A PARCEL OF LAND AS DESCRIBED IN THE RECORDS OF BOULDER COUNTY AT RECEPTION NO. 3046074, DATED DECEMBER 3, 2009, A PORTION OF GARNET LANE, AND A PORTION OF RIVERSIDE AVENUE, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE NORTH–SOUTH CENTERLINE LINE OF SAID SECTION 18 TO BEAR NORTH 00°05'30" EAST, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

BEGINNING AT THE NORTHWEST CORNER OF LOT 6, BLOCK 5, GITHENS ACRES AS RECORDED IN THE RECORDS OF BOULDER COUNTY AT RECEPTION NO. 90542553, DATED JUNE 30, 1954, THENCE ALONG THE WESTERLY LINE OF SAID LOT 6, SOUTH 00°01'40" WEST, A DISTANCE OF 250.84 FEET;
THENCE DEPARTING SAID WESTERLY LINE, SOUTH 40°07'31" WEST, A DISTANCE OF 93.15 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL OF LAND AS RECORDED AT RECEPTION NO. 3046074;
THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL OF LAND, SOUTH 89°11'30" WEST, A DISTANCE OF 333.07 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL OF LAND;
THENCE ALONG THE WESTERLY LINE OF SAID PARCEL OF LAND, NORTH 00°05'30" EAST, A DISTANCE OF 136.74 FEET TO THE NORTHWEST CORNER OF SAID PARCEL OF LAND;
THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL OF LAND THE FOLLOWING THREE (3) COURSES:
NORTH 89°53'00" EAST, 28.46 FEET;
THENCE NORTH 00°09'50" WEST, A DISTANCE OF 0.75 FEET;
THENCE NORTH 89°22'15" EAST, A DISTANCE OF 301.52 FEET TO THE SOUTHEAST CORNER OF A PARCEL OF LAND AS DESCRIBED IN THE RECORDS OF BOULDER COUNTY AT RECEPTION NO. 3022631, DATED JUNE 8, 2009;
THENCE ALONG THE EASTERLY LINE OF SAID PARCEL OF LAND AS DESCRIBED AT RECEPTION NO. 3022631, NORTH 00°05'30" EAST, A DISTANCE OF 141.27 FEET TO THE NORTHEAST CORNER OF SAID PARCEL OF LAND AS DESCRIBED AT RECEPTION NO. 3022631;
THENCE ALONG SAID EASTERLY LINE EXTENDED, NORTH 00°05'30" EAST, A DISTANCE OF 41.75 FEET TO THE NORTHERLY LINE OF SAID LOT 6, EXTENDED WESTERLY;
THENCE ALONG SAID NORTHERLY LINE EXTENDED, ALSO BEING A SOUTHERLY LINE OF RIVERSIDE GROVE SUBDIVISION AS RECORDED IN THE RECORDS OF BOULDER COUNTY AT RECEPTION NO. 1125796, DATED AUGUST 26, 1991, NORTH 87°21'27" EAST, A DISTANCE OF 62.79 FEET TO THE NORTHWEST CORNER OF SAID LOT 6, AND THE POINT OF BEGINNING.

SAID PARCEL CONTAINING 63,123 SQ.FT. OR 1.45 ACRES, MORE OR LESS.

Legend

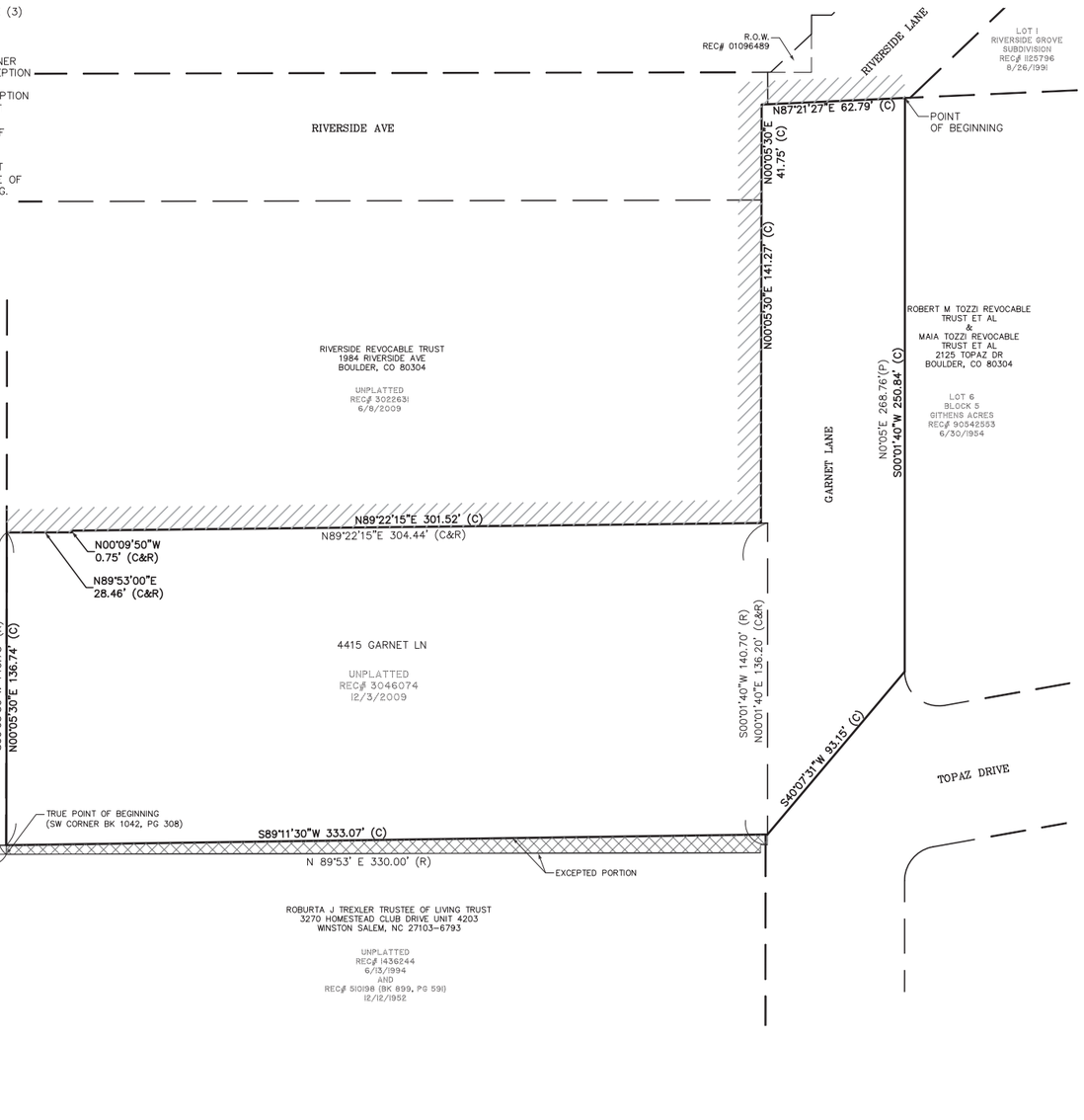
(C) CALCULATED FROM RECORD

(R) AS PER RECORD INFORMATION

(P) AS PER THE PLAT OF GITHENS ACRES REC# 90542553

CURRENT LIMITS OF THE CITY OF BOULDER

EXCEPTED PORTION (BK 899, PG 591), PER DEED RECORDED AT REC# 3046074



Notes

1. THIS ANNEXATION MAP WAS PREPARED WITHOUT THE BENEFIT OF A CURRENT TITLE COMMITMENT OR BINDER. EASEMENTS AND RIGHTS–OF–WAY DISCOVERED IN THE COURSE OF OUR INVESTIGATION ARE SHOWN HEREON. EASEMENTS SUCH AS UNRECORDED EASEMENTS MAY NOT HAVE BEEN DISCOVERED IN OUR SEARCH AND MAY AFFECT THE SUBJECT PROPERTY. IT IS RECOMMENDED THAT THE CLIENT OBTAIN A CURRENT TITLE COMMITMENT OR BINDER TO FURTHER AID IN RESEARCHING EASEMENTS, RIGHTS–OF–WAY AND ENCUMBRANCES THAT MAY AFFECT THE SUBJECT PROPERTY.
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5. THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

Contiguity

TOTAL PERIMETER.....1390.34'
1/6TH PERIMETER.....231.72'
PERIMETER CONTIGUOUS TO CITY LIMITS.....576.54'

Surveyor's Certificate

I, JOHN B. GUYTON, A DULY REGISTERED LAND SURVEYOR, LICENSED IN THE STATE OF COLORADO, HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS ANNEXATION MAP OF THE ABOVE DESCRIBED LAND WAS PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE ON SEPTEMBER 8, 2014 AND THAT AT LEAST 1/6TH OF THE TOTAL PERIMETER OF THAT LAND TO BE ANNEXED IS CONTIGUOUS TO THE EXISTING CITY OF BOULDER LIMITS.

JOHN B. GUYTON
COLORADO P.L.S. #16406
CHAIRMAN/CEO, FLATIRONS, INC.

REVISION	DATE
1 – Added a portion of Garnet Ln	2014–09–09 EP
2	–
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ANNEXATION MAP
PREPARED FOR
CITY OF BOULDER

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FAX: (303) 443–9830
3660 DOWNING ST
UNIT E
DENVER, CO 80205
PH: (303) 936–6997

COLORADO LICENSED
16406
9.9.14
PROFESSIONAL LAND SURVEYOR
SEAL

JOB NUMBER:	14–64,203
DATE:	9–2–2014
DRAWN BY:	E. PRESCOTT
CHECKED BY:	JK/WW/ZG

SHEET 1 OF 1

BY:EPRESCOTT FILE:64203–ANNEX–C13.DWG DATE:9/9/2014 9:06 AM

ANNEXATION MAP

LOT 13, GAPTER SUBDIVISION, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 1

TOTAL AREA = 50,613 SQ FT, OR 1.16 ACRES, MORE OR LESS

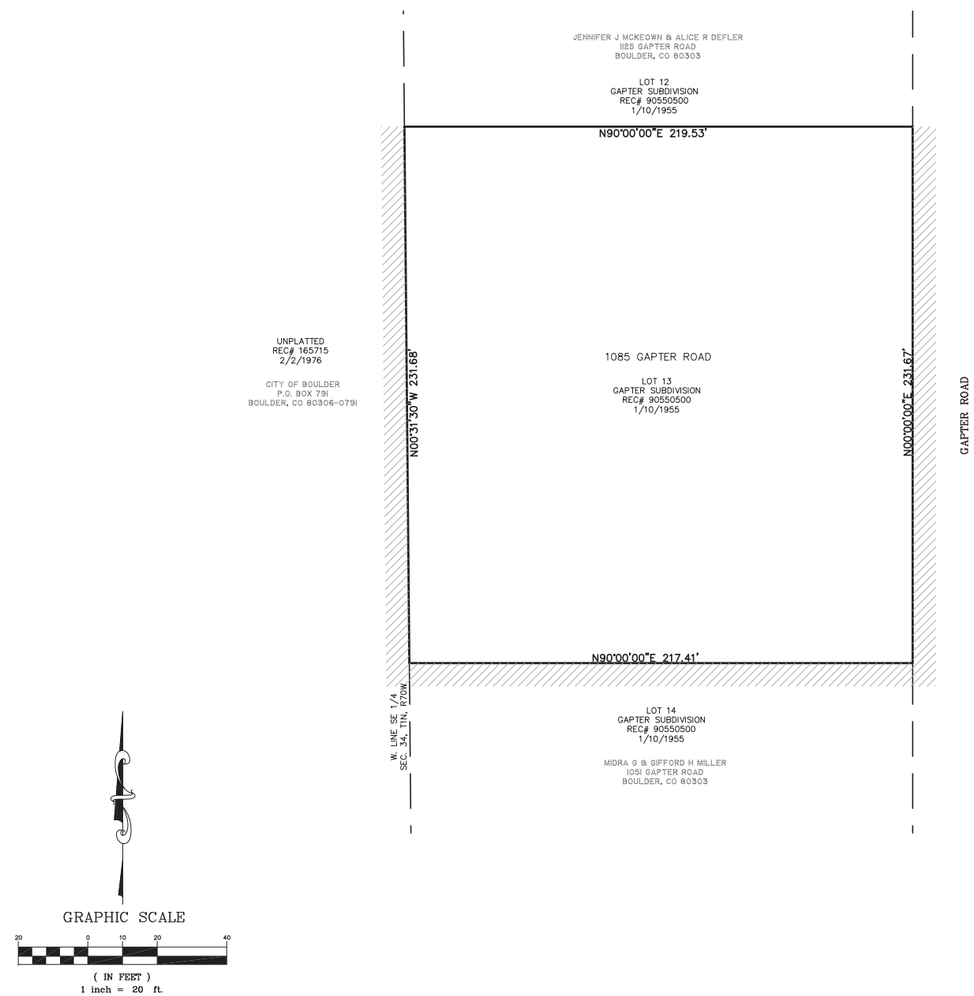
Parcel Description

(PROVIDED BY CLIENT)

LOT 13,
GAPTER SUBDIVISION,
COUNTY OF BOULDER,
STATE OF COLORADO.

Legend

CURRENT LIMITS OF THE CITY OF BOULDER



Notes

1. THIS ANNEXATION MAP WAS PREPARED WITHOUT THE BENEFIT OF A CURRENT TITLE COMMITMENT OR BINDER. EASEMENTS AND RIGHTS-OF-WAY DISCOVERED IN THE COURSE OF OUR INVESTIGATION ARE SHOWN HEREON. EASEMENTS SUCH AS UNRECORDED EASEMENTS MAY NOT HAVE BEEN DISCOVERED IN OUR SEARCH AND MAY AFFECT THE SUBJECT PROPERTY. IT IS RECOMMENDED THAT THE CLIENT OBTAIN A CURRENT TITLE COMMITMENT OR BINDER TO FURTHER AID IN RESEARCHING EASEMENTS, RIGHTS-OF-WAY AND ENCUMBRANCES THAT MAY AFFECT THE SUBJECT PROPERTY.
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3. THE PURPOSE OF THIS MAP IS TO GRAPHICALLY PORTRAY THE RELATIONSHIP OF THE LAND PROPOSED FOR ANNEXATION TO THE CURRENT CITY OF BOULDER LIMITS.
4. ANY PERSON WHO KNOWINGLY REMOVES, ALTERS OR DEFACES ANY PUBLIC LAND SURVEY MONUMENT AND/OR BOUNDARY MONUMENT OR ACCESSORY, COMMITS A CLASS TWO (2) MISDEMEANOR PURSUANT TO STATE STATUTE C.R.S. SEC 18-4-508. WHOEVER WILLFULLY DESTROYS, DEFACES, CHANGES, OR REMOVES TO ANOTHER PLACE ANY SECTION CORNER, QUARTER-SECTION CORNER, OR MEANDER POST, ON ANY GOVERNMENT LINE OF SURVEY, OR WILLFULLY CUTS DOWN ANY WITNESS TREE OR ANY TREE BLAZED TO MARK THE LINE OF A GOVERNMENT SURVEY, OR WILLFULLY DEFACES, CHANGES, OR REMOVES ANY MONUMENT OR BENCH MARK OF ANY GOVERNMENT SURVEY, SHALL BE FINED UNDER THIS TITLE OR IMPRISONED NOT MORE THAN SIX MONTHS, OR BOTH. 18 U.S.C. § 1858.
5. THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

Contiguity

TOTAL PERIMETER.....900.29'
1/6TH PERIMETER.....150.05'
PERIMETER CONTIGUOUS TO CITY LIMITS.....680.76'

Surveyor's Certificate

I, JOHN B. GUYTON, A DULY REGISTERED LAND SURVEYOR, LICENSED IN THE STATE OF COLORADO, HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS ANNEXATION MAP OF THE ABOVE DESCRIBED LAND WAS PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE ON AUGUST 19, 2014 AND THAT AT LEAST 1/6TH OF THE TOTAL PERIMETER OF THAT LAND TO BE ANNEXED IS CONTIGUOUS TO THE EXISTING CITY OF BOULDER LIMITS.

JOHN B. GUYTON
COLORADO P.L.S. #16406
CHAIRMAN/CEO, FLATIRONS, INC.

REVISION	DATE
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ANNEXATION MAP
PREPARED FOR
CITY OF BOULDER

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3660 DOWNING ST
UNIT E
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PH: (303) 936-6997

COLORADO LICENSED
PROFESSIONAL LAND SURVEYOR
JOHN B. GUYTON
16406
8/19/14
SEAL

JOB NUMBER:	14-64,205
DATE:	08-19-2014
DRAWN BY:	E.PRESCOTT
CHECKED BY:	JZG/WW/JK

SHEET 1 OF 1

BY:EPRESCOTT FILE:64205-ANNEX-C13.DWG DATE:8/19/2014 1:46 PM

ANNEXATION MAP

LOT 6, BLOCK 6, GITHENS ACRES SUBDIVISION, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 1

TOTAL AREA = 54,803 SQ FT, OR 1.26 ACRES, MORE OR LESS

Parcel Description

(PROVIDED BY CLIENT)

LOT 3, BLOCK 6,
GITHENS ACRES
COUNTY OF BOULDER,
STATE OF COLORADO

Legend

CURRENT LIMITS OF THE CITY OF BOULDER

GRAPHIC SCALE

30 0 15 30 60

(IN FEET)
1 inch = 30 ft.

Notes

1. THIS ANNEXATION MAP WAS PREPARED WITHOUT THE BENEFIT OF A CURRENT TITLE COMMITMENT OR BINDER. EASEMENTS AND RIGHTS-OF-WAY DISCOVERED IN THE COURSE OF OUR INVESTIGATION ARE SHOWN HEREON. EASEMENTS SUCH AS UNRECORDED EASEMENTS MAY NOT HAVE BEEN DISCOVERED IN OUR SEARCH AND MAY AFFECT THE SUBJECT PROPERTY. IT IS RECOMMENDED THAT THE CLIENT OBTAIN A CURRENT TITLE COMMITMENT OR BINDER TO FURTHER AID IN RESEARCHING EASEMENTS, RIGHTS-OF-WAY AND ENCUMBRANCES THAT MAY AFFECT THE SUBJECT PROPERTY.
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3. THE PURPOSE OF THIS MAP IS TO GRAPHICALLY PORTRAY THE RELATIONSHIP OF THE LAND PROPOSED FOR ANNEXATION TO THE CURRENT CITY OF BOULDER LIMITS.
4. ANY PERSON WHO KNOWINGLY REMOVES, ALTERS OR DEFACES ANY PUBLIC LAND SURVEY MONUMENT AND/OR BOUNDARY MONUMENT OR ACCESSORY, COMMITS A CLASS TWO (2) MISDEMEANOR PURSUANT TO STATE STATUTE C.R.S. SEC 18-4-508. WHOEVER WILLFULLY DESTROYS, DEFACES, CHANGES, OR REMOVES TO ANOTHER PLACE ANY SECTION CORNER, QUARTER-SECTION CORNER, OR MEANDER POST, ON ANY GOVERNMENT LINE OF SURVEY, OR WILLFULLY CUTS DOWN ANY WITNESS TREE OR ANY TREE BLAZED TO MARK THE LINE OF A GOVERNMENT SURVEY, OR WILLFULLY DEFACES, CHANGES, OR REMOVES ANY MONUMENT OR BENCH MARK OF ANY GOVERNMENT SURVEY, SHALL BE FINED UNDER THIS TITLE OR IMPRISONED NOT MORE THAN SIX MONTHS, OR BOTH. 18 U.S.C. § 1858.
5. THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

Contiguity

TOTAL PERIMETER..... 942.43'
1/6TH PERIMETER..... 157.07'
PERIMETER CONTIGUOUS TO CITY LIMITS..... 197.39'

Surveyor's Certificate

I, JOHN B. GUYTON, A DULY REGISTERED LAND SURVEYOR, LICENSED IN THE STATE OF COLORADO, HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS ANNEXATION MAP OF THE ABOVE DESCRIBED LAND WAS PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE ON AUGUST 20, 2014 AND THAT AT LEAST 1/6TH OF THE TOTAL PERIMETER OF THAT LAND TO BE ANNEXED IS CONTIGUOUS TO THE EXISTING CITY OF BOULDER LIMITS.

JOHN B. GUYTON
COLORADO P.L.S. #16406
CHAIRMAN/CEO, FLATIRONS, INC.

REVISION	DATE
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ANNEXATION MAP
PREPARED FOR
CITY OF BOULDER

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PH: (303) 936-6997

COLORADO LICENSED
JOHN B. GUYTON
16406
8-25-14
PROFESSIONAL LAND SURVEYOR
SEAL

JOB NUMBER:	14-64,204
DATE:	08-25-2014
DRAWN BY:	E. PRESCOTT
CHECKED BY:	JK/WW/JZG

SHEET 1 OF 1

BY:EPRESCOTT FILE:64204-ANNEX-C13.DWG DATE:8/25/2014 1:33 PM

EXHIBIT A TO ORDINANCE (Page 2 of 2)
ANNEXATION MAP

A PARCEL OF LAND, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 1

TOTAL AREA = 53,019 SQ FT, OR 1.22 ACRES, MORE OR LESS

Parcel Description

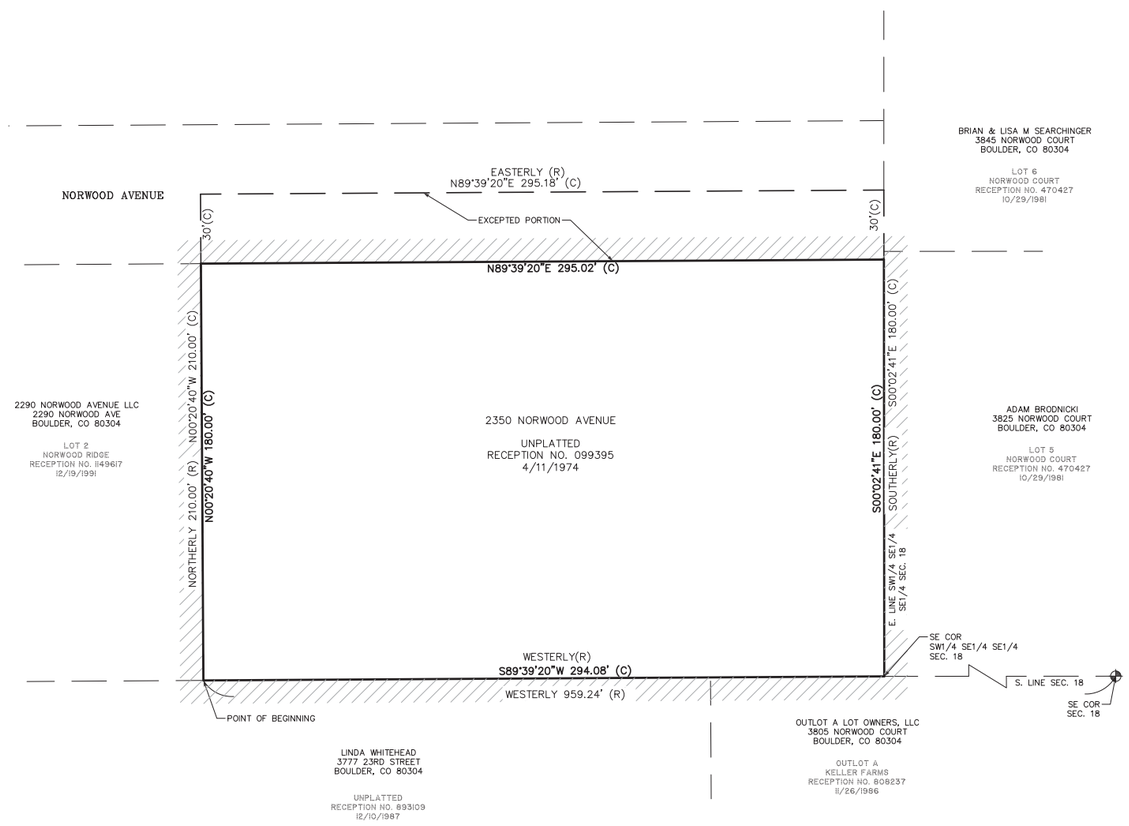
(PROVIDED BY DEED RECORDED AT RECEPTION NO. 099395)

THAT PORTION OF THE SE1/4 SE1/4 OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF SAID SECTION 18, A DISTANCE OF 959.24 FEET WESTERLY FROM THE SOUTHEAST CORNER OF SAID SECTION 18; THENCE NORTHERLY AND AT RIGHT ANGLES TO THE SOUTH LINE OF SAID SECTION 18 A DISTANCE OF 210.00 FEET; THENCE EASTERLY, PARALLEL WITH THE SOUTH LINE OF SAID SECTION 18, TO A POINT ON THE EAST LINE OF THE SW 1/4 SE 1/4 SE 1/4 OF SAID SECTION 18; THENCE SOUTHERLY ALONG THE EAST LINE OF THE SW 1/4 SE 1/4 SE 1/4 OF SAID SECTION 18, TO THE SOUTHEAST CORNER OF THE SW 1/4 SE 1/4 SE 1/4 OF SAID SECTION 18; THENCE WESTERLY ALONG THE SOUTH LINE OF SAID SECTION 18, TO THE PLACE OF BEGINNING.
EXCEPT THE NORTHERLY 30' THEREOF (PER THE DIRECTION OF CLIENT).

Legend

- FOUND ALIQUOT MONUMENT AS DESCRIBED
- (C) CALCULATED FROM RECORD INFORMATION (SEE NOTE 7)
- (R) AS PER RECORD INFORMATION DEED RECORDED AT RECEPTION NO. 099395
- CURRENT LIMITS OF THE CITY OF BOULDER



GRAPHIC SCALE

30 0 15 30 60

(IN FEET)
1 inch = 30 ft.

Notes

1. THIS ANNEXATION MAP WAS PREPARED WITHOUT THE BENEFIT OF A CURRENT TITLE COMMITMENT OR BINDER. EASEMENTS AND RIGHTS-OF-WAY DISCOVERED IN THE COURSE OF OUR INVESTIGATION ARE SHOWN HEREON. EASEMENTS SUCH AS UNRECORDED EASEMENTS MAY NOT HAVE BEEN DISCOVERED IN OUR SEARCH AND MAY AFFECT THE SUBJECT PROPERTY. IT IS RECOMMENDED THAT THE CLIENT OBTAIN A CURRENT TITLE COMMITMENT OR BINDER TO FURTHER AID IN RESEARCHING EASEMENTS, RIGHTS-OF-WAY AND ENCUMBRANCES THAT MAY AFFECT THE SUBJECT PROPERTY.
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6. PARCEL DESCRIPTION HEREON IS GRAPHICALLY DEPICTED BASED ON DEED RECORDED WITH THE BOULDER COUNTY CLERK AND RECORDER RECORDED ON APRIL 11, 1974, AT RECEPTION NUMBER 099395.
7. BEARINGS AND DISTANCES SHOWN AS CALCULATED ARE PER THE LAND SURVEY PLAT DEPOSITED IN THE BOULDER COUNTY LAND USE AT LS-98-0226.

Contiguity

TOTAL PERIMETER..... 949.10'
1/6TH PERIMETER..... 158.18'
PERIMETER CONTIGUOUS TO CITY LIMITS..... 949.10'

Surveyor's Certificate

I, JOHN B. GUYTON, A DULY REGISTERED LAND SURVEYOR, LICENSED IN THE STATE OF COLORADO, HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS ANNEXATION MAP OF THE ABOVE DESCRIBED LAND WAS PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE ON OCTOBER 13, 2014 AND THAT AT LEAST 1/6TH OF THE TOTAL PERIMETER OF THAT LAND TO BE ANNEXED IS CONTIGUOUS TO THE EXISTING CITY OF BOULDER LIMITS.

JOHN B. GUYTON
COLORADO P.L.S. #16406
CHAIRMAN/CEO, FLATIRONS, INC.

REVISION	DATE
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ANNEXATION MAP
PREPARED FOR
CITY OF BOULDER

COPYRIGHT 2014 FLATIRONS, INC.

Flatirons, Inc.
Surveying, Engineering & Geomatics
www.Flatironsinc.com
3825 IRIS AVE, STE 395
BOULDER, CO 80301
PH: (303) 443-7001
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655 FOURTH AVE
LONGMONT, CO 80501
PH: (303) 776-1733
FAX: (303) 776-4355
3660 DOWNING ST
UNIT E
DENVER, CO 80205
PH: (303) 936-6997

COLORADO LICENSED
16406
10/13/14
PROFESSIONAL LAND SURVEYOR
SEAL

JOB NUMBER:	14-64,592
DATE:	10-13-2014
DRAWN BY:	E. PRESCOTT
CHECKED BY:	JK/WW/JZG

SHEET 1 OF 1

BY:EPRESCOTT FILE:64592-ANNEX-C13.DWG DATE:10/13/2014 10:43 AM

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For Administrative Purposes Only
Applicant: Seana Grady
Address: 1950 Riverside Ave.
Case No. LUR2014-00059

ANNEXATION AGREEMENT

This Annexation Agreement ("Agreement"), made this 21st day of Nov., 2014, by and between the City of Boulder, a Colorado home rule city (the "City"), and Seana Grady (the "Applicant"). The City and the Applicant are referred to as the "Parties."

RECITALS

WHEREAS, the Parties recite the following facts related to the annexation of the property described in this Agreement to the City of Boulder:

A. The Applicant is the owner of the property generally known as 1950 Riverside Ave., Boulder CO 80304 and more particularly described on the attached **Exhibit A** (the "Property") included by reference and hereby made a part of this Agreement.

B. The Applicant is interested in obtaining approval from the City of the annexation of the Property in order to provide adequate urban services to the Property.

C. The Parties anticipate that annexation, with an initial zoning designation of Residential – Estate (RE) is consistent with the Boulder Valley Comprehensive Plan.

D. In order to assist the Applicant in annexing into the City, the City is providing an annexation package that includes a method for financing the public improvements and a waiver of certain fees and taxes which includes the annexation application fee and the housing excise tax.

E. The City is interested in ensuring that certain terms and conditions of annexation be met by the Applicant in order to protect the public health, safety, and welfare and prevent the placement of an unreasonable burden on the physical, social, economic, or environmental resources of the City.

COVENANTS

NOW, THEREFORE, in consideration of the recitals, promises, and covenants herein set forth, and other good and valuable consideration herein receipted for, the Parties agree as follows:

1. Definitions. The Parties agree that terms used in this Agreement will have the following meanings:

"Redevelopment" shall be defined as the subdivision of a property to create a new lot, issuance of a building permit for a new or replacement dwelling unit, issuance of a

building permit for additional square footage to the existing structure, or an increase in number of the plumbing fixtures.

2. Requirements Prior to First Reading of the Annexation Ordinance. Prior to the scheduling of first reading of the annexation ordinance, the Applicant shall do the following:

   A. Annexation Agreement. The Applicant will sign this Agreement.

   B. Title Work. The Applicant will provide the City with title work current to within 30 days of signing this Agreement.

   C. Written Descriptions. The Applicant shall provide a written description of any nonconforming uses and/or nonstandard buildings existing on each Property, if any.

   D. Easement Dedications. The Applicant shall dedicate to the City, at no cost, the following easements:

      a. A flood control easement from 60 feet on either side of the centerline of Wonderland Creek as shown on **Exhibit B.** The easements shall be in a form acceptable to the city manager. The easement will exclude any principal building containing a dwelling unit on the lot within the easement area that is existing at the time of annexation.
      b. A 12.5 foot public utility easement as shown on **Exhibit C**.
      c. A ditch lateral easement as shown on **Exhibit D**.

   E. Northern Colorado Water Conservancy District ("NCWCD"). The Applicant will file an application for inclusion of the Property in the Boulder Municipal Subdistrict.

3. Connection Requirements. Prior to connection to the City's water and sanitary sewer mains, the Applicant shall:

   A. Submit applications to connect to the City's water and sanitary sewer mains that meet the requirements of Chapters 11-1 and 11-2, B.R.C. 1981.

   B. Pay all applicable fees and charges associated with service line connections to the water and sanitary sewer mains, including water and wastewater plant investment fees, stormwater and flood management plant investment fees, right-of way, water, and wastewater permit fees, installation fees, and tap fees.

   C. Construct the individual service lines that will connect the Applicant's existing residence to the City's water and wastewater mains.

   D. Pay any assessments, including but not limited to the following:

      a. Stormwater and Flood PIF $12,073.66

E. Execute a Promissory Note and Deed of Trust, if Applicant selected Payment Option #B, as described under Paragraph 4.B(i) below,

4. Payment Options and Requirements for Fees, Taxes, and Public Improvement Costs. The Applicant selects **Option #B** set forth below.

A. Option #A: Payment in Full. The Applicant shall connect to the City water and sanitary sewer mains within one year after the effective date of annexation ordinance and shall comply with the terms of, and pay the costs and fees described in, Paragraph 3 above. The City Manager may, in her discretion, approve a different time for connection to the City water and sanitary sewer mains provided the Applicant demonstrates reasonable diligence to comply with the one-year deadline and good cause for the extension.

B. Option #B: Payment Plan. The Applicant shall connect to the City water and sanitary sewer mains within one year after the effective date of the annexation ordinance and shall comply with the terms of Paragraph 3 above except that the costs, fees and any assessments described in Paragraph 3 shall be paid in accordance with the terms of the following payment plan:

i. Prior to connection to the City's water and sanitary sewer mains, the Applicant shall execute a Promissory Note and a Deed of Trust securing said Note and encumbering the Applicant's Property in the principal amount to cover the amounts set forth in Paragraph 3 above. The Note will have a simple interest rate of 3.25 percent per annum, payable in 10 annual installments of principal and interest beginning at the time of connection to the City water and sanitary sewer mains.

The City Manager may, in her discretion, approve a different time for connection to the City water and sanitary sewer mains provided the Applicant demonstrates reasonable diligence to comply with the one-year deadline and good cause for the extension. The City Manager, in her discretion, may approve for good cause a different time for payment of the first of the 10 annual installments of principal and interest.

C. Option #C: Future Connection. The Applicant shall connect to the City's water and sanitary sewer mains at a time later than what is specified in Option #A and #B above, but no later than the time 1) when the Applicant's on-site wastewater system fails or is declared unsafe, or the Applicant is otherwise required to stop using the on-site wastewater system by the Boulder County Health Department or the State of Colorado; or 2) the Applicant's Property is sold; or 3) of Redevelopment of Applicant's Property, whichever occurs first. At the respective time and prior to the Applicant's connection to the City's water and sanitary sewer mains, the Applicant will pay the costs and fees described in Paragraph 3 above based on the then applicable fee schedule.

5. City of Boulder Design and Construction Standards. Any public improvements that are required to be constructed by the terms of this Agreement shall be constructed in accordance with the requirements of the City of Boulder *Design and Construction Standards* applicable at the time of construction, and shall be subject to the review, approval and acceptance of the City Manager.

6. Use of Existing Wells. The City agrees not to prohibit the Applicant from using existing wells for irrigation purposes, even if the Property is served by the City water utility. Under no circumstances may existing wells be used for domestic water purposes once the Applicant has connected to the city water utility. No person is allowed to make any cross connections between a well and the City's municipal water utility. The Parties agree that there shall not be any type of connection between any well and the City water system serving the Property.

7. Applicant Responsible for Legal Disconnection of On-site Wastewater System. If the Applicant decides to continue to use an existing on-site wastewater system, the Applicant agrees that the Applicant will connect to the adjacent sanitary sewer main, in accordance with Section 11-2-9, B.R.C. 1981, upon any declaration by Boulder County Public Health to cease and desist using the on-site wastewater system, or other declaration that the on-site wastewater system constitutes a threat to the public health. Currently, under Boulder County Public Health Department policy, all on-site wastewater systems must be permitted and approved by 2023. At that time, any resident still using an on-site wastewater system must either have their system permitted and approved, or connect to the adjacent sanitary sewer main. At the time of any disconnection of the on-site wastewater system and connection to the City's sanitary sewer main, the Applicant is required to abandon the existing on-site wastewater system in accordance with Boulder County Public Health and State of Colorado regulations.

8. Historic Drainage. The Applicant agrees to convey drainage from the Property in an historic manner that does not materially and adversely affect abutting properties.

9. Ditch Company Approval. If the Property is abutting an existing irrigation ditch or lateral, the Applicant agrees not to relocate, modify, or alter the ditch or lateral until and unless written approval is received from the appropriate ditch company.

10. Existing Nonstandard Buildings and/or Nonconforming Uses. The Applicant acknowledges that at the time of annexation no uses exist on the Property that were legally established under County zoning that would be prohibited under the City's Residential-Estate (RE) zoning. The Parties acknowledge that the only non-standard building or structure that exists on the Property at the time of annexation is an existing shed on the east side of the property with an eight-foot setback from the east property line where a larger side yard setback may be required under Section 9-7-2, "Setback Standards," B.R.C. 1981. Section 9-10-3, "Changes to Nonstandard Buildings, Structures, and Lots and Nonconforming Uses," B.R.C. 1981, applies to changes to nonstandard buildings. The Applicant and the City agree that this section shall not be construed to permit the Property to constitute a nuisance or to cause a hazard under the City's life safety codes.

11. New Construction. All new construction commenced on the Property after annexation will comply with all City of Boulder laws, taxes, and fees, except as modified by this Agreement.

12. Waiver of Vested Rights. The Applicant hereby waives any statutory vested rights that may have accrued under County jurisdiction that have not been perfected as common law vested rights. The Applicant acknowledges that nothing in this Agreement may be construed as a waiver of the City's powers to zone and regulate land uses for the benefit of the citizens and residents of Boulder.

13. Dedications. The Applicant acknowledges that any dedications and public improvements required herein with this annexation are rationally related and reasonably proportionate to the projected impact of the development of the Property as set forth in this Agreement.

14. Original Instruments. Prior to the first reading of the annexation ordinance, the Applicant shall provide an original of this Agreement signed by the Applicant, along with any instruments required in this Agreement. The City agrees to hold such documents until after final legislative action on the annexation of this Property has occurred. Final legislative action by the City Council shall constitute acceptance of such documents by the City. In the event that the City does not annex the Property, the City agrees that it will return all such original documents to the Applicant. The Applicant agrees that it will not encumber or in any way take any action that compromises the quality of such documents while they are being held by the City.

15. No Encumbrances. The Applicant agrees that between the time of signing this Agreement and the time when final legislative action on the annexation of this Property has occurred, the Applicant shall neither convey ownership nor further encumber the Applicant's Property, without the express approval from the City. Prior to the recording of this Agreement with the Boulder County Clerk and Recorder, Applicant agrees not to execute transactional documents encumbering the Property or otherwise affecting title to the Property without first notifying the City and submitting revised title work within five (5) working days of any such transaction.

16. Breach of Agreement. In the event the Applicant breaches or fails to perform any required action or fails to pay any fee specified under this Agreement or under any document that may also be required to be executed pursuant to this Agreement, the Applicant acknowledges that the City may take all reasonable actions to cure the breach, including but not limited to the filing of an action for specific performance of the obligations herein described. In the event the Applicant fails to pay any monies due under this Agreement or under any document that may also be required to be executed pursuant to this Agreement or fails to perform any affirmative obligation hereunder or under any document that may also be required to be executed pursuant to this Agreement, the Applicant agrees that the City may collect the monies due in the manner provided for in Section 2-2-12, B.R.C. 1981, as amended, as if the said monies were due and owing pursuant to a duly adopted ordinance of the City or may perform the obligation on behalf of the Applicant and collect

its costs in the manner herein provided. The Applicant agrees to waive any rights she may have under Section 31-20-105, C.R.S., based on the City's lack of an enabling ordinance authorizing collection of this specific debt, or acknowledges that the adoption of the annexation ordinance is such enabling ordinance.

17. Failure to Annex. This Agreement and any document executed pursuant hereto shall be null and void and of no consequence in the event that the Property is not annexed into the City.

18. Future Interests. This Agreement and the covenants set forth herein shall run with the land and be binding upon the Applicant, the Applicant's heirs, successors, and assigns and all persons who may hereafter acquire an interest in the Property, or any part thereof. If it shall be determined that this Agreement contains an interest in land, that interest shall vest, if at all, within the lives of the undersigned plus 20 years and 364 days.

19. Right to Withdraw. An Applicant retains the right to withdraw from this Agreement up until the time that final legislative action has been taken on the ordinance that will cause the Property to be annexed into the City. The final legislative action will be the vote of the City Council after the final reading of the annexation ordinance. The Applicant's right to withdraw shall terminate upon the City Council's final legislative action approving the annexation. In the event that the Applicant withdraws from this Agreement in the manner described above, this Agreement shall be null and void and shall have no effect regarding such Applicant. The City agrees, within 30 days of a request by an Applicant after a withdrawal, to return all previously submitted stormwater/flood management PIF, NCWCD fees and application, and easement and/or rights of way dedication documents which the Applicant submitted pursuant to this Agreement to the City.

20. Flood Control Easement Conditions. The Applicant acknowledges that no accessory structures currently exist within the Flood Control Easement Area. The Applicant shall not construct any new buildings within the Flood Control Easement Area.

21. Cash-in-lieu of Providing Permanently Affordable Housing. For each additional dwelling unit on the Property that is not deed-restricted as a permanently affordable residence consistent with the requirements of Chapter 9-13, "Inclusionary Housing," B.R.C. 1981, the Applicant shall pay twice the applicable cash-in-lieu amount as required per each market unit in that chapter to the City. This amount is payable prior to issuance of a building permit for each new dwelling unit that is not deed-restricted as a permanently affordable residence consistent with the requirements of Chapter 9-13, "Inclusionary Housing," B.R.C. 1981. The parties acknowledge that the Property has the equivalent of one habitable dwelling unit on such Property at the time of annexation.

22. Requirements at Subdivision. At the time of subdivision, the Applicants shall extend a City water main in Riverside Avenue along the entire northern boundary of the Property, consistent with the then current City of Boulder *Design and Construction Standards*. Prior to issuance of a certificate of occupancy for any new dwelling unit on the Property, the Applicants shall construct an individual service line and connect the residential use to

the City's water utility consistent with all rules, regulations, and fee, rate and code requirements that are applicable.

23. Requirements at Subdivision or Issuance of a Building Permit for a New or Replacement Dwelling Unit. At the time of subdivision or issuance of a building permit for a new or replacement dwelling unit:

    A. Street and Access Improvements. The Applicant shall meet the site access standards of Section 9-9-5, "Site Access Control," B.R.C. 1981, including the number, spacing, width and paving material requirements.

    B. Right of Way Improvements. The Applicant shall construct or improve the public improvements along the Riverside Avenue street frontage to meet rural residential street standards, including the addition of a two foot wide gravel shoulder.

24. 2014 Fee Schedule. The Applicant agrees to connect to the City sanitary sewer main within one year from the effective date of the ordinance, or as otherwise approved by the City Manager. The Parties agree that any fees required in Paragraph 3 of this Agreement for said initial connection be assessed at the rates applicable on October 9, 2014 and as more particularly described on the attached **Exhibit E**.

EXECUTED on the day and year first above written.

APPLICANT:

By: _____
Seana Grady

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me, a Notary Public, this 21 day of Nov, 2014, by Seana Grady.

Witness my hand and official seal.
My commission expires: Oct 10, 2016

[SEAL]

MARY WALLACE
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID # 20044023780
MY COMMISSION EXPIRES OCTOBER 10, 2016

_____
Notary Public

CITY OF BOULDER:

By: _____
City Manager

ATTEST:

_____
City Clerk

Approved As To Form:

_____
City Attorney's Office

Date: _____

EXHIBITS

A: Legal Description
B: Form of Flood Control Easement
C: Form of Public Utility Easement
D: Form of Ditch Easement
E. Fees due at time of connection

EXHIBIT A TO AGREEMENT (Page 1 of 1)

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 1

PARCEL DESCRIPTION
(1950 RIVERSIDE)
(PER DEED RECORDED AT RECEPTION NO. 2793806)

A TRACT OF LAND IN SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., DESCRIBED AS FOLLOWS:
BEGINNING AT THE SOUTH 1/4 CORNER OF SAID SECTION 18; THENCE NORTH 0°05'30" EAST ALONG THE NORTH–SOUTH CENTERLINE OF SAID SECTION 18, A DISTANCE OF 2,002.09 FEET; THENCE NORTH 89°11'30" EAST A DISTANCE OF 180.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 89°11'30" EAST, A DISTANCE OF 150.00' TO THE WEST LINE OF A TRACT DESCRIBED IN THE WARRANTY DEED IN BOOK 1042 AT PAGE 308 OF THE BOULDER COUNTY RECORDS; THENCE NORTH 0°05'30" EAST AND PARALLEL TO THE NORTH–SOUTH CENTER LINE OF SAID SECTION 18, A DISTANCE OF 281.46 FEET; THENCE SOUTH 89°53'00" WEST, A DISTANCE OF 150.0 FEET; THENCE SOUTH 0°05'30"WEST, A DISTANCE OF 283.27 FEET, TO THE TRUE POINT OF BEGINNING.

ALSO KNOWN AS:

A TRACT OF LAND SITUATE IN THE EAST 1/2 OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., DESCRIBED AS FOLLOWS: THE EAST 1/2 OF THE FOLLOWING DESCRIBED TRACT OF LAND; BEGINNING AT THE SOUTH 1/4 CORNER OF SAID SECTION 18; THENCE NORTH 0°05'30" EAST ALONG THE NORTH–SOUTH CENTER LINE OF SAID SECTION 18, 2,002.09 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 89°11'30" EAST, 330.0 FEET MORE OR LESS, TO THE WEST LINE OF THAT CERTAIN TRACT DESCRIBED IN THE WARRANTY DEED IN BOOK 1042 AT PAGE 308 OF THE BOULDER COUNTY RECORDS; THENCE NORTH 0°05'30" EAST AND PARALLEL TO THE NORTH–SOUTH CENTERLINE OF SAID SECTION 18, 281.46 FEET; THENCE SOUTH 89°53' WEST, 330.0 FEET; THENCE SOUTH 0°05'30" WEST ALONG THE NORTH–SOUTH CENTERLINE OF SAID SECTION 18, 281.46 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING; EXCEPT THE WEST 30 FEET THEREOF RESERVED FOR ROAD PURPOSES,
COUNTY OF BOULDER, STATE OF COLORADO.

I, JOHN B. GUYTON, A LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS PARCEL DESCRIPTION AND ATTACHED EXHIBIT, BEING MADE A PART THEREOF, WERE PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE AT THE REQUEST OF THE CLIENT AND IS NOT INTENDED TO REPRESENT A MONUMENTED LAND SURVEY OR SUBDIVIDE LAND IN VIOLATION OF STATE STATUTE.

COLORADO LICENSED PROFESSIONAL LAND SURVEYOR JOHN BRUCE GUYTON 16406 9/22/14

JOHN B. GUYTON
COLORADO P.L.S. #16406 FSI JOB NO. 14–64,206
CHAIRMAN/CEO, FLATIRONS, INC.

JOB NUMBER: 14–64,206
DRAWN BY: E. PRESCOTT
DATE: SEPTEMBER 22, 2014

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

Flatirons, Inc.
Surveying, Engineering & Geomatics
655 FOURTH AVE
LONGMONT, CO 80501
PH: (303) 776–1733
FAX: (303) 776–4355
www.FlatironsInc.com

BY:EPRESCOTT FILE:64206–ANNEX–C13.DWG DATE:9/22/2014 10:16 AM

EXHIBIT B TO AGREEMENT (Page 1 of 5)

For Administrative Purposes Only
Property Address: 1950 Riverside
Grantor: Seana Grady
Grantee: City of Boulder, Colorado
Case#: LUR2014-00059

GRANT OF FLOOD CONTROL EASEMENT

SEANA GRADY ("Grantor"), whose address is 1950 Riverside, Boulder Colorado 80304, for $1.00 and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey to the CITY OF BOULDER, a Colorado home rule city (the "City"), whose address is 1777 Broadway, Boulder, Colorado 80302, a flood control easement for the purpose of drainage conveyance and control of flood waters and installation and maintenance of improvements necessary to ensure conveyance as determined by the Grantee, together with all rights and privileges as are necessary or incidental to the reasonable and proper use of such easement in and to, over, under and across the following real property, situated in Boulder County, Colorado, to-wit:

See Exhibit A attached

Grantor, for her and for her heirs, successors, agents, lessees, and assigns, does hereby covenant and agree that no permanent structure or improvement shall be placed on said easement by her or her heirs, successors or assigns, and that said use of such easement shall not otherwise be obstructed or interfered with.

Grantor warrants her ability to grant and convey this easement.

The terms of this easement shall run with the land and shall be binding upon and inure to the benefit of the Grantor, her heirs, agents, lessees and assigns, and all other successors to her in interest and shall continue as a servitude running in perpetuity with the property described above.

IN WITNESS WHEREOF, Grantor has caused this instrument to be duly executed as of this ___ day of _____, 2014.

GRANTOR:

By:_____
Seana Grady

[*NOTARY BLOCK FOLLOWS*]

EXHIBIT B TO AGREEMENT (Page 2 of 5)

STATE OF COLORADO)
)ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this ___ day of _____, 2014, by Seana Grady.

Witness my hand and official seal.
My commission expires: _____

_____
Notary Public

EXHIBIT B TO AGREEMENT (Page 3 of 5)

LENDER'S CONSENT AND SUBORDINATION

The undersigned, a beneficiary under a certain deed of trust encumbering the property, hereby expressly consents to and joins in the execution and recording of this grant of easement and makes the deed of trust subordinate hereto. The undersigned represents that he or she has full power and authority to execute this Lender's Consent and Subordination on behalf of the below-stated lender.

US BANK NATIONAL ASSOCIATION

By:_____
Printed Name:_____
Title:_____

ACKNOWLEDGMENT

State of _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____ as _____ of US Bank National Association.

Witness my Hand and Seal.
My Commission Expires:_____

[Seal] _____
Notary Public

EXHIBIT B TO AGREEMENT (Page 4 of 5)

LENDER'S CONSENT AND SUBORDINATION

The undersigned, a beneficiary under a certain deed of trust encumbering the property, hereby expressly consents to and joins in the execution and recording of this grant of easement and makes the deed of trust subordinate hereto. The undersigned represents that he or she has full power and authority to execute this Lender's Consent and Subordination on behalf of the below-stated lender.

KEYBANK NATIONAL ASSOCIATION

By:_____
Printed Name:_____
Title:_____

ACKNOWLEDGMENT

State of _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____ as _____ of Keybank National Association.

Witness my Hand and Seal.
My Commission Expires:_____

[Seal]

_____
Notary Public

EXHIBIT B TO AGREEMENT (Page 5 of 5)

LENDER'S CONSENT AND SUBORDINATION

The undersigned, a beneficiary under a certain deed of trust encumbering the property, hereby expressly consents to and joins in the execution and recording of this grant of easement and makes the deed of trust subordinate hereto. The undersigned represents that he or she has full power and authority to execute this Lender's Consent and Subordination on behalf of the below-stated lender.

U.S. SMALL BUSINESS ASSOCIATION

By:_____
Printed Name:_____
Title:_____

ACKNOWLEDGMENT

State of _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____ as _____ of U. S. Small Business Administration.

Witness my Hand and Seal.
My Commission Expires:_____

[Seal]

_____
Notary Public

EXHIBIT A TO FLOOD CONTROL EASEMENT (Page 1 of 2)

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH,
RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN,
COUNTY OF BOULDER, STATE OF COLORADO
SHEET 1 OF 2

AN EASEMENT FOR FLOODWAY PURPOSES OVER AND ACROSS A PARCEL OF LAND AS DESCRIBED IN THE RECORDS OF BOULDER COUNTY AT RECEPTION NO. 2793806, DATED JULY 11, 2006, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE WESTERLY LINE OF SAID PARCEL OF LAND TO BEAR NORTH 00°05'30" EAST, A DISTANCE OF 283.27 FEET, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

BEGINNING AT THE SOUTHWEST CORNER OF SAID PARCEL OF LAND; THENCE ALONG THE WESTERLY LINE OF SAID PARCEL OF LAND, NORTH 00°05'30" EAST, A DISTANCE OF 45.03 FEET; THENCE DEPARTING SAID WESTERLY LINE, AND 60' NORTHEASTERLY AND PARALLEL WITH THE CENTERLINE OF WONDERLAND CREEK THE FOLLOWING TWO (2) COURSES:
SOUTH 71°34'24" EAST, A DISTANCE OF 47.03 FEET;
THENCE SOUTH 27°42'39" EAST, A DISTANCE OF 33.11 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID PARCEL OF LAND; THENCE ALONG SAID SOUTHERLY LINE, SOUTH 89°11'30" WEST, A DISTANCE OF 60.09 FEET;

SAID EASEMENT CONTAINING 1,892 SQ.FT. OR 0.04 ACRES, MORE OR LESS.

I, JOHN B. GUYTON, A LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS EASEMENT DESCRIPTION AND ATTACHED EXHIBIT, BEING MADE A PART THEREOF, WERE PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE AT THE REQUEST OF THE CLIENT AND IS NOT INTENDED TO REPRESENT A MONUMENTED LAND SURVEY OR SUBDIVIDE LAND IN VIOLATION OF STATE STATUTE.

COLORADO LICENSED
JOHN BRUCE GUYTON
16406
8/19/14
PROFESSIONAL LAND SURVEYOR

JOHN B. GUYTON
COLORADO P.L.S. #16406
CHAIRMAN/CEO, FLATIRONS, INC.

FSI JOB NO. 14-64,206

JOB NUMBER: 14-64,206
DRAWN BY: E. PRESCOTT
DATE: AUGUST 19, 2014

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

Flatirons, Inc.
Surveying, Engineering & Geomatics
655 FOURTH AVE
LONGMONT, CO 80501
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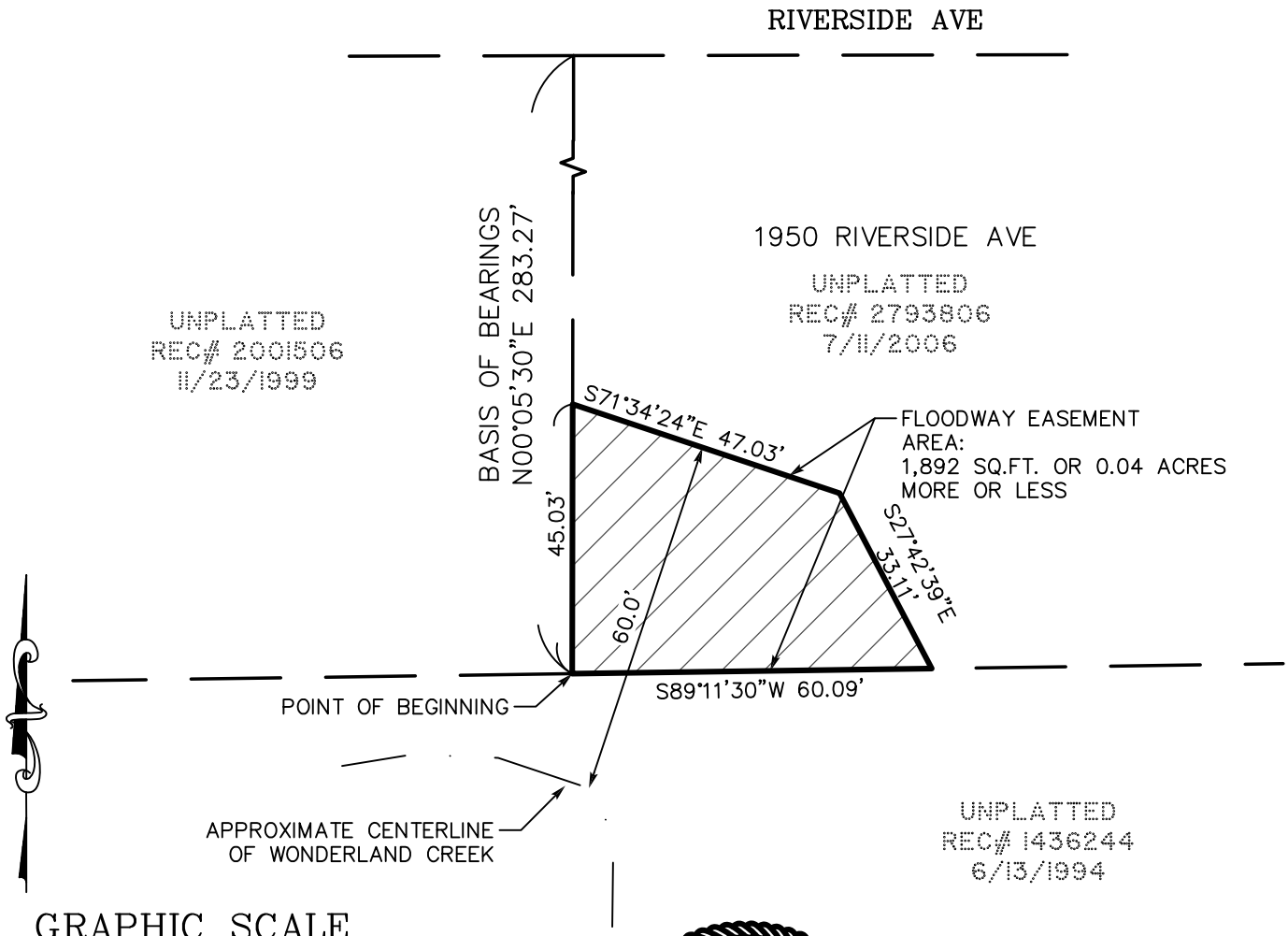
FAX: (303) 776-4355
www.FlatironsInc.com

BY:EPRESCOTT FILE:64206-DESC-C13.DWG DATE:8/19/2014 11:37 AM

EXHIBIT A TO FLOOD CONTROL EASEMENT (Page 2 of 2)

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO

SHEET 2 OF 2



GRAPHIC SCALE

30 0 15 30

(IN FEET)
1 inch = 30 ft.

COLORADO LICENSED
JOHN CHRISTOPHER SUTTON
16406
8/19/14
PROFESSIONAL LAND SURVEYOR

JCS

JOB NUMBER: 14-64,206
DRAWN BY: E. PRESCOTT
DATE: AUGUST 19, 2014

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

Flatirons, Inc.
Surveying, Engineering & Geomatics
655 FOURTH AVE
LONGMONT, CO 80501
PH: (303) 776-1733
FAX: (303) 776-4355
www.FlatironsInc.com

BY:EPRESCOTT FILE:64206-DESC-C13.DWG DATE:8/19/2014 11:38 AM

EXHIBIT C TO AGREEMENT (Page 1 of 5)

For Administrative Purposes Only
Property Address: 1950 Riverside
Grantor: Seana Grady
Grantee: City of Boulder, Colorado
Case#: LUR2014-00059

GRANT OF UTILITY EASEMENT

SEANA GRADY ("Grantor"), whose address is 1950 Riverside, Boulder Colorado 80304, for $1.00 and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey to the CITY OF BOULDER, a Colorado home rule city (the "City"), whose address is 1777 Broadway, Boulder, Colorado 80302, an easement for the installation, construction, repair, maintenance and reconstruction of utilities and appurtenances thereto, together with all rights and privileges as are necessary or incidental to the reasonable and proper use of such easement in and to, over, under and across the following real property, situated in Boulder County, Colorado, to-wit:

See Exhibit A attached

Grantor, for her and for her heirs, successors, agents, lessees, and assigns, does hereby covenant and agree that no permanent structure or improvement shall be placed on said easement by her or her heirs, successors or assigns, and that said use of such easement shall not otherwise be obstructed or interfered with.

Grantor warrants her ability to grant and convey this easement.

The terms of this easement shall run with the land and shall be binding upon and inure to the benefit of the Grantor, her heirs, agents, lessees and assigns, and all other successors to her in interest and shall continue as a servitude running in perpetuity with the property described above.

IN WITNESS WHEREOF, Grantor has caused this instrument to be duly executed as of this ___ day of _____, 2014.

GRANTOR:

By:_____
Seana Grady

[*NOTARY BLOCK FOLLOWS*]

EXHIBIT C TO AGREEMENT (Page 2 of 5)

STATE OF COLORADO)
)ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this ___ day of _____, 2014, by Seana Grady.

Witness my hand and official seal.
My commission expires: _____

_____
Notary Public

EXHIBIT C TO AGREEMENT (Page 3 of 5)

LENDER'S CONSENT AND SUBORDINATION

The undersigned, a beneficiary under a certain deed of trust encumbering the property, hereby expressly consents to and joins in the execution and recording of this grant of easement and makes the deed of trust subordinate hereto. The undersigned represents that he or she has full power and authority to execute this Lender's Consent and Subordination on behalf of the below-stated lender.

US BANK NATIONAL ASSOCIATION

By:_____
Printed Name:_____
Title:_____

ACKNOWLEDGMENT

State of _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____ as _____ of US Bank National Association.

Witness my Hand and Seal.
My Commission Expires:_____

[Seal]

_____
Notary Public

EXHIBIT C TO AGREEMENT (Page 4 of 5)

LENDER'S CONSENT AND SUBORDINATION

The undersigned, a beneficiary under a certain deed of trust encumbering the property, hereby expressly consents to and joins in the execution and recording of this grant of easement and makes the deed of trust subordinate hereto. The undersigned represents that he or she has full power and authority to execute this Lender's Consent and Subordination on behalf of the below-stated lender.

KEYBANK NATIONAL ASSOCIATION

By:_____
Printed Name:_____
Title:_____

ACKNOWLEDGMENT

State of _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____ as _____ of Keybank National Association.

Witness my Hand and Seal.
My Commission Expires:_____

[Seal]

_____
Notary Public

EXHIBIT C TO AGREEMENT (Page 5 of 5)

LENDER'S CONSENT AND SUBORDINATION

The undersigned, a beneficiary under a certain deed of trust encumbering the property, hereby expressly consents to and joins in the execution and recording of this grant of easement and makes the deed of trust subordinate hereto. The undersigned represents that he or she has full power and authority to execute this Lender's Consent and Subordination on behalf of the below-stated lender.

U.S. SMALL BUSINESS ASSOCIATION

By:_____
Printed Name:_____
Title:_____

ACKNOWLEDGMENT

State of _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____ as _____ of U. S. Small Business Administration.

Witness my Hand and Seal.
My Commission Expires:_____

[Seal]

_____
Notary Public

EXHIBIT A TO UTILITY EASEMENT (Page 1 of 2)

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH,
RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN,
COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 2

AN EASEMENT FOR SEWER LINE PURPOSES OVER AND ACROSS A PORTION OF A PARCEL OF LAND AS DESCRIBED IN THE RECORDS OF BOULDER COUNTY AT RECEPTION NO. 2793806, DATED JULY 11, 2006, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE SOUTH LINE OF SAID PARCEL OF LAND TO BEAR SOUTH 89°11'30" WEST, A DISTANCE OF 150.02 FEET, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

BEGINNING AT THE SOUTHWEST CORNER OF SAID PARCEL OF LAND,
THENCE ALONG THE WESTERLY LINE OF SAID PARCEL OF LAND, NORTH 00°05'30" EAST, A DISTANCE OF 12.50 FEET;
THENCE DEPARTING SAID WESTERLY LINE AND 12.50 FEET NORTHERLY OF AND PARALLEL WITH THE SOUTHERLY LINE OF SAID PARCEL OF LAND, NORTH 89°11'30" EAST, A DISTANCE OF 150.02 FEET TO A POINT ON THE EASTERLY LINE OF SAID PARCEL OF LAND;
THENCE ALONG SAID EASTERLY LINE, SOUTH 00°05'30" WEST, A DISTANCE OF 12.50 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL OF LAND;
THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL OF LAND, SOUTH 89°11'30" WEST, A DISTANCE OF 150.02 FEET TO THE POINT OF BEGINNING.

SAID EASEMENT CONTAINING 1,875 SQ.FT. OR 0.43 ACRES, MORE OR LESS.

I, JOHN B. GUYTON, A LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS EASEMENT DESCRIPTION AND ATTACHED EXHIBIT, BEING MADE A PART THEREOF, WERE PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE AT THE REQUEST OF THE CLIENT AND IS NOT INTENDED TO REPRESENT A MONUMENTED LAND SURVEY OR SUBDIVIDE LAND IN VIOLATION OF STATE STATUTE.

COLORADO LICENSED
JOHN BRUCE GUYTON
16406
9/15/14
PROFESSIONAL LAND SURVEYOR

JOHN B. GUYTON
COLORADO P.L.S. #16406
CHAIRMAN/CEO, FLATIRONS, INC.

FSI JOB NO. 14-64,206

JOB NUMBER: 14-64,206
DRAWN BY: E. PRESCOTT
DATE: SEPTEMBER 15, 2014

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

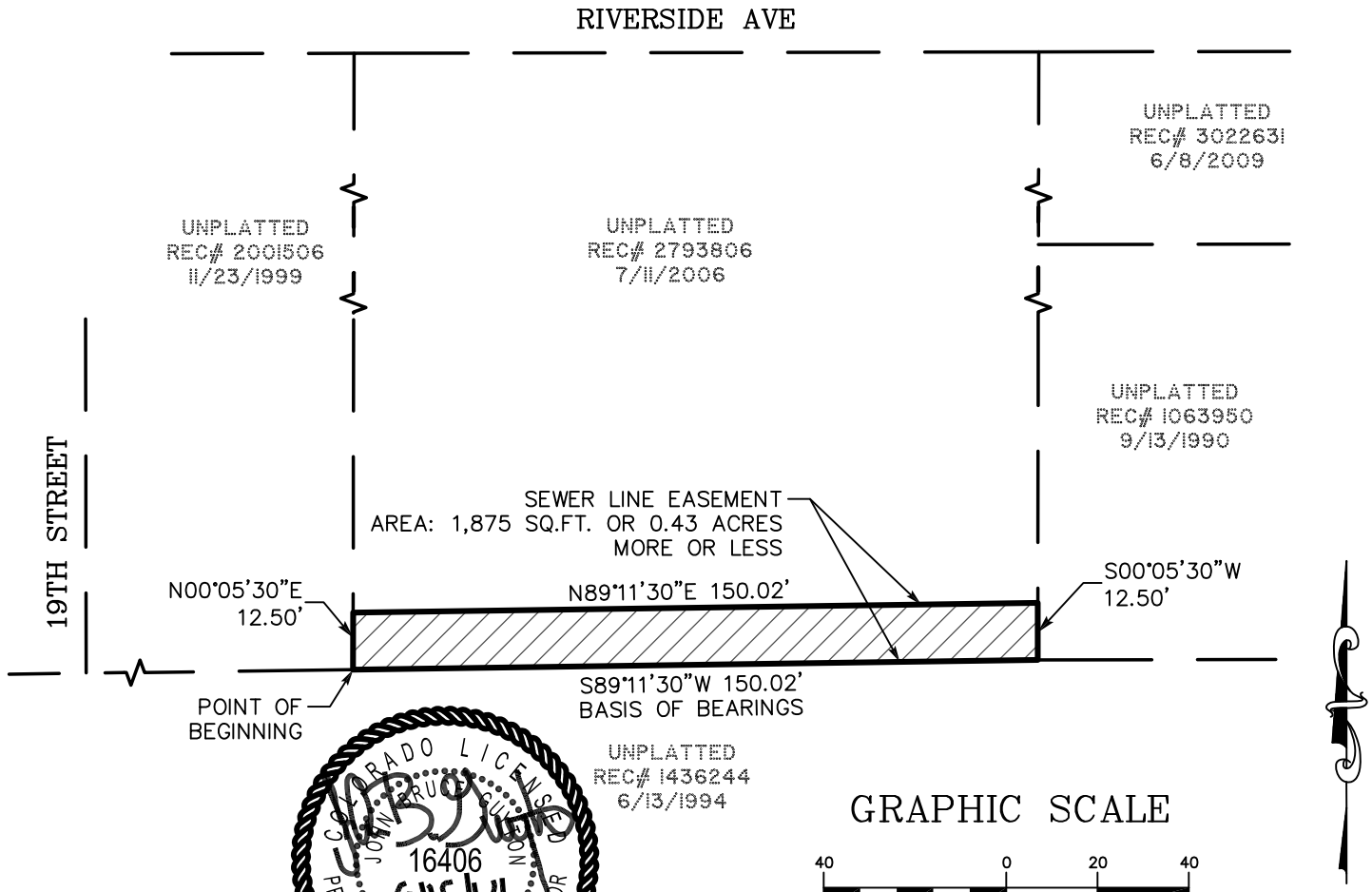
Flatirons, Inc.
Surveying, Engineering & Geomatics
655 FOURTH AVE
LONGMONT, CO 80501
PH: (303) 776-1733
FAX: (303) 776-4355
www.FlatironsInc.com

BY:EPRESCOTT FILE:64206-DESC SEWER C13.DWG DATE:9/15/2014 10:53 AM

EXHIBIT A TO UTILITY EASEMENT (Page 2 of 2)

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH,
RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN,
COUNTY OF BOULDER, STATE OF COLORADO

SHEET 2 OF 2



COLORADO LICENSED
JOHN PRUCHA BUSCH
16406
9/15/14
PROFESSIONAL LAND SURVEYOR

GRAPHIC SCALE

40 0 20 40

(IN FEET)
1 inch = 40 ft.

JOB NUMBER: 14-64,206
DRAWN BY: E. PRESCOTT
DATE: SEPTEMBER 15, 2014

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

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www.FlatironsInc.com

BY:EPRESCOTT FILE:64206-DESC SEWER C13.DWG DATE:9/15/2014 10:53 AM

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EXHIBIT D TO AGREEMENT (Page 1 of 5)

For Administrative Purposes Only
Property Address: 1950 Riverside
Grantor: Seana Grady
Grantee: City of Boulder, Colorado
Case#: LUR2014-00059

GRANT OF DITCH EASEMENT

SEANA GRADY ("Grantor"), whose address is 1950 Riverside, Boulder Colorado 80304, for $1.00 and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey to the CITY OF BOULDER, a Colorado home rule city (the "City"), whose address is 1777 Broadway, Boulder, Colorado 80302, an easement for the installation, construction, repair, maintenance and reconstruction of an irrigation ditch (or lateral) and appurtenances thereto, together with all rights and privileges as are necessary or incidental to the reasonable and proper use of such easement in and to, over, under and across the following real property, situated in Boulder County, Colorado, to-wit:

See Exhibit A attached

Grantor, for her and for her heirs, successors, agents, lessees, and assigns, does hereby covenant and agree that no permanent structure or improvement shall be placed on said easement by her or her heirs, successors or assigns, and that said use of such easement shall not otherwise be obstructed or interfered with.

Grantor warrants her ability to grant and convey this easement.

The terms of this easement shall run with the land and shall be binding upon and inure to the benefit of the Grantor, her heirs, agents, lessees and assigns, and all other successors to her in interest and shall continue as a servitude running in perpetuity with the property described above.

IN WITNESS WHEREOF, Grantor has caused this instrument to be duly executed as of this ___ day of _____, 2014.

GRANTOR:

By:_____
Seana Grady

[*NOTARY BLOCK FOLLOWS*]

EXHIBIT D TO AGREEMENT (Page 2 of 5)

STATE OF COLORADO)
)ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this ___ day of _____, 2014, by Seana Grady.

Witness my hand and official seal.
My commission expires: _____

_____
Notary Public

EXHIBIT D TO AGREEMENT (Page 3 of 5)

LENDER'S CONSENT AND SUBORDINATION

The undersigned, a beneficiary under a certain deed of trust encumbering the property, hereby expressly consents to and joins in the execution and recording of this grant of easement and makes the deed of trust subordinate hereto. The undersigned represents that he or she has full power and authority to execute this Lender's Consent and Subordination on behalf of the below-stated lender.

US BANK NATIONAL ASSOCIATION

By:_____
Printed Name:_____
Title:_____

ACKNOWLEDGMENT

State of _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____ as _____ of US Bank National Association.

Witness my Hand and Seal.
My Commission Expires:_____

[Seal] _____
Notary Public

EXHIBIT D TO AGREEMENT (Page 4 of 5)

LENDER'S CONSENT AND SUBORDINATION

The undersigned, a beneficiary under a certain deed of trust encumbering the property, hereby expressly consents to and joins in the execution and recording of this grant of easement and makes the deed of trust subordinate hereto. The undersigned represents that he or she has full power and authority to execute this Lender's Consent and Subordination on behalf of the below-stated lender.

KEYBANK NATIONAL ASSOCIATION

By:_____
Printed Name:_____
Title:_____

ACKNOWLEDGMENT

State of _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____ as _____ of Keybank National Association.

Witness my Hand and Seal.
My Commission Expires:_____

[Seal]

_____
Notary Public

EXHIBIT D TO AGREEMENT (Page 5 of 5)

LENDER'S CONSENT AND SUBORDINATION

The undersigned, a beneficiary under a certain deed of trust encumbering the property, hereby expressly consents to and joins in the execution and recording of this grant of easement and makes the deed of trust subordinate hereto. The undersigned represents that he or she has full power and authority to execute this Lender's Consent and Subordination on behalf of the below-stated lender.

U.S. SMALL BUSINESS ASSOCIATION

By:_____
Printed Name:_____
Title:_____

ACKNOWLEDGMENT

State of _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____ as _____ of U. S. Small Business Administration.

Witness my Hand and Seal.
My Commission Expires:_____

[Seal]

_____
Notary Public

EXHIBIT A TO DITCH EASEMENT (Page 1 of 2)

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 2

AN EASEMENT OVER AND ACROSS A PARCEL OF LAND AS DESCRIBED IN THE RECORDS OF BOULDER COUNTY AT RECEPTION NO. 2793806, DATED JULY 11, 2006, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE WESTERLY LINE OF SAID PARCEL OF LAND TO BEAR NORTH 00°05'30" EAST, A DISTANCE OF 283.27 FEET, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

COMMENCING AT THE SOUTHWEST CORNER OF SAID PARCEL OF LAND;
THENCE ALONG THE WESTERLY LINE OF SAID PARCEL OF LAND, NORTH 00°05'30" EAST, A DISTANCE OF 151.71 FEET, TO A POINT 5.00 FEET SOUTHERLY OF THE CENTERLINE OF AN EXISTING LATERAL AND THE POINT OF BEGINNING;
THENCE CONTINUING ALONG SAID WESTERLY LINE, NORTH 00°05'30" EAST, A DISTANCE OF 11.01 FEET TO A POINT 5.00 FEET NORTHERLY OF SAID CENTERLINE;
THENCE ALONG A LINE LYING 5.00 FEET NORTHERLY OF AND PARALLEL WITH SAID CENTERLINE, THE FOLLOWING TWO (2) COURSES:
SOUTH 65°10'34" EAST, A DISTANCE OF 66.63 FEET;
THENCE SOUTH 83°07'25" EAST, A DISTANCE OF 90.11 FEET TO A POINT ON THE EASTERLY LINE OF SAID PARCEL OF LAND;
THENCE ALONG SAID EASTERLY LINE, SOUTH 00°05'30" WEST, A DISTANCE OF 10.07 FEET TO A POINT 5.00 FEET SOUTHERLY OF SAID CENTERLINE;
THENCE ALONG A LINE LYING 5.00 FEET SOUTHERLY OF AND PARALLEL WITH SAID CENTERLINE, THE FOLLOWING TWO (2) COURSES:
NORTH 83°07'25" WEST, A DISTANCE OF 92.88 FEET;
THENCE NORTH 65°10'34" WEST, A DISTANCE OF 63.60 FEET TO A POINT ON THE WESTERLY LINE OF SAID PARCEL OF LAND AND THE POINT OF BEGINNING.

SAID EASEMENT CONTAINING 1,566 SQ. FT. OR 0.04 ACRES, MORE OR LESS.

I, JOHN B. GUYTON, A LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS EASEMENT DESCRIPTION AND ATTACHED EXHIBIT, BEING MADE A PART THEREOF, WERE PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE AT THE REQUEST OF THE CLIENT AND IS NOT INTENDED TO REPRESENT A MONUMENTED LAND SURVEY OR SUBDIVIDE LAND IN VIOLATION OF STATE STATUTE.

COLORADO PROFESSIONAL LAND SURVEYOR JOHN B. GUYTON 16406 10/10/14

JOHN B. GUYTON
COLORADO P.L.S. #16406 FSI JOB NO. 14-64,206
CHAIRMAN/CEO, FLATIRONS, INC.

JOB NUMBER: 14-64,206(A)
DRAWN BY: E. PRESCOTT
DATE: SEPTEMBER 25, 2014
REV: OCTOBER 10, 2014

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

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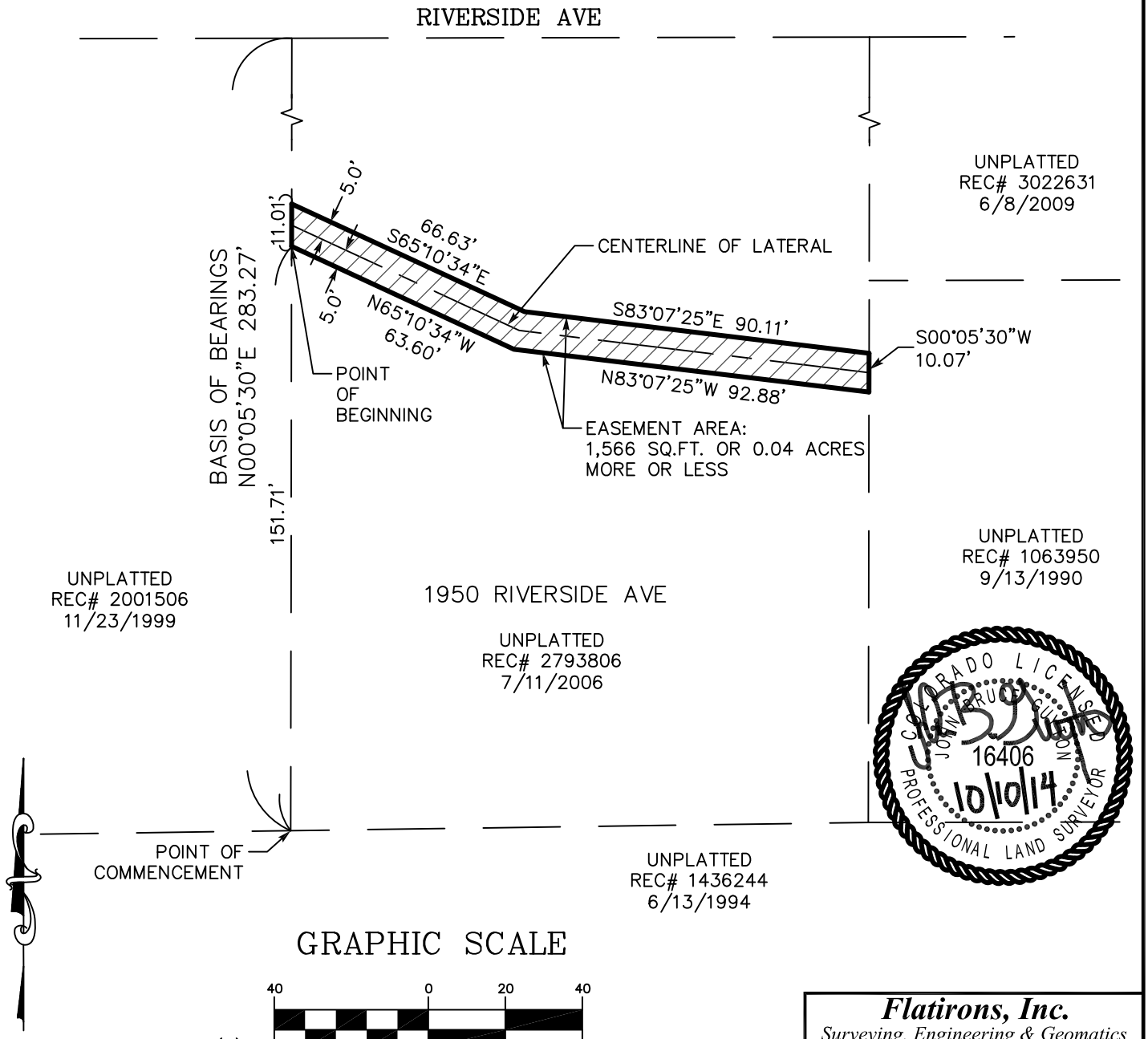
www.FlatironsInc.com

BY:EPRESCOTT FILE:64206-DESC-LATERAL-C13.DWG DATE:10/10/2014 10:36 AM

EXHIBIT A TO DITCH EASEMENT (Page 2 of 2)

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO

SHEET 2 OF 2



COLORADO LICENSED
JOHN PRESCOTT
16406
10/10/14
PROFESSIONAL LAND SURVEYOR

GRAPHIC SCALE

40 0 20 40

(IN FEET)
1 inch = 40 ft.

JOB NUMBER: 14-64,206(A)
DRAWN BY: E. PRESCOTT
DATE: SEPTEMBER 25, 2014
REV: OCTOBER 10, 2014

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

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BY:EPRESCOTT FILE:64206-DESC-LATERAL-C13.DWG DATE:10/10/2014 10:36 AM

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CITY OF BOULDER
Planning and Development Services
1739 Broadway, Third Floor • P.O. Box 791, Boulder, CO 80306-0791
phone 303-441-1880 • fax 303-441-4241 • web boulderplandevelop.net

EXHIBIT E TO AGREEMENT (Page 1 of 1)

Fees for PMT2014-04653

Responsible Person: SEANA GRADY

Address: 1950 RIVERSIDE AV

Please note: This information may not be representative of all fees due. Additional fees may apply.

Fee Description	Amount Assessed	Date Assessed	Amount Paid	Date Paid	Receipt Number	Amount Due History
RES 2014 Sewer PIF [ISS]	$4,473.00	10/9/2014				**$4,473.00**
RES 2014 Storm PIF [ISS]	$12,073.66	10/9/2014				**$12,073.66**
WW Tap Fee (Materials)	$47.04	10/9/2014				**$47.04**
Wastewater Inspection Fee	$169.00	10/9/2014				**$169.00**
Wastewater Permit Fee	$127.00	10/9/2014				**$127.00**
Wastewater Tap Fee (L/E)	$79.96	10/9/2014				**$79.96**

Total Fees Assessed: $16,969.66 **Total Fees Paid: $0.00** **Total Fees Remaining Due: $16,969.66**

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For Administrative Purposes Only
Applicants: Frank Lyon Alexander
Address: 4415 Garnet Lane
Case No. LUR2014-00061

ANNEXATION AGREEMENT

This Annexation Agreement ("Agreement"), made this 21st day of November, 2014, by and between the City of Boulder, a Colorado home rule city (the "City"), and Frank Lyon Alexander (the "Applicant"). The City and the Applicant are referred to as the "Parties."

RECITALS

WHEREAS, the Parties recite the following facts related to the annexation of the property described in this Agreement to the City of Boulder:

A. The Applicant is the owner of the property generally known as 4415 Garnet Lane, Boulder CO 80304 and more particularly described on the attached **Exhibit A** (the "Property") included by reference and hereby made a part of this Agreement.

B. The Applicant is interested in obtaining approval from the City of the annexation of the Property in order to provide adequate urban services to the Property.

C. The Parties anticipate that annexation, with an initial zoning designation of Residential – Estate (RE) is consistent with the Boulder Valley Comprehensive Plan.

D. In order to assist the Applicant in annexing into the City, the City is providing an annexation package that includes a method for financing the public improvements and a waiver of certain fees and taxes which includes the annexation application fee and the housing excise tax.

E. The City is interested in ensuring that certain terms and conditions of annexation be met by the Applicant in order to protect the public health, safety, and welfare and prevent the placement of an unreasonable burden on the physical, social, economic, or environmental resources of the City.

COVENANTS

NOW, THEREFORE, in consideration of the recitals, promises, and covenants herein set forth, and other good and valuable consideration herein receipted for, the Parties agree as follows:

1. Definitions. The Parties agree that terms used in this Agreement will have the following meanings:

   "Redevelopment" shall be defined as the subdivision of a property to create a new lot, issuance of a building permit for a new or replacement dwelling unit, issuance of a

building permit for additional square footage to the existing structure, or an increase in number of the plumbing fixtures.

2. Requirements Prior to First Reading of the Annexation Ordinance. Prior to the scheduling of first reading of the annexation ordinance, the Applicant shall do the following:

   A. Annexation Agreement. The Applicant will sign this Agreement.

   B. Title Work. The Applicant will provide the City with title work current to within 30 days of signing this Agreement.

   C. Written Descriptions. The Applicant shall provide a written description of any nonconforming uses and/or nonstandard buildings existing on each Property, if any.

   D. Water Rights. The Applicant will grant to the City an option in the form attached as **Exhibit B** to purchase certain interests in Silver Lake Ditch and Reservoir Company Shares associated with the Property pursuant to the Settlement Agreement of December 1, 2009 between the City of Boulder and the Silver Lake Ditch & Reservoir Company, recorded at Reception No. 03046201 in Boulder County, Colorado.

   E. Easement Dedications. The Applicant shall dedicate to the City, at no cost, the following easements:

      i. A 12.5 foot public utility easement along the southern property line as shown on **Exhibit C.** The easement shall be in a form acceptable to the city manager. The easement will exclude any principal building containing a dwelling unit on the lot within the easement area that is existing at the time of annexation.
      ii. A ditch lateral easement as shown on **Exhibit D**.

   F. Northern Colorado Water Conservancy District ("NCWCD"). The Applicant will file an application for inclusion of the Property in the Boulder Municipal Subdistrict.

3. Connection Requirements. Prior to connection to the City's water main, the Applicant shall:

   A. Submit an application to connect to the City's water main that meets the requirements of Chapter 11-1, B.R.C. 1981.

   B. Pay all applicable fees and charges associated with a service line connection to the water main, including water plant investment fees, stormwater and flood management plant investment fees, right-of-way and water permit fees, installation fees, and tap fees.

C. Construct the individual service line that will connect the Applicant's existing residence to the City's water main.

D. Pay any assessments, including but not limited to the following:

Water Main	$ 1,410.00
Stormwater and Flood PIF	6,031.68
Street Assessment	10,000.00

E. Execute a Promissory Note and Deed of Trust, if Applicant selected Payment Option #B, as described under Paragraph 4.B(i) below,

4. Payment Options and Requirements for Fees, Taxes, and Public Improvement Costs. The Applicant selects **Option #B** set forth below.

A. Option #A: Payment in Full. The Applicant shall connect to the City water main within **one year** after the effective date of the annexation ordinance and shall comply with the terms of, and pay the costs and fees described in, Paragraph 3 above. The City Manager may, in her discretion, approve a different time for connection to the City water main provided the Applicant demonstrates reasonable diligence to comply with the **one-year** deadline and good cause for the extension.

B. Option #B: Payment Plan. The Applicant shall connect to the City water main within **one year** after the effective date of the annexation ordinance, shall comply with the terms of Paragraph 3 above except that the costs, fees and any assessments described in Paragraph 3 shall be paid in accordance with the terms of the following payment plan:

i. Prior to connection to the City's water main, the Applicant shall execute a Promissory Note and a Deed of Trust securing said Note and encumbering the Applicant's Property in the principal amount to cover the amounts set forth in Paragraph 3 above. The Note will have a simple interest rate of 3.25 percent per annum, payable in 10 annual installments of principal and interest beginning at the time of connection to the City water system.

The City Manager may, in her discretion, approve a different time for connection to the City water main provided the Applicant demonstrates reasonable diligence to comply with the **one-year** deadline and good cause for the extension. The City Manager, in her discretion, may approve for good cause a different time for payment of the first of the 10 annual installments of principal and interest.

C. Option #C: Future Connection. The Applicant shall connect to the City's water main at a time later than what is specified in Option #A and #B above, but no later than the time 1) when the Applicant's Property is sold; or 2) of Redevelopment of Applicant's Property, whichever occurs first. At the respective time and prior to the Applicant's connection to the City's water main, the Applicant will pay the

costs and fees described in Paragraph 3 above based on the then applicable fee schedule.

5. City of Boulder Design and Construction Standards. Any public improvements that are required to be constructed by the terms of this Agreement shall be constructed in accordance with the requirements of the City of Boulder *Design and Construction Standards* applicable at the time of construction and shall be subject to the review, approval, and acceptance of the City Manager.

6. Use of Existing Wells. The City agrees not to prohibit the Applicant from using existing wells for irrigation purposes, even if the Property is served by the City water utility. Under no circumstances may existing wells be used for domestic water purposes once the Applicant has connected to the city water utility. No person is allowed to make any cross connections between a well and the City's municipal water utility. The Parties agree that there shall not be any type of connection between any well and the City water system serving the Property.

7. Historic Drainage. The Applicant agrees to convey drainage from the Property in an historic manner that does not materially and adversely affect abutting properties.

8. Ditch Company Approval. If the Property is abutting an existing irrigation ditch or lateral, the Applicant agrees not to relocate, modify, or alter the ditch or lateral until and unless written approval is received from the appropriate ditch company.

9. Existing Nonstandard Buildings and/or Nonconforming Uses. Existing, nonstandard buildings and/or nonconforming uses will be allowed to continue to be occupied and operated in the City of Boulder. Only those nonstandard buildings and/or nonconforming uses for which the Applicant has provided a written description that is received by the City in accordance with Paragraph 2.C above will be considered legal. The Applicant and the City agree that this section shall not be construed to permit the Property to constitute a nuisance or to cause a hazard under the City's life safety codes.

10. New Construction. All new construction commenced on the Property after annexation will comply with all City of Boulder laws, taxes, and fees, except as modified by this Agreement.

11. Waiver of Vested Rights. The Applicant hereby waives any statutory vested rights that may have accrued under County jurisdiction that have not been perfected as common law vested rights. The Applicant acknowledges that nothing in this Agreement may be construed as a waiver of the City's powers to zone and regulate land uses for the benefit of the citizens and residents of Boulder.

12. Dedications. The Applicant acknowledges that any dedications and public improvements required herein with this annexation are rationally related and reasonably proportionate to the projected impact of the development of the Property as set forth in this Agreement.

13. Original Instruments. Prior to the first reading of the annexation ordinance, the Applicant shall provide an original of this Agreement signed by the Applicant, along with any instruments required in this Agreement. The City agrees to hold such documents until after final legislative action on the annexation of this Property has occurred. Final legislative action by the City Council shall constitute acceptance of such documents by the City. In the event that the City does not annex the Property, the City agrees that it will return all such original documents to the Applicant. The Applicant agrees that it will not encumber or in any way take any action that compromises the quality of such documents while they are being held by the City.

14. No Encumbrances. The Applicant agrees that between the time of signing this Agreement and the time when final legislative action on the annexation of this Property has occurred, the Applicant shall neither convey ownership nor further encumber the Applicant's Property without the express approval from the City. Prior to the recording of this Agreement with the Boulder County Clerk and Recorder, Applicant agrees not to execute transactional documents encumbering the Property or otherwise affecting title to the Property without first notifying the City and submitting revised title work within five (5) working days of any such transaction.

15. Breach of Agreement. In the event the Applicant breaches or fails to perform any required action or fails to pay any fee specified under this Agreement or under any document that may also be required to be executed pursuant to this Agreement, the Applicant acknowledges that the City may take all reasonable actions to cure the breach, including but not limited to the filing of an action for specific performance of the obligations herein described. In the event the Applicant fails to pay any monies due under this Agreement or under any document that may also be required to be executed pursuant to this Agreement or fails to perform any affirmative obligation hereunder or under any document that may also be required to be executed pursuant to this Agreement, the Applicant agrees that the City may collect the monies due in the manner provided for in Section 2-2-12, B.R.C. 1981, as amended, as if the said monies were due and owing pursuant to a duly adopted ordinance of the City or may perform the obligation on behalf of the Applicant and collect its costs in the manner herein provided. The Applicant agrees to waive any rights he may have under Section 31-20-105, C.R.S., based on the City's lack of an enabling ordinance authorizing collection of this specific debt or acknowledges that the adoption of the annexation ordinance is such enabling ordinance.

16. Failure to Annex. This Agreement and any document executed pursuant hereto shall be null and void and of no consequence in the event that the Property is not annexed into the City.

17. Future Interests. This Agreement and the covenants set forth herein shall run with the land and be binding upon the Applicant, the Applicant's heirs, successors, and assigns and all persons who may hereafter acquire an interest in the Property, or any part thereof. If it shall be determined that this Agreement contains an interest in land, that interest shall vest, if at all, within the lives of the undersigned plus 20 years and 364 days.

18. Right to Withdraw. An Applicant retains the right to withdraw from this Agreement up until the time that final legislative action has been taken on the ordinance that will cause the Property to be annexed into the City. The final legislative action will be the vote of the City Council after the final reading of the annexation ordinance. The Applicant's right to withdraw shall terminate upon the City Council's final legislative action approving the annexation. In the event that the Applicant withdraws from this Agreement in the manner described above, this Agreement shall be null and void and shall have no effect regarding such Applicant. The City agrees, within 30 days of a request by an Applicant after a withdrawal, to return all previously submitted stormwater/flood management PIF, NCWCD fees and application, and easement and/or rights of way dedication documents which the Applicant submitted pursuant to this Agreement to the City.

19. Cash-in-lieu of Providing Permanently Affordable Housing. For each additional dwelling unit on the Property that is not deed-restricted as a permanently affordable residence consistent with the requirements of Chapter 9-13, "Inclusionary Housing," B.R.C. 1981, the Applicant shall pay twice the applicable cash-in-lieu amount as required per each market unit in that chapter to the City. This amount is payable prior to issuance of a building permit for each new dwelling unit that is not deed-restricted as a permanently affordable residence consistent with the requirements of Chapter 9-13, "Inclusionary Housing," B.R.C. 1981. The parties acknowledge that the Property has the equivalent of **one** habitable dwelling unit on such Property at the time of annexation.

20. 2014 Fee Schedule. The Applicant agrees to connect to the City water main within one year from the effective date of the ordinance, or as otherwise approved by the City Manager. The Parties agree that any fees required in Paragraph 3 of this Agreement for said initial connection be assessed at the rates applicable on October 9, 2014 and as more particularly described on the attached **Exhibit E**.

EXECUTED on the day and year first above written.

APPLICANT:

By: Frank Lyon Alexander

Frank Lyon Alexander

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me, a Notary Public, this 21st day of November, 2014, by Frank Lyon Alexander.

Witness my hand and official seal.
My commission expires: 11-29-15

[SEAL]

MONICA ORTIZ NOTARY PUBLIC STATE OF COLORADO

Monica Ortiz
Notary Public

CITY OF BOULDER:

By: _____
City Manager

ATTEST:

_____
City Clerk

Approved As To Form:

_____
City Attorney's Office

Date: _____

EXHIBITS

A: Legal Description
B: Silver Lake Ditch Option Agreement
C: Form of Utility Easement
D: Form of Ditch Easement
E: Fees due at time of connection

EXHIBIT A TO AGREEMENT (Page 1 of 1)

Part of the West ½ of the Northwest ¼ of the Southeast ¼ of Section 18, Township 1 North, Range 70 West of the 6th P.M., County of Boulder, State of Colorado, described as follows:

Commencing at the South ¼ corner of Section 18, Township 1 North, Range 70 West of the 6th P.M.; thence North 0°05'30" East, along the North-South centerline of said Section 18, a distance of 2002.09 feet; thence North 89°53' East, a distance of 330.00 feet to the Southwest corner of that tract of land conveyed by Deed from Walter A. Moore to Everett V. Clark and Bernice J. Clark, recorded April 23, 1957 in Book 1042 at Page 308, the true point of beginning;

Thence North 89°53' East, along the South line of said tract conveyed in Book 1042 at Page 308, a distance of 330.00 feet' thence North 0°05'30" East, parallel with the North-South centerline of said Section 18, a distance of 3.48 feet; thence North 89°29'35: East, a distance of 3.04 feet to the West right of way of Garnet Lane; thence North 0°01'40" East, along said West right of way line of Garnet Lane, 140.70 feet; thence South 89°22'15" West, a distance of 304.44 feet; thence South 0°09'50" East, a distance of 0.75 feet; thence South 89°53' West along the North line of said tract conveyed in Book 1042 at Page 308, a distance of 28.46 feet to the Northwest corner of said tract conveyed in Book 1042 at Page 308; thence South 0°05'30" West, along the West line of said tract conveyed in Book 1042 at Page 308, a distance of 140.73 feet to the true point of beginning;

Except that portion of the above-described tract lying within that tract of land conveyed by Deed from Walter A. Moore to Noel E. Robbins, recorded January 12, 1952 in Book 899 at Page 591.

EXHIBIT B TO AGREEMENT (Page 1 of 2)

OPTION TO PURCHASE
SLD&RC SHARE ASSOCIATED WITH
VOLUNTARILY ANNEXED SLD IRRIGATED PROPERTY
PARCEL NO. 96, 4415 GARNET LANE

Frank Lyon Alexander, as Property Owner of Silver Lake Ditch ("SLD") Irrigated Property Parcel No. 96, 4415 Garnet Lane, legally described on Exhibit A attached hereto and incorporated by reference herein, does provide this Option to Purchase to the City of Boulder, Colorado, a home rule city of the State of Colorado ("City"), in accordance with the terms of Section II, Voluntary Annexation, of the Settlement Agreement of December 1, 2009 between the City and The Silver Lake Ditch & Reservoir Company ("SLD&RC"), recorded at Reception No. 03046201 in Boulder County, Colorado ("Settlement Agreement"), this _____ day of _____ _____, 2014, as follows:

1. The City shall have the Option to Purchase **1** SLD&RC Share associated with SLD Irrigated Property Parcel No. 96, along with the rights, and only the rights, represented by such SLD&RC Share to receive a certain amount of water from the Reserved Storage Rights.

2. The City shall have the right to exercise this Option to Purchase within 60 calendar days immediately after receiving a Transfer Notice from SLD&RC of a Non-Nuclear Transfer ("Initial Option Exercise Period") or confirmation of a Non-Nuclear Transfer through means other than receipt of a Transfer Notice from SLD&RC ("Alternative Initial Option Exercise Period"), as the case may be, in accordance with the terms of the Settlement Agreement.

3. If the City determines not to exercise the Option to Purchase during the Initial Option Exercise Period or Alternative Initial Option Exercise Period, as the case may be, the City may subsequently exercise this Option to Purchase within 60 days immediately following each annual anniversary of receipt by the City of the Transfer Notice from SLD&RC or of the City's receipt of confirmation of a Non-Nuclear Transfer of SLD Irrigated Property through means other than a Transfer Notice from SLD&RC.

4. This Option to Purchase shall be recorded with the Boulder County Clerk and Recorder.

5. If the City does exercise this Option to Purchase, the then current owner(s) of the SLD Irrigated Property may lease water to the extent such lease is authorized in paragraph 6.B.viii of the Settlement Agreement.

The Parcel is currently known as 4415 Garnet Lane. This Option to Purchase shall run with the land associated with SLD Irrigated Property Parcel No. 96 regardless of any change of address of all or part of the Parcel. All capitalized terms herein shall be defined as provided in the Settlement Agreement.

EXHIBIT B TO AGREEMENT (Page 2 of 2)

IN WITNESS WHEREOF, Property Owner has caused this instrument to be duly executed as of this _____day of _____, 2014.

PROPERTY OWNER

By:_____
Frank Lyon Alexander

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The above and foregoing instrument was subscribed and sworn to before me this _____ day of _____, 2014, by Frank Lyon Alexander.

Witness my hand and official seal.

My commission expires:

_____
Notary Public

EXHIBIT A TO OPTION TO PURCHASE (Page 1 of 1)

Part of the West ½ of the Northwest ¼ of the Southeast ¼ of Section 18, Township 1 North, Range 70 West of the 6th P.M., County of Boulder, State of Colorado, described as follows:

Commencing at the South ¼ corner of Section 18, Township 1 North, Range 70 West of the 6th P.M.; thence North 0°05'30" East, along the North-South centerline of said Section 18, a distance of 2002.09 feet; thence North 89°53' East, a distance of 330.00 feet to the Southwest corner of that tract of land conveyed by Deed from Walter A. Moore to Everett V. Clark and Bernice J. Clark, recorded April 23, 1957 in Book 1042 at Page 308, the true point of beginning;

Thence North 89°53' East, along the South line of said tract conveyed in Book 1042 at Page 308, a distance of 330.00 feet' thence North 0°05'30" East, parallel with the North-South centerline of said Section 18, a distance of 3.48 feet; thence North 89°29'35: East, a distance of 3.04 feet to the West right of way of Garnet Lane; thence North 0°01'40" East, along said West right of way line of Garnet Lane, 140.70 feet; thence South 89°22'15" West, a distance of 304.44 feet; thence South 0°09'50" East, a distance of 0.75 feet; thence South 89°53' West along the North line of said tract conveyed in Book 1042 at Page 308, a distance of 28.46 feet to the Northwest corner of said tract conveyed in Book 1042 at Page 308; thence South 0°05'30" West, along the West line of said tract conveyed in Book 1042 at Page 308, a distance of 140.73 feet to the true point of beginning;

Except that portion of the above-described tract lying within that tract of land conveyed by Deed from Walter A. Moore to Noel E. Robbins, recorded January 12, 1952 in Book 899 at Page 591.

EXHIBIT C TO AGREEMENT (Page 1 of 3)

For Administrative Purposes Only
Property Address: 4415 Garnet Lane
Grantor: Frank Lyon Alexander
Grantee: City of Boulder, Colorado
Case#: LUR2014-00061

GRANT OF UTILITY EASEMENT

FRANK LYON ALEXANDER ("Grantor"), whose address is 4415 Garnet Lane, Boulder Colorado 80304, for $1.00 and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey to the CITY OF BOULDER, a Colorado home rule city (the "City"), whose address is 1777 Broadway, Boulder, Colorado 80302, an easement for the installation, construction, repair, maintenance and reconstruction of utilities and appurtenances thereto, together with all rights and privileges as are necessary or incidental to the reasonable and proper use of such easement in and to, over, under and across the following real property, situated in Boulder County, Colorado, to-wit:

See Exhibit A attached

Grantor, for him and for his heirs, successors, agents, lessees, and assigns, does hereby covenant and agree that no permanent structure or improvement shall be placed on said easement by him or his heirs, successors or assigns, and that said use of such easement shall not otherwise be obstructed or interfered with.

Grantor warrants his ability to grant and convey this easement.

The terms of this easement shall run with the land and shall be binding upon and inure to the benefit of the Grantor, his heirs, agents, lessees and assigns, and all other successors to him in interest and shall continue as a servitude running in perpetuity with the property described above.

IN WITNESS WHEREOF, Grantor has caused this instrument to be duly executed as of this ___ day of _____, 2014.

GRANTOR:

By:_____
Frank Lyon Alexander

[*NOTARY BLOCK FOLLOWS*]

EXHIBIT C TO AGREEMENT (Page 2 of 3)

STATE OF COLORADO)
)ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this __ day of _____, 2014, by Frank Lyon Alexander.

Witness my hand and official seal.
My commission expires: _____

_____
Notary Public

EXHIBIT C TO AGREEMENT (Page 3 of 3)
LENDER'S CONSENT AND SUBORDINATION

The undersigned, a beneficiary under a certain deed of trust encumbering the property, hereby expressly consents to and joins in the execution and recording of this grant of easement and makes the deed of trust subordinate hereto. The undersigned represents that he or she has full power and authority to execute this Lender's Consent and Subordination on behalf of the below-stated lender.

ROUNDPOINT MORTGAGE COMPANY

By:_____
Printed Name:_____
Title:_____

ACKNOWLEDGMENT

State of _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20___, by _____ as _____ of Roundpoint Mortgage Company.

Witness my Hand and Seal.
My Commission Expires:_____

[Seal]

_____
Notary Public

EXHIBIT A TO UTILITY EASEMENT (Page 1 of 2)

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 2

AN EASEMENT OVER AND ACROSS A PORTION OF A PARCEL OF LAND AS DESCRIBED IN THE RECORDS OF BOULDER COUNTY AT RECEPTION NO. 3046074, DATED DECEMBER 3, 2009, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE SOUTHERLY LINE OF SAID PARCEL OF LAND TO BEAR SOUTH 89°11'30" WEST, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

BEGINNING AT THE SOUTHWEST CORNER OF SAID PARCEL OF LAND;
THENCE ALONG THE WESTERLY LINE OF SAID PARCEL OF LAND, NORTH 00°05'30" EAST, A DISTANCE OF 3.85 FEET;
THENCE DEPARTING SAID WESTERLY LINE, NORTH 89°25'36" EAST, A DISTANCE OF 333.04 FEET TO A POINT ON THE EASTERLY LINE OF SAID PARCEL OF LAND AND A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF GARNET LANE;
THENCE ALONG SAID WESTERLY RIGHT-OF-WAY LINE, SOUTH 00°01'40" WEST, A DISTANCE OF 2.48 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL OF LAND;
THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL OF LAND, SOUTH 89°11'30" WEST, A DISTANCE OF 333.07 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL OF LAND AND THE POINT OF BEGINNING.

SAID EASEMENT CONTAINING 1,053 SQ. FT. OR 0.02 ACRES MORE OR LESS.

I, JOHN B. GUYTON, A LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS EASEMENT DESCRIPTION AND ATTACHED EXHIBIT, BEING MADE A PART THEREOF, WERE PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE AT THE REQUEST OF THE CLIENT AND IS NOT INTENDED TO REPRESENT A MONUMENTED LAND SURVEY OR SUBDIVIDE LAND IN VIOLATION OF STATE STATUTE.

JOHN B. GUYTON
COLORADO P.L.S. #16406
CHAIRMAN/CEO, FLATIRONS, INC.

FSI JOB NO. 14-64,203

JOB NUMBER: 14-64,203(A)
DRAWN BY: E. PRESCOTT
DATE: OCTOBER 6, 2014
THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

Flatirons, Inc.
Surveying, Engineering & Geomatics
655 FOURTH AVE
LONGMONT, CO 80501
PH: (303) 776-1733
FAX: (303) 776-4355
www.FlatironsInc.com

BY:EPRESCOTT FILE:64203-DESC-ESMT.DWG DATE:10/6/2014 2:22 PM

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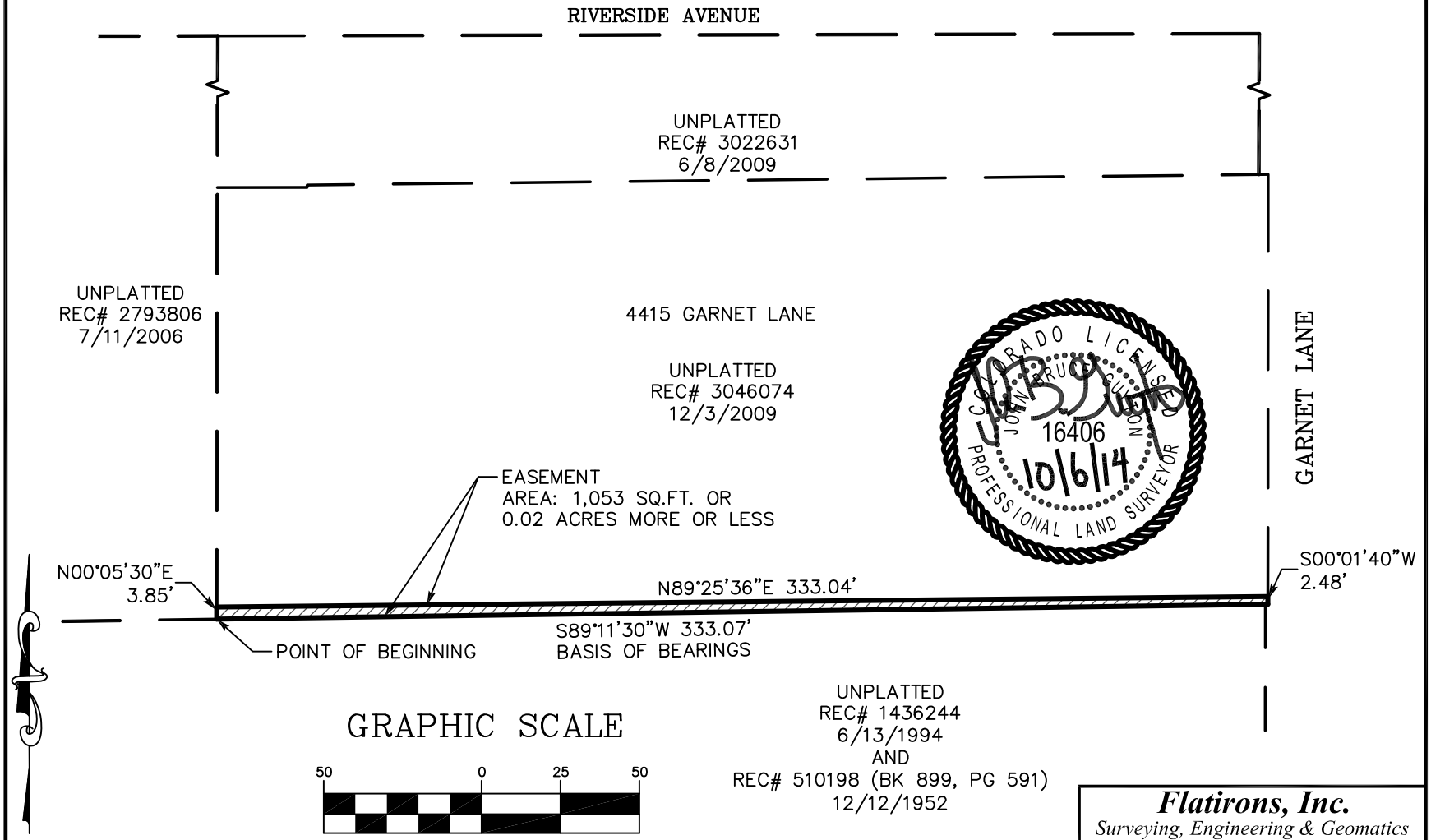
EXHIBIT A TO UTILITY EASEMENT (Page 2 of 2)

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH,
RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN,
COUNTY OF BOULDER, STATE OF COLORADO
SHEET 2 OF 2



GRAPHIC SCALE

50 0 25 50

(IN FEET)
1 inch = 50 ft.

JOB NUMBER: 14-64,203(A)
DRAWN BY: E. PRESCOTT
DATE: OCTOBER 6, 2014

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

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BY:EPRESCOTT FILE:64203-DESC-ESMT.DWG DATE:10/6/2014 2:22 PM

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EXHIBIT D TO AGREEMENT (Page 1 of 3)

For Administrative Purposes Only
Property Address: 4415 Garnet Lane
Grantor: Frank Lyon Alexander
Grantee: City of Boulder, Colorado
Case#: LUR2014-00061

GRANT OF DITCH EASEMENT

FRANK LYON ALEXANDER ("Grantor"), whose address is 4415 Garnet Lane, Boulder, Colorado 80304, for $1.00 and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey to the CITY OF BOULDER, a Colorado home rule city (the "City"), whose address is 1777 Broadway, Boulder, Colorado 80302, an easement for the installation, construction, repair, maintenance and reconstruction of an irrigation ditch (or lateral) and appurtenances thereto, together with all rights and privileges as are necessary or incidental to the reasonable and proper use of such easement in and to, over, under and across the following real property, situated in Boulder County, Colorado, to-wit:

See Exhibit A attached

Grantor, for him and for his heirs, successors, agents, lessees, and assigns, does hereby covenant and agree that no permanent structure or improvement shall be placed on said easement by him or his heirs, successors or assigns, and that said use of such easement shall not otherwise be obstructed or interfered with.

Grantor warrants his ability to grant and convey this easement.

The terms of this easement shall run with the land and shall be binding upon and inure to the benefit of the Grantor, his heirs, agents, lessees and assigns, and all other successors to him in interest and shall continue as a servitude running in perpetuity with the property described above.

IN WITNESS WHEREOF, Grantor has caused this instrument to be duly executed as of this ___ day of _____, 2014.

GRANTOR:

By:_____
Frank Lyon Alexander

[*NOTARY BLOCK FOLLOWS*]

EXHIBIT D TO AGREEMENT (Page 2 of 3)

STATE OF COLORADO)
)ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this ___ day of _____, 2014, by Frank Lyon Alexander.

Witness my hand and official seal.
My commission expires: _____

_____
Notary Public

EXHIBIT D TO AGREEMENT (Page 3 of 3)

LENDER'S CONSENT AND SUBORDINATION

The undersigned, a beneficiary under a certain deed of trust encumbering the property, hereby expressly consents to and joins in the execution and recording of this grant of easement and makes the deed of trust subordinate hereto. The undersigned represents that he or she has full power and authority to execute this Lender's Consent and Subordination on behalf of the below-stated lender.

ROUNDPOINT MORTGAGE COMPANY

By:_____
Printed Name:_____
Title:_____

ACKNOWLEDGMENT

State of _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20___, by _____ as _____ of Roundpoint Mortgage Company.

Witness my Hand and Seal.
My Commission Expires:_____

[Seal] _____
Notary Public

EXHIBIT A TO DITCH EASEMENT (Page 1 of 2)

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 2

AN EASEMENT OVER AND ACROSS A PORTION OF A PARCEL OF LAND AS DESCRIBED IN THE RECORDS OF BOULDER COUNTY RECORDED ON DECEMBER 3, 2009 AT RECEPTION NO. 3046074, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE WESTERLY LINE OF SAID PARCEL OF LAND TO BEAR NORTH 00°05'30" EAST, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

COMMENCING AT THE SOUTHWEST CORNER OF SAID PARCEL OF LAND;
THENCE ALONG THE WESTERLY LINE OF SAID PARCEL OF LAND, NORTH 00°05'30" EAST, A DISTANCE OF 118.52 FEET TO A POINT 5.00 FEET SOUTH OF THE CENTERLINE OF THE SILVER LAKE DITCH AND THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID WESTERLY LINE, NORTH 00°05'30" EAST, A DISTANCE OF 10.04 FEET TO A POINT 5.00 FEET NORTH OF THE CENTERLINE OF SAID DITCH;
THENCE ALONG A LINE LYING 5.00 FEET NORTHERLY OF AND PARALLEL WITH SAID CENTERLINE THE FOLLOWING SIX (6) COURSES:
SOUTH 84°50'39" EAST, A DISTANCE OF 59.66 FEET;
THENCE NORTH 88°19'47" EAST, A DISTANCE OF 36.82 FEET;
THENCE NORTH 81°21'33" EAST, A DISTANCE OF 59.57 FEET;
THENCE NORTH 83°56'24" EAST, A DISTANCE OF 33.10 FEET;
THENCE NORTH 86°57'19" EAST, A DISTANCE OF 40.91 FEET;
THENCE NORTH 31°54'06" EAST, A DISTANCE OF 1.03 FEET TO A POINT ON THE NORTHERLY LINE OF SAID PARCEL OF LAND;
THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL OF LAND, NORTH 89°22'15" EAST, A DISTANCE OF 11.86 FEET TO A POINT LYING 5.00 FEET EASTERLY OF SAID CENTERLINE;
THENCE ALONG A LINE LYING 5.00 FEET EASTERLY AND SOUTHERLY OF, AND PARALLEL WITH SAID CENTERLINE THE FOLLOWING SIX (6) COURSES:
SOUTH 31°54'06" WEST, A DISTANCE OF 12.62 FEET;
THENCE SOUTH 86°57'19" WEST, A DISTANCE OF 45.85 FEET;
THENCE SOUTH 83°56'24" WEST, A DISTANCE OF 32.62 FEET;
THENCE SOUTH 81°21'33" WEST, A DISTANCE OF 59.95 FEET;
THENCE SOUTH 88°19'47" WEST, A DISTANCE OF 38.02 FEET;
THENCE NORTH 84°50'39" WEST, A DISTANCE OF 59.37 FEET TO A POINT ON THE WESTERLY LINE OF SAID PARCEL OF LAND, AND THE POINT OF BEGINNING;

SAID EASEMENT CONTAINING 1,053 SQ. FT. OR 0.02 ACRES, MORE OR LESS.

I, JOHN B. GUYTON, A LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS EASEMENT DESCRIPTION AND ATTACHED EXHIBIT, BEING MADE A PART THEREOF, WERE PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE AT THE REQUEST OF THE CLIENT AND IS NOT INTENDED TO REPRESENT A MONUMENTED LAND SURVEY OR SUBDIVIDE LAND IN VIOLATION OF STATE STATUTE.

COLORADO LICENSED PROFESSIONAL LAND SURVEYOR JOHN B. GUYTON 16406 10/10/14

JOHN B. GUYTON
COLORADO P.L.S. #16406 FLATIRONS, INC. JOB NO. 14-64,203
CHAIRMAN/CEO, FLATIRONS, INC.
JOB NUMBER: 14-64,203(B)
DRAWN BY: E. PRESCOTT
DATE: OCTOBER 10, 2014

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

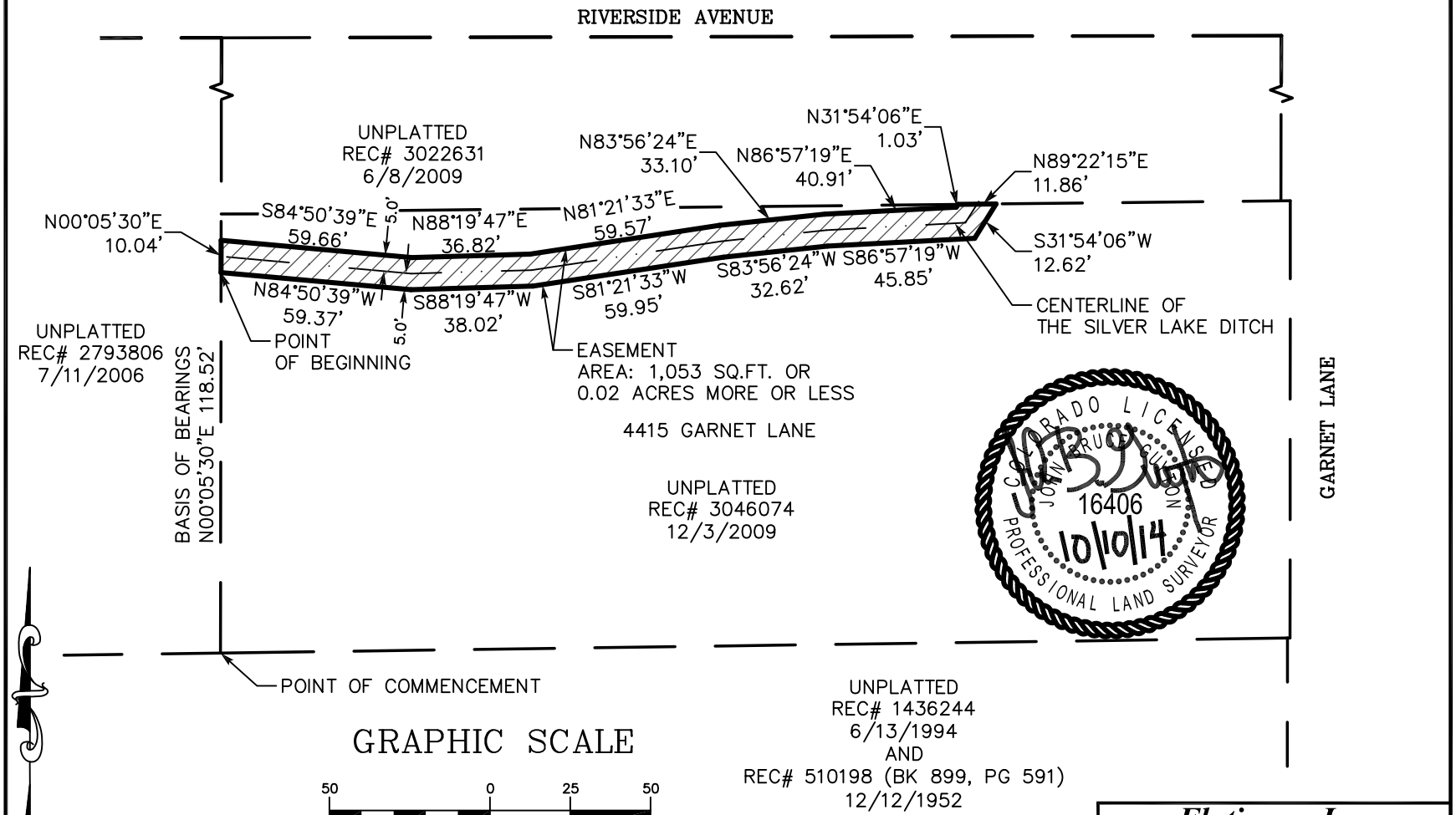
Flatirons, Inc.
Surveying, Engineering & Geomatics
655 FOURTH AVE
LONGMONT, CO 80501
PH: (303) 776-1733
FAX: (303) 776-4355
www.FlatironsInc.com

BY:EPRESCOTT FILE:64203-DESC-LATERAL ESMT.DWG DATE:10/10/2014 10:23 AM

EXHIBIT A TO DITCH EASEMENT (Page 2 of 2)

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH,
RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN,
COUNTY OF BOULDER, STATE OF COLORADO

SHEET 2 OF 2



JOB NUMBER: 14-64,203(B)
DRAWN BY: E. PRESCOTT
DATE: OCTOBER 10, 2014

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

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FAX: (303) 776-4355
www.FlatironsInc.com

BY:EPRESCOTT FILE:64203-DESC-LATERAL ESMT.DWG DATE:10/10/2014 10:24 AM

CITY OF BOULDER
Planning and Development Services
1739 Broadway, Third Floor • P.O. Box 791, Boulder, CO 80306-0791
phone 303-441-1880 • fax 303-441-4241 • web boulderplandevelop.net

EXHIBIT E TO AGREEMENT (Page 1 of 2)

Fees for PMT2014-04657

Responsible Person: FRANK L ALEXANDER

Address: 4415 GARNET LN

Please note: This information may not be representative of all fees due. Additional fees may apply.

Fee Description	Amount Assessed	Date Assessed	Amount Paid	Date Paid	Receipt Number	Amount Due History
RES 2014 Irrig PIF [ISS]	$5,340.00	10/9/2014				**$5,340.00**
RES 2014 Storm PIF [ISS]	$7,300.64	10/9/2014				**$7,300.64**
RES 2014 Water PIF [ISS]	$11,467.00	10/9/2014				**$11,467.00**
Transpo Assessment Fee	$10,000.00	10/9/2014				**$10,000.00**
Water Assessment Fee *TOM BEDNARK*	$1,410.00	10/9/2014				**$1,410.00**
Water Inspection Fee	$169.00	10/9/2014				**$169.00**
Water Meter Fee (L/E)	$52.00	10/9/2014				**$52.00**
Water Meter Fee (Materials)	$492.00	10/9/2014				**$492.00**
Water Permit Fee	$127.00	10/9/2014				**$127.00**

EXHIBIT E TO AGREEMENT (Page 2 of 2)

Fees for PMT2014-04657

Responsible Person: FRANK L ALEXANDER

Address: 4415 GARNET LN

Please note: This information may not be representative of all fees due. Additional fees may apply.

Fee Description	Amount Assessed	Date Assessed	Amount Paid	Date Paid	Receipt Number	Amount Due History
Water Tap Fee (L/E)	$79.00	10/9/2014				**$79.00**
Water Tap Fee (Materials)	$127.00	10/9/2014				**$127.00**

Total Fees Assessed: $36,563.64 **Total Fees Paid: $0.00** **Total Fees Remaining Due: $36,563.64**

Receipt Information

Receipt Number	Paid By	Payment Method	Check Number

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For Administrative Purposes Only
Applicants: Silvano De Luca and
Elvira G. De Luca
Address: 1085 Gapter Road
Case No. LUR2014-00064

ANNEXATION AGREEMENT

This Annexation Agreement ("Agreement"), made this 14th day of November, 2014, by and between the City of Boulder, a Colorado home rule city (the "City"), and Silvano De Luca and Elvira G. De Luca (the "Applicants"). The City and the Applicants are referred to as the "Parties."

RECITALS

WHEREAS, the Parties recite the following facts related to the annexation of the property described in this Agreement to the City of Boulder:

A. The Applicants are the owners of the property generally known as 1085 Gapter Road, Boulder CO 80303 and more particularly described as Lot #13, Gapter Subdivision, County of Boulder, State of Colorado (the "Property").

B. The Applicants are interested in obtaining approval from the City of the annexation of the Property in order to provide adequate urban services to the Property.

C. The Parties anticipate that annexation with an initial zoning designation of Residential – Rural 2 (RR-2) is consistent with the Boulder Valley Comprehensive Plan.

D. In order to assist the Applicants in annexing into the City, the City is providing an annexation package that includes a method for financing the public improvements and a waiver of certain fees and taxes which includes the annexation application fee and the housing excise tax.

E. The City is interested in ensuring that certain terms and conditions of annexation be met by the Applicants in order to protect the public health, safety, and welfare and prevent the placement of an unreasonable burden on the physical, social, economic, or environmental resources of the City.

COVENANTS

NOW, THEREFORE, in consideration of the recitals, promises, and covenants herein set forth, and other good and valuable consideration herein receipted for, the Parties agree as follows:

1. Definitions. The Parties agree that terms used in this Agreement will have the following meanings:

"Redevelopment" shall be defined as the subdivision of a property to create a new lot, issuance of a building permit for a new or replacement dwelling unit, issuance of a building permit for additional square footage to the existing structure, or an increase in number of the plumbing fixtures.

2. Requirements Prior to First Reading of the Annexation Ordinance. Prior to the scheduling of first reading of the annexation ordinance, the Applicants shall do the following:

   A. Annexation Agreement. The Applicants will sign this Agreement.

   B. Title Work. The Applicants will provide the City with title work current to within 30 days of signing this Agreement.

   C. Written Descriptions. The Applicants shall provide a written description of any nonconforming uses and/or nonstandard buildings existing on each Property, if any.

   D. Easement Dedications. The Applicants shall dedicate to the City, at no cost, a flood control easement from 60 feet on either side of the centerline of South Boulder Creek as shown on **Exhibit A** (the "Flood Control Easement Area"). The easement shall be in a form acceptable to the city manager. The easement will exclude any principal building containing a dwelling unit on the lot within the flood control easement area that is existing at the time of annexation.

   E. Northern Colorado Water Conservancy District ("NCWCD"). The Applicants will file an application for inclusion of the Property in the Northern Colorado Water Conservancy District and the Boulder Municipal Subdistrict.

3. Connection Requirements. Prior to connection to the City's sanitary sewer main, the Applicants shall:

   A. Submit an application to connect to the City's sanitary sewer main that meets the requirements of Chapter 11-2, B.R.C. 1981.

   B. Pay all applicable fees and charges associated with a service line connection to the sanitary sewer main, including wastewater plant investment fees, stormwater and flood management plant investment fees, right-of way, and wastewater permit fees, installation fees, and tap fees.

   C. Construct the individual service lines that will connect the Applicants' existing residence to the City's wastewater main.

D. Pay any assessments, including but not limited to the following:

Water Main	14,013.26
Sewer Main	11,010.42
Stormwater and Flood PIF	9,539.86

E. Execute a Promissory Note and Deed of Trust, if Applicants selected Payment Option #B, as described under Paragraph 4.B(i) below,

4. Payment Options and Requirements for Fees, Taxes, and Public Improvement Costs. The Applicants select **Option # B** set forth below.

A. Option #A: Payment in Full. The Applicants shall connect to the City sanitary sewer main within 180 days after the effective date of the annexation ordinance and shall comply with the terms of, and pay the costs and fees described in, Paragraph 3 above. The City Manager may, in her discretion, approve a different time for connection to the City sanitary sewer main provided the Applicants demonstrate reasonable diligence to comply with the 180-day deadline and good cause for the extension.

B. Option #B: Payment Plan. The Applicants shall connect to the City sanitary sewer main within 180 days after the effective date of the annexation ordinance and shall comply with the terms of Paragraph 3 above except that the costs, fees and any assessments described in Paragraph 3 shall be paid in accordance with the terms of the following payment plan:

i. Prior to connection to the City's sewer main, the Applicants shall execute a Promissory Note and a Deed of Trust securing said Note and encumbering the Applicants' Property in the principal amount to cover the amounts set forth in Paragraph 3 above. The Note will have a simple interest rate of 3.25 percent per annum, payable in 10 annual installments of principal and interest beginning at the time of connection to both the City sewer system.

The City Manager may, in her discretion, approve a different time for connection to the City sanitary sewer main provided the Applicants demonstrate reasonable diligence to comply with the 180-day deadline and good cause for the extension. The City Manager, in her discretion, may approve for good cause a different time for payment of the first of the 10 annual installments of principal and interest.

C. Option #C: Future Connection. The Applicants shall connect to the City's sanitary sewer main at a time later than what is specified in Option #A and #B above, but no later than the time 1) when the Applicants' on-site wastewater system fails or is declared unsafe, or the Applicants are otherwise required to stop using the on-site wastewater system by the Boulder County Health Department or the State of Colorado; or 2) the Applicants' Property is sold; or 3) of Redevelopment of Applicants' Property, whichever occurs first. At the respective

time and prior to the Applicants' connection to the City's sanitary sewer main, the Applicants will pay the costs and fees described in Paragraph 3 above based on the then applicable fee schedule.

5. City of Boulder Design and Construction Standards. Any public improvements that are required to be constructed by the terms of this Agreement shall be constructed in accordance with the requirements of the City of Boulder *Design and Construction Standards* applicable at the time of construction, and shall be subject to the review, approval and acceptance of the City Manager.

6. Use of Existing Wells. The City agrees not to prohibit the Applicants from using existing wells for irrigation purposes, even if the Property is served by the City water utility. Under no circumstances may existing wells be used for domestic water purposes once the Applicants have connected to the city water utility. No person is allowed to make any cross connections between a well and the City's municipal water utility. The Parties agree that there shall not be any type of connection between any well and the City water system serving the Property.

7. Applicants Responsible for Legal Disconnection of On-site Wastewater System. If the Applicants decide to continue to use an existing on-site wastewater system, the Applicants agree that they will connect to the adjacent sanitary sewer main, in accordance with Section 11-2-9, B.R.C. 1981, upon any declaration by Boulder County Public Health to cease and desist using the on-site wastewater system, or other declaration that the on-site wastewater system constitutes a threat to the public health. Currently, under Boulder County Public Health Department policy, all on-site wastewater systems must be permitted and approved by 2023. At that time, any resident still using an on-site wastewater system must either have their system permitted and approved, or connect to the adjacent sanitary sewer main. At the time of any disconnection of the on-site wastewater system and connection to the City's sanitary sewer main, the Applicants are required to abandon the existing on-site wastewater system in accordance with Boulder County Public Health and State of Colorado regulations.

8. Historic Drainage. The Applicants agree to convey drainage from the Property in an historic manner that does not materially and adversely affect abutting properties.

9. Ditch Company Approval. If the Property is abutting an existing irrigation ditch or lateral, the Applicants agree not to relocate, modify, or alter the ditch or lateral until and unless written approval is received from the appropriate ditch company.

10. Existing Nonstandard Buildings and/or Nonconforming Uses. Existing, nonstandard buildings and/or nonconforming uses will be allowed to continue to be occupied and operated in the City of Boulder. Only those nonstandard buildings and/or nonconforming uses for which the Applicant has provided a written description that is received by the City in accordance with Paragraph 2.C above will be considered legal. The Applicant and the City agree that this section shall not be construed to permit the Property to constitute a nuisance or to cause a hazard under the City's life safety codes.

11. New Construction. All new construction commenced on the Property after annexation will comply with all City of Boulder laws, taxes, and fees, except as modified by this Agreement.

12. Waiver of Vested Rights. The Applicants hereby waive any statutory vested rights that may have accrued under County jurisdiction that have not been perfected as common law vested rights. The Applicants acknowledge that nothing in this Agreement may be construed as a waiver of the City's powers to zone and regulate land uses for the benefit of the citizens and residents of Boulder.

13. Dedications. The Applicants acknowledge that any dedications and public improvements required herein with this annexation are rationally related and reasonably proportionate to the projected impact of the development of the Property as set forth in this Agreement.

14. Original Instruments. Prior to the first reading of the annexation ordinance, the Applicants shall provide an original of this Agreement signed by the Applicants, along with any instruments required in this Agreement. The City agrees to hold such documents until after final legislative action on the annexation of this Property has occurred. Final legislative action by the City Council shall constitute acceptance of such documents by the City. In the event that the City does not annex the Property, the City agrees that it will return all such original documents to the Applicants. The Applicants agree that they will not encumber or in any way take any action that compromises the quality of such documents while they are being held by the City.

15. No Encumbrances. The Applicants agree that between the time of signing this Agreement and the time when final legislative action on the annexation of this Property has occurred, the Applicants shall neither convey ownership nor further encumber the Applicants' Property, without the express approval from the City. Prior to the recording of this Agreement with the Boulder County Clerk and Recorder, Applicants agree not to execute transactional documents encumbering the Property or otherwise affecting title to the Property without first notifying the City and submitting revised title work within five (5) working days of any such transaction.

16. Breach of Agreement. In the event the Applicants breach or fail to perform any required action or fail to pay any fee specified under this Agreement or under any document that may also be required to be executed pursuant to this Agreement, the Applicants acknowledge that the City may take all reasonable actions to cure the breach, including but not limited to the filing of an action for specific performance of the obligations herein described. In the event the Applicants fail to pay any monies due under this Agreement or under any document that may also be required to be executed pursuant to this Agreement or fail to perform any affirmative obligation hereunder or under any document that may also be required to be executed pursuant to this Agreement, the Applicants agree that the City may collect the monies due in the manner provided for in Section 2-2-12, B.R.C. 1981, as amended, as if the said monies were due and owing pursuant to a duly adopted ordinance of the City or may perform the obligation on behalf of the Applicants and

collect its costs in the manner herein provided. The Applicants agree to waive any rights they may have under Section 31-20-105, C.R.S., based on the City's lack of an enabling ordinance authorizing collection of this specific debt or acknowledge that the adoption of the annexation ordinance is such enabling ordinance.

17. Failure to Annex. This Agreement and any document executed pursuant hereto shall be null and void and of no consequence in the event that the Property is not annexed into the City.

18. Future Interests. This Agreement and the covenants set forth herein shall run with the land and be binding upon the Applicants, the Applicants' heirs, successors, and assigns and all persons who may hereafter acquire an interest in the Property, or any part thereof. If it shall be determined that this Agreement contains an interest in land, that interest shall vest, if at all, within the lives of the undersigned plus 20 years and 364 days.

19. Right to Withdraw. The Applicants retain the right to withdraw from this Agreement up until the time that final legislative action has been taken on the ordinance that will cause the Property to be annexed into the City. The final legislative action will be the vote of the City Council after the final reading of the annexation ordinance. The Applicants' right to withdraw shall terminate upon the City Council's final legislative action approving the annexation. In the event that the Applicants withdraw from this Agreement in the manner described above, this Agreement shall be null and void and shall have no effect regarding such Applicants. The City agrees, within 30 days of a request by the Applicants after a withdrawal, to return all previously submitted stormwater/flood management PIF, NCWCD fees and application, and easement and/or rights of way dedication documents which the Applicants submitted pursuant to this Agreement to the City.

20. Flood Control Easement Conditions.

A. The City will allow existing accessory structures identified on **Exhibit B** to remain within the Flood Control Easement Area until removed, destroyed, demolished, or relocated.

B. The City can require removal of pre-existing accessory buildings if such buildings are required to implement a specific flood mitigation project.

C. The Applicants shall neither construct any new buildings nor rebuild or reconstruct any pre-existing accessory buildings within the Flood Control Easement Area.

21. Property Impacted by Floodplain. The Property is impacted by the 100-year floodplain, 500-year floodplain, conveyance zone, and high hazard zone of South Boulder Creek. Any development on the Property must comply with Sections 9-3-2 through 9-3-8 of the Boulder Revised Code.

22. Water Main Connection. The Applicants shall connect to the City's water main at a time no later than the time the Applicants' Property is sold. Whether at time of sale or at an

earlier time, prior to the Applicants' connection to the City's water main, the Applicants shall:

A. Pay all applicable fees and charges; and

B. Construct the individual service line that will connect the Applicants' residence to the City's water main.

23. 2014 Fee Schedule. The Applicants agree to connect to the City sanitary sewer main within 180 days from the effective date of the ordinance, or as approved by the City Manager. The Parties agree that any fees required in Paragraph 3 of this Agreement for said initial connection be assessed at the rates applicable on October 9, 2014 and as more particularly described on the attached **Exhibit C**.

EXECUTED on the day and year first above written.

APPLICANT:

By: _____
Silvano De Luca

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me, a Notary Public, this 14th day of November, 2014, by Silvano De Luca.

Witness my hand and official seal.
My commission expires: 08/31/2016

[SEAL]

ALEXANDER DICK
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20124032904
MY COMMISSION EXPIRES 08-31-2016

_____
Notary Public

APPLICANT:

By: Elvira G. De Luca
Elvira G. De Luca

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me, a Notary Public, this 14th day of November, 2014, by Elvira G. De Luca.

Witness my hand and official seal.
My commission expires: Oct. 10, 2016

[SEAL]

Notary Public

MARY WALLACE
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID # 20044023780
MY COMMISSION EXPIRES OCTOBER 10, 2016

CITY OF BOULDER:

By: _____
City Manager

ATTEST:

_____
City Clerk

Approved As To Form:

_____
City Attorney's Office

Date: _____

EXHIBITS

A: Form of Flood Control Easement
B: Accessory Structures to remain within Flood Control Esmt Area
C. Fees due at time of connection

EXHIBIT A TO AGREEMENT (Page 1 of 5)

For Administrative Purposes Only
Property Address: 1085 Gapter Road
Grantors: Silvano De Luca and
Elvira G. De Luca
Grantee: City of Boulder, Colorado
Case#: LUR2014-00064

GRANT OF FLOOD CONTROL EASEMENT

SILVANO DE LUCA AND ELVIRA G. DE LUCA ("Grantors"), whose address is 1085 Gapter Road, Boulder, Colorado 80304, for $1.00 and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey to the CITY OF BOULDER, a Colorado home rule city (the "City"), whose address is 1777 Broadway, Boulder, Colorado 80302, a flood control easement for the purpose of drainage conveyance and control of flood waters and installation and maintenance of improvements necessary to ensure conveyance as determined by the Grantee, together with all rights and privileges as are necessary or incidental to the reasonable and proper use of such easement in and to, over, under and across the following real property, situated in Boulder County, Colorado, to-wit:

See Exhibit A attached

Grantors, for them and for their heirs, successors, agents, lessees, and assigns, do hereby covenant and agree that no permanent structure or improvement shall be placed on said easement by them or their heirs, successors or assigns, and that said use of such easement shall not otherwise be obstructed or interfered with.

Grantors warrant their ability to grant and convey this easement.

The terms of this easement shall run with the land and shall be binding upon and inure to the benefit of the Grantors, their heirs, agents, lessees and assigns, and all other successors to them in interest and shall continue as a servitude running in perpetuity with the property described above.

IN WITNESS WHEREOF, Grantor has caused this instrument to be duly executed as of this ___ day of _____, 2014.

GRANTOR:

By:_____
Silvano De Luca

[*NOTARY BLOCK FOLLOWS*]

EXHIBIT A TO AGREEMENT (Page 2 of 5)

STATE OF COLORADO)
)ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this ___ day of _____, 2014, by Silvano De Luca.

Witness my hand and official seal.
My commission expires: _____

_____
Notary Public

GRANTOR:

By:_____
Elvira G. De Luca

STATE OF COLORADO)
)ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this ___ day of _____, 2014, by Elvira G. De Luca.

Witness my hand and official seal.
My commission expires: _____

_____
Notary Public

EXHIBIT A TO AGREEMENT (Page 3 of 5)

LENDER'S CONSENT AND SUBORDINATION

The undersigned, a beneficiary under a certain deed of trust encumbering the property, hereby expressly consents to and joins in the execution and recording of this grant of easement and makes the deed of trust subordinate hereto. The undersigned represents that he or she has full power and authority to execute this Lender's Consent and Subordination on behalf of the below-stated lender.

U.S. SMALL BUSINESS ADMINISTRATION

By:_____
Printed Name:_____
Title:_____

ACKNOWLEDGMENT

State of _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20___, by _____ as _____ of U.S. Small Business Administration.

Witness my Hand and Seal.
My Commission Expires:_____

[Seal]

_____
Notary Public

EXHIBIT A TO AGREEMENT (Page 4 of 5)

LENDER'S CONSENT AND SUBORDINATION

The undersigned, a beneficiary under a certain deed of trust encumbering the property, hereby expressly consents to and joins in the execution and recording of this grant of easement and makes the deed of trust subordinate hereto. The undersigned represents that he or she has full power and authority to execute this Lender's Consent and Subordination on behalf of the below-stated lender.

CHASE BANK

By:_____
Printed Name:_____
Title:_____

ACKNOWLEDGMENT

State of _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20___, by _____ as _____ of **Chase Bank.**

Witness my Hand and Seal.
My Commission Expires:_____

[Seal]

_____
Notary Public

EXHIBIT A TO AGREEMENT (Page 5 of 5)

LENDER'S CONSENT AND SUBORDINATION

The undersigned, a beneficiary under a certain deed of trust encumbering the property, hereby expressly consents to and joins in the execution and recording of this grant of easement and makes the deed of trust subordinate hereto. The undersigned represents that he or she has full power and authority to execute this Lender's Consent and Subordination on behalf of the below-stated lender.

FIRSTBANK OF LONGMONT

By:_____
Printed Name:_____
Title:_____

ACKNOWLEDGMENT

State of _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20___, by _____ as _____ of **Firstbank of Longmont**.

Witness my Hand and Seal.
My Commission Expires:_____

[Seal]

_____
Notary Public

EXHIBIT A TO FLOOD CONTROL EASEMENT (Page 1 of 2)

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 2

AN EASEMENT OVER AND ACROSS A PORTION OF LOT 13, GAPTER SUBDIVISION AS RECORDED IN THE RECORDS OF BOULDER COUNTY AT RECEPTION NO. 90550500, DATED JANUARY 10, 1955, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE WESTERLY LINE OF SAID LOT 13 TO BEAR NORTH 00°31'30" WEST, A DISTANCE OF 231.68 FEET, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 13; THENCE ALONG THE NORTHERLY LINE OF SAID LOT 13, NORTH 90°00'00" WEST, A DISTANCE OF 54.01 FEET TO THE POINT OF BEGINNING:
THENCE DEPARTING SAID NORTHERLY LINE, AND RUNNING 60' SOUTHEASTERLY AND PARALLEL WITH THE CENTERLINE OF SOUTH BOULDER CREEK, THE FOLLOWING THREE (3) COURSES:
SOUTH 24°45'44" WEST, A DISTANCE OF 61.15 FEET;
THENCE SOUTH 40°13'16" WEST, A DISTANCE OF 105.20 FEET;
THENCE SOUTH 23°32'33" WEST, A DISTANCE OF 14.00 FEET;
THENCE SOUTH 14°56'18" WEST, A DISTANCE OF 85.89 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID LOT 13;
THENCE ALONG SAID SOUTHERLY LINE, NORTH 90°00'00" WEST, A DISTANCE OF 42.12 FEET TO THE SOUTHWEST CORNER OF SAID LOT 13;
THENCE ALONG THE WESTERLY LINE OF SAID LOT 13, NORTH 00°31'30" WEST, A DISTANCE OF 196.93 FEET;
THENCE DEPARTING SAID WESTERLY LINE, AND RUNNING 60' NORTHWESTERLY AND PARALLEL WITH THE CENTERLINE OF SOUTH BOULDER CREEK, NORTH 40°13'16" EAST, A DISTANCE OF 45.51 FEET TO A POINT ON THE NORTHERLY LINE OF SAID LOT 13;
THENCE ALONG SAID NORTHERLY LINE, NORTH 90°00'00" EAST, A DISTANCE OF 135.81 FEET TO THE POINT OF BEGINNING;

SAID EASEMENT CONTAINING 21,705 SQ.FT. OR 0.50 ACRES, MORE OR LESS.

I, JOHN B. GUYTON, A LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS PARCEL DESCRIPTION AND ATTACHED EXHIBIT, BEING MADE A PART THEREOF, WERE PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE AT THE REQUEST OF THE CLIENT AND IS NOT INTENDED TO REPRESENT A MONUMENTED LAND SURVEY OR SUBDIVIDE LAND IN VIOLATION OF STATE STATUTE.

COLORADO LICENSED PROFESSIONAL LAND SURVEYOR JOHN BRUCE GUYTON 16406 9/12/14

JOHN B. GUYTON
COLORADO P.L.S. #16406 FSI JOB NO. 14-64,205
CHAIRMAN/CEO, FLATIRONS, INC.

JOB NUMBER: 14-64,205
DRAWN BY: E.PRESCOTT
DATE: AUGUST 19, 2014
REV: SEPTEMBER 12, 2014

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

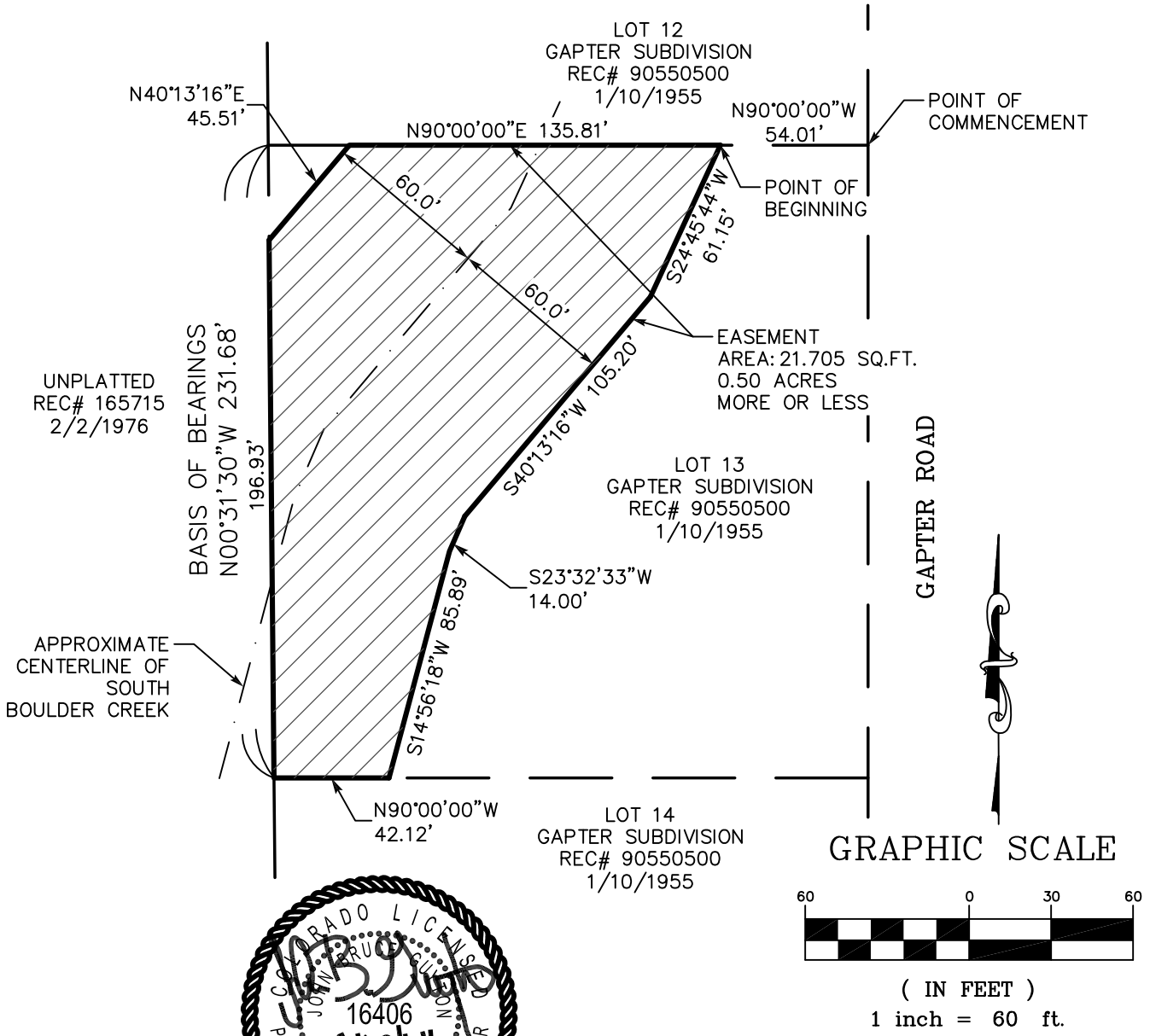
Flatirons, Inc.
Surveying, Engineering & Geomatics
655 FOURTH AVE
LONGMONT, CO 80501
PH: (303) 776-1733
FAX: (303) 776-4355
www.FlatironsInc.com

BY:EPRESCOTT FILE:64205-DESC-C13.DWG DATE:9/12/2014 11:05 AM

EXHIBIT A TO FLOOD CONTROL EASEMENT (Page 2 of 2)

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO

SHEET 2 OF 2



COLORADO LICENSED
JOHN TRUCHARD SCHOON
16406
9/12/14
PROFESSIONAL LAND SURVEYOR

JOB NUMBER: 14-64,205
DRAWN BY: E.PRESCOTT
DATE: AUGUST 19, 2014
REV: SEPTEMBER 12, 2014

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

Flatirons, Inc.
Surveying, Engineering & Geomatics
655 FOURTH AVE
LONGMONT, CO 80501
PH: (303) 776-1733
FAX: (303) 776-4355
www.FlatironsInc.com

BY:EPRESCOTT FILE:64205-DESC-C13.DWG DATE:9/12/2014 11:06 AM

EXHIBIT B TO AGREEMENT (Page 1 of 2)

- One barn
- One storage shed/chicken coop

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EXHIBIT B TO AGREEMENT (Page 2 of 2)
Box above approximates the property boundaries of 1085 Gapter Road
RD

CITY OF BOULDER
Planning and Development Services
1739 Broadway, Third Floor • P.O. Box 791, Boulder, CO 80306-0791
phone 303-441-1880 • fax 303-441-4241 • web boulderplandevelop.net

EXHIBIT C TO AGREEMENT (Page 1 of 2)

Fees for PMT2014-04658

Responsible Person: SILVANO DELUCA

Address: 1085 GAPTER RD

Please note: This information may not be representative of all fees due. Additional fees may apply.

Fee Description	Amount Assessed	Date Assessed	Amount Paid	Date Paid	Receipt Number	Amount Due History
RES 2014 Irrig PIF [ISS]	$5,340.00	10/9/2014				**$5,340.00**
RES 2014 Sewer PIF [ISS]	$4,473.00	10/9/2014				**$4,473.00**
RES 2014 Storm PIF [ISS]	$9,539.86	10/9/2014				**$9,539.86**
RES 2014 Water PIF [ISS]	$11,467.00	10/9/2014				**$11,467.00**
WW Tap Fee (Materials)	$47.04	10/9/2014				**$47.04**
Wastewater Assessment Fee	$11,010.42	10/9/2014				**$11,010.42**
Wastewater Inspection Fee	$169.00	10/9/2014				**$169.00**
Wastewater Permit Fee	$127.00	10/9/2014				**$127.00**
Wastewater Tap Fee (L/E)	$79.96	10/9/2014				**$79.96**

Fees for PMT2014-04658

Responsible Person: SILVANO DELUCA

Address: 1085 GAPTER RD

Please note: This information may not be representative of all fees due. Additional fees may apply.

Fee Description	Amount Assessed	Date Assessed	Amount Paid	Date Paid	Receipt Number	Amount Due History
Water Assessment Fee	$14,013.26	10/9/2014				**$14,013.26**
Water Inspection Fee	$169.00	10/9/2014				**$169.00**
Water Meter Fee (L/E)	$52.00	10/9/2014				**$52.00**
Water Meter Fee (Materials)	$492.00	10/9/2014				**$492.00**
Water Permit Fee	$127.00	10/9/2014				**$127.00**
Water Tap Fee (L/E)	$79.00	10/9/2014				**$79.00**
Water Tap Fee (Materials)	$127.00	10/9/2014				**$127.00**

Total Fees Assessed: $57,312.54 **Total Fees Paid: $0.00** **Total Fees Remaining Due: $57,312.54**

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For Administrative Purposes Only
Applicants: Amy J. Carpenter and
Stephen R. Carpenter
Address: 2200 Emerald Road
Case No. LUR2014-00065

ANNEXATION AGREEMENT

This Annexation Agreement ("Agreement"), made this 14th day of November, 2014, by and between the City of Boulder, a Colorado home rule city (the "City"), and Amy J. Carpenter and Stephen R. Carpenter (the "Applicants"). The City and the Applicants are referred to as the "Parties."

RECITALS

WHEREAS, the Parties recite the following facts related to the annexation of the property described in this Agreement to the City of Boulder:

A. The Applicants are the owners of the property generally known as 2200 Emerald Road, Boulder CO 80304 and more particularly described as Lot 3, Block 6, Githens Acres, County of Boulder, State of Colorado (the "Property").

B. The Applicants are interested in obtaining approval from the City of the annexation of the Property in order to provide adequate urban services to the Property.

C. The Parties anticipate that annexation with an initial zoning designation of Residential – Rural 1 (RR-1) is consistent with the Boulder Valley Comprehensive Plan.

D. In order to assist the Applicants in annexing into the City, the City is providing an annexation package that includes a method for financing the public improvements and a waiver of certain fees and taxes which includes the annexation application fee and the housing excise tax.

E. The City is interested in ensuring that certain terms and conditions of annexation be met by the Applicants in order to protect the public health, safety, and welfare and prevent the placement of an unreasonable burden on the physical, social, economic, or environmental resources of the City.

COVENANTS

NOW, THEREFORE, in consideration of the recitals, promises, and covenants herein set forth, and other good and valuable consideration herein receipted for, the Parties agree as follows:

1. Definitions. The Parties agree that terms used in this Agreement will have the following meanings:

"Redevelopment" shall be defined as the subdivision of a property to create a new lot, issuance of a building permit for a new or replacement dwelling unit, issuance of a building permit for additional square footage to the existing structure, or an increase in number of the plumbing fixtures.

2. Requirements Prior to First Reading of the Annexation Ordinance. Prior to the scheduling of first reading of the annexation ordinance, the Applicants shall do the following:

   A. Annexation Agreement. The Applicants will sign this Agreement.

   B. Title Work. The Applicants will provide the City with title work current to within 30 days of signing this Agreement.

   C. Written Descriptions. The Applicants shall provide a written description of any nonconforming uses and/or nonstandard buildings existing on each Property, if any.

   D. Water Rights. The Applicants will grant to the City an option in the form attached as **Exhibit A** to purchase certain interests in Silver Lake Ditch and Reservoir Company Shares associated with the Property pursuant to the Settlement Agreement of December 1, 2009 between the City of Boulder and the Silver Lake Ditch & Reservoir Company, recorded at Reception No. 03046201 in Boulder County, Colorado.

   E. Easement Dedications. The Applicants shall dedicate to the City, at no cost, a flood control easement from 60 feet on either side of the centerline of Wonderland Creek as shown on **Exhibit B** (the "Flood Control Easement Area"). The easement shall be in a form acceptable to the city manager. The easement will exclude any principal building containing a dwelling unit on the lot within the flood control easement area that is existing at the time of annexation.

   F. Northern Colorado Water Conservancy District ("NCWCD"). The Applicants will file an application for inclusion of the Property in the Boulder Municipal Subdistrict.

3. Connection Requirements. Prior to connection to the City's sanitary sewer main, the Applicants shall:

   A. Submit an application to connect to the City's sanitary sewer main that meets the requirements of Chapter 11-2, B.R.C. 1981.

   B. Pay all applicable fees and charges associated with a service line connection to the sanitary sewer main, including wastewater plant investment fees, stormwater and flood management plant investment fees, right-of way and wastewater permit fees, installation fees, and tap fees.

C. Construct the individual service line that will connect the Applicants' existing residence to the City's wastewater main.

D. Pay any assessments, including but not limited to the following:

- Stormwater and Flood PIF $14,640.42

E. Execute a Promissory Note and Deed of Trust, if Applicants selected Payment Option #B, as described under Paragraph 4.B(i) below.

4. Payment Options and Requirements for Fees, Taxes, and Public Improvement Costs. The Applicants select **Option #A** set forth below.

A. Option #A: Payment in Full. The Applicants shall connect to the City sanitary sewer main within 180 days after the effective date of annexation ordinance and shall comply with the terms of, and pay the costs and fees described in, Paragraph 3 above. The City Manager may, in her discretion, approve a different time for connection to the City sanitary sewer main provided the Applicants demonstrate reasonable diligence to comply with the 180-day deadline and good cause for the extension.

B. Option #B: Payment Plan. The Applicants shall connect to the City sanitary sewer main within 180 days after the effective date of the annexation ordinance, shall comply with the terms of Paragraph 3 above except that the costs, fees and any assessments described in Paragraph 3 shall be paid in accordance with the terms of the following payment plan:

i. Prior to connection to the City's sewer main, the Applicants shall execute a Promissory Note and a Deed of Trust securing said Note and encumbering the Applicants' Property in the principal amount to cover the amounts set forth in Paragraph 3 above. The Note will have a simple interest rate of 3.25 percent per annum, payable in 10 annual installments of principal and interest beginning at the time of connection to the City sewer systems.

The City Manager may, in her discretion, approve a different time for connection to the City sanitary sewer main provided the Applicants demonstrate reasonable diligence to comply with the 180-day deadline and good cause for the extension. The City Manager, in her discretion, may approve for good cause a different time for payment of the first of the 10 annual installments of principal and interest.

C. Option #C: Future Connection. The Applicants shall connect to the City's sanitary sewer main at a time later than what is specified in Option #A and #B above, but no later than the time 1) the Applicants' on-site wastewater system fails or is declared unsafe, or the Applicants are otherwise required to stop using the on-site wastewater system by the Boulder County Health Department or the State of Colorado; or 2) the Applicants' Property is sold; or 3) of Redevelopment of Applicants' Property, whichever occurs first. At the respective time and prior

to the Applicants' connection to the City's sanitary sewer main, the Applicants will pay the following costs and fees described in Paragraph 3 above based on the then applicable fee schedule.

5. City of Boulder Design and Construction Standards. Any public improvements that are required to be constructed by the terms of this Agreement shall be constructed in accordance with the requirements of the City of Boulder *Design and Construction Standards* applicable at the time of construction, and shall be subject to the review, approval, and acceptance of the City Manager.

6. Use of Existing Wells. The City agrees not to prohibit the Applicants from using existing wells for irrigation purposes, even if the Property is served by the City water utility. Under no circumstances may existing wells be used for domestic water purposes once the Applicants have connected to the City water utility. No person is allowed to make any cross connections between a well and the City's municipal water utility. The Parties agree that there shall not be any type of connection between any well and the City water system serving the Property.

7. Applicants Responsible for Legal Disconnection of On-site Wastewater System. If the Applicants decide to continue to use an existing on-site wastewater system, the Applicants agree that they will connect to the adjacent sanitary sewer main, in accordance with Section 11-2-9, B.R.C. 1981, upon any declaration by Boulder County Public Health to cease and desist using the on-site wastewater system, or other declaration that the on-site wastewater system constitutes a threat to the public health. Currently, under Boulder County Public Health Department policy, all on-site wastewater systems must be permitted and approved by 2023. At that time, any resident still using an on-site wastewater system must either have their system permitted and approved, or connect to the adjacent sanitary sewer main. At the time of any disconnection of the on-site wastewater system and connection to the City's sanitary sewer main, the Applicants are required to abandon the existing on-site wastewater system in accordance with Boulder County Public Health and State of Colorado regulations.

8. Historic Drainage. The Applicants agree to convey drainage from the Property in an historic manner that does not materially and adversely affect abutting properties.

9. Ditch Company Approval. If the Property is abutting an existing irrigation ditch or lateral, the Applicants agree not to relocate, modify, or alter the ditch or lateral until and unless written approval is received from the appropriate ditch company.

10. Existing Nonstandard Buildings and/or Nonconforming Uses. Existing, nonstandard buildings and/or nonconforming uses will be allowed to continue to be occupied and operated in the City of Boulder. Only those nonstandard buildings and/or nonconforming uses for which the Applicant has provided a written description that is received by the City in accordance with Paragraph 2.C above will be considered legal. The Applicant and the City agree that this section shall not be construed to permit the Property to constitute a nuisance or to cause a hazard under the City's life safety codes.

11. New Construction. All new construction commenced on the Property after annexation will comply with all City of Boulder laws, taxes, and fees, except as modified by this Agreement.

12. Waiver of Vested Rights. The Applicants hereby waive any statutory vested rights that may have accrued under County jurisdiction that have not been perfected as common law vested rights. The Applicants acknowledge that nothing in this Agreement may be construed as a waiver of the City's powers to zone and regulate land uses for the benefit of the citizens and residents of Boulder.

13. Dedications. The Applicants acknowledge that any dedications and public improvements required herein with this annexation are rationally related and reasonably proportionate to the projected impact of the development of the Property as set forth in this Agreement.

14. Original Instruments. Prior to the first reading of the annexation ordinance, the Applicants shall provide an original of this Agreement signed by Applicants, along with any instruments required in this Agreement. The City agrees to hold such documents until after final legislative action on the annexation of this Property has occurred. Final legislative action by the City Council shall constitute acceptance of such documents by the City. In the event that the City does not annex the Property, the City agrees that it will return all such original documents to the Applicants. The Applicants agree that they will not encumber or in any way take any action that compromises the quality of such documents while they are being held by the City.

15. No Encumbrances. The Applicants agree that between the time of signing this Agreement and the time when final legislative action on the annexation of this Property has occurred, the Applicants shall neither convey ownership nor further encumber the Applicants' Property, without the express approval from the City. Prior to the recording of this Agreement with the Boulder County Clerk and Recorder, Applicants agree not to execute transactional documents encumbering the Property or otherwise affecting title to the Property without first notifying the City and submitting revised title work within five (5) working days of any such transaction.

16. Breach of Agreement. In the event the Applicants breach or fail to perform any required action or fail to pay any fee specified under this Agreement or under any document that may also be required to be executed pursuant to this Agreement, the Applicants acknowledge that the City may take all reasonable actions to cure the breach, including but not limited to the filing of an action for specific performance of the obligations herein described. In the event the Applicants fail to pay any monies due under this Agreement or under any document that may also be required to be executed pursuant to this Agreement or fail to perform any affirmative obligation hereunder or under any document that may also be required to be executed pursuant to this Agreement, the Applicants agree that the City may collect the monies due in the manner provided for in Section 2-2-12, B.R.C. 1981, as amended, as if the said monies were due and owing pursuant to a duly adopted ordinance of the City or may perform the obligation on behalf of the Applicants and

collect its costs in the manner herein provided. The Applicants agree to waive any rights they may have under Section 31-20-105, C.R.S., based on the City's lack of an enabling ordinance authorizing collection of this specific debt, or acknowledge that the adoption of the annexation ordinance is such enabling ordinance.

17. Failure to Annex. This Agreement and any document executed pursuant hereto shall be null and void and of no consequence in the event that the Property is not annexed into the City.

18. Future Interests. This Agreement and the covenants set forth herein shall run with the land and be binding upon the Applicants, the Applicants' heirs, successors, and assigns and all persons who may hereafter acquire an interest in the Property, or any part thereof. If it shall be determined that this Agreement contains an interest in land, that interest shall vest, if at all, within the lives of the undersigned plus 20 years and 364 days.

19. Right to Withdraw. The Applicants retain the right to withdraw from this Agreement up until the time that final legislative action has been taken on the ordinance that will cause the Property to be annexed into the City. The final legislative action will be the vote of the City Council after the final reading of the annexation ordinance. The Applicants' right to withdraw shall terminate upon the City Council's final legislative action approving the annexation. In the event that the Applicants withdraw from this Agreement in the manner described above, this Agreement shall be null and void and shall have no effect regarding the Applicants. The City agrees, within 30 days of a request by the Applicants after a withdrawal, to return all previously submitted stormwater/flood management PIF, NCWCD fees and application, and easement and/or rights of way dedication documents which the Applicants submitted pursuant to this Agreement to the City.

20. Flood Control Easement Conditions. The Applicants acknowledge that no accessory structures currently exist within the Flood Control Easement Area. The Applicants shall not construct any new buildings within the Flood Control Easement Area.

21. Water Main Requirements. At the time a water main is installed in Emerald Road, but in no event later than prior to the issuance of any building permit on the Property following the installation of the water main, the Applicant agrees to (1) pay to the City a pro-rata share, on an adjusted front foot basis, of the construction costs of the water main, any road construction costs, and any other costs related to the installation of the water main, (2) install an individual service line and connect to the City's water utility, and (3) pay all plant investment fees and connection costs and fees associated with such connection to the City's water utility.

22. Right of Way Improvements. At the time when Emerald Road is improved to meet rural residential street standards as described in the then current City of Boulder *Design and Construction Standards*, but in no event later than prior to the issuance of any building permit on the Property following the installation of such right of way improvements, the Applicant agrees to pay to the City a pro-rata share, on an adjusted front foot basis, of the construction costs of such right of way improvements.

23. Floodplain Regulations. The Property is impacted by the 100-year floodplain, conveyance zone, and high hazard zone of Wonderland Creek. Any development must comply with Sections 9-3-2 through 9-3-8 of the Boulder Revised Code.

24. 2014 Fee Schedule. The Applicants agree to connect to the City sanitary sewer main within 180 days from the effective date of the ordinance, or as otherwise approved by the City Manager. The Parties agree that any fees required in Paragraph 3 of this Agreement for said initial connection be assessed at the rates applicable on October 9, 2014 and as more particularly described on **Exhibit C**.

EXECUTED on the day and year first above written.

APPLICANT:

By: _____
Amy J. Carpenter

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me, a Notary Public, this 14th day of November, 2014, by Amy J. Carpenter.

Witness my hand and official seal.
My commission expires: 4-27-2016

[SEAL]

_____
Notary Public

JULIA B. CHASE
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID # 19964003812
MY COMMISSION EXPIRES APRIL 27, 2016

APPLICANT:

By: _____
Stephen R. Carpenter

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me, a Notary Public, this 14th day of November, 2014, by Stephen R. Carpenter.

Witness my hand and official seal.
My commission expires: 4-27-2016

[SEAL]

_____
Notary Public

JULIA B. CHASE
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID # 19964003812
MY COMMISSION EXPIRES APRIL 27, 2016

CITY OF BOULDER:

By: _____
City Manager

ATTEST:

_____
City Clerk

Approved As To Form:

_____
City Attorney's Office

Date: _____

EXHIBITS

A: Option to Purchase Silver Lake Ditch Shares
B: Form of Flood Control Easement
C: Fees due at time of connection

EXHIBIT A TO AGREEMENT (Page 1 of 2)
OPTION TO PURCHASE
SLD&RC SHARE ASSOCIATED WITH
VOLUNTARILY ANNEXED SLD IRRIGATED PROPERTY
PARCEL NO. 133, 2200 EMERALD ROAD

Amy J. Carpenter and Stephen R. Carpenter, as Property Owners of Silver Lake Ditch ("SLD") Irrigated Property Parcel No. 133, 2200 Emerald Road, legally described as Lot 3, Block 6, Githens Acres, County of Boulder, State of Colorado, do provide this Option to Purchase to the City of Boulder, Colorado, a home rule city of the State of Colorado ("City"), in accordance with the terms of Section II, Voluntary Annexation, of the Settlement Agreement of December 1, 2009 between the City and The Silver Lake Ditch & Reservoir Company ("SLD&RC"), recorded at Reception No. 03046201 in Boulder County, Colorado ("Settlement Agreement"), this _____ day of _____, 2014, as follows:

1. The City shall have the Option to Purchase **1** SLD&RC Share associated with SLD Irrigated Property Parcel No. 133, along with the rights, and only the rights, represented by such SLD&RC Share to receive a certain amount of water from the Reserved Storage Rights.

2. The City shall have the right to exercise this Option to Purchase within 60 calendar days immediately after receiving a Transfer Notice from SLD&RC of a Non-Nuclear Transfer ("Initial Option Exercise Period") or confirmation of a Non-Nuclear Transfer through means other than receipt of a Transfer Notice from SLD&RC ("Alternative Initial Option Exercise Period"), as the case may be, in accordance with the terms of the Settlement Agreement.

3. If the City determines not to exercise the Option to Purchase during the Initial Option Exercise Period or Alternative Initial Option Exercise Period, as the case may be, the City may subsequently exercise this Option to Purchase within 60 days immediately following each annual anniversary of receipt by the City of the Transfer Notice from SLD&RC or of the City's receipt of confirmation of a Non-Nuclear Transfer of SLD Irrigated Property through means other than a Transfer Notice from SLD&RC.

4. This Option to Purchase shall be recorded with the Boulder County Clerk and Recorder.

5. If the City does exercise this Option to Purchase, the then current owner(s) of the SLD Irrigated Property may lease water to the extent such lease is authorized in paragraph 6.B.viii of the Settlement Agreement.

The Parcel is currently known as 2200 Emerald. This Option to Purchase shall run with the land associated with SLD Irrigated Property Parcel No. 133 regardless of any change of

EXHIBIT A TO AGREEMENT (Page 2 of 2)

address of all or part of the Parcel. All capitalized terms herein shall be defined as provided in the Settlement Agreement.

IN WITNESS WHEREOF, Property Owner has caused this instrument to be duly executed as of this _____ day of _____, 2014.

PROPERTY OWNER

By:_____
Amy J. Carpenter

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The above and foregoing instrument was subscribed and sworn to before me this _____ day of _____, 2014, by Amy J. Carpenter.

Witness my hand and official seal.
My commission expires:

_____
Notary Public

PROPERTY OWNER

By:_____
Stephen R. Carpenter

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The above and foregoing instrument was subscribed and sworn to before me this _____ day of _____, 2014, by Stephen R. Carpenter.

Witness my hand and official seal.
My commission expires:

_____
Notary Public

EXHIBIT B TO AGREEMENT (Page 1 of 2)

For Administrative Purposes Only
Property Address: 2200 Emerald Road
Grantors: Amy J. Carpenter and Stephen R. Carpenter
Grantee: City of Boulder, Colorado
Case#: LUR2014-00065

GRANT OF FLOOD CONTROL EASEMENT

AMY J. CARPENTER and STEPHEN R. CARPENTER ("Grantors"), whose address is 2200 Emerald Road, Boulder Colorado 80304, for $1.00 and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey to the CITY OF BOULDER, a Colorado home rule city (the "City"), whose address is 1777 Broadway, Boulder, Colorado 80302, a flood control easement for the purpose of drainage conveyance and control of flood waters and installation and maintenance of improvements necessary to ensure conveyance as determined by the Grantee, together with all rights and privileges as are necessary or incidental to the reasonable and proper use of such easement in and to, over, under and across the following real property, situated in Boulder County, Colorado, to-wit:

See Exhibit A attached

Grantors, for them and for their heirs, successors, agents, lessees, and assigns, do hereby covenant and agree that no permanent structure or improvement shall be placed on said easement by them or their heirs, successors or assigns, and that said use of such easement shall not otherwise be obstructed or interfered with.

Grantors warrant their ability to grant and convey this easement.

The terms of this easement shall run with the land and shall be binding upon and inure to the benefit of the Grantors, their heirs, agents, lessees and assigns, and all other successors to them in interest and shall continue as a servitude running in perpetuity with the property described above.

IN WITNESS WHEREOF, Grantor has caused this instrument to be duly executed as of this ___ day of _____, 2014.

GRANTOR:

By:_____
Amy J. Carpenter

[*NOTARY BLOCK FOLLOWS*]

EXHIBIT B TO AGREEMENT (Page 2 of 2)

STATE OF COLORADO)
)ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this ___ day of _____, 2014, by Amy J. Carpenter.

Witness my hand and official seal.
My commission expires: _____

_____
Notary Public

GRANTOR:

By:_____
Stephen R. Carpenter

STATE OF COLORADO)
)ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this ___ day of _____, 2014, by Stephen R. Carpenter.

Witness my hand and official seal.
My commission expires: _____

_____
Notary Public

EXHIBIT A TO FLOOD CONTROL EASEMENT (Page 1 of 2)

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH,
RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN,
COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 2

AN EASEMENT OVER AND ACROSS A PORTION OF LOT 3, BLOCK 6, GITHENS ACRES AS RECORDED IN THE RECORDS OF BOULDER COUNTY AT RECEPTION NO. 90542553, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE SOUTHERLY LINE OF SAID LOT 3 TO BEAR SOUTH 89°43'10" WEST, A DISTANCE OF 197.39 FEET, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 3,
THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 3, SOUTH 89°43'10" WEST, A DISTANCE OF 197.39 FEET TO THE SOUTHWEST CORNER OF SAID LOT 3;
THENCE ALONG THE WESTERLY LINE OF SAID LOT 3, NORTH 00°00'00" EAST, A DISTANCE OF 65.78 FEET;
THENCE DEPARTING SAID WESTERLY LINE, AND RUNNING 60' NORTHEASTERLY AND PARALLEL WITH THE CENTERLINE OF WONDERLAND CREEK THE FOLLOWING SIX (6) COURSES:
SOUTH 86°17'13" EAST, A DISTANCE OF 28.97 FEET;
THENCE SOUTH 74°01'10" EAST, A DISTANCE OF 38.38 FEET;
THENCE SOUTH 73°13'59" EAST, A DISTANCE OF 22.03 FEET;
THENCE SOUTH 80°00'49" EAST, A DISTANCE OF 38.95 FEET;
THENCE SOUTH 71°00'36" EAST, A DISTANCE OF 53.92 FEET;
THENCE SOUTH 81°15'33" EAST, A DISTANCE OF 21.40 FEET TO A POINT ON THE EASTERLY LINE OF SAID LOT 3;
THENCE ALONG SAID EASTERLY LINE, SOUTH 00°01'20" WEST, A DISTANCE OF 18.47 FEET TO THE POINT OF BEGINNING.

SAID EASEMENT CONTAINING 8,723 SQ.FT. OR 0.20 ACRES, MORE OR LESS.

I, JOHN B. GUYTON, A LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS PARCEL DESCRIPTION AND ATTACHED EXHIBIT, BEING MADE A PART THEREOF, WERE PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE AT THE REQUEST OF THE CLIENT AND IS NOT INTENDED TO REPRESENT A MONUMENTED LAND SURVEY OR SUBDIVIDE LAND IN VIOLATION OF STATE STATUTE.

JOHN B. GUYTON
COLORADO P.L.S. #16406 FSI JOB NO. 14-64,204
CHAIRMAN/CEO, FLATIRONS, INC.
JOB NUMBER: 14-64,204
DRAWN BY: E. PRESCOTT
DATE: AUGUST 25, 2014
REV: SEPTEMBER 12, 2014

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

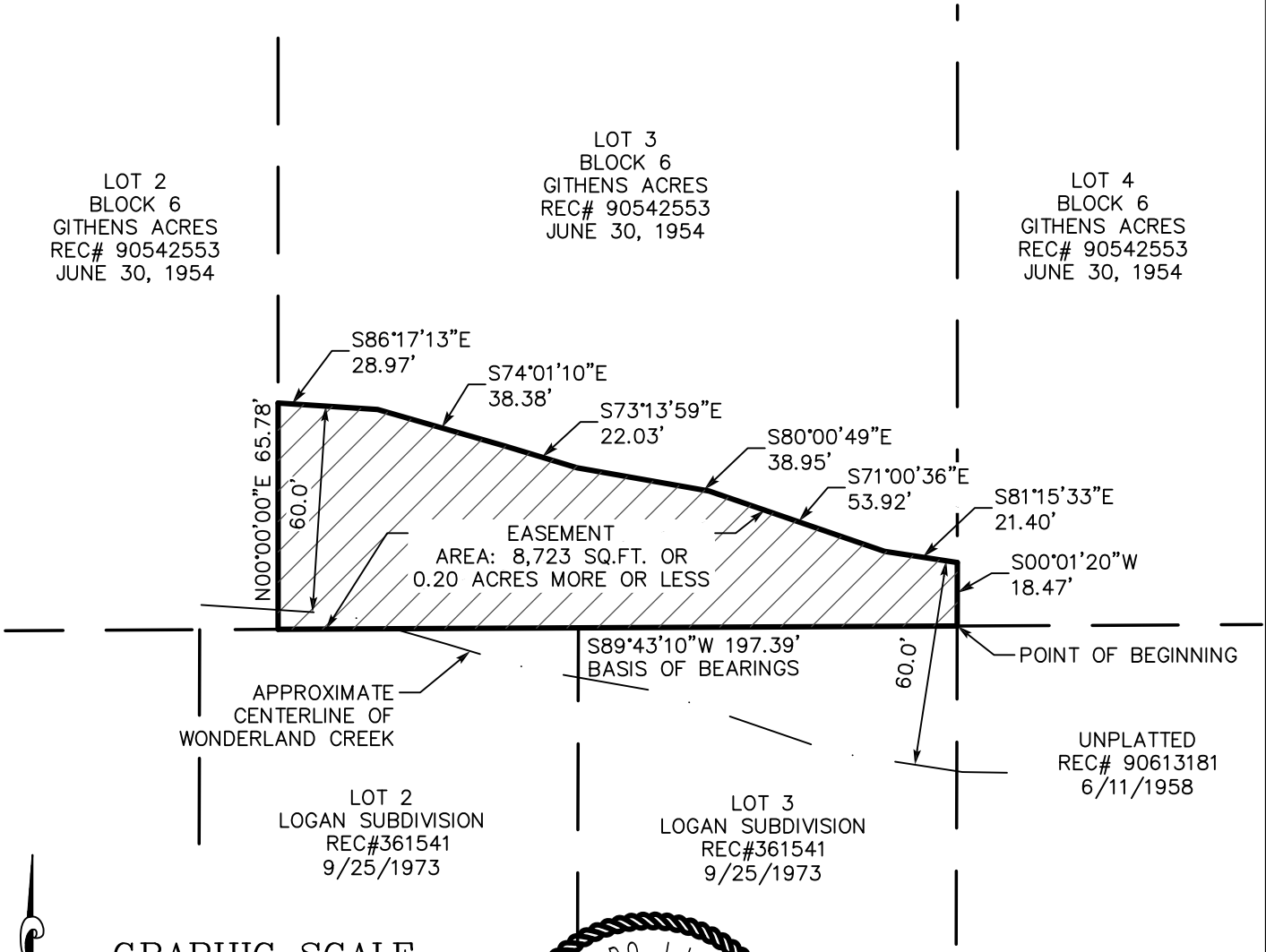
Flatirons, Inc.
Surveying, Engineering & Geomatics
655 FOURTH AVE
LONGMONT, CO 80501
PH: (303) 776-1733
FAX: (303) 776-4355
www.FlatironsInc.com

BY:EPRESCOTT FILE:64204-DESC-C13.DWG DATE:9/12/2014 11:13 AM

EXHIBIT A TO FLOOD CONTROL EASEMENT (Page 2 of 2)

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO

SHEET 2 OF 2



GRAPHIC SCALE

50 0 25 50

(IN FEET)
1 inch = 50 ft.

COLORADO LICENSED
JOHN W. BRUCE
16406
9/12/14
PROFESSIONAL LAND SURVEYOR

JOB NUMBER: 14-64,204
DRAWN BY: E. PRESCOTT
DATE: AUGUST 25, 2014
REV: SEPTEMBER 12, 2014

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

Flatirons, Inc.
Surveying, Engineering & Geomatics
655 FOURTH AVE
LONGMONT, CO 80501
PH: (303) 776-1733
FAX: (303) 776-4355
www.FlatironsInc.com

BY:EPRESCOTT FILE:64204-DESC-C13.DWG DATE:9/12/2014 11:13 AM

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CITY OF BOULDER
Planning and Development Services
1739 Broadway, Third Floor • P.O. Box 791, Boulder, CO 80306-0791
phone 303-441-1880 • fax 303-441-4241 • web boulderplandevelop.net

EXHIBIT C TO AGREEMENT (Page 1 of 1)

Fees for PMT2014-04655

Responsible Person: STEPHEN R CARPENTER

Address: 2200 EMERALD RD

Please note: This information may not be representative of all fees due. Additional fees may apply.

Fee Description	Amount Assessed	Date Assessed	Amount Paid	Date Paid	Receipt Number	Amount Due History
RES 2014 Sewer PIF [ISS]	$4,473.00	10/9/2014				**$4,473.00**
RES 2014 Storm PIF [ISS]	$14,640.42	10/9/2014				**$14,640.42**
WW Tap Fee (Materials)	$47.04	10/9/2014				**$47.04**
Wastewater Inspection Fee	$169.00	10/9/2014				**$169.00**
Wastewater Permit Fee	$127.00	10/9/2014				**$127.00**
Wastewater Tap Fee (L/E)	$79.96	10/9/2014				**$79.96**

Total Fees Assessed: $19,536.42 **Total Fees Paid: $0.00** **Total Fees Remaining Due: $19,536.42**

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For Administrative Purposes Only
Applicant: Norwood Garden LLC
Address: 2350 Norwood Avenue
Case No. LUR2014-00066

ANNEXATION AGREEMENT

This Annexation Agreement ("Agreement"), made this _____ day of _____, 2014, by and between the City of Boulder, a Colorado home rule city (the "City"), and Norwood Garden LLC, a Colorado limited liability company (the "Applicant"). The City and the Applicant are referred to as the "Parties."

RECITALS

WHEREAS, the Parties recite the following facts related to the annexation of the property described in this Agreement to the City of Boulder:

A. The Applicant is the owner of the property generally known as 2350 Norwood Avenue and more particularly described on the attached **Exhibit A** (the "Property") included by reference and hereby made a part of this Agreement.

B. The Applicant is interested in obtaining approval from the City of the annexation of the Property in order to obtain adequate urban services for the Property.

C. The Parties anticipate that annexation with an initial zoning designation of Residential - Estate (RE) is consistent with the Boulder Valley Comprehensive Plan.

D. In order to assist the Applicant in annexing into the City, the City is providing an annexation package that includes a method for financing the public improvements and a waiver of certain fees and taxes which includes the annexation application fee and the housing excise tax.

E. The City is interested in ensuring that certain terms and conditions of annexation be met by the Applicant in order to protect the public health, safety, and welfare and prevent the placement of an unreasonable burden on the physical, social, economic, or environmental resources of the City.

COVENANTS

NOW, THEREFORE, in consideration of the recitals, promises, and covenants herein set forth, and other good and valuable consideration herein receipted for, the Parties agree as follows:

1. Definitions. The Parties agree that terms used in this Agreement will have the following meanings:

"Redevelopment" shall be defined as the subdivision of a property to create a new lot, issuance of a building permit for a new or replacement dwelling unit, issuance of a building permit for additional square footage to the existing structure, or an increase in number of the plumbing fixtures.

2. Requirements Prior to First Reading of the Annexation Ordinance. Prior to the scheduling of first reading of the annexation ordinance, the Applicant shall do the following:

   A. Annexation Agreement. The Applicant will sign this Agreement.

   B. Title Work. The Applicant will provide the City with title work current to within 30 days of signing this Agreement.

   C. Written Descriptions. The Applicant shall provide a written description of any nonconforming uses and/or nonstandard buildings existing on each Property, if any.

   D. Dedications. The Applicant shall convey to the City, at no cost, the following:

      1) A fee interest in the 30-foot wide portion of property being that portion of the right-of-way for Norwood Avenue which was previously granted on May 24, 1958 from Frederick C. Trucksess a/k/a Frederick Clement Trucksess, Frances Hoar Trucksess, Emmet G. Dignan, and Ann V. Dignan to the County of Boulder, Colorado, pursuant to the instrument recorded in the Office of the Boulder County Clerk and Recorder on June 11, 1958 at Book 1077 and Page 416 in the form attached **Exhibit B**; and

      2) 16-foot public access easement as shown on the attached **Exhibit C**.

   E. Northern Colorado Water Conservancy District ("NCWCD"). The Applicant will deliver to the City an application for inclusion of the Property in the Boulder Municipal Subdistrict of the Northern Colorado Water Conservancy District.

3. Connection Requirements. Prior to connection to the City's water and/or sanitary sewer mains, the Applicant shall:

   A. Submit an application to connect to the City's water and/or sanitary sewer mains that meets the requirements of Chapters 11-1 and 11-2, B.R.C. 1981.

   B. Pay all applicable fees and charges associated with the service line connections to water and/or sanitary sewer mains, including water and wastewater plant investment fees, right-of way, water, and wastewater permit fees, installation fees, and tap fees, which as of the date of the signing of this agreement, the City estimated to be $22,754.00.

   C. Construct the individual service lines that will connect the Applicant's existing residence to the City's water and/or wastewater mains.

D. Pay any assessments, including but not limited to the following:

Norwood Improvement District Assessment	$ 5,000.00
Stormwater and Flood PIF Assessment	$ 5,489.90

4. Ditch Shares. The Parties agree that prior to January 6, 2015, the Applicant shall execute an Agreement to Buy and Sell Water Rights and related conveyance documents for the water rights more particularly described as follows:

A. The water and water rights, ditches and ditch rights, and reservoirs and reservoir rights represented by a 59/672 share of stock in the Farmer's Ditch Company, represented by Share Certificate No. 2336, together with any and all lateral ditches, easements, rights of way and entitlements appurtenant to or used in connection therewith; and

B. The 1.25 share in The Silver Lake Ditch & Reservoir Company (the "SLD&RC Share") associated with SLD Irrigated Property Parcel No. 253, along with the rights, and only the rights, represented by the SLD&RC Share to receive a certain amount of water from the Reserved Storage Rights, all as more particularly provided for in the Settlement Agreement of December 1, 2009 between the City and SLD&RC, recorded at Reception No. 03046201 in Boulder County, Colorado.

5. Payment Options and Requirements for Fees, Taxes, and Public Improvement Costs. The Applicant selects **Option #A** set forth below.

A. Option #A: Payment in Full. The Applicant shall connect to City water and sanitary sewer mains within 180 days after the effective date of the annexation ordinance and shall comply with the terms of, and pay the costs and fees described in, Paragraph 3 above. The City Manager may, in her discretion, approve a different time for connection to City water and sanitary sewer mains provided the Applicant demonstrates reasonable diligence to comply with the 180-day deadline and good cause for the extension.

B. Option #B: Payment Plan. The Applicant shall connect to City water and sanitary sewer mains within 180 days after the effective date of the annexation ordinance and shall comply with the terms of Paragraph 3 above except that the costs, fees and any assessments described in Paragraph 3 shall be paid in accordance with the terms of the following payment plan:

i. Prior to connection to the City's water and/or sewer mains, the Applicant shall execute a Promissory Note and a Deed of Trust securing said Note and encumbering the Applicant's Property in the principal amount to cover the amounts set forth in Paragraph 3 above. The Note will have a simple interest rate of 3.25 percent per annum, payable in 10 annual installments of principal and interest beginning at the time of connection to both the City water and sewer systems.

The City Manager may, in her discretion, approve a different time for connection to City water and sanitary sewer mains provided the Applicant demonstrates reasonable diligence to comply with the 180-day deadline and good cause for the extension. The City Manager, in her discretion, may approve for good cause a different time for payment of the first of the 10 annual installments of principal and interest.

C. Option #C: Future Connection. The Applicant shall connect to the City's water and sanitary sewer mains at a time later than what is specified in Option #A and #B above, but no later than the time when 1) the Applicant's on-site wastewater system fails or is declared unsafe, or the Applicant is otherwise required to stop using the on-site wastewater system by the Boulder County Health Department or the State of Colorado; or 2) at the time Applicant's Property is sold; or 3) at the time of Redevelopment of Applicant's Property, whichever occurs first. At the respective time and prior to the Applicant's connection to the City's water and sanitary sewer mains, the Applicant will pay the costs and fees described in Paragraph 3 above based on the then applicable fee schedule.

6. City of Boulder Design and Construction Standards. Any other public improvements that are required to be constructed by the terms of this Agreement shall be constructed in accordance with the requirements of the City of Boulder *Design and Construction Standards* applicable at the time of construction and shall be subject to the review, approval and acceptance of the City Manager.

7. Use of Existing Wells. The City agrees not to prohibit the Applicant from using any existing well for irrigation purposes, even if the Property is served by the City water utility. Under no circumstances may existing wells be used for domestic water purposes once the Applicant has connected to city water utility No person is allowed to make any cross connections between a well and the City's municipal water utility. The Parties agree that there shall not be any type of connection between any well and the City water system serving the Property.

8. Applicant Responsible for Legal Disconnection of On-site Wastewater System. If the Applicant decides to continue to use an existing on-site wastewater system, the Applicant agrees that it will connect to the adjacent sanitary sewer main, in accordance with Section 11-2-9, B.R.C. 1981, upon any declaration by Boulder County Public Health to cease and desist using the on-site wastewater system, or other declaration that the on-site wastewater system constitutes a threat to the public health. Currently, under Boulder County Public Health Department policy, all on-site wastewater systems must be permitted and approved by 2023. At that time, any resident still using an on-site wastewater system must either have their system permitted and approved, or connect to the adjacent sanitary sewer main. At the time of any disconnection of the on-site wastewater system and connection to the City's sanitary sewer main, the Applicant is required to abandon the existing on-site wastewater system in accordance with Boulder County Public Health and State of Colorado regulations.

9. Historic Drainage. The Applicant agrees to convey drainage from the Property in an historic manner that does not materially and adversely affect abutting properties.

10. Ditch Company Approval. If the Property is abutting an existing irrigation ditch or lateral, the Applicant agrees not to relocate, modify, or alter the ditch or lateral until and unless written approval is received from the appropriate ditch company.

11. Existing Nonstandard Buildings and/or Nonconforming Uses. The only nonconforming uses and nonstandard buildings and structures on the Property that will be recognized by the City and allowed to continue to exist are those that are included in **Exhibit D**. Section 9-10-3, "Changes to Nonstandard Buildings, Structures, and Lots and Nonconforming Uses," B.R.C. 1981, applies to changes to nonstandard buildings and nonconforming uses. The Parties also agree that the site access control standards of Section 9-9-5, "Site Access Control," B.R.C., as may be amended, apply to the Property and must be met as required by subsection (a) of that section. The Applicant and the City agree that this section shall not be construed to permit the Property to constitute a nuisance or to cause a hazard under the City's life safety codes.

12. New Construction. All new construction commenced on the Property after annexation will comply with all City of Boulder laws, taxes, and fees, except as modified by this Agreement.

13. Waiver of Vested Rights. The Applicant hereby waives any statutory vested rights that may have accrued under County jurisdiction that have not been perfected as common law vested rights. The Applicant acknowledges that nothing in this Agreement may be construed as a waiver of the City's powers to zone and regulate land uses for the benefit of the citizens and residents of Boulder.

14. Dedications. The Applicant acknowledges that any dedications and public improvements required herein with this annexation are rationally related and reasonably proportionate to the projected impact of the development of the Property as set forth in this Agreement.

15. Original Instruments. Prior to the first reading of the annexation ordinance, the Applicant shall provide an original of this Agreement signed by Applicant, along with any instruments required in this Agreement. The City agrees to hold such documents until after final legislative action on the annexation of this Property has occurred. Final legislative action by the City Council shall constitute acceptance of such documents by the City. In the event that the City does not annex the Property, the City agrees that it will return all such original documents to the Applicant. The Applicant agrees that it will not encumber or in any way take any action that compromises the quality of such documents while they are being held by the City.

16. No Encumbrances. The Applicant agrees that between the time of signing this Agreement and the time when final legislative action on the annexation of this Property has occurred, the Applicant shall neither convey ownership nor further encumber the Applicant's Property, without the express approval from the City. Prior to the recording of this

Agreement with the Boulder County Clerk and Recorder, Applicant agrees not to execute transactional documents encumbering the Property or otherwise affecting title to the Property without first notifying the City and submitting revised title work within five (5) working days of any such transaction.

17. Breach of Agreement. In the event the Applicant breaches or fails to perform any required action or fails to pay any fee specified under this Agreement or under any document that may also be required to be executed pursuant to this Agreement, the Applicant acknowledges that the City may take all reasonable actions to cure the breach, including but not limited to the filing of an action for specific performance of the obligations herein described. In the event the Applicant fails to pay any monies due under this Agreement or under any document that may also be required to be executed pursuant to this Agreement or fails to perform any affirmative obligation hereunder or under any document that may also be required to be executed pursuant to this Agreement, the Applicant agrees that the City may collect the monies due in the manner provided for in Section 2-2-12, B.R.C. 1981, as amended, as if the said monies were due and owing pursuant to a duly adopted ordinance of the City or may perform the obligation on behalf of the Applicant and collect its costs in the manner herein provided. The Applicant agrees to waive any rights he or she may have under Section 31-20-105, C.R.S., based on the City's lack of an enabling ordinance authorizing collection of this specific debt, or acknowledges that the adoption of the annexation ordinance is such enabling ordinance.

18. Failure to Annex. This Agreement and any document executed pursuant hereto shall be null and void and of no consequence in the event that the Property is not annexed into the City.

19. Future Interests. This Agreement and the covenants set forth herein shall run with the land and be binding upon the Applicant, the Applicant's heirs, successors, and assigns and all persons who may hereafter acquire an interest in the Property, or any part thereof. If it shall be determined that this Agreement contains an interest in land, that interest shall vest, if at all, within the lives of the undersigned plus 20 years and 364 days.

20. Right to Withdraw. An Applicant retains the right to withdraw from this Agreement up until the time that final legislative action has been taken on the ordinance that will cause the Property to be annexed into the City. The final legislative action will be the vote of the City Council after the final reading of the annexation ordinance. The Applicant's right to withdraw shall terminate upon the City Council's final legislative action approving the annexation. In the event that the Applicant withdraws from this Agreement in the manner described above, this Agreement shall be null and void and shall have no effect regarding the Applicant. The City agrees, within 30 days of a request by the Applicant after a withdrawal, to return all previously submitted stormwater/flood management PIFs and easement and/or rights of way dedication documents which the Applicant submitted pursuant to this Agreement to the Applicant.

21. Cash-in-lieu of Providing Permanently Affordable Housing. For each additional dwelling unit on the Property that is not deed-restricted as a permanently affordable residence

consistent with the requirements of Chapter 9-13, "Inclusionary Housing," B.R.C. 1981, the Applicant shall pay twice the applicable cash-in-lieu amount as required per each market unit in that chapter to the City. As of July 1, 2014, the applicable cash-in-lieu amount per each market unit is $26,370; twice the applicable cash-in-lieu amount would be $52,740 as July 1, 2014. The Applicant recognizes that this amount may be adjusted annually by the City, as set forth in Chapter 9-13, B.R.C. 1981. The applicable cash-in-lieu amount is payable prior to issuance of a building permit for each new dwelling unit that is not deed-restricted as a permanently affordable residence consistent with the requirements of Chapter 9-13, "Inclusionary Housing," B.R.C. 1981. The parties acknowledge that the Property has the equivalent of one habitable dwelling unit on such Property at the time of annexation.

22. Norwood Improvement District Assessment. Ordinance No. 5876 established the Norwood Improvement District for the purpose of construction and financing of transportation improvements benefitting properties included in the Norwood Improvement District. As an unannexed property, the Property could not be assessed at the time the assessment ordinance, Ordinance No. 6052, went into effect. However, Ordinance No. 5876 requires that a condition of a future annexation of the Property be payment of an assessment of $ 5,000.00 plus interest compounded at an annual rate of eight percent starting thirty days after the date of the final assessment ordinance. The Parties agree that, as a condition of this annexation, the Applicant pay $5,000.00 identified in Paragraph 3.D above, but that the interest accrued on the $5,000.00 assessment will be waived. Payment of the $5,000.00 assessment shall satisfy the payment requirements established in Ordinance No. 5876.

23. Requirements at Subdivision or Issuance of a Building Permit for a New or Replacement Dwelling Unit. At the time of subdivision or issuance of a building permit for a new or replacement dwelling unit, the Applicant shall ensure that a 12-foot wide multi-use path is constructed along west and south sides of the Property, unless the City Manager, at his or her discretion, agrees to an alternative location.

24. 2014 Fee Schedule. The Applicant agrees to connect to the City water and sanitary sewer mains within 180 days from the effective date of the ordinance, or as otherwise approved by the City Manager. The Parties agree that any fees required in Paragraph 3 of this Agreement for said initial connections be assessed at the rates applicable on October 9, 2014 and as more particularly described on the attached **Exhibit E**.

EXECUTED on the day and year first above written.

APPLICANT:
Norwood Garden LLC,
a Colorado limited liability company

By: _____
Marilyn J. Jorrie, Member

STATE OF ~~COLORADO~~ California
) ss.
COUNTY ~~OF BOULDER~~ Ventura)

The foregoing instrument was acknowledged before me, a Notary Public, this 25th day of November 2014, by Marilyn J. Jorrie as Member of Norwood Garden LLC.

Witness my hand and official seal.
My commission expires: 08/09/2016

[SEAL]

_____
Notary Public

KATHERINE EILEEN KENNEDY
Commission # 1987585
Notary Public - California
Ventura County
My Comm. Expires Aug. 9, 2016

CITY OF BOULDER:

By: _____
City Manager

ATTEST:

_____
City Clerk

Approved As To Form:

_____
City Attorney's Office

Date: _____

EXHIBITS

A: Legal Description
B: Quitclaim Deed (30-feet of ROW for Norwood Av)
C: Public Access Easement
D: Written Description of Nonstandard or Nonconforming Structures
E. Fees due at time of connection

EXHIBIT A TO ANNEXATION AGREEMENT

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 1

PARCEL DESCRIPTION
(PROVIDED BY DEED RECORDED AT RECEPTION NO. 099395)

THAT PORTION OF THE SE1/4 SE1/4 OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF SAID SECTION 18, A DISTANCE OF 959.24 FEET WESTERLY FROM THE SOUTHEAST CORNER OF SAID SECTION 18; THENCE NORTHERLY AND AT RIGHT ANGLES TO THE SOUTH LINE OF SAID SECTION 18 A DISTANCE OF 210.00 FEET; THENCE EASTERLY, PARALLEL WITH THE SOUTH LINE OF SAID SECTION 18, TO A POINT ON THE EAST LINE OF THE SW 1/4 SE 1/4 SE 1/4 OF SAID SECTION 18; THENCE SOUTHERLY ALONG THE EAST LINE OF THE SW 1/4 SE 1/4 SE 1/4 OF SAID SECTION 18, TO THE SOUTHEAST CORNER OF THE SW 1/4 SE 1/4 SE 1/4 OF SAID SECTION 18; THENCE WESTERLY ALONG THE SOUTH LINE OF SAID SECTION 18, TO THE PLACE OF BEGINNING.
EXCEPT THE NORTHERLY 30' THEREOF (PER THE DIRECTION OF THE CLIENT).

I, JOHN B. GUYTON, A LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS PARCEL DESCRIPTION AND ATTACHED EXHIBIT, BEING MADE A PART THEREOF, WERE PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE AT THE REQUEST OF THE CLIENT AND IS NOT INTENDED TO REPRESENT A MONUMENTED LAND SURVEY OR SUBDIVIDE LAND IN VIOLATION OF STATE STATUTE.

COLORADO LICENSED JOHN B. GUYTON 16406 10/13/14 PROFESSIONAL LAND SURVEYOR

JOHN B. GUYTON
COLORADO P.L.S. #16406
CHAIRMAN/CEO, FLATIRONS, INC.

FSI JOB NO. 14-64,592

JOB NUMBER: 14-64,592
DRAWN BY: E. PRESCOTT
DATE: OCTOBER 13, 2014

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

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655 FOURTH AVE
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FAX: (303) 776-4355
www.FlatironsInc.com

BY:EPRESCOTT FILE:64592-ANNEX-C13.DWG DATE:10/13/2014 10:41 AM

EXHIBIT B TO ANNEXATION AGREEMENT (Page 1 of 4)

For Administrative Purposes Only
Property Address: 2350 Norwood Av
Case#: LUR2014-00066

QUITCLAIM DEED

The "Grantor", NORWOOD GARDEN LLC, a Colorado limited liability company, whose legal address is P.O. Box 4116, Boulder, Colorado 80306, for the consideration of the sum of LESS THAN FIVE HUNDRED DOLLARS, in hand paid, hereby sells and quitclaims to the CITY OF BOULDER, a Colorado home rule city, the "Grantee," whose legal address is 1777 Broadway, Boulder, Colorado 80302, the following real property in the County of Boulder, State of Colorado, to wit:

SEE, EXHIBIT A, ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE

with all its appurtenances.

Signed this 18 day of November, 2014.

GRANTOR:

Norwood Garden LLC,
a Colorado limited liability company

By
Marilyn J. Jorrie, Member

STATE OF CALIFORNIA)
)ss.
COUNTY OF VENTURA)

The foregoing instrument was acknowledged before me this 18th day of November, 2014, by Marilyn J. Jorrie as Member of Norwood Garden LLC.

Witness my hand and official seal.
My commission expires: 06-19-2015

DEBJANI GHOSH
COMM. #1941566
NOTARY PUBLIC - CALIFORNIA
VENTURA COUNTY
My Commission Expires 06/19/2015

Notary Public

No. 898, Rev. 1-06. QUITCLAIM DEED (Short Form) (Page 1 of 2)

EXHIBIT B TO ANNEXATION AGREEMENT (Page 2 of 4)
LENDER'S CONSENT AND SUBORDINATION

The undersigned, a beneficiary under a certain deed of trust encumbering the property, hereby expressly consents to and joins in the execution and recording of this Deed and makes the deed of trust subordinate hereto. The undersigned represents that he or she has full power and authority to execute this Lender's Consent and Subordination on behalf of the below-stated lender.

COLORADO BUSINESS BANK

By:_____
Printed Name:_____
Title:_____

ACKNOWLEDGMENT

State of _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20___, by _____ as _____ of _____.

Witness my Hand and Seal.
My Commission Expires:_____

[Seal]

_____
Notary Public

No. 898. Rev. 1-06. QUITCLAIM DEED (Short Form) (Page 2 of 2)

EXHIBIT B TO ANNEXATION AGREEMENT (Page 3 of 4)

EXHIBIT A TO DEED OF DEDICATION (Page 1 of 2)

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 2

A PORTION OF A PARCEL OF LAND AS DESCRIBED IN THE RECORDS OF BOULDER COUNTY, RECORDED ON APRIL 11, 1974 AT RECEPTION NO. 099395, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE WESTERLY LINE OF SAID PARCEL OF LAND TO BEAR NORTH 00°20'40" WEST, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

COMMENCING AT THE SOUTHWEST CORNER OF SAID PARCEL OF LAND;
THENCE ALONG SAID WESTERLY LINE, NORTH 00°20'04" WEST, A DISTANCE OF 180.00 FEET TO THE NORTHEAST CORNER OF LOT 2, NORWOOD RIDGE, AS DESCRIBED IN THE RECORDS OF BOULDER COUNTY, RECORDED ON DECEMBER 19, 1991, AT RECEPTION NO. 1149617 AND THE POINT OF BEGINNING;
THENCE CONTINUING ALONG SAID WESTERLY LINE, NORTH 00°20'40" WEST, A DISTANCE OF 30.00 FEET TO THE NORTHWEST CORNER OF SAID PARCEL OF LAND AS RECORDED AT RECEPTION NO. 099395;
THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL OF LAND, NORTH 89°39'20" EAST, A DISTANCE OF 295.18 FEET TO THE NORTHEAST CORNER OF SAID PARCEL OF LAND;
THENCE ALONG THE EASTERLY LINE OF SAID PARCEL OF LAND, SOUTH 00°02'41" EAST, A DISTANCE OF 30.00 FEET;
THENCE ALONG A LINE 30.00 FEET SOUTHERLY OF AND PARALLEL WITH SAID NORTHERLY LINE, SOUTH 89°39'20" WEST, A DISTANCE OF 295.02 FEET TO A POINT ON THE WESTERLY LINE OF SAID PARCEL OF LAND AND THE POINT OF BEGINNING.

SAID PORTION OF A PARCEL OF LAND CONTAINING 8,853 SQ.FT. OR 0.20 ACRES, MORE OR LESS.

I, JOHN B. GUYTON, A LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS PARCEL DESCRIPTION AND ATTACHED EXHIBIT, BEING MADE A PART THEREOF, WERE PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE AT THE REQUEST OF THE CLIENT AND IS NOT INTENDED TO REPRESENT A MONUMENTED LAND SURVEY OR SUBDIVIDE LAND IN VIOLATION OF STATE STATUTE.

16406
10/27/14
PROFESSIONAL LAND SURVEYOR

JOHN B. GUYTON
COLORADO P.L.S. #16406
CHAIRMAN/CEO, FLATIRONS, INC.

FSI JOB NO. 14-64,592

JOB NUMBER: 14-64,592(A)
DRAWN BY: E. PRESCOTT
DATE: OCTOBER 13, 2014
REV: OCTOBER 27, 2014

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

Flatirons, Inc.
Surveying, Engineering & Geomatics
655 FOURTH AVE
LONGMONT, CO 80501
PH: (303) 776-1733
FAX: (303) 776-4355
www.FlatironsInc.com

BY:EPRESCOTT FILE:64592-ROW DEDICATION DESC.DWG DATE:10/27/2014 11:49 AM

EXHIBIT B TO ANNEXATION AGREEMENT (Page 4 of 4)

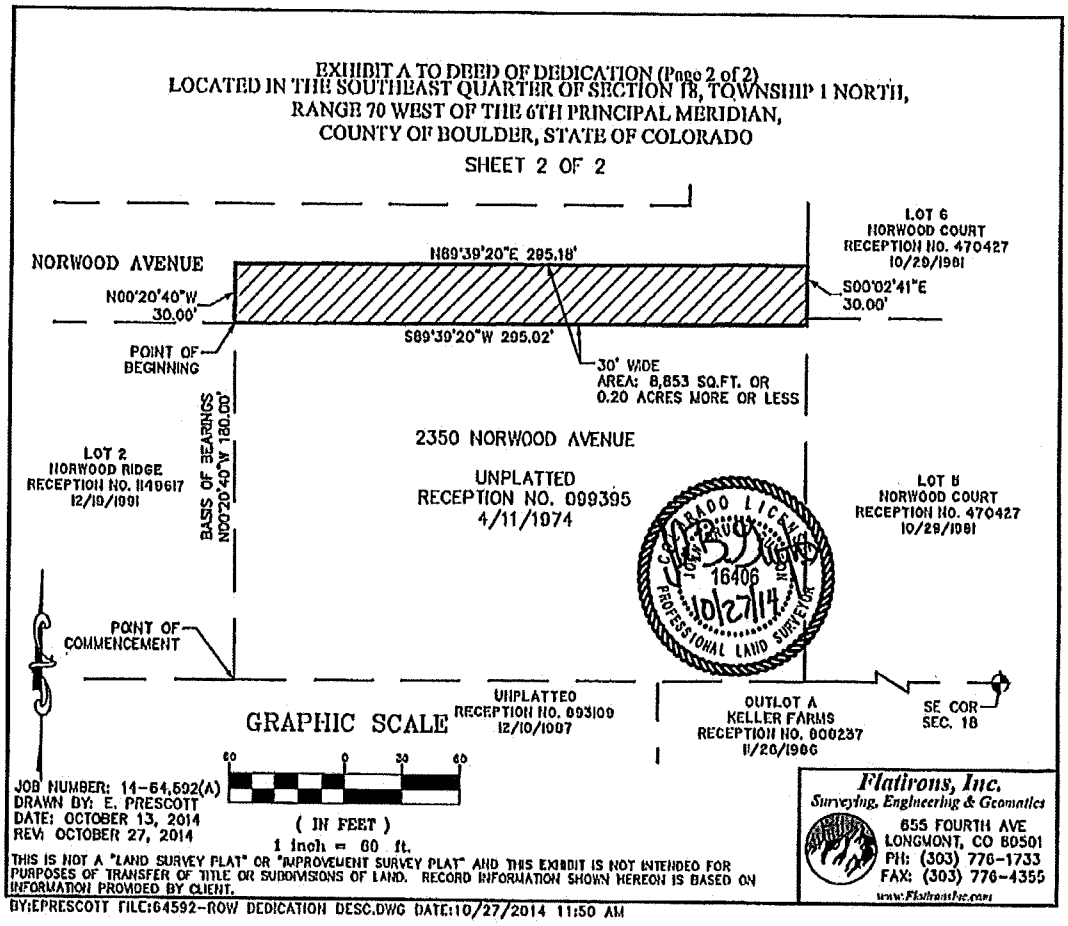


EXHIBIT C TO ANNEXATION AGREEMENT (Page 1 of 3)

For Administrative Purposes Only
Property Address: 2350 Norwood Avenue
Grantor: Norwood Garden LLC
Grantee: City of Boulder, Colorado
Case#: LUR2014-00066

GRANT OF PUBLIC ACCESS EASEMENT

NORWOOD GARDEN LLC, a Colorado limited liability company ("Grantor"), whose address is P. O. Box 4116, Boulder CO 80306, for $1.00 and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey to the CITY OF BOULDER, a Colorado home rule city (the "City"), whose address is 1777 Broadway, Boulder, Colorado 80302, an easement for public access purposes, for purposes of ingress and egress, and the installation, construction, repair, maintenance and reconstruction of transportation improvements, landscaping, utilities and appurtenances thereto, together with all rights and privileges as are necessary or incidental to the reasonable and proper use of such easement in and to, over, under and across the following real property, situated in Boulder County, Colorado, to-wit:

See Exhibit A attached

This public access easement shall also include a right of access, including motor vehicle access, for ditch repair, maintenance, and reconstruction.

Grantor, for it and for its successors, agents, lessees, and assigns, does hereby covenant and agree that no permanent structure or improvement shall be placed on said easement by it or its successors or assigns, and that said use of such easement shall not otherwise be obstructed or interfered with.

This public access easement shall remain until such time as the City Manager approves and accepts the relocation and dedication of a new public access easement on Grantor's property described on Exhibit B, attached hereto and incorporated herein by reference, that the City Manager determines to be equally usable and safe for its intended purposes. The City may not relocate the public access easement without Grantor's consent. However, approval and acceptance of a relocation and dedication shall be in the sole discretion of the City; and there shall be no obligation on the City to approve and accept a relocation of this public easement. If relocated, all costs and expenses of resurveying the relocated easement shall be born by Grantor.

Grantor warrants its ability to grant and convey this easement.

The terms of this easement shall run with the land and shall be binding upon and inure to the benefit of the Grantor, its agents, lessees and assigns, and all other successors to it in interest and shall continue as a servitude running in perpetuity with the property described above.

EXHIBIT C TO ANNEXATION AGREEMENT (Page 2 of 3)

Any interest in land created under this instrument shall vest within 21 years after the death of the undersigned plus 20 years and 365 days.

IN WITNESS WHEREOF, Grantor has caused this instrument to be duly executed as of this 25 day of November 2014.

GRANTOR:
NORWOOD GARDEN LLC,
a Colorado limited liability company

By: _____
Marilyn Jorrie, Member

STATE OF ~~COLORADO~~) California
)ss.
COUNTY OF ~~BOULDER~~) Ventura

The foregoing instrument was acknowledged before me this 25 day of November 2014, by Marilyn Jorrie, Member of Norwood Garden LLC.

Witness my hand and official seal.
My commission expires: 08/09/2016

_____
Notary Public

KATHERINE EILEEN KENNEDY
Commission # 1987585
Notary Public - California
Ventura County
My Comm. Expires Aug. 9, 2016

EXHIBIT C TO ANNEXATION AGREEMENT (Page 3 of 3)

LENDER'S CONSENT AND SUBORDINATION

The undersigned, a beneficiary under a certain deed of trust encumbering the property, hereby expressly consents to and joins in the execution and recording of this grant of easement and makes the deed of trust subordinate hereto. The undersigned represents that he or she has full power and authority to execute this Lender's Consent and Subordination on behalf of the below-stated lender.

COLORADO BUSINESS BANK, NATIONAL ASSOCIATION

By:_____
Printed Name:_____
Title:_____

ACKNOWLEDGMENT

State of _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20___, by _____ as _____ of Colorado Business Bank, National Association.

Witness my Hand and Seal.
My Commission Expires:_____

[Seal]

_____
Notary Public

EXHIBT A TO PUBLIC ACCESS EASEMENT (Page 1 of 2)

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 2

AN EASEMENT OVER AND ACROSS A PORTION OF A PARCEL OF LAND AS DESCRIBED IN THE RECORDS OF BOULDER COUNTY, RECORDED ON APRIL 11, 1974 AT RECEPTION NO. 099395, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE WESTERLY LINE OF SAID PARCEL OF LAND TO BEAR NORTH 00°20'40" WEST, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

BEGINNING AT THE SOUTHWEST CORNER OF SAID PARCEL OF LAND;
THENCE ALONG SAID WESTERLY LINE, NORTH 00°20'40" WEST, A DISTANCE OF 180.00 FEET TO A POINT ON THE SOUTHERLY LINE OF THE PROPOSED RIGHT-OF-WAY LINE OF NORWOOD AVENUE;
THENCE ALONG SAID SOUTHERLY LINE, NORTH 89°39'20" EAST, A DISTANCE OF 16.00 FEET;
THENCE DEPARTING SAID SOUTHERLY RIGHT-OF-WAY LINE, AND ALONG A LINE LYING 16.00 FOOT EASTERLY OF AND PARALLEL WITH SAID WESTERLY LINE, SOUTH 00°20'40" EAST, A DISTANCE OF 155.76 FEET;
THENCE SOUTH 45°20'40" EAST, A DISTANCE OF 11.66 FEET TO A POINT BEING 16.00 FEET NORTHERLY OF THE SOUTHERLY LINE OF SAID PARCEL OF LAND;
THENCE ALONG A LINE LYING 16.00 FEET NORTHERLY OF AND PARALLEL WITH THE SOUTHERLY LINE OF SAID PARCEL OF LAND, NORTH 89°39'20" EAST, A DISTANCE OF 45.76 FEET;
THENCE SOUTH 00°20'40" EAST, A DISTANCE OF 16.00 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID PARCEL OF LAND;
THENCE ALONG SAID SOUTHERLY LINE, SOUTH 89°39'20" WEST, A DISTANCE OF 70.00 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL OF LAND, AND THE POINT OF BEGINNING;

SAID EASEMENT CONTAINING 3,778 SQ.FT. OR 0.09 ACRES, MORE OR LESS.

I, JOHN B. GUYTON, A LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS EASEMENT DESCRIPTION AND ATTACHED EXHIBIT, BEING MADE A PART THEREOF, WERE PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE AT THE [illegible] OF THE CLIENT AND IS NOT INTENDED TO REPRESENT A MONUMENTED LAND SURVEY OR SUBDIVISION AND IN VIOLATION OF STATE STATUTE.

JOHN B. GUYTON
COLORADO P.L.S. #16406
CHAIRMAN/CEO, FLATIRONS, INC.

FSI JOB NO. 14-64,592

JOB NUMBER: 14-64,592(B)
DRAWN BY: E. PRESCOTT
DATE: OCTOBER 13, 2014
REV: OCTOBER 27, 2014

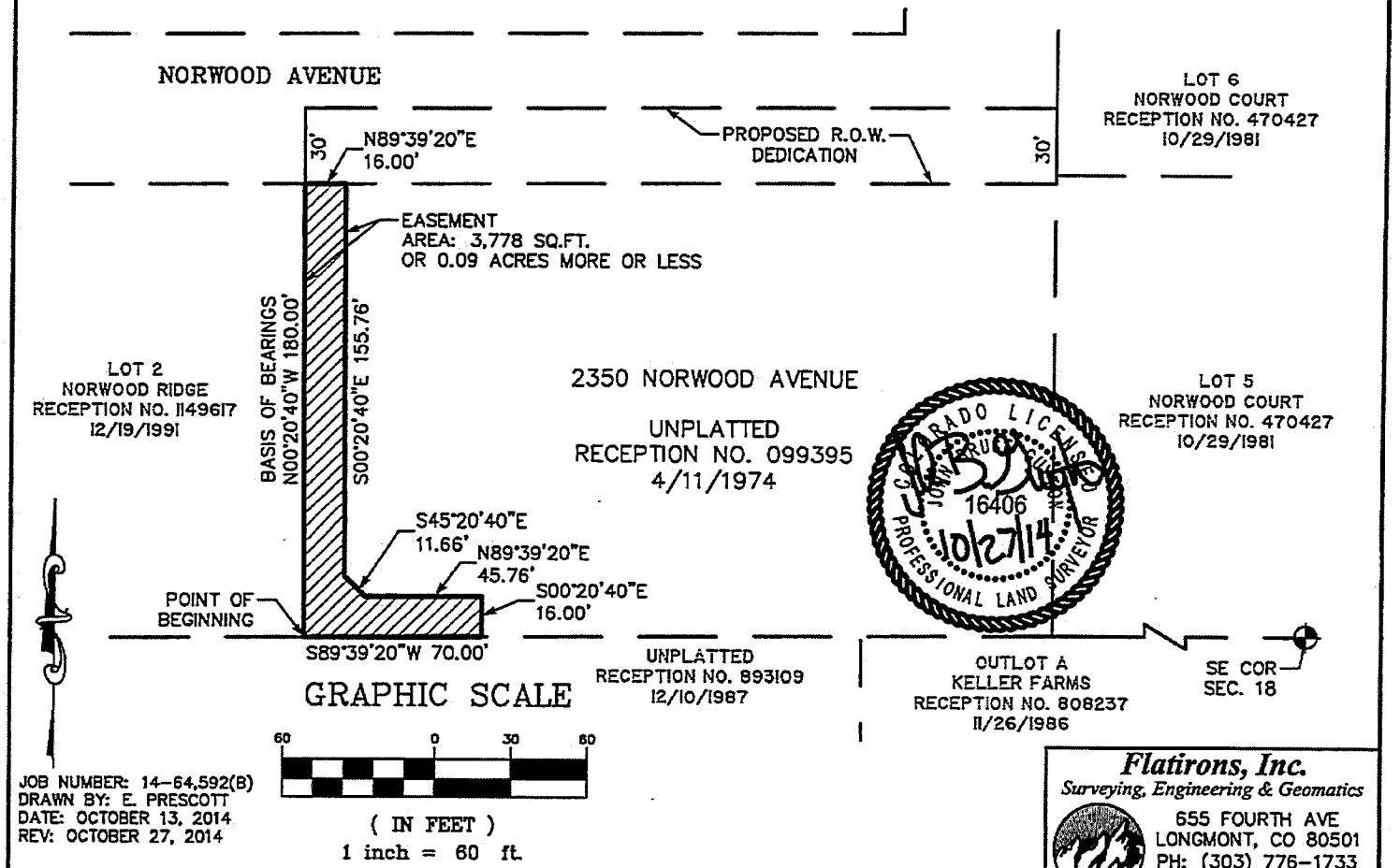
THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

Flatirons, Inc.
Surveying, Engineering & Geomatics
655 FOURTH AVE
LONGMONT, CO 80501
PH: (303) 776-1733
FAX: (303) 776-4355
www.FlatironsInc.com

BY:EPRESCOTT FILE:64592-TRAIL DESC.DWG DATE:10/27/2014 11:52 AM

EXHIBT A TO PUBLIC ACCESS EASEMENT (Page 2 of 2)
LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH,
RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN,
COUNTY OF BOULDER, STATE OF COLORADO

SHEET 2 OF 2



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BY:EPRESCOTT FILE:64592-TRAIL DESC.DWG DATE:10/27/2014 11:52 AM

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EXHIBIT B TO PUBLIC ACCESS EASEMENT

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 1

PARCEL DESCRIPTION
(PROVIDED BY DEED RECORDED AT RECEPTION NO. 099395)

THAT PORTION OF THE SE1/4 SE1/4 OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF SAID SECTION 18, A DISTANCE OF 959.24 FEET WESTERLY FROM THE SOUTHEAST CORNER OF SAID SECTION 18; THENCE NORTHERLY AND AT RIGHT ANGLES TO THE SOUTH LINE OF SAID SECTION 18 A DISTANCE OF 210.00 FEET; THENCE EASTERLY, PARALLEL WITH THE SOUTH LINE OF SAID SECTION 18, TO A POINT ON THE EAST LINE OF THE SW 1/4 SE 1/4 SE 1/4 OF SAID SECTION 18; THENCE SOUTHERLY ALONG THE EAST LINE OF THE SW 1/4 SE 1/4 SE 1/4 OF SAID SECTION 18, TO THE SOUTHEAST CORNER OF THE SW 1/4 SE 1/4 SE 1/4 OF SAID SECTION 18; THENCE WESTERLY ALONG THE SOUTH LINE OF SAID SECTION 18, TO THE PLACE OF BEGINNING.
EXCEPT THE NORTHERLY 30' THEREOF (PER THE DIRECTION OF THE CLIENT).

I, JOHN B. GUYTON, A LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS PARCEL DESCRIPTION AND ATTACHED EXHIBIT, BEING MADE A PART THEREOF, WERE PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE AT THE REQUEST OF THE CLIENT AND IS NOT INTENDED TO REPRESENT A MONUMENTED LAND SURVEY OR SUBDIVIDE LAND IN VIOLATION OF STATE STATUTE.

COLORADO LICENSED
JOHN B. GUYTON
16406
10/13/14
PROFESSIONAL LAND SURVEYOR

JOHN B. GUYTON
COLORADO P.L.S. #16406
CHAIRMAN/CEO, FLATIRONS, INC.

FSI JOB NO. 14-64,592

JOB NUMBER: 14-64,592
DRAWN BY: E. PRESCOTT
DATE: OCTOBER 13, 2014

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

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BY:EPRESCOTT FILE:64592-ANNEX-C13.DWG DATE:10/13/2014 10:41 AM

EXHIBIT D TO ANNEXATION AGREEMENT
WRITTEN DESCRIPTION PROVIDED PURSUANT TO PARAGRAPH 2.C. OF THE ANNEXATION AGREEMENT SIGNED BY NORWOOD GARDEN LLC ON NOVEMBER 18, 2014

The following is a list of the uses and/or structures which currently exist on the Property, some or all of which may be nonstandard or nonconforming:

A single-family residence;
A studio in the northeast corner of the property;
Two sheds, referred to by the Applicant as the "west garden house" and as "Sheryl's" Shed;
Two chicken pens;
Three driveways, identified as 2326, 2350/2364, 2372 Norwood;
A berm located on the northeast edge of the property;
Street scape, including lighting and related electrical lines, located within the 30-foot-wide right-of-way for Norwood Avenue;
Pipe for the Truckess Mabee Ditch;
Three test wells used to determine groundwater levels;
Three ponds, including the large, decreed storage pond near the south line of the Property;
Pump and related connections to the Farmer's Ditch; and
A 23-foot tall Windspire wind energy conversion system (windmill), constructed in 2010.

CITY OF BOULDER
Planning and Development Services
1739 Broadway, Third Floor • P.O. Box 791, Boulder, CO 80306-0791
phone 303-441-1880 • fax 303-441-4241 • web boulderplandevelop.net

EXHIBIT E TO ANNEXATION AGREEMENT (Page 1 of 2)

Fees for PMT2014-04649

Responsible Person: GARDEN L NORWOOD

Address: 2350 NORWOOD AV

Please note: This information may not be representative of all fees due. Additional fees may apply.

Fee Description	Amount Assessed	Date Assessed	Amount Paid	Date Paid	Receipt Number	Amount Due History
RES 2014 Irrig PIF [ISS] *2,000 SQ FT MINIMUM*	$5,340.00	10/9/2014				**$5,340.00**
RES 2014 Sewer PIF [ISS]	$4,473.00	10/9/2014				**$4,473.00**
RES 2014 Storm PIF [ISS]	$5,489.90	10/9/2014				**$5,489.90**
RES 2014 Water PIF [ISS]	$11,467.00	10/9/2014				**$11,467.00**
Transpo Assessment Fee *Norwood Improvement District Two Shares - All interest charges waived*	$5,000.00	10/9/2014				**$5,000.00**
WW Tap Fee (Materials)	$47.04	10/9/2014				**$47.04**
Wastewater Inspection Fee	$169.00	10/9/2014				**$169.00**
Wastewater Permit Fee	$127.00	10/9/2014				**$127.00**
Wastewater Tap Fee (L/E)	$79.96	10/9/2014				**$79.96**

Fees for PMT2014-04649

EXHIBIT E TO ANNEXATION AGREEMENT (Page 2 of 2)

Responsible Person: GARDEN L NORWOOD

Address: 2350 NORWOOD AV

Please note: This information may not be representative of all fees due. Additional fees may apply.

Fee Description	Amount Assessed	Date Assessed	Amount Paid	Date Paid	Receipt Number	Amount Due History
Water Inspection Fee	$169.00	10/9/2014				$169.00
Water Meter Fee (L/E)	$52.00	10/9/2014				$52.00
Water Meter Fee (Materials)	$492.00	10/9/2014				$492.00
Water Permit Fee	$127.00	10/9/2014				$127.00
Water Tap Fee (L/E)	$79.00	10/9/2014				$79.00
Water Tap Fee (Materials)	$32.00	10/9/2014				$32.00

Total Fees Assessed: $33,143.90 **Total Fees Paid: $0.00** **Total Fees Remaining Due: $33,143.90**

Receipt Information

Receipt Number	Paid By	Payment Method	Check Number

City of Boulder
Guidelines for Annexation Agreements
-Individual Annexations of Mostly Developed Residential Properties
in Area II-

June 25, 2002

I. Background:

The purpose of these guidelines is to provide general direction for negotiating annexation agreements with individual landowners of mostly developed residential properties in Area II. They are intended to clarify city expectations in individual annexations. These guidelines have been endorsed by Planning Board and City Council and are a reference for city staff, landowners, Planning Board and City Council in future individual annexation negotiations.

The Boulder Valley Comprehensive Plan provides a framework for annexation and urban service provision.
With the 2001 update to the BVCP, Annexation Policy 1.25 was amended to provide more clarity about annexations. The amendments to the policy included the following:

- Direction for the city to actively pursue annexation of county enclaves, Area II properties along the western boundary, and other mostly developed Area II properties;
- Direction to the county to attach great weight to the city's input on development in enclaves and developed Area II lands and to place emphasis on conforming to the city's standards in these areas; and
- A policy that developed parcels proposed for annexation that are seeking no greater density or building size should not be required to provide the same level of community benefit as vacant parcels until more development of the parcel is applied for.

In order to reduce the negative impacts of new development in the Boulder Valley, the BVCP states that the city shall annex Area II land with significant development or redevelopment potential only on a very limited basis. Such annexations will be supported only if the annexation provides a special opportunity to the city or community benefit.

These guidelines apply primarily to mostly developed residential properties in Area II. In most of these cases, the city would not request a community benefit with the annexation. However, a few of the properties that are currently developed in the county may have further development potential once annexed into the city. These guidelines further refine the BVCP Policy 1.25 by specifically outlining which properties will be asked to provide community benefit upon annexation and what form of community benefit may be requested by the city.

II. General Principles of Individual Annexations of Mostly Developed Residential Properties:

A. In terms of the city's interests, the benefits of annexing mostly developed residential properties in Area II outweigh the costs.

B. The city has a strong desire to annex many of the residential properties in Area II because of the potential environmental and health issues associated with well and septic systems.

C. The basic fees associated with annexation (plant investment and impact fees) should not be reduced for individual property owners seeking annexation (although financing and payback may be negotiated).

D. The city has a legal obligation under state law to annex enclaves at the request of the property owner without terms and conditions beyond those required through existing ordinances.

E. The city may apply additional terms and conditions to enclaves only through negotiation with the property owner. (Use caution when applying community benefit).

III. Principles of Applying City Community Benefit Policy:

A. Community benefit should only be applied to properties with additional development potential.

B. For the purposes of these guidelines, additional development potential includes the ability to subdivide the property and/or build at least one additional unit on the property. Additional development potential **does not** include the ability to add on to an existing house or to replace an old house with a new one (scrape-offs).

C. Although emphasis is placed on affordable housing, community benefit is not restricted to housing. An affordable housing benefit should be balanced with other benefits such as land or property dedications (landmarking, flood and open space easements) or other restrictions that help meet BVCP goals.

D. The city should strive for consistency in applying the affordable housing requirement to properties with additional development potential. In areas where new affordable units are appropriate (Crestview East), restrictions should be placed on the affordability of the new units. In areas where new affordable units are not appropriate or feasible, (Gould Subdivision, 55th St. enclaves), the applicant should be requested to pay two times the cash contribution in-lieu of providing on-site affordable housing.

IV. Framework for Basic Annexation Conditions for All Properties:

A. Inclusion in the Boulder Municipal Subdistrict and the Northern Colorado Water Conservancy District.

B. Assessment for waterline and sanitary sewer along street frontage (either existing or to be constructed).

C. Development Excise Tax (DET).

D. Storm Water and Flood Management Utility Plant Investment fees.

E. Water and Wastewater Utility Plant Investment Fee.

F. Dedication to the city of right-of-way for streets, alleys, water mains, and/or fire hydrants.
G. Agreement to participate in their pro rata share of any future right-of-way improvements (paving, roadbase, curb, gutter, landscaping, sidewalks, bicycle and pedestrian path connections).
H. Properties with Silver Lake Ditch rights: The city would ask the property owner to sell all interests in the ditch company to the city.
I. Properties with other ditch rights: The city would ask for the first Right of Refusal for any ditch rights associated with the property.

V. Application of Community Benefit

A. Guidelines for properties within the flood conveyance zone or with an open space or natural ecosystem land use designations.

1. The city would request dedication of an open space conservation easement for any portion of the site with a BVCP Open Space or Natural Ecosystem land use designation.
2. The city would request dedication to the city of a stormwater and floodplain easement for any portion of the site located within the flood conveyance zone.

B. Guidelines for properties with additional development potential.

The guidelines below are based on the definition of development potential as the potential for a property to be subdivided or for additional units to be built on the property. Although the terms of the community benefit requirement may be negotiated on a case-by-case basis, the following are the general guidelines for requesting community benefit:

1. A community benefit requirement in the form of two times the cash in-lieu contribution as set forth in the city's inclusionary zoning ordinance to the Housing Trust Fund would be negotiated with property owners in ER and RR zones.
2. For properties in LR and MR zones, a condition would be negotiated that a certain percentage of any new dwelling units be made permanently affordable to various income groups (see specific guidelines for each property group below).
3. For enclaves, the affordable housing request should be consistent with similar annexations in the area (see specific guidelines for each property group below).
4. For edge properties, the cash-in-lieu requested would be two times that required under the inclusionary zoning ordinance.

C. Guidelines for specific property areas.

1. Enclave – Crestview East

a. All properties:
- Request that the applicant demonstrate compliance with the North Boulder Subcommunity Plan Design Guidelines upon redevelopment or other applicable developed zoning district standards.

b. Properties along Fourmile Canyon Creek:
- Attempt to secure through negotiation, dedication of conservation, trail, and floodplain and drainage utility easements to the city to meet the objectives of the Greenways Master Plan and the Stormwater and Flood Management Utility.

c. Properties with subdivision potential – split MR/LR zoning:
- 50% of any newly constructed units should be permanently affordable to low and middle income households.

d. Properties with subdivision potential – split LR/ER zones:
- 25% of any newly constructed units should be permanently affordable to middle income households; and
- Market rate units permitted on site should pay twice the applicable cash-in-lieu amount required by inclusionary zoning provisions.

e. Properties with subdivision potential – ER zones:
- Payment of two times the cash contribution in-lieu of providing on-site affordable housing set forth in the city's inclusionary zoning ordinance for each new dwelling unit (prior to building permit).

2. Enclave – Githens Acres and other miscellaneous North Boulder enclave properties.

a. All properties:
- Request that the applicant demonstrates compliance with the North Boulder Subcommunity Plan Design Guidelines upon redevelopment or other applicable developed zoning district standards.

b. Properties along Fourmile Canyon Creek:
- Attempt to secure through negotiation, dedication of conservation, trail, and floodplain and drainage utility

easements to the city to meet the objectives of the Greenways Master Plan.

3. Enclave – Pennsylvania Ave.

a. Three properties along the Wellman Canal (5255, 5303, and 5101):
- Attempt to secure through negotiation, dedication of a trail easement to the city to meet the objectives of the city's Transportation Master Plan.

b. For all properties:
- Request payment for share of sidewalk improvements along Pennsylvania Ave.

4. Enclave – 55th St.

a. Property with an MR land use designation (1415 55th St.):
If zoned LR-D,
- Payment of two times the cash contribution in-lieu of providing on-site affordable housing set forth in the city's inclusionary zoning ordinance for each new dwelling unit. (at the time of building permit) or;
- Any newly constructed units must be permanently affordable to middle income households.

If zoned MR-D,
- 50% of any newly constructed units must be permanently affordable to low and middle income households.

b. Properties with an LR land use designation and further development potential (994, 836, 830 55th St. and 5495 Baseline Rd.):
- Payment of two times the cash contribution in-lieu of providing on-site affordable housing set forth in the city's inclusionary zoning ordinance for each new dwelling unit (at the time of building permit).

5. Gould Subdivision

a. Three properties with additional development potential (2840 Jay Rd., 2818 Jay Rd., 4040 28th St.):
- Payment of two times the cash contribution in-lieu of providing on-site affordable housing set forth in the city's inclusionary zoning ordinance for each new dwelling unit.

6. Western Edge

a. Two properties with a VLR land use designation and development potential (0 Linden Dr., and 3650 4th St.):

- Payment of two times the cash contribution in-lieu of providing on-site affordable housing set forth in the city's inclusionary zoning ordinance for each new dwelling unit. (at the time of subdivision).

b. Properties at 3365 4th St., 3047 3rd St., 2975 3rd St., and 2835 3rd St.:

- An open space conservation easement, for the portion of the property that is west of the ABlue Line," should be dedicated to the city.

7. Old Tale Rd./Cherryvale Rd.

a. Properties along South Boulder Creek:

- Attempt to secure through negotiation, dedication of conservation, trail, and floodplain and drainage utility easements to the city to meet the objectives of the Greenways Master Plan and the Stormwater and Flood Management Utility.

November 5th, 2014

Hi Mike,

We are the Co Chairs of the Githens Acres Neighborhood Assoc. (GANA).

First we'd like to thank you for the help that you and the rest of the City Transportation Department staff has given us over the years.

We are writing to you and your Department today regarding the proposed annexation of 4415 Garnet Lane which will be reviewed tomorrow evening at the City Planning Board meeting. This annexation includes the section of Garnet Lane roadway itself that has been closed to cars for over 20 years.

Recent communications with the City about annexation have called into question whether the street closure at Garnet Lane is permanent. This language is causing significant concerns to the folks that have worked hard for many years to keep our neighborhoods' streets safe. Here is the reference to this street closure in the City's latest Annexation materials.

"Garnet Lane is currently under Boulder County jurisdiction. Boulder County staff has requested that the city annex the portion of the road that fronts 4415 Garnet Ln. and the property to the north since the road will service properties within the city. City staff is recommending annexation of this portion of the road. The road includes an existing road barrier that was erected by the county several years ago to prevent cut- through traffic between 19th and 26th streets. The concern that this road barrier may be removed once the road is in the city has been a primary concern of the Githens Acres neighborhood over the years and a factor in their past decision not to annex. The city has stated that while it will not guarantee permanent closure of this road as a condition of annexation (which the neighborhood has requested in the past), staff has no intention of removing the barrier in the near future.

History of Garnet Lane street closure

Over 20 years ago, after a child was struck nearby by a car, Boulder County installed concrete barriers at Garnet Lane between 19th street and 26th street to end cut through traffic. The curving streets had created a favorite driving experience for owners of many cars going through this area. With narrow lanes, no sidewalks and cars visibly speeding through these rural streets, the County Commissioners voted unanimously to close Garnet Lane due to safety concerns. At the time the road was closed the Director of the County Transportation Dept. determined that closing the street would not have a meaningful negative affect on other east-west routes in this area.

As you know, about 5 years ago the neighborhoods that surround this closure petitioned the City and County to make the closure more permanent. The concrete construction barricades that were blocking the street had been an eyesore for many years at that point. The neighbors offered to raise the funds from local citizens to pay all of the costs to build and landscape the permanent closure to cars at a cost of $16,000. After receiving the initial go ahead from the City and the County, the funds were raised and an architect was hired to design the street closure. After

receiving final approvals from the City and the County, new barrier bricks were laid and trees, shrubs and flowers were planted.

Since then the area has become known to many bicyclists and pedestrians as a safe area to bike and walk in. Baby strollers, seniors and others slowly wind there way throughout these streets daily. The walking experience is very different compared with other places in Boulder such as the heavily used open space hiking trails or multi use paths, which can be more congested and less safe. Our area is extremely family friendly, uniquely rural in character, and is heavily used for this purpose.

Thanks to on-going cooperation between the City and the local neighbors, routes through these neighborhoods are now well marked with signage to local schools and paths for walkers and bikers including travel distances. These routes have been added to the GO Boulder maps and Website. These simple improvements including the new signage are in line with the recommendations of the Greenways Advisory Committee the last time this area was discussed in detail.

Here is a specific recommendation from the GAC at their meeting about this area:

"Do not proceed with the design and construction of a multi-use path along Four Mile Canyon Creek between 19th and 22nd Streets at this time, but evaluate other ways to improve bicycle and pedestrian connectivity for Crest View Elementary School students and other people trying to navigate from 26th Street to 19th Street."

Following the recommendations by the GAC, an effort known as Safe Routes Crestview was created to work on improving bicycle and pedestrian connectivity around Crestview School. The process started by identifying 8 different potential routes through this area. With input from GO Boulder, Boltage, Community Cycles and the Crestview Parent Teacher Org., these 8 routes were narrowed to 2-3 routes that would improve safety and would not require significant capital improvements. GAC recommended that the City take no action for five years to see if clearly marked routes using existing roads would alleviate concerns about having bikes, pedestrians and cars sharing these streets.

During the GAC meeting, Bob Yates, the representative of the Parks and Recreation Dept. summarized the prevailing opinion of the GAC. He stated that during the on-site walk through the area by GAC Board Members, they saw almost no cars on these roads and that there must be other places in Boulder with more conflict between cars, pedestrians and bikers "where the money could be better used."

We greatly appreciate that you have always honored your word to us. We need your help now to advise us on what to do. We followed all of the instructions given to us by your Department. We raised the funds to pay for the work without asking either the City or the County for financial assistance. Despite all of this, it appears that some on city staff continue to consider reopening Garnet Lane at some point. This would recreate a significant transportation safety hazard for the people that live, walk and bike through this network of streets that are a cornerstone of our neighborhood.

Thank you,

Jim Snow Co chair, GANA

Allen Goldstone Co chair, GANA

Dear Boulder Planning Board Members,

I am the Executive Director of New Horizons preschool, a North Boulder neighborhood school for the last 44 years. I am writing concerning the annexations of North Boulder Properties that are before you.
Our school uses local nature as teaching opportunities for our students. We have a history of standing up for these special places around us including the riparian corridor surrounding Four Mile Canyon Creek. Our Board has become aware that there is a long term threat to the Silver Lake Ditch (SLD) which provides water to the wild things near our school. The reason as we understand it, stems from the City of Boulder's interest in owning more of the SLD water. We ask you to reconsider this policy, as we do not support the City's efforts to replace the local residents as owners of the Ditch in order for the City to own a greater share of the water carried by the SLD.

SLD is vitally important to the health of the ecosystem in Boulder.
One of our Board Members found the following facts about the SLD:

SLD was initially laid out in the late 1800's to irrigate 1500 Silver Maple trees from Missouri that were planted along Mapleton Ave. It was the last irrigation ditch constructed in Boulder and is the only ditch that transports water a considerable distance north of town. The Ditch supplies water to several migration corridors throughout the city for a diverse population of mammals. The SLD supports a wide range of breeding birds. Neighbors living along SLD have documented more than 50 bird species on these corridors.

Here are some specific benefits to the City provided by SLD:

- SLD waters and provides a water feature to the Community Gardens in North Boulder.
- Because storage water is released throughout the summer from Silver Lake or Barker Reservoir, water qualities in creeks upstream are improved.
- Water flows into Sunshine Creek throughout the irrigation season, sustaining the riparian zone and improving the water quality of the creek.
- Carriage of water to Mesa Reservoir. Prior to a joint effort between the City and SLD, Mesa had been dry for many years. Thanks to this collaboration, Mesa is now a large thriving wetlands and wildlife habitat.
- Water deliveries are made to Wonderland Lake at the beginning and end of the season. This increases the water levels and improves the water quality and wildlife habitat there.
- Each season, the Ditch is used to fill Maxwell Lake in Maxwell Park, a city park that also provides riparian zones, wetlands and wildlife habitat.
- Each season, the Ditch recharges the water table in North Boulder. This sustains the vegetation, especially the trees. It recharges domestic wells, which City residents use for irrigation in North Boulder.
- The Ditch provides running water, riparian habitat, and play areas for the citizens, dogs and wild animals of Boulder in many City Open Space areas,

including Red Rocks, Elephant Buttress area, Sanitas, Maxwell Lake Park, Wonderland Lake Area, North Boulder Community Park, and North Boulder Open Space out to Mesa.

- The Foothills Community Park uses Ditch water to irrigate, with a significant cost benefit to the City budget and elimination of chemical treatment of the water.

We feel that it's a major mistake for the City not to keep the water in SLD tied to the local residents and to the land.

Thank you
Isolde Stewart
Executive Director
New Horizons Preschool
1825 Upland Ave., Boulder, Co.

Johnson, Beverly

From: Kent D Wilson [kentwilson@ft.NewYorkLife.com]
Sent: Thursday, November 06, 2014 3:11 PM
To: boulderplanningboard
Cc: Johnson, Beverly; Meschuk, Chris
Subject: Silver Creek Ditch

Dear City of Boulder Planning Board,
We represent an organization known as Friends of Four Mile Canyon Creek. We are a several years old "grass roots" group of folks from all over Boulder that is concerned about the issues surrounding the preservation of Four Mile Canyon Creek and its riparian corridor.

Due to the close proximity of Four Mile Canyon Creek to the Silver Lake Ditch, many of our members irrigate their land with water from the Silver Lake Ditch. Some live in the City and some are in the County in areas that the Boulder Valley Comp Plan maps show as Area II. Now that some of these Area II properties may be considering annexation, we are taking a closer look at the effect this will have on the City's character.

It has come to our attention that the City is asking the property owners that are considering annexing to give the City a first right of refusal to buy their Silver Lake Ditch shares when they sell their homes. We do not support this condition for annexation. As we understand it, the last contract between the City and the Silver Lake Ditch already gives the City access to Silver Lake Ditch's water during dry years. This is exactly what happened a few years ago when Boulder had a dry year. The City received Silver lake Ditch's water and the ditch remained dry.

Over time this City policy will destroy the Silver Lake Ditch as there are less volunteers to do the work and pay the bills. Some of the shares that are retired will irreversibly lead to declining water beyond which the ditch cannot function. While City Council Members and Staff today respect and understand the importance of Boulder's irrigation ditches and their contribution to our City's current health and past history, there is no guarantee that future Members will be like-minded.

The demise of the Silver Lake Ditch will have a very negative impact on the Four Mile Canyon Creek area as there are years when the Creek carries very little water, or none. During those years we depend on the water in the Silver Lake Ditch to keep the plants and animals alive. The Silver Lake Ditch is an integral part of the ecosystem, with many species of trees, bushes and grasses depending on it.

Please request that the City amend their agreement with the Silver Lake Ditch that requires property owners that voluntarily annex to give a first right of refusal for their Ditch shares to the City. We also request that the City stop its policy of trying to own more of this Ditch. The City already has access to the water when it needs it.

As citizens, we spend considerable time working to save this important place of nature that still exists within Boulder, and contributes to defining its character. Please help us preserve some of what is left of the town that attracted many of us here in the first place.

Thank you
Kent and Ellen Wilson
2192 Tamarack Ave., Boulder, Co

Johnson, Beverly

From: Connie Redak [connieredak@yahoo.com]
Sent: Wednesday, November 05, 2014 7:11 PM
To: boulderplanningboard
Cc: Johnson, Beverly; Meschuk, Chris
Subject: githens acres annexations

November 5, 2014

Dear City of Boulder Planning Board,

I have been the Githens Acres Lateral Chairperson for the Silver Lake Ditch for many years. I know intimately the value of ditch water to the Githens Acres neighborhood and am saddened whenever a property is annexed because it ultimately results in the loss of valuable and irreplaceable water to us. I am also, of course, aware of the 2009 agreement that allows the city to ask property owners being considered for annexation for first right of refusal upon the sale of their property. However, this same agreement also allows for people to negotiate different terms if they wish. Agreements can be changed if both parties wish to do so... and this one is no exception. It is my hope that a new era of cooperation and creativity will evolve soon that makes keeping our water a possibility. This neighborhood is an oasis for people and a sanctuary for wildlife. With each acre foot of water lost we lose critical flow as well as more of the volunteer base that is necessary for us to operate. I am told that the city has an impressive water portfolio. I don't know just how much difference our approximately 40 acre feet could make to them but to us--- it makes all the difference in the world.

Sincerely,

Connie Redak
2295 Topaz Drive
Boulder, Colorado 80304

Githens Acres Lateral Chairperson
Silver Lake Ditch

Dear Council Members

We understand that for a wide variety of reasons a number of you were unable to attend the Council Session on November 12th that focused on Boulder's Climate Commitment and updates on a number of major energy initiatives including the development and implementation of our Commercial and Industrial Energy Efficiency Ordinance.

In order to give all of you an opportunity to review and provide comments on these important and high Council priority initiatives, we have included the attached link. We ask that you provide any questions or comments by November 24th. Staff will include these and staff responses as part of the Study Session summary that will be completed by December 5th.

Johnson, Beverly

From: Ferro, Charles
Sent: Wednesday, November 05, 2014 3:37 PM
To: Johnson, Beverly
Subject: FW: annexation

From: Boulder Back Pain Clinic [mailto:marc@boulderbackpainclinic.com]
Sent: Wednesday, November 05, 2014 3:34 PM
To: boulderplanningboard
Subject: annexation

To: City of Boulder Planning Board

From: Dr. Marc Cahn

Date: Nov 5 2014

I am writing in reference to the proposed Annexations that will be discussed this Thursday Nov 6 2014.

I live in North Boulder in a property that was annexed to the City of Boulder.

At the time of the annexation the Silver lake Ditch rights had to be turned over to the City.

The Silver Lake Ditch continues to run near us and we are very appreciative that it does.

Each summer the water that it brings through North Boulder (up past the Armory)

keeps the City green and feeds all of the wild animals.

The City needs to stop its practice of taking the rights to this water or the ditch will cease to exist.

Sincerely,

Marc S Cahn, DC

Marc S Cahn, DC, CAc

DIETZE AND DAVIS, P.C.
ATTORNEYS AT LAW

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November 25, 2014

Chris Meschuk
City of Boulder
Planning and Development Services
1739 Broadway
Boulder, Colorado 80302

SENT VIA EMAIL ONLY

Re: 2350 Norwood Annexation

Dear Chris:

Attached are the Annexation Agreement and Grant of Public Access Easement signed by Norwood Garden LLC and notarized. I have also contacted the title company and requested an updated commitment. I will deliver that to you as soon as it is received.

As has been repeatedly communicated to Staff, my client objects to the requirements, included in the attached Annexation Agreement and evidenced by the Grant of Public Access Easement, relating to a 16-foot-wide easement for a multi-use path over the western and southern edges of the referenced property. The primary reasons for my client's objection to this specific easement are tied to the desire to (a) protect the sensitive habitat and fruit production attributes of the dense plum thicket located in the southwestern portion of her property, and the pond located along the southern boundary, and (b) maintain the existing drainage from the property, as required by the Annexation Agreement. The destruction of the thicket and the potential negative effects on the drainage in that area, as would necessarily result from motor vehicles traversing the area and the ultimate construction of the proposed multi-use path, is something to which my client is adamantly opposed and would seem to be contrary to many of the City's goals, including neighborhood preservation.

Because the City rejected my client's offer of a similar 16-foot-wide easement along the eastern edge of the property, which would not carry with it the same adverse effects, my client previously executed, and delivered, a Deed by which the western 4 feet of the property would be conveyed to the City in fee so that a walking path could be constructed thereon.

In any event, my client has opted to sign and deliver the attached documents, and asks that they be included in the packet to be delivered to Council. The delivery of these documents is based

on my, and my client's, understanding that the proposed annexation, evidenced by these documents (and the Quitclaim Deed for the Norwood ROW previously provided), may be withdrawn by my client at any time before the vote is taken in connection with the second reading of the applicable annexation ordinance, which vote is expected to be taken at the January 20, 2015, meeting of the City Council. If these understandings are incorrect, please let me know as soon possible.

This letter will also serve to confirm our telephone conversation earlier today, in which you provided me with the following information:

1. The attached documents, along with the Quitclaim Deed for the Norwood ROW, will be included in the packet to be provided to Council in advance of its December 2, 2014, meeting. In the Staff memo to be included in that packet, mention will be made of my client's objection to the requirements included in the Annexation Agreement relating to the 16-foot-wide easement for the multi-use path, especially the location of the easement;

2. The first reading of the applicable annexation ordinance will take place at the December 2, 2014, Council meeting. Although members of Council may ask questions in connection with the annexation ordinance at that meeting, no public hearing will be held in connection with the ordinance. As a result, you advised there is no need for my client, or a representative, to be present at that meeting;

3. Following the first reading of the ordinance, Council may ask for changes to the annexation documents, which Staff will then address prior to the second reading of the annexation ordinance to occur at the January 20, 2015, Council meeting;

4. Staff expects to prepare comments relating to the annexation ordinance in anticipation of the second reading on January 20, 2015, for delivery to Council. You suggested that comments and/or information from my client could be provided prior to January 6, 2015 and January 13, 2015, for inclusion in the draft and final packets, respectively; and

5. At the second reading of the annexation ordinance, at the January 20, 2015, Council meeting, there will be a public hearing in connection with the ordinance, at which time my client may present testimony. If, following the public hearing, but prior to the actual vote on the ordinance, Norwood Garden LLC is not willing to comply with the requirements that will be imposed in accordance with the annexation ordinance, then it may withdraw its annexation petition. Should that occur, then the attached documents, along with the Quitclaim Deed for the Norwood Property and the Deed of the westerly 4' of the property, shall be of no further force and effect and should be returned to my client.

If I have misstated any of the information I understood you were conveying to me in our conversation today, please let me know as soon as possible. Thank you.

Very truly yours,

DIETZE AND DAVIS, P.C.

Robyn W. Kube

RWK/hs
Attachments
c: Client (via email, with attachments)

CITY OF BOULDER
CITY COUNCIL AGENDA ITEM

MEETING DATE: Dec. 2, 2014

AGENDA TITLE: Second reading and consideration of a motion to adopt Ordinance No. 8010 to rezone the property located at 5400 Spine Road, from Industrial – General to Business Community-2, consistent with the Boulder Valley Comprehensive Plan land use designation of Community Business.

PRESENTER/S
Jane S. Brautigam, City Manager
David Driskell, Executive Director of Community Planning & Sustainability
Susan Richstone, Deputy Director of Community Planning & Sustainability
Charles Ferro, Land Use Review Manager
Elaine McLaughlin, Senior Planner

EXECUTIVE SUMMARY

The proposed ordinance rezones the property located at 5400 Spine Road from IG (Industrial General) to BC-2 (Business Community-2). The rezoning is necessary to bring the property into conformance with the Boulder Valley Comprehensive Plan (BVCP) land use designation of Community Business and implements the Gunbarrel Community Center Plan (GCCP), adopted by Planning Board and City Council in 2004.

The GCCP is a land use and transportation plan for the entire Gunbarrel commercial area. The plan provides direction for reviewing future public improvements and private sector development proposals in the area and provides redevelopment direction for individual landowners. The intent of the GCCP is to provide a rich and thriving mix of uses by expanding the amount of retail and office use in the Gunbarrel area, adding new residents in close proximity to the retail core, creating more usable public spaces, and improving access to and from the plan area.

On Oct. 21, 2014, City Council approved first reading of Ordinance 8010 by consent. There were two questions: one with regard to the layout of the building on the site and the second with regard to by-right development under the proposed zoning. These issues are addressed under

"Background." On Aug. 28, 2014 the Planning Board unanimously recommended that City Council approve the ordinance.

STAFF RECOMMENDATION:

Suggested Motion Language:
Staff requests council consideration of this matter and action in the form of the following motion:

Motion to:
Approve Ordinance No. 8010 rezoning the property located at 5400 Spine Road from Industrial – General to Business Community-2, consistent with the Boulder Valley Comprehensive Plan land use designation of Community Business.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic - Implementation of the GCCP is expected to revitalize the existing industrial site to establish a more vibrant and viable community business site. The subject site is a vacant office warehouse building. Under the current IG zoning designation, most retail and restaurant uses are not permitted on this site. The proposed rezoning would allow for sales tax producing uses on the site.

- Environmental – Consistent with the GCCP, the rezoning will permit retail and restaurant uses that can serve the emerging residential uses located in walkable distance to the site. In addition, the applicant intends to adaptively reuse the existing building which allows use of the embodied energy of an existing building.

- Social – The rezoning will help to realize the goals of the GCCP that include creating a commercial center for Gunbarrel, "with a unique identity that is the heart of social and cultural activity in the subcommunity."

OTHER IMPACTS

- Fiscal: City services are existing and available to this site.
- Staff time: The applicant has submitted the required rezoning application fee to cover staff review time of this application for a rezoning.

BOARD AND COMMISSION FEEDBACK

At a Planning Board public hearing on Aug. 28, 2014, a motion was made by C. Gray and seconded by J. Putnam to recommend approval of Rezoning case no. LUR2017-00051 incorporating the staff memorandum and the review criteria checklist as findings of fact, the vote was 7-0.

PUBLIC FEEDBACK

All notice requirements of section 9-4-3, "Public Notice Requirements," B.R.C. 1981 have been met. Public notice of this proposed vacation was sent to property owners within 600 feet of the project on February 21, 2014. Staff received no comments from the public.

BACKGROUND

The 0.99 acre site is located at the northeast corner of Spine and Lookout roads and is occupied by an existing, approximately 14,000 square foot building constructed in 1982 that has housed a variety of industrial/office uses over the past 30 years. The building is currently vacant. There is also an existing parking lot with 39 spaces and a loading dock on the north side of the building.

The site is located within an area subject to the Gunbarrel Community Center Plan (GCCP) and is designated by the plan as "Community Business." After a two year public process the plan was adopted by City Council in 2004. Subsequently, a change was approved to the Boulder Valley Comprehensive Plan (BVCP) land use designation on the property from Performance Industrial to Community Business in accordance with the Gunbarrel Community Center Plan. Refer to Figures 1 and 2 that illustrate the GCCP and the BVCP plan, respectively, for the site and surrounding area,

The GCCP was adopted as a future land use and transportation plan for the entire Gunbarrel commercial area. The plan provides direction for reviewing future public improvements and private sector development proposals in the area and provides redevelopment direction for individual landowners.

The applicant is proposing to change the current zoning from Industrial General (IG) to Business – Community 2 (BC-2) to be consistent with the BVCP and GCCP land use designations of Community Business to allow for a more diverse mix of uses including specialty retail, restaurant, service and other uses as envisioned in the GCCP. Under Industrial – General (IG) zoning, restaurants are not permitted by-right uses.

By-Right Development per Existing and Proposed Zoning. Under both the existing IG zoning and the proposed BC-2 zoning, the size of the site and the building would not meet the threshold for Site Review. Because the applicant is not proposing modifications to the standards of the Land Use Code, the site and building improvements would also not require an application for Site Review. However, there are certain uses within the BC-2 zoning district that may require Use Review prior to building permit.

At the Oct. 21, 2014 City Council hearing on the first reading of the ordinance to rezone the property, a question was raised about what type of development could be built there by-right. The applicant is proposing a by-right development under the BC-2 zoning, and Table 1 in Attachment B is a summary of the by-right development standards for the zoning district.

Additionally, at the City Council Agenda Meeting on Nov. 24, 2014, a question was raised regarding whether there would be support for a new building on the site (as opposed to adaptively reusing the existing structure as is currently proposed). As noted above, under both the existing IG zoning and the proposed BC-2 zoning, the size of the site and the building would not meet the minimum threshold for Site Review and therefore, any new structure would have to be compliant with the by-right standards for development established by the underlying zone district. Staff is supportive of the adaptive reuse of the existing structure as well as the construction of a new by-right building.

Figure 1: Gunbarrel Community Center Planning Area (GCCP)

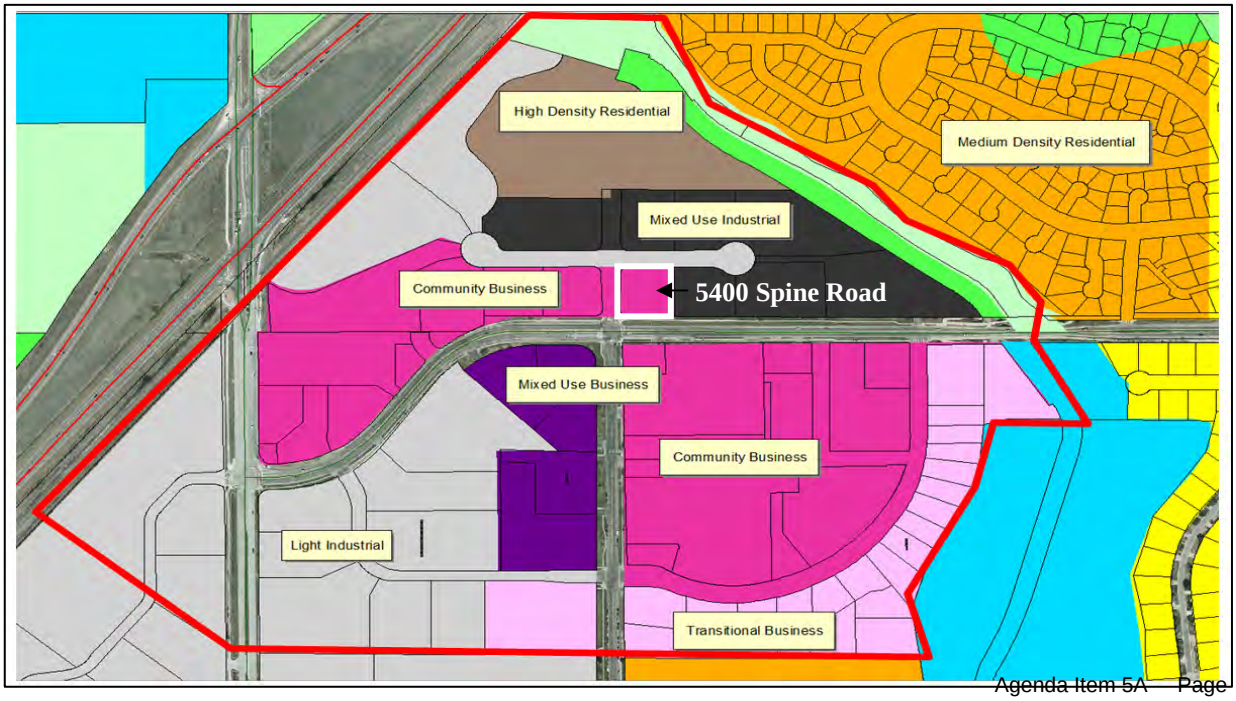


Figure 2: Boulder Valley Comprehensive Plan Land Use

Preliminary Plans. The applicant requested the rezoning to allow for by-right retail and restaurant uses, refer to Attachment C, Applicant's Written Statement. Upon rezoning the applicant intends to adaptively reuse and reduce the size of the existing building and reduce a portion of the existing parking lot. The applicant intends to apply for a by-right building permit as the proposal does not necessitate a request for modifications to the development standards and the size of the site and building do not meet the threshold for Site Review.

At the Oct. 21, 2014 City Council hearing on the first reading of the ordinance to rezone the property, a council member asked why the proposed by-right project appeared to be surrounded by parking. As shown in Figures 3a and 3b, a comparison of the existing site and the preliminary by-right plans for the property, the applicant is proposing to remove existing parking located on the northwest corner of the site nearest the prominent intersection of Spine and Lookout roads. In place of six existing parking spaces, the applicant is proposing an outdoor patio space that would be used by the tenants of the building, particularly for a coffee shop or restaurant tenant.

The preliminary sketch plan also illustrates the exact number of required parking spaces by-right, which is 33 spaces (1 space per 300 square feet = 10,080/300 = 33.6, round down per land use code = 33 spaces). Because the applicant is proposing to reduce the size of the building by approximately 4,000 square feet, the number of required parking spaces is reduced by a proportional amount on the site.

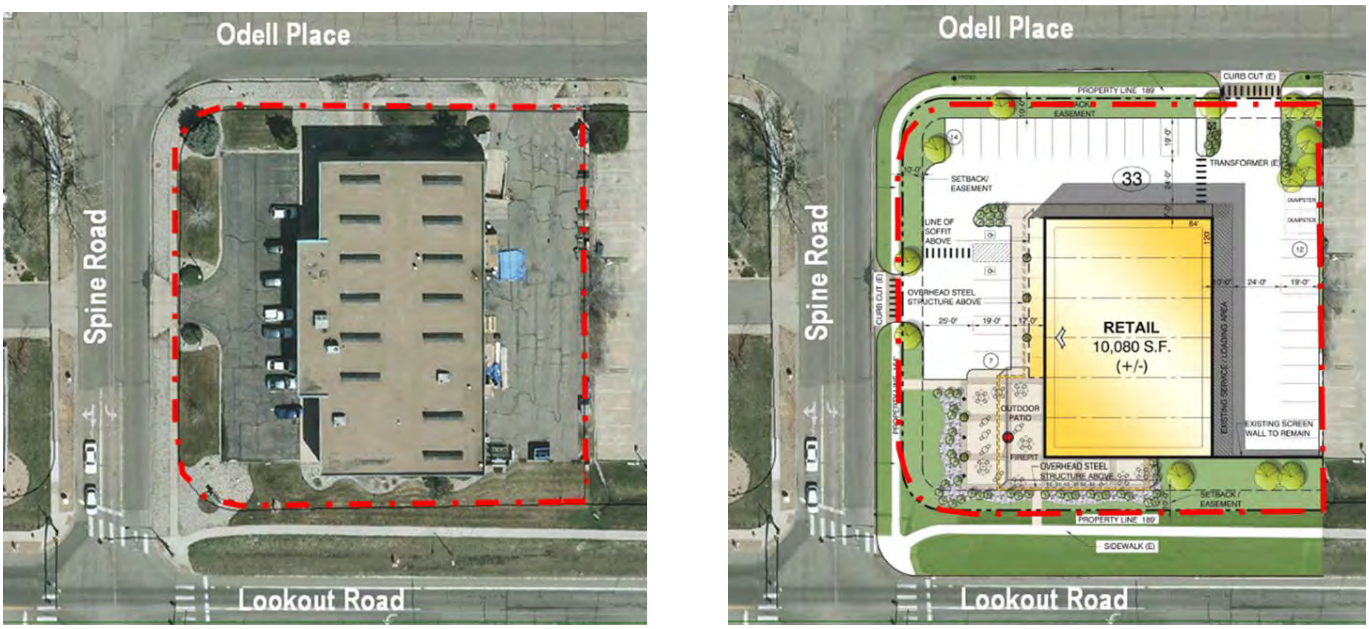


Figure 3a and 3b: Existing Site (left) and Preliminary Site Layout (right)

Figure 4a: Existing Building (above) and Preliminary Design of Reuse of Building (below)

Figure 4b: Existing Building views (above) and Preliminary Design of Reuse of Building

As can be seen in figures 4a and 4b, the comparisons of the existing and proposed building, the existing building is a concrete warehouse and the applicant intends to remove a portion of the existing building on the north and create new window and door openings on the existing building along with building façade improvements.

The criteria for rezoning is limited to very specific terms that a request for rezoning either meets or doesn't meet the rezoning criteria, as described under the Analysis section below, and any changes to a by-right development are not a part of the consideration for a rezoning.

ANALYSIS:

Rezoning criteria of Land Use Code section 9-2-18(e), B.R.C. 1981 requires consistency with one of six criteria as follows:

> *(e) Criteria: The city's zoning is the result of a detailed and comprehensive appraisal of the city's present and future land use allocation needs. In order to establish and maintain sound, stable, and desirable development within the city, rezoning of land is to be discouraged and allowed only under the limited circumstances herein described. Therefore, the city council shall grant a rezoning application only if the proposed rezoning is consistent with the policies and goals of the Boulder Valley Comprehensive Plan, and, for an application not incidental to a general revision of the zoning map, meets one of the following criteria:*
>
> > *(1) The applicant demonstrates by clear and convincing evidence that the proposed rezoning is necessary to come into compliance with the Boulder Valley Comprehensive Plan map;*
> >
> > *(2) The existing zoning of the land was the result of a clerical error;*
> >
> > *(3) The existing zoning of the land was based on a mistake of fact;*
> >
> > *(4) The existing zoning of the land failed to take into account the constraints on development created by the natural characteristics of the land, including, but not limited to, steep slopes, floodplain, unstable soils, and inadequate drainage;*
> >
> > *(5) The land or its surrounding environs has changed or is changing to such a degree that it is in the public interest to encourage a redevelopment of the area or to recognize the changed character of the area; <u>or</u>*
> >
> > *(6) The proposed rezoning is necessary in order to provide land for a community need that was not anticipated at the time of adoption of the Boulder Valley Comprehensive Plan.*

The applicant's request is based on criterion (e)(1):

> "*The applicant demonstrates by clear and convincing evidence that the proposed rezoning is necessary to come into compliance with the Boulder Valley Comprehensive Plan map*."

A rezoning to Business Community-2 is necessary to bring the property into conformance with the BVCP and GCCP land use designations of Community Business. On page 67 of the BVCP it states:

> "*Community Business is defined as the focal point for commercial activity serving a subcommunity. These areas are designated to serve the daily convenience shopping and service needs of the local population, and are generally less than 150,000 to 200,000 square feet in area. Offices within the Community Business areas should be offices designated specifically for residents of the subcommunity. Where feasible, multiple uses will be encouraged within these centers. Example uses: restaurants, personal services, large or small retail, banks, hotels, motels, medical or dental offices, recreational facilities, schools, day care, art studios, and professional offices.*"

The proposed BC-2 zoning district on the property will permit commercial and retail uses in accordance with the Gunbarrel Community Center Plan (GCCP). Therefore, staff recommends approval of the proposed rezoning application.

Approved By:

_____

Jane S. Brautigam
City Manager

ATTACHMENTS:

A: Ordinance No. 8010
B: Summary of By-Right Standards of BC-2
C: Applicant's Written Statement

ORDINANCE NO. 8010

AN ORDINANCE REZONING A 43,071 SQUARE FOOT LOT GENERALLY KNOWN AS 5400 SPINE ROAD FROM THE INDUSTRIAL-GENERAL (IG) TO THE BUSINESS-COMMUNITY 2 ZONING DISTRICT AS DESCRIBED IN CHAPTER 9-5, "MODULAR ZONE SYSTEM," B.R.C., 1981, AND SETTING FORTH RELATED DETAILS.

THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO FINDS:

A. A public hearing before the Planning Board of the City of Boulder was duly held on August 28, 2014 in consideration of rezoning a 43,071 square foot lot generally known as 5400 Spine Road and more particularly described on Exhibit A attached to this ordinance (the "Property") from the Industrial - General (IG) to the Business-Community 2 (BC-2) zoning district.

B. The Planning Board found that the rezoning of the Property from the Industrial - General (IG) to the Business-Community 2 (BC-2) zoning district is consistent with the policies and goals of the Boulder Valley Comprehensive Plan and that clear and convincing evidence demonstrates that rezoning is necessary to bring the Property into conformance with the Boulder Valley Comprehensive Plan land use map designation of Community Business, and meets the criteria for rezoning as provided in Chapter 9-2, "Review Processes," B.R.C. 1981.

C. The Planning Board duly recommended that City Council amend the zoning district map to include the Property in the Business-Community 2 (BC-2) zoning district as provided in Chapter 9-5, "Modular Zone System," B.R.C. 1981.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. Chapter 9-5, "Modular Zone System," B.R.C. 1981, and the zoning district map forming a part thereof are amended to include the Property within the Business-Community 2 (BC-2) zoning district.

Section 2. The City Council finds that the rezoning of the Property from the Industrial - General (IG) to the Business-Community 2 (BC-2) zoning district is consistent with the policies and goals of the Boulder Valley Comprehensive Plan and that clear and convincing evidence demonstrates that rezoning is necessary to bring the Property into compliance with the Boulder Valley Comprehensive Plan land use map designation of Community Business, and meets the criteria for rezoning as provided in Chapter 9-2, "Review Processes," B.R.C. 1981. The City Council adopts the recitals as a part of this ordinance.

Section 3. The City Council has jurisdiction and legal authority to rezone the Property.

Section 4. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern. The rezoning of the Property bears a substantial relation to, and will enhance the general welfare of, the Property and of the residents of the City of Boulder.

Section 5. The City Council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY this_____ day of _____, 2014.

_____
Mayor

Attest:

_____
City Clerk

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED PUBLISHED BY TITLE ONLY this _____ day of _____, 2014.

_____
Mayor

Attest:

_____
City Clerk

EXHIBIT A

LEGAL DESCRIPTION

Lot 4, The Greens Industrial Park,
County of Boulder,
State of Colorado.

- **BC-2 Zoning District Intent** ***(per Land Use Code section 9-5-2(c), B.R.C. 1981):***
  "Business areas containing retail centers serving a number of neighborhoods, where retail-type stores predominate."

- **Uses Allowed By-Right** ***(per Land Use Code section 9-6-1, B.R.C. 1981):***
  Note: the following are the uses permitted by-right in the BC-2 zoning district; not all of these by-right uses could be constructed on the subject site at 5400 Spine Road, due to parking requirements with each associated use.

  Residential:
  - *Detached and Attached Dwelling Units;*
  - *Duplexes;*
  - *Townhomes;*
  - *Efficiency Living Units if < 20% of total units;*
  - *Congregate Care Facilities;*
  - *Dormitories;*
  - *Boarding Houses*

  Dining and Entertainment, and Lodging uses:
  - *Arts and Craft Studios*
  - *Restaurants, brewpubs and taverns no larger than 1,500 square feet in floor area, which may have meal service on a an outside patio not more than ½ the floor area and which close no later than 11 p.m.*
  - *Restaurants, brewpubs and taverns that are over 1,500 square feet in floor area or which close after 11p.m.*
  - *Hostels*
  - *Motels/Hotels*

  Public and Institutional Uses
  - *Daycare center with ≤ 50 children*
  - *Daycare center with ≥ 50 children*
  - *Essential municipal and public utility services*
  - *Governmental facilities*
  - *Nonprofit membership clubs*
  - *Private elementary, junior and senior high schools*
  - *Public elementary, junior and senior high schools*
  - *Private colleges and universities*
  - *Religious assemblies*
  - *Adult education facilities*
  - *Vocational and trade schools*

Office, Medical and Financial Uses:

- *Data processing facilities*
- *Financial institutions*
- *Medical or dental clinics and laboratories*
- *Offices: administrative, professional, technical*

Parks and Recreation:

- *Indoor recreational or athletic facilities*
- *Parks and recreation uses*

Commercial, Retail and Industrial Uses:

- *Animal hospital or veterinary clinic*
- *Broadcasting and recording facilities*
- *Business support services <10,000 square feet*
- *Person service uses*
- *Convenience Retail*
- *Retail sales*
- *Computer design and development facilities*
- *Telecommunications use*

- **Form and Bulk Standards for Principal Buildings**
  (per Land Use Code section 9-7-1, B.R.C. 1981):
  - *Front: 20 feet*
  - *Side Yard setbacks Adjacent to a Street: 15 feet*
  - *Rear Yard: 20 feet*
  - *Height: 35 feet*
  - *Stories: 3*

- **Intensity Standards** ***(per Land Use Code section 9-8-1, B.R.C. 1981):***
  - *Minimum Lot Area per Dwelling Unit: 1,600 square feet*
  - *Number of Dwelling Units Per Acre: 27.2 du's*
  - *Minimum Open Space Per Dwelling Unit: 600 square feet*
  - *Minimum Open Space on Lots (nonresidential uses) at 35 feet: 10 percent*
  - *Maximum Floor Area Ratio: 0*

5400 Spine Road Boulder, CO

Written Statement for Rezoning

Rezoning Request: The rezoning request is to rezone the property from I-G (Industrial General) to BC-2 (Business Community 2) as under the City of Boulder zoning code.

City of Boulder Rezoning Criteria: The applicant's written statement for a rezoning application must address how the application meets the criteria below from **Section 9-2-18(e), B.R.C. 1981** of the code.

(e) Criteria: The city's zoning is the result of a detailed and comprehensive appraisal of the city's present and future land use allocation needs. In order to establish and maintain sound, stable, and desirable development within the city, rezoning of land is to be discouraged and allowed only under the limited circumstances herein described. Therefore, the city council shall grant a rezoning application only if the proposed rezoning is consistent with the policies and goals of the Boulder Valley Comprehensive Plan, and for an application not incidental to a general revision of the zoning map, meets one of the six criteria from Section 9-2-18(e), B.R.C. 1981 of the code. The rezoning request meets two of the six criteria stated below:

- ✓ The applicant demonstrates by clear and convincing evidence that the proposed rezoning is necessary to come into compliance with the Boulder Valley Comprehensive Plan Map.
- ✓ The land or surrounding environs has changed or is changing to such a degree that it is in the public interest to encourage a redevelopment of the area or to recognize the changed character of the area.

Applicant Response:

5400 Spine Road is located on the northeast corner of Lookout Road and Spine Road in the heart of Gunbarrel's emerging Retail Core District. The immediate area is rapidly changing with the recently completed Hampton Inn hotel, over 500 new multifamily apartments (under construction), the Gunbarel Center development, and the new Avery Brewery facility to the south of the Retail Core.

Compliance with Planning:

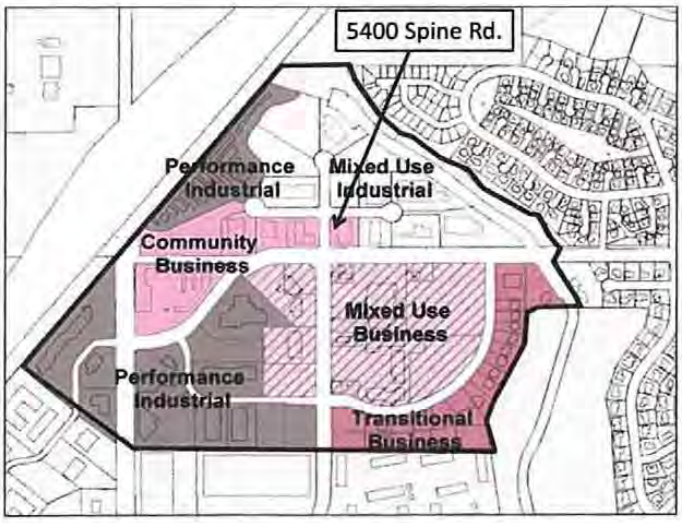
Boulder Valley Comprehensive Plan - The rezoning request is consistent with the Boulder Valley Comprehensive Plan that shows the property as Community Business. Community Business is described in the Plan as the focal point for commercial activity serving a subcommunity or a collection of neighborhoods. These are designated to serve the daily convenience shopping and service needs of the local populations and are generally less than 150,000 to 200,000 square feet in area. Offices within the Community Business areas should be offices designated specifically for residents of the subcommunity. Where feasible, multiple uses will be encouraged within these centers.

The Boulder Valley Comprehensive Plan states the following regarding the Gunbarrel Community Plan that is also consistent with the rezoning request:

The Gunbarrel Community Center Plan, adopted in 2004 and amended in 2006, provides a blueprint for transitioning the Gunbarrel commercial area from mostly light industrial uses to a viable and vibrant, pedestrian-oriented commercial center serving Gunbarrel subcommunity residents and workers. This will involve: expanding the amount of retail and allowing more density in the retail area; adding new residential and some offices uses in proximity to the retail core; and providing more vehicular, pedestrian and bicycle connections to and from and within the center. The new connections will improve access, break down the existing "superblocks," provide better visibility to shops, and promote more pedestrian-scale architecture and outdoor spaces. Spine Road between Lookout and Gunpark roads will become the 'Main Street' for the retail area. Implementation of the Plan Implementation of the Gunbarrel Community Center Plan will occur over a long period of time through a combination of actions from both the public and private sectors. Business associations, such as the Gunbarrel Business Alliance, and neighborhood groups will play an important role in promoting collaboration to successfully implement the plan. Land use changes were made in the 2005 Boulder Valley Comprehensive Plan update to reflect the plan vision.

Gunbarrel Community Center Plan- The rezoning request is consistent with the Gunbarrel Community Center Plan that shows the property as Community Retail in the Retail Core District. Community Retail is described in the plan primarily intended as a retail center serving residents within the subcommunity and the outlying areas. The uses in this area will be easily accessible by automobile and cater to the convenient shopping of household goods.

The following Map from the Gunbarrel Community Center Plan shows the desired future land uses per the plan and location of the 5400 Spine Road property.



Overview of the Proposed Zoning and Redevelopment Plan:

The property is located on the northeast corner of Lookout Road and Spine Road and consists of an approximate 14,000 square foot light industrial/flex building on less than 1 acre of land. The property is currently zoned I-G and has most recently been occupied by a window manufacturing company that vacated the space in December 2013. The space has been vacant since that time. The applicant is seeking a rezoning of the property to allow for an "adaptive re-use" of the existing structure and site.

The intent of the applicant is to remodel the exterior of the existing building and redesign the site with a plan that is intended to attract neighborhood retail and service tenants such as a specialty retail, restaurant, sandwich shop, quick serve, bakery, deli, coffee shop, and/or general services tenants that will serve the surrounding residents, business and visitors.

The footprint of the existing building will be reduced from 14,000 square feet to 10,000 square feet and the site will be redesigned and landscaped to meet the requirements of the BC-2 zoning. In addition, the new site plan allows for a large outdoor plaza and seating area with attractive landscaping that will help to activate the corner and create a sense of place at the intersection of Lookout & Spine Roads. The overall streetscape design has been designed to support an inviting pedestrian experience with ample landscaping, walkways, seating areas, bike racks, planters, etc. The public right-of-way along Spine Road and Odell Place will provide on-street parking in order to afford direct access and visibility to the retail uses and create a separation between pedestrians and moving cars.

The existing façade of the building will be improved significantly to create a more attractive elevation with updated materials such as masonry, steel, new storefront windows and doors, awnings, glass roll-up doors at the ground level, new exterior building lighting and outdoor gathering and seating areas.

Community Benefits:

In addition to being consistent with local and regional planning, there are numerous Community Benefits associated with the rezoning of the property and adaptive re-use of the existing structure. The benefits are as follows:

- ✓ The rezoning will allow for new restaurants, specialty retail and services that will serve the Gunbarrel community in general.
- ✓ The new restaurants, specialty retail and services will help to reduce car trips and traffic.
- ✓ The current building is outdated and not very attractive and the redesign of the façade and site will help to improve the area and create a sense of place for the corner of Lookout & Spine Road.
- ✓ There are over 500 new apartments under construction within 2 blocks of the property and over half of these units are located on the north side of Lookout Road. 5400 Spine Road will directly serve these residents with services in a walkable, pedestrian friendly environment.

- ✓ The new outdoor plaza area on the corner of Spine Road & Lookout Road will create a visible and attractive gathering place for local residents, employees and visitors.
- ✓ The adaptive re-use of the existing building and recycling of materials is good for the environment and reduces contributions to the landfill.

For more information or additional questions please contact:

Applicant:
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CITY OF BOULDER
CITY COUNCIL AGENDA ITEM

MEETING DATE: December 2, 2014

AGENDA TITLE
Consideration of the following items related to Open Space Property:

1. Consideration of a motion to approve the disposal of 11 noncontiguous, paved parcels of Open Space land to the City of Boulder Transportation Department for the purpose of permitting the use of electric bicycles as a means of alternate transportation. This is a disposal of Open Space land pursuant to Section 177 of the Boulder City Charter.
2. Discussion of the process for identifying Open Space uses and disposal of Open Space lands.

PRESENTER/S
Jane S. Brautigam, City Manager
Michael D. Patton, Director, Open Space and Mountain Parks
Thomas A. Carr, City Attorney

EXECUTIVE SUMMARY
The purpose of this agenda item is to consider approval of a disposal of Open Space associated with the permanent adoption of an ordinance permitting electric bicycles on a variety of multi-use paths in the community. Associated with this item is a discussion item related to the process associated with the use and disposal of Open Space properties for future consideration.

On Nov. 11, 2013, the City Council authorized a pilot electric bicycle (E-bikes) program for use on most non-Open Space paved paths throughout the city**.** In support of the E-bike pilot program, the Open Space Board of Trustees (OSBT) and staff discussed the prospect for disposing of a number of paved paths on Open Space lands according to Section 177 of the City Charter for use in the pilot program.

An issue that came up during that process is the lack of clarity in city Charter Section 177. The Charter lacks specificity with respect to how to address transfers of land from Open Space. OSBT and the Open Space and Mountain Parks (OSMP) Department have

always assumed that such transfers would be treated as disposals. The City Attorney's Office, however, has noted that the language is not clear; pointing out that the Charter language might be interpreted to apply only to conveyances of land to third parties. The action before the council is a transfer of management responsibility to another department. Staff is recommending that the transfer of use and management responsibility be treated in a manner similar to a disposal of Open Space.

The prospect for disposing of or transferring Open Space land for the pilot program was considered by City Council at its November 2013 meeting but without a decision on the applicability of Section 177. The pilot program proceeded without use of Open Space land.

Following a year of evaluation, the pilot program has been determined a success. During its Nov. 18, 2014 meeting, City Council unanimously approved removing the pilot designation and authorized the use of E-bikes on certain Public Works Department's multi-use paths.

The eleven parcels proposed for disposal are all directly a part of either Greenways multi-use paths or designated bike ways. OSMP staff believes that there are mutual advantages to the disposal of the parcels identified in Attachment A. The Public Works Department will be able to expand the E-bike program, improve connectivity and support the use of E-bikes as an alternative means of transportation. For OSMP, disposal of those portions of properties that have trails which serve transportation purposes will support an important shared community value - alternate transportation - and relieve the department of the responsibility for management of these parcels. Advantages to the OSMP Department support a proposed disposal at no cost to Public Works.

STAFF RECOMMENDATION

Suggested Motion Language:
Staff requests council consideration of this matter and action in the form of the following motion:

Motion to approve the disposal of 11 noncontiguous, paved parcels of Open Space land to the City of Boulder Department of Public Works Department for the purpose of permitting the use of electric bicycles as a means of alternate transportation. This is a disposal of Open Space land pursuant to Section 177 of the Boulder City Charter.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Environmental: OSMP is a significant community-supported program that is recognized worldwide as a leader in preservation of Open Space lands contributing to the environmental sustainability goal of the City Council. The disposal of these noncontiguous, paved parcels has no environmental value and would have no impact on the environmental value, overall, of the OSMP system. This disposal will also create opportunities for the use of E-bikes, which are a transportation option that has the potential to reduce greenhouse gas emissions.

- Economic: OSMP contributes to the economic vitality goal of the city as it provides the context for the diverse and vibrant economic system that sustains services for residents. The land system and the quality of life it represents attract visitors and help businesses to recruit and retain quality employees. The disposal of these parcels would relieve OSMP of any management responsibilities.
- Social: Because the Open Space land system is equally accessible to all members of the community, it helps support council's community sustainability goal because all residents "who live in Boulder can feel a part of and thrive in" this aspect of their community. The addition of these parcels to the City of Boulder transportation system would increase the potential for use of E-bikes as an alternative mode of transportation.

OTHER IMPACTS

- Fiscal – This transfer will have a modest economic benefit to the OSMP Department in that Open Space staff will no longer be required to manage these parcels.
- Staff time – Sufficient funding for staff time is available to process this disposal.

BOARD AND COMMISSION FEEDBACK

At its Oct. 23, 2014 meeting, the OSBT approved, unanimously, to send the following statement to City Council: the Board maintains that conveying or otherwise transferring management responsibilities for any parcel of Open Space land including those containing paved, multi-use paths to any other department of the city constitutes a disposal of Open Space Land, which is subject to all applicable City Charter provisions including without limitations Section 177.

The Board also recommended that the City Council approve the disposal of the 11 identified parcels. The vote was split three to two in favor of the disposal. The dissenting Board members voiced concerns about disposing so many parcels at the same time and the fact that some of the parcels were not particularly small.

PUBLIC FEEDBACK

This item was heard as part of the Oct. 23, 2014 OSBT public meeting advertised in the *Daily Camera* on Oct. 19, 2014. A Notice of Disposal of Open Space Lands was published in the *Daily Camera* on Oct. 12 and 13, 2014 pursuant to Section 177 of the City Charter. Public comment at the meeting was in support of the disposal with some remarks stressing the need to follow the provisions of Section 177 of the Charter by treating this as a disposal of OSMP land rather than a transfer. Anything else was viewed as setting a dangerous precedent.

ANALYSIS

A. Open Space Disposal

Staff and OSBT discussed the prospect for disposal of the parcels identified in Attachment A, according to Section 177 of the city Charter, last year when the E-bike program was first under discussion. The language of Charter Section 177 might be

interpreted to apply only to conveyances of land to third parties. The change of use and transfer of management responsibilities to another department would not be a disposal under the Charter in this interpretation. During the Nov. 11, 2013 City Council meeting, this opinion was discussed but the applicability of Section 177 was not finalized. Council authorized the E-bike pilot program but excluded the use of any Open Space land. The transfer of management authority of Open Space land authorized by the proposed resolution is not clearly defined in any provision of the Charter. The OSBT treated it as a "disposal" under Charter Section 177 and recommended it as such. Staff also recommends that council approve the proposed disposition.

After a year of experience, the pilot program has been determined a success and on Nov. 18, 2014 City Council considered and authorized the use of E-bikes on certain Transportation and Greenways multi-use paths.

No formal council action has been taken to address the disposal of Open Space land as defined by the City Charter to another city department. Staff is in support of disposing of the Open Space parcels as described in Attachment A according to Section 177 of the City Charter to enhance the E-bike program. Because there is at least ambiguity under the Charter about whether Section 177 applies to transfers between departments, staff and the OSBT recommend treating this transfer as a disposal. This will insulate the city from any claim that the disposal procedures had not been followed to effectuate the change.

All of the small parcels identified in Attachment A are paved segments and for the most part connected to other existing portions of paved transportation corridors. Emblematic of these parcels is the 1,700-foot long section of paved sidewalk in front of the NIST building along Broadway between Dartmouth Avenue and Lawrence Road. This sidewalk serves as a means of connecting the Table Mesa shopping area and portions of south Boulder with neighborhoods to the north and along Broadway. This and the other parcels proposed for disposal have limited environmental value. Paved paths are inconsistent with virtually all other features of OSMP properties and are not typically included in environmental or visitor use planning.

A question was raised at the Council Agenda Committee meeting about the Bobolink Trail. The Bobolink Trail is not recommended for disposal. Part of the Bobolink Trail, although paved and used frequently by bicyclists, is part of a significant riparian ecosystem along South Boulder Creek. It differs significantly from the remaining 11 parcels and staff believes should remain as part of the Open Space system.

The development of alternative modes of transportation is an important and shared community value. The potential for increased use of nonpolluting modes of transportation could reduce carbon impacts on critical OSMP lands and habitats. The disposal of these parcels will provide better contiguity and a wider range of opportunity for the use of E-bikes as a viable alternative mode of transportation.

Disposal to the Public Works Department (Transportation Division) would be for no cost. Staff believes there is a value to OSMP in the development of nonpolluting alternative

modes of transportation and that OSMP will be relieved of any management responsibilities for these widely dispersed, short segments of paved path.

Staff recommends council, using the disposal procedures as recommended by the OSBT, to transfer the 11 small parcels of land at issue to the Transportation Division, Public Works Department.

B. Discussion of the process for identifying Open Space uses and disposal of Open Space lands

Staff believes that the process could be improved by adopting an ordinance to provide more specificity. The Open Space Department has disposed of Open Space land to a variety of recipients using the "disposal of Open Space" land provisions in the Charter since 1986. While disposals of Open Space are relatively rare, there have been occasions during the past 28 years when Open Space lands were conveyed through the disposal process to third parties such as Boulder County for transportation and parks and open space uses, Xcel Energy and the Colorado Department of Transportation. Many of these disposals were for easements rather than outright sales. The only instance of disposal of Open Space property to another city department occurred in 2004 when about two acres of the Hart-Jones Open Space property were conveyed to the Public Works Department for the expansion of the city's Water Treatment Plant at 63rd Street and the Diagonal through the disposal process outlined in the Charter – approval of the disposal by the OSBT and Council.

When the City Attorney's Office staff analyzed the issues associated with the transfer of the management responsibility of some multi-use paths from the OSMP Department to the Public Works Department, two issues emerged that would benefit from some additional clarity from the council:

1. Use of Property Managed as Open Space. OSBT decided, before the original pilot program began, that riding electric bicycles is not an Open Space use under the Charter. It is not clear that, in the absence of a Charter provision or delegation from the council, OSBT has the authority to make such a decision.

2. Disposal Process. The disposal process in the Charter is not clearly applicable to a transfer of management authority from one city department to another, because such a transfer is not a "conveyance," which is the word used in the Charter for the disposal requirement. This presents a quandary because the charter clearly contemplates limitations on both use of Open Space and disposal. It would neither be appropriate to transfer Open Space land to another department for a non-Open Space use nor to allow another department to dispose of such land without going through the Charter-required disposal process. It would be best if there was clear policy direction from council addressing these issues.

Accordingly, staff recommends that council consider developing an ordinance that sets forth clear processes for:
1. deciding appropriate uses of Open Space land; and
2. transferring management authority of Open Space land from one department to another.

While there is no controversy surrounding the present transfer, it highlights the need for additional clarity around these issues.

Background
Staff recommends that council consider the disposition of property related to the use of electric bicycles on a variety of city multi-use paths. Some multi-use paths have been constructed over property that has been purchased, or otherwise maintained, with funds from the Open Space sales taxes that have been collected over the years.

OSBT has passed a motion expressing its opinion that a disposition is necessary to transfer management to another department. While this is a fair interpretation of the intent of the Charter, it does not conform neatly to the actual language of the Charter.

1. Use of Open Space Land
This issue arises because the Charter restricts the use of Open Space land to Open Space uses. Section 176, provides the following restrictions and standards related to the acquisition, maintenance, preservation, retention, and use:

> Open space land shall be acquired, maintained, preserved, retained, and used only for the following purposes:
>
> (a) Preservation or restoration of natural areas characterized by or including terrain, geologic formations, flora, or fauna that are unusual, spectacular, historically important, scientifically valuable, or unique, or that represent outstanding or rare examples of native species;
>
> (b) Preservation of water resources in their natural or traditional state, scenic areas or vistas, wildlife habitats, or fragile ecosystems;
>
> (c) Preservation of land for passive recreational use, such as hiking, photography or nature studies, and, if specifically designated, bicycling, horseback riding, or fishing;
>
> (d) Preservation of agricultural uses and land suitable for agricultural production;
>
> (e) Utilization of land for shaping the development of the city, limiting urban sprawl, and disciplining growth;

(f) Utilization of non-urban land for spatial definition of urban areas;

(g) Utilization of land to prevent encroachment on floodplains; and

(h) Preservation of land for its aesthetic or passive recreational value and its contribution to the quality of life of the community.

Open space land may not be improved after acquisition unless such improvements are necessary to protect or maintain the land or to provide for passive recreational, open agricultural, or wildlife habitat use of the land.

One of the conclusions that OSBT reached with respect to the E-bike ordinance is that an E-bike is not a "passive recreational use, such as . . . bicycling . . ." The Charter does not set forth who decides what is Open Space land or who decides what is an appropriate Open Space use. Neither the Charter nor the Code delegates that authority to OSBT. In the absence of an express provision, Charter Section 2(h) provides that all non-delegated functions reside with the council.

Boards and commissions only have that authority which is specifically delegated by charter or ordinance. For example, as part of the OSMP merger process, the council added the following to the Boulder Revised Code: "The board . . . [s]hall make recommendations to the city council concerning any land that is to be placed under the direction, supervision, or control of the department . . ." Section 2-3-9(b)(3), B.R.C. 1981. This code change is an example of the council further refining and defining the role and responsibilities of the OSBT. If council would like to delegate this function, it would be easy to draft an ordinance giving responsibility to OSBT to either make such interpretations or make a recommendation to council on such interpretations.

OSBT decided that riding electric bikes was not an appropriate Open Space use. OSBT then decided that a disposal would be necessary for the use to be allowed. OSBT's authority to decide what constitutes an Open Space use is not a power that has been expressly delegated by either the Charter or council. OSBT has assumed that role, as a matter of practice. This is an area where ultimate authority to decide what constitutes an Open Space use is the responsibility of council. If council is satisfied with this division of authority, to avoid future confusion on the matter, it should consider making a specific delegation of this authority to OSBT. Council also could consider whether to retain for itself some authority to review these decisions.

2. Management of Open Space Land

Another issue that is addressed in the Charter is the management of Open Space land. Charter Section 171 provides that it is the responsibility of the Open Space Department to "acquire, supervise, administer, preserve, and maintain all open space land . . . ." The department handles the day-to-day responsibilities. The department also serves OSBT by providing recommendations to it on the matters required by the Charter.

In turn, the Charter provides that OSBT is required to "make recommendations to the council . . . concerning use policies on, planned uses of, and restrictions on uses of, open space land." Charter Section 175(c). In the case of the E-bikes ordinance, the issue could be resolved simply by a recommendation to council that E-bikes, in the locations proposed, are equivalent to "bicycles" in the permitted passive recreational uses anticipated in the Charter, and that council permit their use on the Open Space properties as proposed in the E-bike ordinance. That conclusion is consistent with the decision to allow E-bikes on bike paths generally. Council then would not need to address the issue of disposal.

3. Disposal of Open Space

The way that staff and OSBT have chosen to deal with the E-bikes ordinance is to use the disposal procedures for Open Space in the City Charter. Charter Section 177, which addresses disposals, provides as follows:

> No open space land owned by the city may be sold, leased, traded, or otherwise conveyed, nor may any exclusive license or permit on such open space land be given, until approval of such disposal by the city council. Such approval may be given only after approval of such disposal by the affirmative vote of at least three members of the open space board of trustees after a public hearing held with notice published at least ten days in advance in a newspaper of general circulation in the city, giving the location of the land in question and the intended disposal thereof. No open space land owned by the city shall be disposed of until sixty days following the date of city council approval of such disposal. If, within such sixty-day period, a petition meeting the requirements of Section 45 above and signed by registered electors of the city to the number of at least five percent of the registered electors of the city as of the day the petition is filed with the city clerk, requesting that such disposal be submitted to a vote of the electors, such disposal shall not become effective until the steps indicated in Sections 46 and 47 above have been followed.
>
> This section shall not apply to agricultural leases for crop or grazing purposes for a term of five years or less.
>
> This section is to be construed liberally in favor of providing opportunities for the citizens of the city to refer measures proposing the disposal of any open space land.

Under this provision, a disposal occurs when Open Space land is "sold, leased, traded or otherwise conveyed." These terms all seem to refer to transfer of an interest in real property and would not appear to contemplate transfer of management authority from one city department to another. Land management issues, under Charter Section 175(c), require a recommendation of OSBT prior to final action by the council, manager, or department, but do not give OSBT the same veto power as it has over disposals.

4. The Open Space Property Conundrum

There is a restriction on the use of land issue that is not addressed well in the City Charter. On the one hand, the management shift anticipated by the E-bikes ordinance is not a "conveyance," as it does not meet the plain meaning definition of the term. On the other hand, the city has restrictions on the use of Open Space land that would not ever be permitted without some process to remove the Open Space use restrictions. The Charter clearly anticipates that it can be transferred to a private use, but does not address transfer for another city purpose. In part, Open Space land is defined as any interest in real property:

- purchased or leased with dedicated Open Space revenues,
- dedicated to the city for Open Space purposes, and
- placed under the direction, supervision, or control of the Open Space department,

The definition goes on to state that it is Open Space land unless disposed of as expressly provided in Charter Section 177. The catch 22 in this analysis is that it appears that Open Space land cannot, even if transferred to another department, be used for a non-Open Space purpose, unless there is a disposal. A disposal requires a conveyance, which implies a transfer to a third-party. It can, however, be "disposed" to a third party for any use whatsoever. Use of the disposal process for a transfer solves this problem, but extends the process into an area where it does not fit neatly under the Charter.

It is not unusual to find gaps in the Charter. As an organic document it is not intended to anticipate every possible circumstance. The council regularly adopts ordinances to create processes to implement the intent of the Charter. This would appear to be an area where such clarification might be helpful.

5. Conclusion and Recommendation

Going forward, council should consider whether it would like to continue the current practice of having OSBT interpret uses of Open Spaces and then requiring the completion of a disposal process. Another approach would be to have OSBT make such recommendations to the council. Regardless of which approach the council prefers, it would be helpful to those charged with administering program to document the result in the Boulder Revised Code.

Finally, the council should consider whether it would be appropriate to draft an ordinance establishing some process for deciding what constitutes an Open Space use and who decides when a disposition is necessary. It would be helpful to delineate OSBT's role, while either establishing the council's authority to make the final decision or expressly delegating that responsibility to the OSBT.

ATTACHMENTS:

A. Paved Paths on OSMP Land (map)

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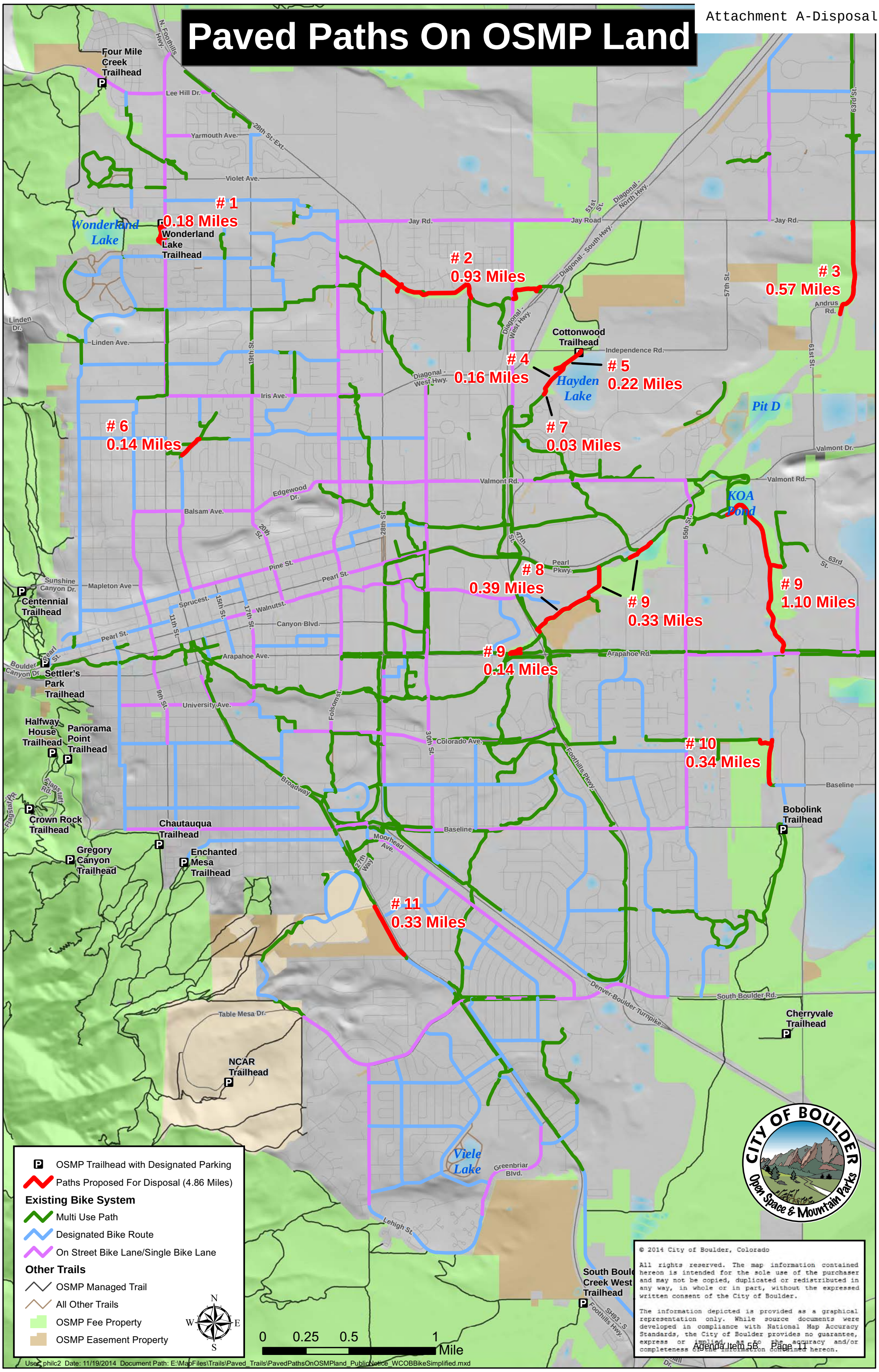
Paved Paths On OSMP Land



CITY OF BOULDER
CITY COUNCIL AGENDA ITEM

MEETING DATE: December 2, 2014

AGENDA TITLE:
Request for Council Direction Regarding EcoPasses

PRESENTERS
Jane S. Brautigam, City Manager
Thomas A. Carr, City Attorney
Bob Eichem, Chief Financial Officer
Maureen Rait, Executive Director, Public Works
Tracey Winfree, Director, Public Works, Transportation Division
Carl Castillo, Policy Advisor
Chris Hagelin, Senior Transportation Planner
Ted Lopez, Payroll Supervisor

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – Transit ridership tends to promote economic activity. Single occupancy vehicle drivers generally drive from home to a parking lot. Transit riders usually walk some distance to cover the last mile between a transit stop and their destination. This provides the opportunity for economic activity not available to drivers.
- Environmental – Single occupancy vehicles are one of the primary causes of greenhouse gases. Transit users have significantly lower carbon impact per trip than drivers. The availability of a transit pass encourages employees to choose transit over driving.
- Social – Single occupancy vehicles impose a significant societal cost in the need for road maintenance, parking and road capacity. Transit ridership provides savings in all of these areas.

OTHER IMPACTS

- Fiscal – Covering the tax liability for 2014 will have a budgetary impact of over $300,000

- Staff time – Work required to address the tax liability is not in the 2014 work plan. The city will make the adjustments with existing staff.

EXECUTIVE SUMMARY

The city purchases and distributes Regional Transportation District EcoPasses to all city employees. The city pays on the average $104 per year for each pass.[1] Last year, the city purchased 1,325 EcoPasses. The Internal Revenue Service has rules regarding the tax treatment of transit passes. Transit passes are a taxable benefit. Each year the IRS adopts an exclusion amount to limit the taxable value of the transit pass. Only the value above the exclusion amount is taxable. The following table shows the monthly exclusion amounts for the last two years:

Year	Exclusion Amount
2013	$245
2014	$130

The value of the pass is the fair market value of the benefit. That is, the amount the employee would have to pay to get an equivalent benefit. Staff has no definitive basis to establish the fair market value of an EcoPass. RTD has established a group purchase pricing matrix for its EcoPass product. Similar pricing structures are available for other EcoPass corporate participants, but are limited to those corporate participants and are not available to the general public. If a non-EcoPass participant were to purchase an RTD pass with a similar level of service, that RTD regional pass costs $1,936.00 per year ($161.33 per month) without any other discounts.

Although both the City and RTD believe that the appropriate fair market value for tax purposes should be established by the similar group-discounted EcoPass products rather the public's regional pass, the possibility exists that the IRS may determine the fair market value to be the public price of the EcoPass rather than the EcoPass group pricing rate. In that event, city employees may have a taxable benefit of $31.33 per month, which is the fair market value of $161.33 less the 2014 IRS transit exclusion amount of $130. We believe this reading to be the worst-case scenario, but without confirmation from the IRS the possibility exists.

In September, city staff requested a private letter ruling from the IRS to determine the fair market value of the pass. The worst case scenario is that the EcoPass is considered to be the equivalent of a monthly regional pass, which costs $1,936 if purchased at one time for the entire year, which equates to $161 per month. This would create an employee tax liability of $31 per month. ($161 minus the $130 exclusion amount)

When the city entered into the 2014 EcoPass contract with RTD, no one anticipated that the EcoPass would be considered a taxable benefit. In fact, until recently, the RTD website advertised EcoPasses as tax exempt.

[1] The contract provides two different prices for the passes. Zone A passes are $54 per year and zone B passes are $135 per year. The total price represents 511 zone A employees and 814 zone B employees. The zones are based on the employee's work location.

There are three reasons for staff to bring this agenda item forward. First, staff seeks to inform council that, if necessary, the city will be paying the tax liability for all city employees incurred due to the 2014 EcoPass. Second, staff seeks council direction about whether to enter into a 2015 EcoPass contract with RTD. Finally, staff seeks to inform council of the steps taken to attempt to avoid tax liability for EcoPasses.

This matter is coming forward at this time because of some approaching deadlines. To cover employee tax liability, any payment must be made during the 2014 tax year. This means that it must be included in the last 2014 paycheck. To have that payroll ready in time, the process must begin no later than December 7, 2014. In addition, the city must decide whether to enter into the 2015 EcoPass agreement by the end of 2014.

BACKGROUND

In early 2014, upon learning that the city's recreation passes were considered a taxable benefit, the Mayor asked whether EcoPasses also were taxable. City staff researched the issue and discovered that the IRS had lowered the transit pass exemption amount.

This issue arises because of the nature of the EcoPass. RTD requires that an entity purchasing an EcoPass must do so for all employees. There is a realization that usage of the EcoPass will vary widely depending on the individual employee's transit needs. Some employees commute daily by bus and others use the pass only a few times each year. As a policy matter, however, it is clear that an employee who has a pass is more likely to use transit than an employee who does not have a pass. RTD's pricing structure presumably recognizes that the services delivered are far less than those provided to a regional pass holder. It is difficult to imagine that anyone would pay nearly $2000 for twelve monthly regional passes and only ride the bus a few times in the year. Accordingly, the price that the city pays for EcoPasses is only 5% of the price of the annual regional pass. This leads to the incongruous fact that the tax on the benefit would be more than the price that the city paid.

To avoid tax liability to employees related to the EcoPass, the city would not only pay the amount of the tax, but also the amount of the tax on the tax payment itself. For example, if the tax is $10 and the employee is in the 20% tax bracket, there would be $2 of tax incurred if the city paid the employee $10 to cover the tax liability. The city would pay $12 to cover the $10, plus the additional $2. Of course, the additional payment would also need to be covered. Because money only exists in whole numbers, the payment can be set at a number where the additional tax liability becomes only a fraction and is eliminated by permissible rounding. This process is called "grossing up." Of course, this example is simplified and does not take into account additional liability for such things as Medicare taxes. To eliminate any additional employee tax liability of $31 per month the cost to the city would be over $300,000. Unless council objects, if the issue is not resolved in one of the ways discussed below, staff will include these payments in the employees' last paycheck for 2014.

It also is time for the city manager to enter into a 2015 contract with RTD. Staff has identified three options, which are as follows:

1) eliminate the EcoPass Program;
2) continue the EcoPass Program but require employees to pay any tax liability; or
3) continue the EcoPass Program and have the city pay any employee tax liability.

The EcoPass program is an important part of the city's efforts to reduce travel by single occupancy vehicles and the attendant greenhouse gases. Elimination of the employee EcoPass program would likely result in a significant decrease in transit ridership by employees. Continuing the EcoPass program, but requiring employees to pay any tax liability would most likely have a similar outcome. For most employees, the tax liability would far exceed any fare avoided. An employee is only liable for tax on a benefit that he or she actually receives. Thus, although the city would still be required to purchase a pass for each employee, an employee could refuse to accept the pass. If the city does not offer to pay any tax liability, then it is fair to expect that any employee who does not commute by bus on a regular basis would refuse the EcoPass. This would undermine the very reason for having the program. Staff therefore recommends that the city manager enter into a 2015 EcoPass contract and agree to cover any employee tax liability.

The challenge presented by this recommendation is that there is no way of knowing what the tax liability would be, because the IRS has not yet set the exclusion amount for 2015. This will present budgeting challenges for 2015 and beyond.

Potential to Avoid Tax Liability

Staff retained an outside tax accountant to provide advice on the issue. The accountant contacted the IRS regional director to inquire about a possible IRS valuation more in line with the actual EcoPass value. The regional director could not provide such an informal interpretation. The only alternative was to seek a private letter ruling from the IRS. Accordingly, the city filed a request for a formal letter ruling on September 9, 2014. The city paid a $19,000 user fee for the request. The city asked for a response before December 2, 2014. The city has not yet received a response.

City staff also has contacted the city's federal lobbyists. For most of 2014, there have been bills active in Congress that would retroactively increase the transit pass exemption. Currently, there is an omnibus tax exemption extender bill, which includes a wide range of tax exemptions that expired at the end of 2013 or are set to expire by the end of this year. Although generally such bills pass, considering the current political climate it is impossible to predict whether this bill will pass. Congress is scheduled to reconvene on December 1 and adjourn on December 11. The plan is for Congress to consider the bill during this period. There is a bipartisan coalition in Congress supporting the bill. The President, however, on November 24, 2014, threatened to veto the bill.

Finally, staff has contacted RTD to attempt to obtain a more realistic value for the EcoPass. RTD staff have been very helpful. They are willing to assist us to find a mechanism to address these issues. It is not clear, however, what effect, if any; this will have on the taxability of the passes.

It is still possible that one of these paths will eliminate the employee tax liability. Unfortunately, time is running out. Staff is committed to waiting until the last possible minute before committing to the tax payment, because, if something happens to eliminate the tax liability, it is unlikely that the city will be able to recover this money.

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CITY OF BOULDER
CITY COUNCIL AGENDA ITEM

MEETING DATE: DECEMBER 2, 2014

AGENDA TITLE: Consideration of a motion to amend the Council Rules of Procedure to add a new Section XVII Executive Sessions.

PRESENTERS
Tom Carr, City Attorney
Kathy Haddock, Senior Assistant City Attorney

EXECUTIVE SUMMARY

At the November 4, 2014 election, the voters amended the Boulder Home Rule Charter to permit executive sessions for the limited purpose of "obtaining and discussing legal advice, including negotiation strategy, with respect to Boulder's electric utility." Staff recommends that council consider amending council's procedural rules for the purpose of conducting executive sessions. A proposed amendment is set forth in **Attachment A**.

STAFF RECOMMENDATION

Suggested Motion Language:
Staff requests council consideration of this matter and action in the form of the following motion:

Motion to approve amendments to Council Rules of Procedure, as set forth in **Attachment A**.

BACKGROUND

Since the adoption of the Boulder Home Rule Charter, all meetings of the city council have been held in public. The Colorado Open Meetings Act allows for some meetings to be held in executive session. The city has never taken advantage of this provision. The recently enacted amendment to Charter § 9 allows for executive session under very limited circumstances. The Charter now provides as follows:

All meetings of the council or committees thereof shall be public. However, the council may meet in executive session exclusively for the purpose of obtaining and discussing legal advice, including negotiation strategy, with respect to Boulder's electric utility.

All executive sessions shall be conducted according to state law. The following additional special procedural rules shall apply to every executive session:

(a) No final action may be taken in an executive session.

(b) An executive session shall be initiated only by a 2/3 vote of those council members present at a council meeting.

(c) All executive sessions shall be recorded in their entirety.

(d) Any recording of an executive session shall be released to the public only upon a unanimous vote of the city council or as otherwise provided by state law.

(e) Any executive session shall be part of a public meeting with the public being excluded only from that portion of the meeting strictly necessary for the purpose of obtaining and discussing legal advice, including negotiation strategy.

(f) Each council member shall have an affirmative duty to prevent any discussion of any subject other than those strictly necessary for the purpose of obtaining and discussing legal advice, including negotiation strategy. If during any executive session, any two council members express the opinion that the subject being discussed is not strictly necessary for the purpose of obtaining and discussing legal advice, including negotiation strategy, the discussion shall cease immediately. At such time, council shall either end the executive session or return to a discussion necessary for the purpose of obtaining and discussing legal advice, including negotiation strategy.

(g) This provision is adopted because of the unique and complex circumstances related to the potential creation of a municipal electrical utility. The adoption of this provision is not intended to establish a precedent for executive sessions for any other purpose.

The authority to hold executive sessions shall expire on December 31, 2017.

Accordingly, staff recommends that council amend the Council Rules of Procedure to establish practices for implementing the amended section 9. The proposed amended rule is Attachment A.

The rules track closely with the requirements of the Charter. There are a few additions that are worth noting.

Rule B provides that only the city manager and the city attorney are authorized to record an executive session. This precludes other staff or council members from making independent recordings.

Rule D limits who can attend an executive session.

Rule E requires that all persons must attend in person. No one may participate in an executive session remotely.

Rule J provides that only the city manager, the city attorney, their designees or city council members may access executive session recordings without a court order.

Rule K provides that the recording must be maintained until the conclusion of any litigation. If there is no pending litigation, the recording must be maintained for 90 days. The city council must be informed before any recording of an executive session is destroyed.

ATTACHMENT

Attachment A – Proposed Amendments adding Section XVII to the Council Rules of Procedure

Attachment A

XVII. Procedure for Executive Sessions

A. At a regular or special public meeting, prior to holding an executive session, the council may by 2/3 vote of the members present elect to go into executive session to obtain and discuss legal advice, including negotiation strategy, with respect to Boulder's electric utility. The motion may be for the executive session to be held immediately after the vote or at a specific time and place in the future.

B. Any executive session shall be recorded in its entirety. The recording for the executive session shall be separate from the recording of the meeting during which the executive session is being held. The City Manager or the City Attorney are the only persons authorized to make any audio or visual recording of an executive session.

C. The council shall take no final action during any executive session.

D. Only council members, attorneys and city staff or consultants necessary to provide information to council relating to legal advice, including negotiation strategy, with respect to Boulder's electric utility, shall attend an executive session.

E. All persons must attend any executive session in person. No one may participate remotely by conference call or other means.

F. During any executive session, the discussion shall be limited to obtaining and discussing legal advice, including negotiation strategy, with respect to Boulder's electric utility.

G. Any discussion during an executive session shall end immediately if any two council members express the opinion that the subject being discussed does not involve legal advice, including negotiation strategy, with respect to Boulder's electric utility.

H. The discussion shall not resume until all council members agree on the scope of the discussion.

I. Each council member has the affirmative duty to prevent any discussion during any executive session about any matter not necessary for the purpose of obtaining and discussion legal advice, including negotiation strategy, with respect to Boulder's electric utility, and to avoid and prevent any discussion of matters discussed during an executive session outside of an executive session.

J. Any recording of an executive session shall be maintained in a secure place within the city and may not be accessed by anyone, other than the City Manager or City Attorney, their authorized delegate or a Member of the City Council, except upon order of a court of competent jurisdiction.

K. Any recording of an executive session shall be maintained for 90 days, unless litigation relating to matters discussed is initiated or pending during that time in which case the recording shall be maintained until the conclusion of the litigation. The City Council shall be informed before any recording of an executive session is destroyed.

L. Council may, by unanimous vote, release all or part of a recording of an executive session.

M. The minutes of the regular or special meeting during which an executive session is held shall include the motion and vote for the executive session and the start and stop time of the executive session.

N. The city council intends that section 9 of the charter be interpreted and construed to be more restrictive than the provisions of the state Open Meetings Law, C.R.S. 24-6-401, *et seq.*

O. By adopting these procedures, the city does not waive the attorney-client privilege for any of the legal advice provided to the council. In the event the electronic recording is released by unanimous vote of the council or by court order, nothing related to the legal advice provided during the executive session may be used in any other proceeding.

P. No portion of the electronic recording of an executive session of a local public body shall be open for public inspection or subject to discovery in any administrative or judicial proceeding, except upon the unanimous consent of the council, or as provided in C.R.S. 24-72-204(2)(d.5)(II)(C).

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Council Working Agreements

Council Process:

- The council will work on general discipline in being prepared to ask questions and make comments.
- The council asks the mayor to intervene if discussion on agenda items extends beyond a reasonable time frame.
- The council will engage in the practice of colloquy to fully explore the different sides of a specific point.
- The mayor will ask the city clerk to set the timer lights for council members if discussions begin to exceed efficient debate. Members should respect the lights as a time reminder, but will not be bound by them as absolute limits.
- Rather than restating a point, council members should simply say "I agree."
- The council agenda committee may, with advance notice, adjust each public speaker's time to two rather than three minutes during public hearings for items on which many speakers want to address the council.
- Council members will grant each other permission to mentor and support each other on how each person contributes to the goal of being accountable for demonstrating community leadership.
- In order to hear each other respectfully and honor the public, council will avoid body language that could convey disrespect, side conversations, talking to staff, whispering to neighboring council members, passing notes, and leaving the council chambers.
- Regarding not revisiting past discussions, the council should check-in with fellow members periodically to ensure that this is not an issue.
- During a council meeting, any form of electronic messages, including emails and texts, that relate to matters being considered and which arrived at any time during that meeting shall not be read by council members, nor shall any messages on matters under consideration be sent by council members.

Council Communication:

- Council members agree to keep quasi-judicial roles scrupulously separate between members of boards and members of council, avoid expressing ideas to board members on things coming before the board, and carefully disclose or recuse themselves when there is involvement with board members on a topic.
- Council agrees to e-mail the city manager about issues that they run into that staff or boards may be working on so that the manager can be actively involved in managing issues and keeping the full council informed well in advance of items coming before council for action.
- Members will keep the full council informed on issues from committees, public groups or other agencies that they are following, through hot line e-mails, brief verbal reports at the end of council meetings or other means.
- The council will find ways to support majority council decisions and adequately inform the public, through responsive letters that explain how divergent points of view were heard and honored in decisions, via standard e-mail responses for hot issues, by occasional council Letters to the Editor to clarify the facts, or by seeking out reporters after meetings to explain controversial decisions.

Council Committees:

- Council committee meetings will be scheduled to accommodate the council members on the committee.
- Notice of the times and places for each committee meeting will be noticed once per month in the Daily Camera.
- The council agenda will include time for reports from committees under Matters from Members of Council, noting that written communications from the committees are appropriate as well.

Selection of Mayor and Mayor Pro Tem:

- Council members will make a good faith effort to the select the mayor and mayor pro tem in an open and transparent process.
- After the council election, members seeking election as mayor or mayor pro tem should:
    - make their interest in the positions known to their fellow members as soon as possible;
    - focus their communication with other council members on the positive attributes the member brings to the positions; and
    - refrain from any negative remarks about any person seeking election as mayor or mayor pro tem.
- Nominated individuals' presentations may include, but need not be limited to the following:
    - the skills and attributes the member would bring to the mayoral position;
    - the member's ability to efficiently run council meetings, respect the views of the minority while allowing the majority to rule, and perform other mayoral duties;
    - how the member would represent the city and city council and mayor position at gatherings outside of city council meetings
    - how the member would serve on and appoint other council members to regional and national boards and commissions; and
    - how the member would promote trust of the community and other council members.
- Council members should work to avoid divisiveness by being inclusive during the mayoral selection process.

Agreed: Members of the Boulder City Council

Approved by Council: January 21, 2014

2014 Study Session Calendar				Televised?
Date	**Status**	**Topic**	**Time**	**Televised**
12/09/14	Approved	Design Excellence with Victor Dover	6-9 PM	Yes
12/23/14	N/A	**Week of Christmas**	N/A	N/A
12/30/14	N/A	**Tuesday before New Year's**	N/A	N/A

2015 Study Session Calendar				Televised?
Date	**Status**	**Topic**	**Time**	**Televised**
1/13/2015	Approved	Briefing: Age Well Boulder County Update	5:30-6 PM	NO
1/13/2015	Approved	Council Pre-Retreat and Financial Update	7:30-9 PM	NO
1/27/2015	Tentative	Boulder's Energy Future	6-7:30PM	YES
1/27/2015	Approved	University Hill Issues and Updates	7:30-9 PM	NO
2/10/2015			6-9 PM	
2/24/2015		Briefing:		
2/24/2015	Approved	TMP Implementation Follow Up	6-7 PM	NO
2/24/2015	Approved	Envision East Arapahoe - Review Draft Vision Plan	7-8:30 PM	NO
3/6/2015	Approved	Board and Commission Interviews (Thursday)	6-9 PM	NO
3/10/2015	Approved	Board and Commission Interviews	6-9 PM	NO
3/12/2015	Approved	Board and Commission Interviews (Thursday)	6-9 PM	NO
3/24/2015	**University of Colorado Spring Break - No Meeting**			
3/31/2015	Approved	Sister City Dinner	5-7 PM	NO
3/31/2015	Approved	Civic Area Implementation	7-8:30 PM	NO
4/14/2015	Approved	Board and Commission Reception (moved from 3/31 due to Sister City Dinner)	5-6 PM	NO
4/14/2015	Approved	Fire Department Operations, Deployment, Light Rescue Vehicle Response and Master Plan update	6-7:30 PM	NO
4/14/2015			7:30-9 PM	
4/28/2015		Briefing:		
4/28/2015	Approved	Human Services Master Strategy SS #2	6-8 PM	NO
4/28/2015			8-9 PM	
5/12/2015	Approved	Boulder's Energy Future	6-9 PM	YES
5/26/2015		Briefing:		
5/26/2015			6-9 PM	
6/9/2015	Approved	Boulder's Energy Future	6-7:30 PM	
6/23/2015	**Council Recess June 17-July 12**			
6/30/2015	**Council Recess June 17-July 12**			
7/14/2015			6-9 PM	
7/28/2015		Briefing:		
7/28/2015			6-9 PM	
8/11/2015			6-9 PM	
8/25/2015		Briefing:		
8/25/2015			6-9 PM	
9/8/2015			6-9 PM	
9/22/2015		Briefing:		
9/22/2015			6-9 PM	
9/29/2015			6-9 PM	
10/13/2015			6-9 PM	
10/27/2015		Briefing:		
10/27/2015			6-9 PM	
11/10/2015	**Veteran's Day Holiday**			
11/24/2015	**Thanksgiving Holiday Week**			
12/8/2015			6-9 PM	
12/22/2015	**Christmas Holiday Week**			
12/29/2015	**New Years Holiday Week**			

December 16, 2014
Start Time: 5:30 PM Business Meeting
Location: Council Chambers, 1777 Broadway

Agenda Section	Item Name	Time
SPECIAL PRESENTATIONS:	Janet Driskell Turner Award	15 Minutes
	Declaration on Latino History Project	10 Minutes
OPEN COMMENT:		45 Minutes
CONSENT:	Study Session Summary for 11/12 Climate Commitment Update	15 Minutes
	Consideration of a resolution for the City of Boulder to adopt and enter into the trust agreement for the Colorado Firefighter Health and Circulatory Benefits Trust	
	2nd reading Valuation Land Use Code Changes (moved from public hearing)	
	2nd Reading - Title 4 - Pearl Street Mall Code Update - 2nd Reading (moved from public hearing)	
	Comcast Franchise Agreement and 120 Day Extension	
PUBLIC HEARINGS:		
	2nd Reading, Authorization of Eminent Domain to Acquire Property for the Construction of the Wonderland Creek Greenways Improvement Project	45 Minutes
	2nd R Marijuana Conversion date - Adopt by Emergency	90 minutes
MATTERS FROM CITY MANAGER:	Motion to Accept 2015 Human Services Fund Recommendations	30 Minutes
	BVCP 2015 Update	45 Minutes
MATTERS FROM CITY ATTORNEY:		
MATTERS FROM MAYOR AND MEMBERS:		
CALL-UPS:		
	Total Estimated Meeting Time (Hours)	4.55

January 6, 2015 - NO MEETING FIRST TUESDAY OF THE YEAR
Start Time: 6:00 PM Business Meeting (CANCELLED)
Location: Council Chambers, 1777 Broadway

January 20, 2015
Start Time: 6:00 PM Business Meeting
Location: Council Chambers, 1777 Broadway

Agenda Section	Item Name	Time	
SPECIAL PRESENTATIONS:	State of the City presentation	20	Minutes
OPEN COMMENT:		45	Minutes
CONSENT:		15	Minutes
	Consideration of a resolution allowing for continuation of the Rocky Flats Stewardship Council		
	2nd reading of a Correction Ordinance to the 2130 Tamarack Annexation		Minutes
PUBLIC HEARINGS:	2nd Reading Flood Related Annexations	90	Minutes
	2nd Reading Smoking Ban on Selected City Properties	60	Minutes
MATTERS FROM CITY MANAGER:			Minutes
MATTERS FROM CITY ATTORNEY:			Minutes
MATTERS FROM MAYOR AND MEMBERS:			Minutes
CALL-UPS:			Minutes
	Total Estimated Meeting Time (Hours)	3.83	

January 23 & 24
2015 City Council Retreat

February 3, 2015 Start Time: 6:00 PM Business Meeting Location: Council Chambers, 1777 Broadway			
Agenda Section	**Item Name**	**Time**	**Minutes**
SPECIAL PRESENTATIONS:			Minutes
OPEN COMMENT:		45	Minutes
CONSENT:		15	Minutes
			Minutes
			Minutes
			Minutes
			Minutes
PUBLIC HEARINGS:			Minutes
			Minutes
MATTERS FROM CITY MANAGER:			Minutes
MATTERS FROM CITY ATTORNEY:			Minutes
MATTERS FROM MAYOR AND MEMBERS:			Minutes
CALL-UPS:			Minutes
	Total Estimated Meeting Time (Hours)	1.00	

February 17, 2015 Start Time: 6:00 PM Business Meeting Location: Council Chambers, 1777 Broadway			
Agenda Section	**Item Name**	**Time**	
SPECIAL PRESENTATIONS:			Minutes
OPEN COMMENT:		45	Minutes
CONSENT:		15	Minutes
	1st reading and public hearing of an ordinance to change certain BMS zoning district standards and uses as part of the University Hill Moratorium project		Minutes
	Study Session Summary for 1/27 University Hill Issues and Updates		Minutes
			Minutes
PUBLIC HEARINGS:			Minutes
			Minutes
MATTERS FROM CITY MANAGER:	Consideration of a Motion to Revise the City of Boulder's 2015 State and Federal Legislative Agenda	30	Minutes
MATTERS FROM CITY ATTORNEY:			Minutes
MATTERS FROM MAYOR AND MEMBERS:			Minutes
CALL-UPS:			Minutes
	Total Estimated Meeting Time (Hours)	1.50	

	Project	Council or Staff?	2014				2015			
			1st Quarter	***2nd Quarter***	***3rd Quarter***	***4th Quarter***	***1st Quarter***	***2nd Quarter***	***3rd Quarter***	***4th Quarter***
HOUSING/LAND USE/PLANNING	Comprehensive Housing Strategy	Council	Briefing - with other related efforts, workplan	SS - objectives, recommended early action items	Briefing	Direction on policy options	Adopt strategy and action plan			
		Staff Activities	Housing choice analysis; needs assessment; best practices; trends data; workplan	Opportunity site inventory; potential tools with "bang for buck" analysis	Develop policy options and recommendations; stakeholder engagement					
	North Boulder	Council	IP - update and preliminary policy choices	Briefing - options and feedback	Update and direction					
		Staff Activities	Public meeting with options	Preferred options and refined action plan	Action plan					
	East Arapahoe/Sustainable Streets and Centers	Council		Briefing - issues, scope, and feedback	SS - preferred scenarios, draft plan, and action plan	Plan "Lite" - council action	Next Corridor - 30th St or Colorado			
		Staff Activities	Joint East Arapahoe workshop to "test" planning workshop	East Arapahoe scope of work, public workshop, scenario modeling, character definition	Scenario refinement ad recommendations	Develop East Arapahoe action plan				
	Resilience	Council		Briefing - scope agenda		SS - scoping session	SS	Direction or IP	Direction or IP	Direction or IP
		Staff Activities	Agenda setting workshop 4/28	Hire Asst. City Manager, begin strategy development	Scope strategy components	Scoping	Resilience work	Strategy analysis and development	Strategy analysis and development	Strategy analysis and development
	Boulder Valley Comprehensive Plan	Council				SS - scoping session	SS	Direction or IP	Direction or IP	Direction or IP
		Staff Activities				Scoping analysis and partner outreach	Issues identification	Strategy analysis and development	Strategy analysis and development	Strategy analysis and development
	Other	Council	Annexation Strategy - Direction (options and feedback)	Usable open space - Code Change	Economic Sustainability Strategy implementation - Code Change					
			Density/ROW Dedication Calculations - Code Change	Parking generation and reduction - Code Change						
			County Assessor valuations for landscape and lighting upgrades - Code Change	Renewable energy sources - Code Change						
		Staff Activities	Annexation Strategy - analyze costs and options	Planning Board for above code changes	Planning Board for above code changes					
			Planning Board for above code changes							

	Project	Council or Staff?	2014				2015			
			1st Quarter	***2nd Quarter***	***3rd Quarter***	***4th Quarter***	***1st Quarter***	***2nd Quarter***	***3rd Quarter***	***4th Quarter***
TRANSPORTATION	Transportation Master Plan	Council	IP (includes scope for AMPs)	SS (includes AMPS)	Acceptance - establish work program and coordination	Continue implementing pilots	Coordination with BVCP	Coordination with BVCP	Coordination with BVCP	Coordination with BVCP
		Staff Activities	Scenario and sensitivity analysis	Joint board workshop, TAB	Develop final update for board recommendation and council acceptance	Implement and coordination with BVCP and Resilience				
	Community EcoPass	Council	Feasibility Study - joint release with County	Rolls into TMP update						
		Staff Activities								
	Regional Transportation	Council	Briefing	Briefing		Briefing		Briefing		Briefing
		Staff Activities								
	Electric Vehicle Parking Ordinance/Energy Services	Council	Council agenda	SS			IP	IP	IP	IP
		Staff Activities								
	Access Management and Parking Strategies	Council	Scope	SS - Guiding principles, work program and process (includes TMP update)	Round 1 Code Changes - Auto and parking planning, zoning regs, EV charging stations	Update - Work plan and policy issues	Long Term Round 2 - Parking code changes and other policy issues	Council endorsement of ongoing work plan		
		Staff Activities	Finalize work program	Short term parking code regulation changes	Long term parking code changes	Long term parking code changes	Additional workplan items and public process tbd	Finalize document		
			TDM tool kit development for TMP integration	Long term parking code regulation changes	Additional workplan items tbd	Additional workplan items and public process tbd				
			Short term parking code ordinance changes	Public outreach and joint board meeting						
			Research/best practices	Additional workplan items tbd						
			Develop communications strategy							
ADD'L HOUS/PLAN/TRANS	Comp. Financial Strategy/Capital Bond	Council	Direction	SS	SS - finalize ballot?	Ballot?				
		Staff								
	Cap. Bond 1 Implement.	Staff		Construction			85% complete		100% Complete	
	Flood Recovery	Staff		Repairs and FEMA Reimbursement	FHWA/FEMA work	FHWA/FEMA work	Building Better Boulder		Building Better Boulder	
	Boulder Junction Phase 1 Implementation	Staff			South side of Pearl opens	Ongoing redevelopment coordination		Goose Creek Bridge opens		Depot Square opens
	Boulder Junction Phase 2 - City owned site	Staff		Coordination	Coordination		Coordination			
	Yards mobilized to move for Pollard option	Staff		Grading, prairie dogs, moving	Final prep			Yards moves continue		
	Safe Routes to School	Staff			Public process to prioritize projects		Application			
	Implement Transpo.Tax	Staff		Expand maintenance, hire						

	Project	Council or Staff?	2014				2015			
			1st Quarter	***2nd Quarter***	***3rd Quarter***	***4th Quarter***	***1st Quarter***	***2nd Quarter***	***3rd Quarter***	***4th Quarter***
LIVABILITY	Homelessness/Human Services	Council Items	Shelter/ Funding: Update on position and relationship with Boulder Shelter; Shelter funding and issues update and other funders.	SS - Human Services Strategy Update and Homeless Action Plan (including funding priorities and partnerships)	IP - Homelessness Issues	SS - Human Services Strategy Update and Homeless Action Plan (including funding and service priorities)				
					Regional Planning update/services and housing					
					2014 Point in Time Report					
					SS - Services and Regional coordination update	IP - Services and Regional coordination	IP - Services and Regional	SS - Services and Regional coordination	SS - Services and Regional	IP - Services and Regional
		Staff Activities	Facilitate monthly Boulder Homeless Planning Group re:	HS Strategy Update and Homeless Action Plan Update	HS Strategy Update and Homeless Action Plan -					
			Convene regional meeting with Denver/Boulder/MDHI							
			County Ten Year Plan meeting with focus on meeting housing	County Ten Year Plan meeting with focus on meeting housing						
	Neighborhood/Park Events and Other Events	Council Items	GOCO grant application		GOCO grant acceptance					
						SS - Special Events with Street Closures and Block Party Permitting				
		Staff Activities	Review current PR permits and developm pilot program	Conduct pilot neighborhood event (link with Hill and GOCO school yard grant)	Conduct pilot neighborhood event	Review neighborhood park planning and event pilot success and plan schedule for 2015	Finalize njeighborhood event schedule for 2015	Conduct neighborhood events	Conduct neighborhood events	Review pilot program and propose permit changes required to make improvements
			Link with park planning outreach	Summer recreation programs - arts, music, health, wellness	Continue summer art series and volunteer events					
			GOCO school yard grant	Submit GOCO grant	GOCO grant award - start civic area community park					
				Review and analysis of existing special event permitting	Develop recommendations					
	Arts	Council Items		SS - Library & Arts, including Community Cultural Plan				Adoption of Community Cultural Plan		
		Staff Activities		Work with new director						

	Project	Council or Staff?	2014				2015			
			1st Quarter	***2nd Quarter***	***3rd Quarter***	***4th Quarter***	***1st Quarter***	***2nd Quarter***	***3rd Quarter***	***4th Quarter***
LIVABILITY	Code Enforcement	Council Items	SS	SS (includes Social Issues Strategy information)						
		Staff Activities								
	University Hill	Council Items	IP - 14th St Public/Private Partnership	Update - 14th St Public/Private Partnership	Update - 14th St Public/Private Partnership					
			Bears/Trash							
				SS - Hill Reinvestment Strategy	Update - Hill Reinvestment Strategy					
		Staff Activities	14th St - Hill Alt. Mode survey	14th St - Finalize analysis and develop recommendation to proceed with the Global Agreement						
			14th St - Finalize LOI							
			14th St - Financial Analysis							
			14th St - Additional access analysis							
			14th St - Board outreach							
			Pilot Parklet Competition	Parklet Implementation						
			Outreach to CU and stakeholders for support of Reinvestment Strategy	Fox Theatre mural by CU students	start pilot RSD program (to run through 2016)					
			Recommendation for staffing Strategy implementation and prelim. analysis of future org structure options	Hire a fixed term Hill Coordinator						
	Civic Area	Council Items					SS - Park Program and Improvements			
		Staff Activities	Civic Activity Team established	Coordinate music in park series		Review summer series success and revise for 2015	Prepare first phase of park improvements for 2015	Conduct adult fitness and health classes	Conduct visitor event at civic area around art installations	
			Hire Civic Area staff for P&R	Add seasonal park staff for outdoor education and orientation		Expand Ready to Work crew	Revise summer programs and plan for 2015	Install temporary adult fitness playground	Coordinate horticulture gardens with Farmers' Market event	
			Prepare GOCO grant for nature play and park planning	Conduct volunteer event around upgrades to Peace Garden and edible plant exhibit		Complete park planning outreach	Conduct art competition for summer installation	Install south side nature play area		
			Work with Park Foundation to develop plan for art and entertainment	Coodinate with CU for partnership with GUB and Civic Area park plan		Develop 1% for Arts demonstration project in partnership with foundations and non-profits		Expand seasonal staffing and horticulture/edible garden displays		

	Project	Council or Staff?	2014				2015			
			1st Quarter	***2nd Quarter***	***3rd Quarter***	***4th Quarter***	***1st Quarter***	***2nd Quarter***	***3rd Quarter***	***4th Quarter***
LOCAL FOOD	Civic Area	Council Items	IP - update on implementation		SS - catalyst projects					
		Staff Activities								
	Ag Plan	Council Items	IP				Acceptance			
		Staff Activities								
	Other or not categorized	Council Items								
		Staff Activities	CU/BVSD partnerhip for neighborhood garden	Form cross-dept team	Develop work plan to achieve council vision					
			Burk Park/Horizon School playground	Housing links with YSI programs and local gardening pilot						
			Design guidelines for edible landscape in local parks							
CLIMATE AND ENERGY	Zero Waste Master Plan	Council Items	IP	SS - options and feedback		Acceptance and action plan		Implementation - commercial focus		
		Staff Activities	Stakeholder input on options and rulemaking on curbside compost		Public feedback on strategies	Draft plan and action plan for public review		Implementation - program enhancements and ordinance development		
	Municipalization	Council Items		SS - workplan	Briefing - energy services	Briefing - energy services	Update - energy services	Update - energy services	Update - energy services	Update - energy services
				SS - energy services						
		Staff Activities		Xcel/city task force; refine recommendations						
	Climate Commitment	Council Items		Briefing - framework, preliminary goals/targets, strategy development	SS - goals/targets, feedback on strategy scenarios, draft document	Approval				
		Staff Activities	Working groups meet	Scenario development; GHG inventory complete	Strategy formulation; city organization initiative launched		Launch action plan			
	Valmont Butte	Council Items			SS					
		Staff Activities								

	Project	Council or Staff?	2014				2015			
			1st Quarter	***2nd Quarter***	***3rd Quarter***	***4th Quarter***	***1st Quarter***	***2nd Quarter***	***3rd Quarter***	***4th Quarter***
OPEN SPACE	Charter Issues	Council Items			Address disposition process and use of Realization Point for pro bike race					
		Staff Activities								
	Highway 93 Underpass	Council Items								
		Staff Activities			In process					
	Eldo to Walker Ranch	Council Items								
		Staff Activities	City/County review of contractor proposals for potential mountain bike connection	Routes - weather dependent						
	IBM Connector	Council Items								
		Staff Activities		City/County requirement complete and await railroad to replace bridge						
	Trailhead as part of transportation system	Council Items								
		Staff Activities			status update					
	Other or not categorized	Council Items								
		Staff Activities			additional signage					

	Project	Council or Staff?	2014				2015			
			1st Quarter	***2nd Quarter***	***3rd Quarter***	***4th Quarter***	***1st Quarter***	***2nd Quarter***	***3rd Quarter***	***4th Quarter***
OTHER	Emerald Ash Borer (EAB)	Council	IP							
			Develop preliminary management plan	Implement pilot plan	Monitoring	Evaluate long term forest management plan and EAB strategy	Management plan and response	Response	EAB	EAB
	Civic Use Pad	Council	SS - Public/private partnership	Approval of MOU with St. Julien Partners	Update on negotiations with St. Julien Partners					
	Human Services Strategy	Council		SS		SS		Public hearing		
	Various	Council	IGA with CDOT/County for US 36 bikeway maintenance	Pilot dog waste composting project - Valmont and OSMP possible site	Transportation code changes for AMPS	Smoking ban - public hearing				
			IGA for bikeway maintenance/ US 36 enhancements	CEAP call up for Baseline Underpass east of Broadway	Comprehensive Annual Finanical Report					
			Old Pearl Street ROW vacation	DRCOG TIP Priorities for city applications	Appointment of independent auditor					
			Transportation code changes - bike parking, TDM, etc.	Mobile food vehicles - ordinance change to expand podding in downtown	Update on investment policies - action					
			NPP - zone expansions and removal		Modification of construction use tax filing - IP then action					
					Pearl Street Mall regulations - code changes					

COUNCIL MEMBERS

Matthew Appelbaum	Mayor
George Karakehian	Mayor Pro Tem
Macon Cowles	Council Member
Suzanne Jones	Council Member
Lisa Morzel	Council Member
Tim Plass	Council Member
Andrew Shoemaker	Council Member
Sam Weaver	Council Member
Mary Young	Council Member

COUNCIL EMPLOYEES

Thomas A. Carr	City Attorney
Jane S. Brautigam	City Manager
Linda P. Cooke	Municipal Judge

KEY STAFF

Mary Ann Weideman	Assistant City Manager
Bob Eichem	Chief Financial Officer
Alisa D. Lewis	City Clerk
Patrick von Keyserling	Communications Director
David Driskell	Executive Director of Community Planning and Sustainability and Acting Director of Housing
Molly Winter	Downtown, University Hill Management & Parking Services Director
Heather Bailey	Energy Strategy and Electric Utility Development Executive Director
Michael Calderazzo	Acting Fire Chief
Joyce Lira	Human Resources Director
Karen Rahn	Human Services Director
Don Ingle	Information Technology Director
Eileen Gomez	Labor Relations Director
David Farnan	Library and Arts Director
James Cho	Acting Municipal Court Administrator
Michael Patton	Open Space and Mountain Parks Director
Jeff Dillon	Acting Parks and Recreation Director
Greg Testa	Police Chief
Maureen Rait	Executive Director of Public Works
Cheryl Pattelli	Director of Fiscal Services
Tracy Winfree	Transportation Director
Jeff Arthur	Utilities Director

2014 City Council Committee Assignments

INTERGOVERNMENTAL ORGANIZATIONS

Beyond the Fences Coalition	Morzel, Plass (Castillo – staff alternate)
Boulder County Consortium of Cities	Morzel, Young
Colorado Municipal League (CML) – Policy Committee	Jones, Appelbaum (Castillo – staff alternate)
Denver Regional Council of Governments (DRCOG)	Jones, Plass
Housing Authority (Boulder Housing Partners)	Shoemaker
Metro Mayors Caucus	Appelbaum
National League of Cities (NLC)	Appelbaum, Cowles
Resource Conservation Advisory Board	Morzel (at large seat), Plass
Rocky Flats Stewardship	Morzel, Plass (1st alternate), Castillo (2nd alternate)
University of Colorado (CU) / City Oversight	Cowles, Shoemaker, Weaver
US36 Mayors and Commission Coalition	Appelbaum
US36 Commuting Solutions	Karakehian, Morzel (alternate)
Urban Drainage and Flood Control District	Karakehian

LOCAL ORGANIZATIONS

Boulder Museum of Contemporary Art (BMoCA)	Young
Boulder Convention and Visitors Bureau	Plass, Cowles (alternate)
Dairy Center for the Arts	Jones
Downtown Business Improvement District Board	Shoemaker, Weaver, Young

INTERNAL CITY COMMITTEES

Audit Committee	Cowles, Morzel, Shoemaker
Boards and Commissions Committee	Plass, Shoemaker
Boulder Urban Renewal Authority (BURA) Mayoral Appointment	Karakehian
Charter Committee	Karakehian, Morzel, Weaver
Civic Use Pad/ 9th and Canyon	Karakehian, Morzel, Young
Council Retreat Committee	Jones, Morzel
Evaluation Committee	Morzel, Plass
Legislative Committee	Jones, Karakehian, Weaver
School Issues Committee	Morzel, Plass, Shoemaker

SISTER CITY REPRESENTATIVES

Jalapa, Nicaragua	Jones
Kisumu, Kenya	Morzel
Llasa, Tibet	Shoemaker
Dushanbe, Tajikistan	Weaver
Yamagata, Japan	Plass
Mante, Mexico	Young
Yateras, Cuba	Karakehian
Sister City Sub-Committee	Morzel, Cowles, Karakehian

TO: Members of Council
FROM: Mary Moline, City Clerk's Office
DATE: December 2, 2014
SUBJECT: Information Packet

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1. **CALL UPS**
   None

2. **INFORMATION ITEMS**
   A. Update on the Voice and Sight Tag Program

3. **BOARDS AND COMMISSIONS**
   A. Human Relations Commission – November 17, 2014
   B. Open Space Board of Trustees – November 12, 2014
   C. Water Resources Advisory Board – September 15, 2014
   D. Water Resources Advisory Board – October 20, 2014

4. **DECLARATIONS**
   A. American Indian Heritage Month – November 2014
   B. Boulder Companies to Watch Month – November 1-30, 2014
   C. First United Methodist Church Day – November 23, 2014

INFORMATION PACKET
MEMORANDUM

To: Members of City Council

From: Jane S. Brautigam, City Manager
Mike Patton, Director of Open Space and Mountain Parks
Steve Armstead, Environmental Planner

Date: December 2, 2014

Subject: Information Item: Update on the Voice and Sight Tag Program

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EXECUTIVE SUMMARY

On May 6, 2014, City Council unanimously approved a series of changes to the Voice and Sight Tag Program (Tag Program) to become effective in 2015. Since then, staffs from the Open Space and Mountain Parks (OSMP), Finance, Parks and Recreation and Information Technology (IT) departments have been taking the actions necessary to implement these changes. The significant tasks undertaken to date include:

- Notifying community members that the program will be changing on Jan. 1, 2015,
- Presenting the Voice and Sight Education Class,
- Promoting the availability of the class,
- Developing the software application and online user interface for program registration,
- Completing baseline compliance monitoring data collection,
- Updating regulatory and informational signs, and
- Integrating the Voice and Sight and the dog license programs.

A timeline for implementation milestones is available in Attachment A and a summary of progress on the program changes is available in Attachment B. More detailed information on the progress of the Voice and Sight Education Class and the registration process for 2015 Voice and Sight Tags is provided in this memo.

PROGRAM STATUS

Voice and Sight Education Class

One of the council-adopted changes in the Tag Program is that all dog guardians participating in the program are now required to attend a Voice and Sight Education Class before they can register in the program. On June 2, staff began offering educational classes to provide an advance opportunity for guardians to complete this requirement before the program changes go

into effect Jan. 1, 2015. A schedule of classes was created to accommodate nearly 20,000 individuals which was the estimated number of potential participants. Therefore, since the classes began in June, there have been, on average 10 classes presented every week. Two classes are typically scheduled on days of the week with the greatest demand for class space. Through the summer and early fall, the average class size was 12 participants. In the last month, class sizes have increased to average 26 participants. The table below lists the total number of classes, seats, attendees through Nov. 23 and the percent of time elapsed until the end of the year.

Table 1: Voice and Sight Education Class Capacity and Attendance

	SEATS OFFERED		ATTENDEES	TIME ELAPSED
	Number of Classes	**Number of Seats**	**Number of Attendees**	**Percent of Time Elapsed Until the End of the Year**
June 2 – Nov. 23	258	14,130	3,591	81%
Percent of Estimated Participants		71%	18%	

Staff will continue to offer an enhanced number of classes through the remainder of 2014 and into the first quarter of 2015. This is in anticipation of high class demand as guardians seek to become compliant with the new requirements. There will also be a continued effort to notify guardians about upcoming opportunities to attend a class. A summary list of outreach and notification efforts is provided in Attachment C.

After the first quarter of 2015, staff will assess class attendance and demand and determine an appropriate frequency and number of classes to offer on an ongoing basis. Staff anticipates that the ongoing rate of classes could be at least one class per week.

The Tag Program and Dog License Registration Process

Registration for the new "blue" 2015 Voice and Sight Tags will begin on Dec. 1, 2014. There are both online and in-person options to register for the program. In person registration is available at the Tax and License Division Information Desk at the Municipal Building and at OSMP's administrative offices. Online registration is available at www.voiceandsight.org.

The previous program registration software was replaced with a newly developed application to accommodate revised program requirements. Staffs from the OSMP, IT and Finance departments collaborated on the development of the software so that the program registration could confirm that applicants completed the education class and included verification of City of Boulder dog licenses (Boulder residents), or rabies vaccination (for others). Additionally, the registration process requires information about dogs participating in the program and accounts for the revised fee structure based on where people reside.

Coinciding with changes to the Tag Program registration process, the Finance Department contracted with a dog licensing service to provide online and mail-in processing of city dog licenses. This new service will be available for residents to purchase 2015 dog licenses and is integrated with the Tag Program application process, automatically verifying dog license requirements for Boulder residents.

Staff notified guardians who have previously participated in the Tag Program and individuals who have completed the class that the registration for 2015 Voice and Sight Tags has begun. Additionally, staff will continue to publicize that guardians should attend the class if they have not already done so, update their dog's rabies vaccination if necessary, and encourage Boulder residents to promptly acquire 2015 dog licenses. By taking that action, Boulder residents will fulfill the program's new requirements and be allowed to register for 2015 Voice and Sight Tags.

NEXT STEPS

Staff will continue to offer classes on a weekly basis through the remainder of 2014 and into the first quarter of 2015. On Jan.1, 2015, OSMP Rangers will begin contacting visitors with off-leash dogs not displaying the new Voice and Sight Tags. Visitors will be advised of the new requirements, provided information if they are unaware of the program and advised that until they obtain the tag they must leash their dogs. Visitors who have been previously advised of the regulation, or demonstrate a clear knowledge of the expectation and have chosen not to obtain the tag may receive a citation. After at least three weeks of visitor contacts focused on building awareness of the program change, there will be a greater expectation that guardians will have had sufficient opportunity to learn about the program change. Failure to display the new Voice and Sight Tag on unleashed dogs could result in a citation.

ATTACHMENTS

A. Tag Program Implementation Timeline

B. Implementation Status of Voice and Sight Tag Program Changes

C. Voice and Sight Tag Program Outreach and Notification Efforts

Tag Program Implementation Timeline

	May - June	July - Aug.	Sep.- Nov.	Dec.	Jan. – Feb. 2015
MAJOR MILESTONES	Education Classes Start: JUNE 2			Registration and Tags Available: DEC. 1	Program Changes Effective: JAN. 1

OSBT UPDATES	Education Class	Monitoring	Program Readiness	Registration	Early Implementation
EDUCATION CLASS	Education Classes and Promoting Availability of the Class				
SOFTWARE	Registration Software Development & Testing		Final Testing	Operational & Track Functionality	
MONITORING	Field Work		Data Analysis		Preliminary Reporting
SIGNS	Program Changing in 2015 Signs			New Regulation Signs	
TAG AND LICENSE INTEGRATION	Transition Administration of Tag Servicing to Finance Department			Finance Services Tags	

Implementation Status of Voice and Sight Tag Program Changes

#	Voice and Sight Tag Program Changes	Implementation Status
1	**Implement the following education and outreach strategies:**	**Implement the following education and outreach strategies:**
	a) Increase outreach and education about training opportunities	• Included in Voice and Sight Education Class • Information sheet made available at education class and online
	b) Support stakeholder efforts	• Provided information to Friends Interested in Dogs and Open Space (FIDOS) to post on its Website and through social media
	c) Create refresher videos on requirements, etiquette or issues that will be phased in based on time and cost	• Created a video about the Voice and Sight Class with interviews of two attendees
	d) Use traditional and social media to provide instructive educational information to participants	• Future work item
	e) Provide educational walks for dogs and dog guardians on a trial basis	• Two educational hikes for guardians and dogs offered in October, 2014
	f) Improve clarity and information on signs	• Assessed and revised Tag Program regulation signs • Posted large attention-getting signs at select trailheads announcing program changes
	g) Distribute palm cards explaining the Tag Program	• Distributed palm cards and flyers with information about the Tag Program and upcoming changes • Distributed flyers and a revised the program brochure
	h) Increase outreach and education to visitors without dogs about voice and sight control and what to expect	• Web information in development
	i) Consider under specific conditions and on well-suited OSMP properties, opportunities for special voice and sight control training events	• Future work item
	j) Encourage dog guardians to become volunteer Trail Guides and provide additional training for outreach with a dog	• Provided recruitment information to FIDOS to include in its newsletter and Website

#	Voice and Sight Tag Program Changes	Implementation Status
		• Included announcement in an email to current Tag Program participants
	k) Participate in more dog-related outreach events; consider organizing another "Tag Wag" type event	• Hosted two "dog photo contests" to promote dog excrement composting trial and the importance of picking up after your pet and the Tag Program changes • Participating in the Dog Days event at Scott Carpenter Pool • Participated in the Humane Society of Boulder Valley's Doggie Dash event • Organized a "Howl-O-Ween" event for dogs and guardians
	l) Promote information on dog-prohibited trails and add this information on the OSMP Website	• Web page created that lists and provides information on dog-free opportunities: https://bouldercolorado.gov/osmp/dog-free-trails
	m)Train all staff on the new regulations for informal educational opportunities	• Included the Voice and Sight Education Class as part of an all-staff meeting • Had staff answer questions with prizes for correct answers about the changes to the program
	n) Increase focus on major trailheads	• OSMP outreach staff has set up information tables at popular trailheads
	o) Provide more focused ranger patrol	• Focused ranger patrol to coincide with new requirements going into effect in 2015
	p) Consider more strategic placement of signs and waste cans	• Staff considering opportunities and making changes when improvements identified
2	Require proof of current rabies vaccination for all dogs to be registered in the program. City of Boulder residents are required to provide a valid city of Boulder dog license as proof of current rabies vaccination. Require that all dogs on OSMP lands display a valid rabies vaccination tag.	Revision to the program registration software will include a process to verify that City of Boulder residents have a Boulder dog license. Guardians residing outside the City of Boulder will need to upload a copy of a valid rabies certificate before a dog can receive a Voice and Sight Tag.

#	Voice and Sight Tag Program Changes	Implementation Status
3	The program registration and annual renewal fees will include a graduated fee structure for residents of the City of Boulder, residents of Boulder County outside the City of Boulder, and non-Boulder County residents. Program registration fees: • City of Boulder Residents ($13), • Boulder County residents outside the City of Boulder ($33), • Non-Boulder County residents ($75), and • The registration fee includes one guardian and one dog; the fee for each additional guardian in a household is ($5) and the fee for each additional dog in a household is ($10). Annual household renewal fee: • City of Boulder Residents ($5), • Boulder County residents outside the City of Boulder ($20), and • Non-Boulder County residents ($30). The additional guardian and dog registration fees will be waived for City of Boulder households who meet income criteria consistent with the City of Boulder Food Tax Rebate Program or the Parks and Recreation Reduced Rate Program.	A City Manager's Rule has been processed authorizing the new fees for the Tag Program.
4	Require all program participants attend an information session. Program participants must attend a session before they can register in the program. The information session will include as part of the content a revised and updated voice and sight video. Program participants must complete an online refresher education course at least every five years. The refresher will include an on-line test to establish that participants understand the Voice and Sight Tag Program requirements.	The revised program registration process will include a process to verify that any guardian registering in the Tag Program has first completed the Voice and Sight Education Class. The application will also include a process that confirms the completion of an online refresher every five years.

#	Voice and Sight Tag Program Changes	Implementation Status
5	Increase fines for Voice and Sight Evidence Tag Required (B.R.C. 6-13-2) and Dog at Large violations (B.R.C. 6-1-16) to $100 (maximum), $200 (maximum), and $300 (minimum) for first, second and third or more convictions respectively. Provide mechanism for dismissal of tickets for lawful participants who inadvertently failed to display tag. Recommend to the municipal court that the bond amount for dog-related City Manager's Rule violations (B.R.C. 8-3-3) be increased to $100.	City Council adopted an ordinance on May 6, 2014 that amends the Boulder Revised Code to include the increased fines.
6	Encourage courts to order such additions to fines for violations of the following ordinances: • Voice and Sight Evidence Tag Required (B.R.C. 6-13-2), • Dog at Large violations (B.R.C. 6-1-16), • Aggressive Animal Prohibited (B.R.C. 6-1-20) and • Failure to Protect Wildlife (or livestock) (B.R.C. 8-3-5). The court may impose conditions that include without limitation attendance at classes related to the voice and sight control regulations of the city, evaluation or training of the dog to ensure that it is capable of complying with voice and sight control requirements, or the temporary suspension or permanent revocation of voice and sight control privileges.	City Council adopted an ordinance on May 6, 2014 that amends the Boulder Revised Code to include penalties in addition to fines.

Voice and Sight Tag Program Outreach and Notification Efforts

There has been a concerted effort by city staff to notify dog guardians about the Tag Program changes and to call attention to the new class requirement and the availability of the class. Staff has completed the following:

- Six emails to program participants; these emails have been opened 45,680 times, an average of 7,613 people have opened each email, with an open rate of 43 percent,
- Website information www.voiceandsight.org and links on city dog-related Web pages,
- A video of class participants talking about what they learned from the class,
- Three media releases,
- Three Daily Camera news stories,
- Three ads in the paper and online with the Daily Camera,
- Inside Boulder News reports,
- Social media posts,
- Noticed in four OSMP Newsletters,
- Information at the OSMP booth at the Boulder Farmer's Market,
- Information signs posted at trailheads and access points frequented by dog guardians,
- Visitor outreach at trailheads with staff handing out information palm cards,
- Information at the Ranger Cottage at Chautauqua,
- Three interviews on the KDVR Fox 31,
- Interview on KGNU Morning Magazine,
- Online article in RE/MAX of Boulder's "The Boulder Source,"
- Ad in the Fall Parks and Recreation Guide,
- Colorado Daily Article in Student Welcome Back section,
- FIDOS provided information on its Website and in three newsletters,
- Dog photography contest events Aug. 9 and Sept. 10,
- Staffed booth at Humane Society of Boulder Valley Doggie Dash event Sept. 6,
- Posters set up at Boulder recreation centers,
- Handed out information at Humane Society of Boulder Valley pancake breakfast event,
- Booth and banner at Dog Days at Scott Carpenter Pool,
- Large signs stationed and rotated between trailheads,
- Outreach and offered two classes for University of Colorado students,
- Boulder utility bill insert for December, and
- Distributed 4000 program brochures.

Staff has distributed flyers and posted flyers on community information boards throughout the city. Locations where the flyer has been distributed include the city's recreation centers, veterinarian offices, pet stores and dog-related businesses, the Boulder Valley Humane Society, The Longmont Humane Society, and locations where the city posts community information. Signs have also been posted at Parks and Recreation trailheads where the Tag Program applies and the city's dog parks.

City of Boulder
BOARDS AND COMMISSIONS MEETING SUMMARY FORM

NAME OF BOARD/COMMISSION: Human Relations Commission

DATE OF MEETING: Nov. 17, 2014

NAME/TELEPHONE OF PERSON PREPARING SUMMARY: Robin Pennington 303-441-1912

NAMES OF MEMBERS, STAFF AND INVITED GUESTS PRESENT:
Commissioners – Amy Zuckerman, Shirly White, Emilia Pollauf, Nikhil Mankekar, José Beteta
Staff – Carmen Atilano, Robin Pennington, Karen Rahn
Commissioners absent - None

WHAT TYPE OF MEETING (CIRCLE ONE) **[REGULAR]** [SPECIAL] [QUASI-JUDICIAL]

AGENDA ITEM 1 - CALL TO ORDER – The Nov. 17, 2014 HRC meeting was called to order at 6 p.m. by **A. Zuckerman.**

AGENDA ITEM 2 – AGENDA ADJUSTMENTS – Move Postoley's 2014 CEF report and 2015 CEF proposal to first under Action and Discussion/Informational Items, add Veterans Helping Veterans 2014 CIF report review under Action Items, postpone BarrioE' 2014 CoIH and CEF reports and 2015 CEF proposal to December, add Event Reports and Follow-up Tasks to Discussion/Informational Items.

AGENDA ITEM 3 – APPROVAL OF MINUTES – E. Pollauf moved to accept the Sept. 15, 2014 minutes**. N. Mankekar seconded. Motion carries 5-0. E. Pollauf moved** to accept the Oct. 20, 2014 minutes. **S. White seconded. Motion carries 5-0.**

AGENDA ITEM 4 – COMMUNITY PARTICIPATION (non-agenda action items) – None.

AGENDA ITEM 5 – ACTION ITEMS

A. 2014 Celebration of Immigrant Heritage Reports

1. **Boulder Latino History Project –** Linda Arroyo-Holmstrom reported on the reception and presentation of project exhibits held Oct. 9, 2014 at the Museum of Boulder. **N. Mankekar moved** to approve. **J. Beteta seconded. Motion carries 5-0.**
2. **Boulder Latino Family Project –** Phil Hernandez gave a report on the portable banner exhibit that was displayed during the week of Oct. 5 to Oct. 11 in front of the Boulder County Court House and at the Museum of Boulder. **J. Beteta moved** to approve. **S. White seconded. Motion carries 5-0.**
3. **Motus Theater –** Kirsten Wilson reported on the Oct. 11, 2014 performance of "Do You Know Who I am?" at the Boulder Public Library. **E. Pollauf** moved to approve. **N. Mankekar seconded. Motion carries 5-0.**

B. 2014 Community Event Reports

1. **Boulder Jewish Festival** – Cheryl Fellows reported on the 20th Anniversary Boulder Jewish Festival held on June 8, 2014. **S. White moved** to approve**. E. Pollauf seconded. Motion carries 5-0.**
2. **Boulder Museum of Contemporary Art –** Randee Toler gave a report on the Access Tours and Workshops conducted between Jan. 1 and Nov. 17, 2014 at BMoCA. **N. Mankekar moved** to approve. **J. Beteta seconded. Motion carries 5-0.**
3. **Out Boulder –** Samantha Feld reported on the events during the week preceding and the day of Pridefest, held on Sept. 14, 2014. **J. Beteta moved** to approve. **E. Pollauf seconded. Motion carries 5-0.**
4. **Postoley –** Tom Masterson gave a report on the 2014 Folk Dancing on the Plaza events held during the summer of 2014. **S. White moved** to approve. **E. Pollauf seconded.**

Motion carries 5-0.

C. **Community Impact Fund - Veterans Helping Veterans Now –** The commissioners reviewed the budget statement for the 2014 CIF grant which was reported on at the October meeting. **J. Beteta moved** to approve. **E. Pollauf seconded. Motion carries 5-0**.

AGENDA ITEM 6 – DISCUSSION/INFORMATIONAL ITEMS

A. **2015 Community Event Applications**
   1. **Motus Theater –** Kirsten Wilson and Kate Kelsch gave an overview of the 2015 proposal for "One Action."
   2. **Boulder Jewish Festival** – Cheryl Fellows presented the proposal for the 2015 Boulder Jewish Festival.
   3. **Boulder Museum of Contemporary Art –** Randee Toler presented the 2015 BMoCA Día del Niño proposal.
   4. **Out Boulder –** Samantha Feld reviewed the proposal for Pridefest 2015.
   5. **Postoley –** Tom Masterson presented the proposal for the 2015 Folk Dancing on the Plaza.
   6. **Bridge House (Homeless Person's Memorial, Kids Give Back Thanksgiving Dinner)** – Shane Wyenn presented the two Bridge House proposals for 2015.

B. **Living Wage Issue –** C. Atilano reviewed the logistics for the Living Wage public hearings to occur on Dec. 4 and Dec. 7, 2014.

C. **Housing and Social Security Number –** This item was tabled to December.

D. **Questions from City Council –** C. Atilano reviewed the process and timeline for answering the Questions from City Council.

E. **HRC 2015 Work Plan –** C. Atilano requested that commissioners review the 2014 Work Plan and provide input for the 2015 Work Plan at the December meeting.

F. **Event Reports – E. Pollauf** attended the Oct. 21, 2014 Veterans Awareness Series event. **N. Mankekar** attended the CU Summit on Diversity and Inclusivity on Nov. 12, 2014.

G. **Follow Up Tasks –** File the September and October minutes, reschedule the BarrioE' CoIH and CEF reports and CEF proposal to December, request clarification on the 2015 CEF proposal budget from Out Boulder, request that a written report from Bridge House for the Kids Give Back Thanksgiving Dinner event be received prior to the December meeting, draft a memo to City Council on Living Wage.

AGENDA ITEM 7 – IMMEDIATE ACTION ITEMS – None.

AGENDA ITEM 8 – Adjournment – **S. White moved** to adjourn the Nov. 17, 2014 meeting. **E. Pollauf seconded** the motion. **Motion carries 5-0.** The meeting was adjourned at 9:20 p.m.

TIME AND LOCATION OF ANY FUTURE MEETINGS, COMMITTEES OR SPECIAL HEARINGS: Special hearings on Living Wage will be held on Dec. 4, 2014 at 5:30 p.m. at the West Senior Center, 909 Arapahoe and on Dec. 7, 2014 at 2:30 p.m. at the Sacred Heart of Jesus Church, 2312 14th St. The next regular meeting of the HRC will be Dec. 15, 2014 at 6 p.m. at 1777 West Conference Room, Municipal Building, 1777 Broadway St.

CITY OF BOULDER
Boards and Commissions Minutes

NAME OF COMMISSION: Open Space Board of Trustees
DATE OF MEETING: November 12, 2014
NAME/EXTENSION OF PERSON PREPARING SUMMARY: Leah Case x3440
NAMES OF MEMBERS, STAFF AND INVITED GUESTS PRESENT: MEMBERS: Tom Isaacson, Shelley Dunbar, Frances Hartogh, Molly Davis, Kevin Bracy Knight STAFF: Mike Patton, Jim Reeder, Mark Gershman, Linda Vandervort, Lauren Kolb, Heather Swanson, Will Keeley, Steve Armstead, Don D'Amico, Alyssa Frideres, Leah Case, Phil Yates
TYPE OF MEETING: **REGULAR** CONTINUATION SPECIAL

SUMMATION:

AGENDA ITEM 1- **Approval of the Minutes**
Shelley Dunbar moved to approve the minutes from Oct. 23, 2014 as amended. Tom Isaacson seconded. This motion passed unanimously.

AGENDA ITEM 2- **Public Participation**
Randy Winter, Boulder, expressed his concern for self closing gates on OSMP. These are dangerous for equestrians. He suggested some other options to benefit equestrians in addition to other user groups.

Suzanne Webel, Longmont, spoke to the Board about the group, Boulder Area Trails Coalition (BATCO). She showed the Board a copy of their updated trails map that includes areas from the West TSA.

AGENDA ITEM 3- **Director's Updates**
Research Program
Will Keeley, Wildlife Ecologist, gave a presentation on various Open Space and Mountain Parks (OSMP) research projects.

Voice and Sight Tag Program
Steve Armstead, Environmental Planner, gave an update on the Voice and Sight Tag Program.

Council retreat questions for Boards and Commissions
Mike Patton, Open Space and Mountain Parks (OSMP) Director, reminded the Board they will need to come up with questions to send to council for their retreat. The Board will be ready to discuss this at their next meeting in December.

Prairie Dog Relocation
Heather Swanson, Wildlife Ecologist, gave an update to the Board on several areas OSMP is relocating prairie dog colonies.

AGENDA ITEM 4- **Matters from the Board**
The Board asked for an update on the survey staff is doing in Sunshine Canyon. Tom noted that the opening of Royal Arch Trail was the last trail OSMP had closed due to the flood.

AGENDA ITEM 5 **– Consideration of a motion to approve a conservation easement amendment on the property owned by the Graham Casden 2009 Trust at 5097 Flagstaff Rd.***
Linda Vandervort, Conservation Easement Specialist, gave a presentation to the Board explaining a potential amendment to a Conservation Easement (CE). OSMP staff supports this amendment because it improves the original CE and is a benefit to the OSMP program.

This item spurred one motion:
Shelley Dunbar moved the Open Space Board of Trustees approve the conservation easement amendment on the property owned by the Graham Casden 2009 Trust at 5097 Flagstaff Rd., as written in Attachment F, and waive the amendment fee. Tom Isaacson seconded. This motion passed unanimously.

AGENDA ITEM 7 **– Consideration of a motion to approve a conservation easement amendment on the property owned by Epaka Holdings, LLC at 8104 N. 63rd St.***
Linda Vandervort, Conservation Easement Specialist, gave a presentation to the Board explaining a potential CE amendment. OSMP staff supports this amendment because it improves the original CE and is a benefit to the OSMP program. In particular, it supports local organic food production and preserves agricultural operations in Boulder County as well as further restricts development on the property.

This item spurred one motion:
Kevin Bracy Knight moved the Open Space Board of Trustees approve a conservation easement amendment as shown in attachment F on the property owned by Epaka Holdings, LLC at 8104 N. 63rd St. and waive the amendment fee. Shelley Dunbar seconded. This motion passed unanimously.

AGENDA ITEM 8 **– Consideration of a motion pertaining to development of a trail on the Joder Open Space and Mountain Parks property.***
Mike Patton, Open Space and Mountain Parks Director, gave a presentation to the Board on the Joder property.

This item spurred one motion:
Shelley Dunbar moved the Open Space Board of Trustees recommends that visitor access to Joder property should be considered prior to the North TSA process and ask that staff return to this Board with some options for that access that would utilize existing trail networks and roads as much as possible. Kevin Bracy Knight seconded. This motion passed three to two; Frances Hartogh and Molly Davis dissented.

ADJOURNMENT: The meeting adjourned at 10:12 p.m.

ATTACH BRIEF DETAILS OF ANY PUBLIC COMMENTS:
Many members from the public spoke in regard to the Joder Property. All were in favor of opening this property to the public and all user groups. Some felt it would be important to open this immediately to provide the needed trail connection, but others said they would support waiting until the North TSA. This would allow staff to evaluate the surrounding habitat as well as additional parking where users would not have to cross the highway.

TIME AND LOCATION OF ANY FUTURE MEETINGS, COMMITTEES OR SPECIAL HEARINGS:
The next OSBT meeting will be Dec. 10, 2014.

CITY OF BOULDER, COLORADO
BOARDS AND COMMISSIONS MEETING MINUTES

Name of Board / Commission: Water Resources Advisory Board

Date of Meeting: 15 September 2014

Contact Information of Person Preparing Minutes: Andrea Flanagan 303.413.7372

Board Members Present: Vicki Scharnhorst, Dan Johnson, Mark Squillace, Lesley Smith, Ed Clancy
Board Members Absent: None

Staff Present: Jeff Arthur, Director of Public Works for Utilities
Bob Harberg, Principal Engineer - Utilities
Katie Knapp, Engineering Project Manager
Annie Noble, Flood and Greenways Engineering Coordinator
Kurt Bauer, Engineering Project Manager - Utilities
Bret Linenfelser, Water Quality and Environmental Services Manager
Joe Taddeucci, Water Resources Manager
Joanna Bloom, Source Water Administrator
Andrea Flanagan, Board Secretary

Cooperating Agencies Present:
Craig Jacobson, Principal Engineer, ICON Engineering

Meeting Type: Regular

Agenda Item 1 – Call to Order **[7:01 p.m.]**

Agenda Item 2 – Approval of the 18 August 2014 Meeting Minutes: **[7:01 p.m.]**
18 August minutes: Motion to approve minutes from August 18th as presented.
Moved by: **Squillace;** Seconded by: **Johnson**
Vote: 5:0

Agenda Item 3 – Public Participation and Comment **[7:02 p.m.]**
Public Comment: None
Board follow up: None

Agenda Item 4 – **[7:03 p.m.]**
Public Hearing and Consideration of a Recommendation to City Council Regarding Floodplain Mapping Updates for Skunk Creek, Bluebell Canyon Creek, and King's Gulch
Katie Knapp and Utilities staff presented the item to the board, which included a PowerPoint presentation.

Executive Summary from the Packet Materials:
Floodplain mapping provides the basis for flood management by identifying the areas subject to the greatest risk of flooding. This information is essential for determining areas where life safety is threatened and property damage is likely and is the basis for floodplain regulations and the National Flood Insurance Program (NFIP). The city's floodplain maps need to be periodically updated to reflect changes in the floodplain resulting from land development, flood mitigation improvements, new topographic mapping information and new mapping study technologies.

The Skunk Creek Floodplain Mapping Update includes the King's Gulch, Skunk and Bluebell Canyon Creek floodplains between the city limits to east of Foothills Parkway where Skunk Creek confluences into Bear Canyon Creek as shown in red below.

- City of San Francisco and the County Water District there has recommended that fluoride in drinking water should not be used in bottled milk for infants and whether there is a duty to warn about potential health risks to children? Recommending additional discussion at next WRAB meeting.
- Are children especially vulnerable to fluoride and the use of formula milk, based on concerns expressed in said studies?

Board member Scharnhorst brought up the below matter(s):

- Attended community flood event and felt it was very good. Thanks to staff for all the hours of hard work that were invested, post-flood.

From Staff: **[8:45p.m.]**

Northern Water Study: Northern performed recent financial analysis of its CBT rates starting in 2013 and started rolling out process to allottees in January, 2014 for review and comment, which included January informational meeting. Comprehensive presentation of rate study at spring user's meeting. Solicited input from allottees and city staff felt their study was a thorough and comprehensive analysis of their rates. Most questions and comments were regarding fixed rate contracts.

- Half of revenue comes from property taxes and prior to 2008 recession, saw about an 8% increase in revenue and after that, went flat. Conducted rate study using industry standard cost of service model. Different categories of contracts that they have, factored in ability to pay for their irrigation class customers. Study looked at different sources of revenue, but limited in what board of directors can influence on total revenue. CBT Assessments contribute about 20% of Northern's total revenue and of that, 2/3 is from $2.00 per unit fixed rate contracts and the remainder is from $28 per unit open rate contracts. Open rate assessments are going to increase in a stepped manner beginning in 2015 with the goal of rebuilding Northern's reserves over the next several years.
- Summary highlights: our current CBT bill is around $260,000.00 based on the mixture of open and fixed rate contracts. By 2018, this bill would go up to around $500,000.00, causing a noticeable rate increase.
- A board member suggested the city explore alternative water sources to Northern's. . CBT shares are one of the only types of freely marketable water rights in the country, which is unique.
- In 2009, the city's Source Water Master Plan was completed, with recommendation to consider getting rid of rest of Windy Gap shares. Eliminating CBT shares was not something recommended in the SWMP, although we are always thinking about the effect that future compact calls could have on west slope supplies.

Water Budget: One-on-one outreach conducted between staff and businesses has highlighted frustration and concern about rate structure in terms of whether these are equitable across customer types. The level of concern is such that it is worth additional follow-up. Potentially get into close look at rates starting next year, and future conversations with board early next year to get recommendation for future for changes.

- The stormwater monthly fee and formula may not work well with particularly large sites. Suggestion to take a look at possible alternatives for limited number of very large users who have these unique situations.

Study Session: Study session scheduled September 30th with City Council on flood topics, with updated version of presentation by Wright Water Engineers, as well as a high level information about mitigation mapping studies and how to best move these studies through future agendas. Will also check in with Council about South Boulder Creek after presenting to Open Space Board of Trustees and received a motion from them regarding impacts to open space. Would like to also receive Council's thoughts on what considerations they would like to see around upstream of 36 option.

Agenda Item 6 – Future Schedule **[9:18 p.m.]**

- October Information Item: Update on Twomile/Upper Goose Creek Mapping Studies (Bauer)
- October Update on Skunk, Bluebell, King's Gulch Mapping Study
- October Information Item: Update on Gregory Creek Mitigation
- October Matters Item: Update on Wright Water Rainfall/Recurrence Analysis
- November Information Item: Update on Twomile/Upper Goose Creek Mapping Studies (Bauer)
- December Update on Betasso

Public Comment:

- **Christina Jurgens** – Concerns are with the Bluebell and that there were no diversions, which isn't reflected accurately in the mapping presented. Question is if a lot of water falls in the area, water will not flow uphill to 19th street and over Columbine if it's natural direction is downhill. She would like for this to be considered when moving forward with the amendment.
- **Bryan Boots** – Owns a home at 20th and Columbine, which is in a newly designated hazard zone. He was completely unaware of the changes in zoning and is feeling like he is coming to the conversation late. Questions the assumptions that are going into this decision making and having a hard time reconciling the recent studies with what he actually experienced last September. He would like to better understand the next steps in the process regarding what is decided. It doesn't seem reasonable to put the burden on residents. He is requesting better, more effective outreach to citizens.
- **Tim Fuller-Rowell** – Lives on Columbine Avenue, which is affected by the new floodplain, which now makes up half of his property. Increase in the water table flooded the basement. Flow down Mariposa didn't affect us. Rock dam broke causing a flash flood and persistent rainfall and wonders if that was factored into the analysis, but didn't see any major flow on Columbine. Wants to understand the actual impact of flood to his property and physical reasons why it is now included on the floodplain. What is the process for deciding how the new boundaries are drawn and decided? Premature to start approving a new floodplain before the previous event is fully understood and would like the city to have more interaction with the people who are actually affected.
- **Jamie Krapohl** – Property owner affected by the proposed flow split changes at 15th is his major concern. He didn't observe what is being shown on the maps and feels there is a lack of correlation in how the split affects these three blocks. On the Saturday of the flood, he was at 15th and Mariposa and didn't observe any diversions that were put into place by residents. The flooding on his corner was due to the Anderson Ditch overflowing, which is not represented in the changes. Since the open house, he has reached out to neighbors, but there are many renters around his property. He contacted three other property owners and informed them of the recent flood mapping changes. Feels that neighbors were not aware of these new changes. Concerned with the accuracy of the models, based on observations from walking around the neighborhood and what is being reflected in the updated maps. He feels this just doesn't make sense.

Motion by: Johnson; **Seconded:** Smith
Motion to recommend that City Council adopt the Skunk Creek floodplain mapping update including potential additional refinements made prior to Council's consideration and with the understanding that should such additional refinements result in substantial modifications to affected properties, that WRAB would have the opportunity to review the results prior to Council's review

Vote: 3-2, Motion Passes (Clancy, Squillace Opposed)
Opposition Statement by Clancy: People have a right to a peer-review process and an additional outside party should be asked to review findings. Icon Engineering was the only company to review the findings and this does not constitute peer review. This process would benefit greatly from a peer-review process.

Agenda Item 5 – Matters From the Board: **[8:33 p.m.]**

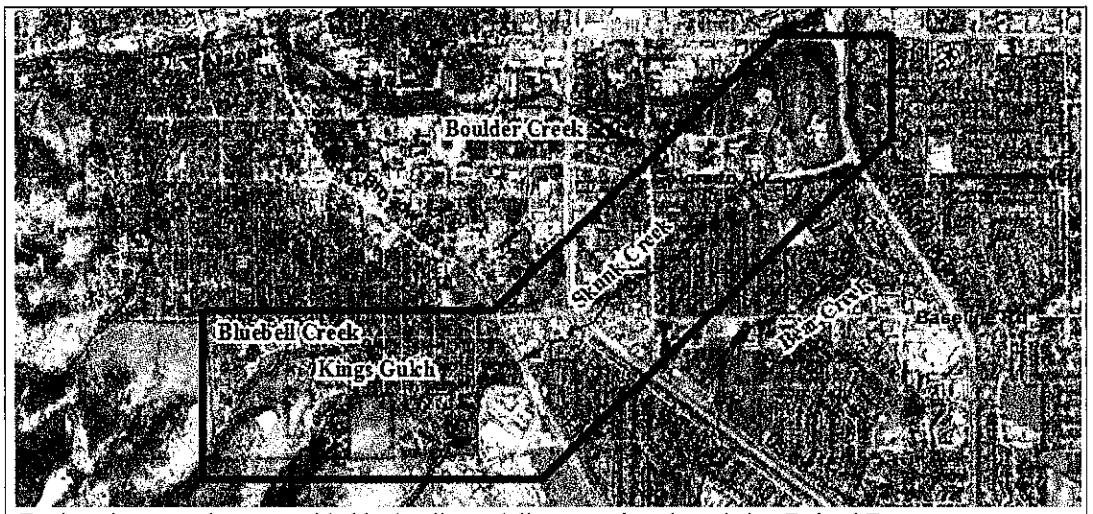
Board Member Smith brought up the below matter(s):

- Attended flood commemorative event and acknowledges that staff members put a lot of work into this event. The Science of Disaster Planning Research and Response featured excellent panels talking about the flood in terms of science, social science and climate science, where she learned about new technology called non-contact radar sensors to measure stream flows. She is impressed by these new, modern sensors used on bridges to monitor stream flows to gather data. Professor and hydrologist from CSU spoke about importance of diversity in floodplains.

Board member Johnson brought up the below matter(s):

- Communication about budget used to hire additional staff to have more resources, but there are questions staff had relative to improvements that might be made. Suggests maybe taking a step back instead of taking the approach to reline the conduits right now in order to get a better return on our investment.

Board Member Clancy brought up the below matter(s):



Engineering consultants provided hydraulic modeling to update the existing Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) and City of Boulder floodplains, water surface elevations, conveyance and high hazard zones.

The proposed mapping of the Skunk Creek Floodplain would result in a net:

- Increase of 44 structures identified in the 100-year floodplain;
- Decrease of 27 structures identified in the conveyance zone and;
- Decrease of 17 structures identified in the high hazard zone.

WRAB Discussion Included:

- Questions about whether the assumptions on which the study is based are going to be posted on the website?
- Questions about whether the information presented is complete enough to allow the WRAB to make a recommendation today.
- Discussion around whether the board feels the mapping is substantially incomplete. The board always reserves the right to request additional updates.
- Questions regarding how the determination of the 100-year flood plain boundaries are determined; Whether individuals have the opportunity to review this and have changes made based upon new findings; Whether the additional communication that was recommended by board with the affected parties is under way?
- Questions about what happens with flood insurance and CU after additional analysis is completed? Is the flood insurance policy affected?
- Very good job with timeline and the flood mapping regarding mitigation steps.
- Confusion expressed regarding the volume of rain and the accuracy if in a drainageway.
- If the suggested motion does move forward, board requests information back regarding the high hazard zone delineations and the distribution of the Bluebell Canyon Creek split flow paths downstream of 15th Street. Most residents live after the split shown in the flood mapping; question if this going to be revisited? Board requests explanation as to the reasoning and suggests maybe holding off on approval.
- Discussion regarding further refinements to the mapping and the possibility of moving affected residents' properties out of the floodplain.
- Questions about whether this study by ICON Engineering is going to be peer-reviewed and how many floodplain maps from the past have not been peer-reviewed?
- Questions regarding actual flows up Columbine and how they compare to the flood mapping predictions. Concerns with how residents are being notified and how addresses are obtained for issuing announcements.
- Mention of rock dam that burst during the flood. Questions seeking confirmation on whether this event happened or not.
- Questions about FEMA requirements and whether or not standard debris flow gets modeled?
- Question about next steps in making a motion to Council and the intended communications that will go out to residents prior to presenting to Council?

Adjournment **[9:21 p.m.]**

There being no further business to come before the Board at this time, by motion regularly adopted, the meeting was adjourned at 9:21 p.m.

Motion to adjourn by: Squillace; **Seconded by:** Johnson

Motion Passes 5:0

Date, Time, and Location of Next Meeting:

The next WRAB meeting will be Monday, 20 October 2014 at 7:00 p.m., in the Council Chambers, 1777 Broadway, 80302.

APPROVED BY:

Board Chair

11/17/2014

Date

ATTESTED BY:

Board Secretary

11/18/2014

Date

An audio recording of the full meeting for which these minutes are a summary, is available on the Water Resources Advisory Board web page.

CITY OF BOULDER, COLORADO
BOARDS AND COMMISSIONS MEETING MINUTES

Name of Board / Commission: Water Resources Advisory Board

Date of Meeting: 20 October 2014

Contact Information of Person Preparing Minutes: Andrea Flanagan 303.413.7372

Board Members Present: Vicki Scharnhorst, Mark Squillace, Lesley Smith, Ed Clancy
Board Members Absent: Dan Johnson

Staff Present: Jeff Arthur, Director of Public Works for Utilities
Robert Harberg, Principal Engineer - Utilities
Katie Knapp, Engineering Project Manager
Annie Noble, Flood and Greenways Engineering Coordinator
Kristin Dean, Utilities Planner
Bret Linenfelser, Water Quality and Environmental Services Manager
Chris Douville, Wastewater Treatment Manager
Andrea Flanagan, Board Secretary

Cooperating Agencies Present:
Alan Turner, Senior Project Manager, CH2M HILL

Meeting Type: Regular

Agenda Item 1 – Call to Order **[7:00 p.m.]**

Agenda Item 2 – Approval of the 15 September 2014 Meeting Minutes: **[7:01 p.m.]**
Motion to approve minutes as amended from September 15th as presented.
Page
Moved by: **Squillace;** Seconded by: **Smith**
Vote: 4:0

Agenda Item 3 – Public Participation and Comment **[7:02 p.m.]**
Public Comment: None
Board follow up: None

Agenda Item 4 – **[7:03 p.m.]**
Public Hearing and Discussion of Gregory Creek Mitigation Alternatives
Katie Knapp and Utilities staff presented the item to the board, which included a Prezi presentation.

Executive Summary from the Packet Materials:
The purpose of this memorandum is to provide a general summary of the preliminary proposal for flood mitigation measures to facilitate improved flood conveyance along Gregory Canyon Creek as it traverses the City of Boulder from Flagstaff Rd. to its confluence with Boulder Creek.

The city has retained CH2MHill to evaluate potential alternatives to help alleviate future flooding along Gregory Canyon Creek. CH2MHill has conducted a study of the creek corridor and developed three sets of categorical options which would improve flood conveyance. These categories include:

1. Improvements in Public Right-of-Way and Easements;
2. Improvements outside Public Right-of-Way and Easements; and,
3. Improvements for street conveyance.

CH2MHill's Alternative Analysis Memorandum ("Analysis") is included as Attachment A. This analysis contains a detailed description of the data and models used to determine the improvements which would help flood conveyance along Gregory Canyon Creek. The intent of the draft mitigation plan is to identify various types of improvements which could be constructed along the creek corridor in order to discern the costs and benefits associated with each improvement, or group of improvements, and to prioritize these improvements.

WRAB Discussion Included:

- Questions about whether or not there has been a cost benefit analysis performed yet?
- Questions regarding staff's sense of potential merits of using street conveyance as an option?
- Suggestion to consider alternative safety signage in the event of a flood to prevent bottle necks and involve the University through outreach to student housing.
- Discussion regarding private culverts and if there is a potential plan to address this.

- Questions about whether there has been positive feedback about the drainageways and easements.
- Comments about the need to clear cars, grills and fences from areas that are prone to flooding. Questions as to what thought is given to providing instructions and educational programs for people when there is a flood?
- Questions about whether smaller group meetings could take place with property owners/ early adopters interested in getting larger culverts, driven by neighborhood groups rather than city government. Possible way to get more people on board to consider this plan for street conveyance.
- Discussion about looking into smaller detention and viable ways to help keep culverts clear.
- Questions about if smaller detentions on open space a viable option?
- Questions about how many private culverts exist?
- Questions to the board about whether the approach to smaller culverts is reasonable or should larger culverts be considered.
- Discussion around how the city gets buy-in for the city to maintain a conveyance system, as there are reservations for the city to spend money without buy-in from the residents who would benefit.
- Question if city has talked to residents about setting up a watershed focus group to discuss watersheds that the city could cooperate with.
- Mention of potential to provide incentives for community and city to work together to clean out streams and keep trees down to collectively solve issues.
- Question about costs associated with clearing areas around houses in high hazard zone.
- Statement that street conveyance option has broad support among community and appears to be a cost-effective option. Is this a fair guess of what we are likely to see?
- Question about if this watershed will flash quickly during a storm event?
- Question about whether the city has spoken with landowners in the Willow Brook area about ideas on how to better protect their properties?
- Discussion of putting soccer field in the low-lying area where the major flow would take place.
- Request to see more discussion about outreach to community in advance and during rain events.

Public Comment:

- **Keith Pearen** – Lives near Flatirons Elementary School, really appreciates where city is going with their plan and agrees that conveying a 100 year flood out of the question. Read study in its entirety. Alternatives proposed do not necessarily match what actually happened on the ground during the flood. Problematic area during this event that may not adequately be addressed at 7th. Does not have a strong feeling on option three in the roadway. Feels that spending money to make the roads convey without hurting property is money well spent. People are open to having flood mitigation done on their properties, but there are possible challenges there. Impressed with how accurately earlier studies match up with what was seen during the flood event. May be able to leverage earlier studies going forward.
- **Justin Hoffenberg** – Lives midway on creek and has specific question regarding two maps and noticed there is a chart in attachment A that shows different culverts and what improvements would look like in a 10-year plan or maximum culvert (35x6). The 10 and 50 year maps only show maximum 50-year extent. Comments were heard during open house questioning this finding showing 35 foot culverts on the 10-year map, which isn't actual benchmark for 10-year event. Requests clarification whether the maps reflect 10-year or maximum numbers and asks if maps need updating.
- **Scott Hoffenberg** – Wants to thank the board for hearing the neighborhood last year and putting neighborhood's name out there for potential for growth, which shows a lot of thought. Concerns about map showing 35-foot culvert and hopes that Board will take closer look at document from CH2M Hill to address and consider street conveyance. Appreciates Board taking a closer look at this creek and looks forward to the future.
- **Laszlo Nemeth** – Didn't have problems like University and 7th. Suggests putting energy into conveyance because Mother Nature is going to decide, not what planners decide. Water went back into Gregory Creek because a car diverted it. This area is packed with cars and not enough parking.
- **Tom Manteuffel** – Lives on College and appreciates looking into this issue. Mentioned culvert at College Avenue, which was filled with fences and BBQ grills that were piled into

culvert, forcing water to run over the creek onto other properties. Suggests looking at this issue and better advising people not to put objects in the creek bed. Mentioned 22-foot wide culvert at Aurora and feels that a 35-foot culvert is too excessive.

- **Hal Totten** – Lives on College, family built house in 1950. At height of flood, banks took all the flood waters, bank to bank and held a 1.5 – 2 feet of water before touching his foundation. Some of the street did have water conveying and he built diversion with 2x4's which diverted water down College, past Flatiron Elementary School. According to charts – what happened on College is being compared to what happened on Pennsylvania, which are not comparable. Stone bridge on his property has weathered 3 major storm events in his lifetime, which is a good model.
- **Brad Sclar** - Lives below Anderson Ditch. Asks what kind of incentive programs are being considered for property owners to keep stream beds clean?
- **Paul Shankman** - Lives at 7th and Pleasant and thinks that street conveyance is a good idea. With some work on 7th, a lot of the damage could have been avoided. East side was severely damaged. Could make a difference in the future with better street conveyance.

No Board action was requested at this time.

Agenda Item 5 – Matters **[8:11 p.m.]**

From the Board:

Board Member Smith brought up the below matter(s):

- Question regarding businesses and water bills, would there be incentive and/or adjustment to stormwater bills if these large surface areas can be converted from pavement to a more pervious surface area, which could potentially be reflected in their bill?

Board Member Clancy brought up the below matter(s):

- Requested to extend water quality report warning on fluoride in city's drinking water for seven individual groups of vulnerable populations to address more specifics surrounding fluoride in infant formula. Asking that a CDC warning be included on the report and on the city's website, modeling that of other city municipalities.
- Feels that people should be properly noticed.
- Expressed concerns for higher risks of fluorosis in infants due to fluoride in water.
- Asked the question if there exists an annual report on wastewater treatment effluent that is made available to the public?
- Noticed that Boulder Reservoir water levels are low. Asked if this is something the city controls and monitors?

Board member Scharnhorst brought up the below matter(s):

- Questioned whether a utility bill insert would suffice as a means to providing information about CDC's opinion on study of fluoride in drinking water that may affect infant baby formula.
- Expressed that if we start down the path of providing information to the public about fluoride, then Council should be prepared to put the topic back on the ballot.

Board member Squillace brought up the below matter(s):

- Expressed concern that if a recommendation is made to the public about fluoride in water, that it could create a fury for people to react to, which should be carefully considered.
- Suggests before making any recommendations, that all consequences be considered and caution should be exercised to prevent triggering reactions in the general public.

From Staff: **[8:31p.m.]**

- **Chris Douville and Bret Linenfelser will provide some brief updates on wastewater treatment and nutrients.** *Topics included:*
  - Permit compliance items regarding energy efficiency
  - Nutrient Management Grant
  - Nitrogen Upgrades Design Project
  - Permit renewal due and will expire in April, 2016
  - EnerNOC Demand Response Program
  - Alternative energy and options to modify and modernize cogeneration
  - Process optimization studies
- **South Boulder Creek**: Still waiting for additional information from CH2M Hill about scenarios involving University property.
- **Wonderland Creek Mitigation**: Funding is not atypical, need Council's authorization for potential imminent domain. First reading in November and second reading in December, which would be a last resort for negotiations.

- **Lower Bear Canyon Creek**: Board approved a motion recommending approval of the mapping study. It will be presented to Council at a later time.
- **Boulder Slough**: Board approved a motion recommending approval of the mapping study. It will be presented to Council at a later time.
- **Skunk, Bluebell, King's Gulch**: Additional work was completed on 15th and Mariposa and this topic will be revisited with the board at a later time with notable updates.
- **Frasier Meadow's Neighborhood**: Lining the wastewater collection system appears to be effectively reducing infiltration. Suggestion made for staff to put together outreach materials for residents.
- **Budget**: Recommendation for rate increases go to City Council on October 21st.

Agenda Item 6 – Future Schedule **[9:00p.m.]**

- Possible November 8th WRAB retreat to be scheduled to discuss priorities and interests for 2015.
- November: Update on Upper Twomile Goose Creek
- December: Update on Betasso CIP
- January 26th meeting is scheduled for 4th Monday rather than 3rd for WRAB board meeting, due to Martin Luther King Jr. holiday
- February 23rd meeting is scheduled for 4th Monday rather than 3rd for WRAB board meeting, due to Presidents' Day holiday.

Adjournment **[9:27 p.m.]**

There being no further business to come before the Board at this time, by motion regularly adopted, the meeting was adjourned at 9:27 p.m.

Motion to adjourn by: Squillace; **Seconded by:** Smith

Motion Passes 4:0

Date, Time, and Location of Next Meeting:

The next WRAB meeting will be Monday, 17 November 2014 at 7:00 p.m., in the Council Chambers, 1777 Broadway, 80302.

APPROVED BY:

Board Chair

11/17/14

Date

ATTESTED BY:

Board Secretary

11-17-2014

Date

An audio recording of the full meeting for which these minutes are a summary, is available on the Water Resources Advisory Board web page.

AMERICAN INDIANS COMMITTEE NATIONAL SOCIETY
DAUGHTERS of the AMERICAN REVOLUTION

AMERICAN INDIAN HERITAGE MONTH
November 2014

WHEREAS, the history and culture of our great nation have been significantly influenced by American Indians and indigenous peoples; and

WHEREAS, the contributions of American Indians have enhanced the freedom, prosperity and greatness of America today; and

WHEREAS, the customs and traditions are respected and celebrated as part of a rich legacy throughout the United States; and

WHEREAS, Native American Awareness Week began in 1976 and recognition was expanded by Congress and approved by President George Bush in August 1990, designating the month of November as National American Heritage History Month; and

WHEREAS, in honor of American Indian Heritage Month, community celebrations, as well as numerous cultural and artistic, educational and historical activities have been planned.

NOW, THEREFORE, **BE IT DECLARED** by the City Council of the City of Boulder that November is

National American Indian Heritage Month

and urge all our citizens to observe this month with appropriate programs, ceremonies and activities.

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Matthew Appelbaum, Mayor

Boulder *Colorado Companies to Watch* Month
November 1-30, 2014

WHEREAS, the Governor of Colorado initiated an annual *Colorado Companies to Watch* award program in 2009 to recognize second-stage companies with high potential for future growth; and

WHEREAS, from hundreds of nominations, only 50 companies from throughout the state are selected for the award each year and six of the *Colorado Companies to Watch* award winners in 2013 and six of the winners in 2014 are from Boulder, and

WHEREAS, these twelve Boulder companies: Connect First, Doc Popcorn, eGauge Systems, Gravity Renewables, Green Garage, Isonas, JustRight Surgical, Minute Key, Populus, Quick Left, Stratom and TeamSnap represent a broad range of industries; and

WHEREAS, these twelve Boulder companies support the local and state economy by providing more than 250 jobs in the community; and

WHEREAS, the Boulder economy benefits from the expenditures that these companies make in the local community and the wages they pay; and

WHEREAS, the city of Boulder benefits from the innovation and entrepreneurial spirit of these companies and their involvement in the community,

NOW, THEREFORE, BE IT DECLARED by the City Council of the City of Boulder, Colorado, that November 1-30, 2014 is

Boulder *Colorado Companies to Watch* Month

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Matthew Appelbaum, Mayor

First United Methodist Church Day
November 23, 2014

WHEREAS, early in 1859, the twenty-three-year-old Rev. Jacob Adriance was sent by the Methodist Bishop of Nebraska to minister to the gold camps of north central Colorado; and

WHEREAS, by the end of that year, Rev. Adriance had founded four Methodist congregations in the area, in Central City, Golden, Auraria (now Denver), and Boulder, all of which have served their communities continuously since that time; and

WHEREAS, on August 12, 1859, Rev. Adriance preached to a small gathering of people in a private home in the city of Boulder, thought to be the first formal religious service in the new community; and

WHEREAS, the First Methodist Episcopal Church of Boulder, the oldest congregation in the city, was formally founded on November 27, 1859; and

WHEREAS, this Methodist Church has stood on its site at 14th and Spruce Streets since 1872; and

WHEREAS, First United Methodist Church has actively been involved in spiritual, musical, and social justice concerns of the community for 155 years; and

WHEREAS, 2014 marks the 155th Anniversary of the founding of these four continuously operating churches in their respective communities,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Boulder, do hereby declare November 23, 2014 as

First United Methodist Church Day

in the City of Boulder, and urge all members of the community to join in recognizing this day with appropriate ceremonies and activities.

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Matthew Appelbaum, Mayor