

**THE CITY OF BOULDER
CITY COUNCIL MEETING
COUNCIL CHAMBERS, 1777 Broadway
March 3, 2015
6 PM**

1. **CALL TO ORDER AND ROLL CALL**
2. **OPEN COMMENT and COUNCIL/STAFF RESPONSE** (Limited to 45 minutes.)
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 **February 10, 2015 Study Session Summary regarding potential regulation of short term rentals.**
 - B. Consideration of a motion to accept the **February 10, 2015 Study Session Summary regarding the Chautauqua Lease.**
 - C. Consideration of a motion to approve the **disposal of an interest in Open Space lands** pursuant to Boulder City Charter Section 177 through the **grant of an easement to Public Service Company of Colorado for three power pole support beams on the Stanger Open Space property** that were required to be relocated by the construction of the Boulder County/Colorado Department of Transportation road improvements **on State Highway 93.**
 - D. Consideration of a motion to **authorize an Intergovernmental Agreement with Boulder County for design and construction of the extension of the Boulder Creek Bike Path.**
 - E. Consideration of a motion to **renew the employment agreement of Boulder Municipal Court Associate Judge Jeffrey Cahn and to award a 2.5% merit increase.**
 - F. Introduction, **first reading** and consideration of a motion to order published by title only an **ordinance granting a 10-year franchise to Comcast of Colorado IV, LLC**; approving a 10-year cable television franchise agreement between the City of Boulder and Comcast of Colorado IV, LLC; and authorizing the city manager to sign all agreements attendant thereto.
 - G. Introduction, **first reading** and consideration of a motion to order published by title only an **ordinance approving supplemental appropriations to the 2015 Budget.**

- H. Introduction, **first reading** and consideration of a motion to publish by title only an **ordinance** amending the capital facilities impact fee in Section 4-20-62, “and Chapter 8–9, B.R.C. 1981 by the addition of a **new affordable housing linkage fee** on non-residential development, and setting forth related details.
- I. Introduction, **first reading** and consideration of a motion to publish by title only an **emergency ordinance** amending Section 4-20-68, “**Flood Related Fee Waiver**,” B.R.C. 1981, to extend temporary authority to waive certain fees to facilitate recovery and repair work resulting from flood impacts and amending Section 9-10-2 “Continuation or Restoration of Nonconforming Uses and Nonstandard Buildings, Structures, and Lots,” B.R.C., 1981, **to extend the time to resume uses and restore buildings affected by the September 2013 flood.**

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. 8029 designating** the building and property at **747 12th St.**, to be **known as the Cowgill Property, as an individual landmark** under the city’s Historic Preservation Ordinance.
 Owner: 747 Twelfth Street, LLC
 Applicant: Landmarks Board
- B. **Council decision and direction on items related to the University Hill Commercial District Moratorium Project**, including:
 - 1. Second reading and consideration of a motion to adopt **Emergency Ordinance No. 8030** amending Title 9, “Land Use Code,” B.R.C. 1981, to **limit residential uses within the University Hill General Improvement District** in the BMS (Business Main Street) zoning district **and correct BMS zone standards**, and setting forth related details.
 - 2. **Direction to staff about strategies** to consider further as part of the **on-going Hill Reinvestment Strategy and the Community Planning and Sustainability Work Plan.**

6. **MATTERS FROM CITY MANAGER**

None

7. **MATTERS FROM CITY ATTORNEY**

None

8. **MATTERS FROM MAYOR AND MEMBERS**

A. Call Ups

1. Vacation of a 79 square foot portion of a utility easement that is located at the southeast corner of the property at 2248 Nicholl Street. (ADR2015-00006)
 2. Concept Plan Review for 96 Arapahoe (LUR2014-00100)
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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Anyone requiring special packet preparation such as Braille, large print, or tape recorded versions may contact the City Clerk's Office at 720- 564-2175, 8 a.m. – 5 p.m. Monday through Friday. *At least two business days notification prior to the meeting or preparation of special materials is required.*

If you need Spanish interpretation or other language-related assistance for this meeting, please call (303) 441-1905 at least three business days prior to the meeting. *Si usted necesita interpretación o cualquier otra ayuda con relación al idioma para esta junta, por favor comuníquese al (303) 441-1905 por lo menos 3 negocios días antes de la junta.*

Electronic presentations to the city council must be pre-loaded by staff and will not be accepted after 3:30 p.m. the day of a regularly scheduled council meeting. Electronic media must come on a prepared USB jump (flash/thumb) drive.



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: March 3, 2015

AGENDA TITLE: Consideration of a motion to accept the February 10, 2015 Study Session Summary regarding potential regulation of short term rentals.

PRESENTERS:

Tom Carr, City Attorney
Bob Eichen, Chief Financial Officer
Kristin Delcamp, Homeownership Program Manager

EXECUTIVE SUMMARY:

The purpose of this agenda item is to seek council approval of the following summary of the February 10, 2015 study session on short term rentals. Council scheduled this study session to provide direction to staff to draft regulations regarding short term rentals.

STAFF RECOMMENDATION:

Staff recommends approval of the summary of the February 10, 2015 study session regarding financial disclosure.

Suggested Motion Language:

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

Motion to accept the study session summary of the February 10, 2015 study session, included as **Attachment A**.

BACKGROUND: The background information for this topic can be found in the Study Session Memorandum dated February 10, 2015.

NEXT STEPS:

Based on input at the study sessions, staff will:

1. Draft a proposed ordinance to implement council's direction regarding regulation of short term rentals.
2. Develop an enforcement program to deter the conversion of long term rental properties into short term rental properties.

ATTACHMENT A – February 10, 2015 Study Session Summary

Study Session Summary
February 10, 2015
Short Term Rental

PRESENT

City Council: Mayor Matthew Appelbaum, Mayor Pro Tem Suzanne Jones, Council Members Macon Cowles, Suzanne Jones, George Karakehian, Tim Plass, Andrew Shoemaker, Sam Weaver and Mary Young.

Staff members: City Manager Jane S. Brautigam, City Attorney Tom Carr, Chief Financial Officer Bob Eichem, Kristin Delcamp, Homeownership Program Manager.

PURPOSE

The purpose of this study session was for council to discuss and provide feedback on potential regulation or prohibition of short term rentals in Boulder.

INTRODUCTION AND PRESENTATION

City attorney Tom Carr made a brief presentation regarding short term rentals in Boulder. He noted that Boulder's code was not drafted in anticipation of the use of residential properties for rentals of less than thirty days. There appears to have been a significant growth in short term rentals over the last five years. A staff memorandum in 2009 found 21 rentals in Boulder listed on the VRBO.com website. In December 2014, staff found 514 rentals in Boulder on the airbnb.com website. Other cities have addressed regulating short term rentals in a variety of ways. Among other things, communities regulate location, ownership, residency, fire safety, parking and length of stay. Chief financial officer Bob Eichem reviewed taxation options. He suggested that the new sharing economy could require a new tax adaptable to various incarnations of this new business model. He suggested that council consider a ballot measure for the November 2015 ballot.

DISCUSSION

Council first considered additional information that might be helpful in developing and administering regulations. Council members suggested that staff explore establishing a baseline for number of short term rentals and monitoring the impact on rental housing units would be helpful. One council member suggested looking at the number of houses that have been purchased by limited liability corporations would provide some insight into properties purchased for investment rather than to be owner occupied. Another council member thought that it would be helpful to know how many older houses have been replaced by new ones.

No council member expressed any interest in a complete ban on short term rentals. Council members expressed significant concern about the effect of short term rentals on the housing market. There appear to be economic incentives to convert long term rental

properties to short term rentals. Boulder has a shortage of housing available. The conversion to short term rentals could further reduce the availability of affordable housing in Boulder. Council members also expressed concern about life safety issues. Long term rentals require an inspection every four years. There is no similar inspection program for short term rentals.

Council members discussed limiting rentals to rentals of an owner's principal place of residence. There was a discussion of whether this would include other structures on the same property. Council members appeared to agree that principal residence should include the entire lot, although there was concern that this could lead to the conversion of accessory units to short term rentals.

A council member expressed concern about the conversion of affordable housing units to short term rentals. Kristin Delcamp explained that the affordable housing covenant prohibited renting an affordable housing unit as a short term rental. Rental of a room is permitted, but rental of the entire unit is not.

Council members considered whether to limit the number of days for which a property could be rented as a short term rental. There was a discussion of the importance of having a local contact available at all times. There also was a recognition that some residents might want to rent their home while on vacation.

There was a discussion of maximum occupancy. One council member suggested that occupancy be tied to the number of bedrooms. Others stressed the importance of not giving short term rentals an advantage over long term rentals. There appeared to be a consensus that occupancy should be tied to the underlying occupancy.

Council members agreed that short term rentals should be subject to inspections similar to those for long term rentals. There was some discussion of whether the current long term program requires inspections with sufficient frequency. There was a sense that the inspections should be more frequent. One council member pointed out that short term rentals are regulated by the market place. That is, owners have a business incentive to make their properties attractive and safe.

With respect to taxation, council members expressed a desire to have a level playing field. That is, the tax should be equal to the accommodations tax paid by hotels and motels. Council members appeared comfortable with a separate tax to be approved by the voters. Council members agreed that the legalization of short term rentals should be contingent on voter authorization of a tax.

Council members agreed that the city should maintain a publicly available list of authorized short term rentals. Neighbors could use this list to be better informed about what is happening in their neighborhood.

Council directed staff to bring back a first reading ordinance, with a realization that the ordinance could be used to further refine council direction regarding regulation. In the

interim, council did not see a need for interim regulation unless life safety issues presented themselves.

NEXT STEPS

Staff will present a first reading ordinance for council consideration in the beginning of the second quarter. Staff will work to research the data that council members believe would be helpful. Council wanted to be clear that anyone who purchased a property as an investment with the intent of generating revenue through short term rentals would be doing so at their own risk. Staff will work on developing an enforcement program to address this goal before a final ordinance is adopted.



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: March 3, 2015

AGENDA TITLE: Consideration of a motion to accept the February 10, 2015 Study Session Summary regarding the Chautauqua Lease.

PRESENTERS:
Tom Carr, City Attorney

EXECUTIVE SUMMARY:

The purpose of this agenda item is to seek council approval of the following summary of the February 10, 2015 study session on the Chautauqua lease. Council scheduled this study session to provide direction regarding issues to be addressed regarding the Chautauqua lease and to establish a process for negotiating a new lease.

STAFF RECOMMENDATION:

Staff recommends approval of the summary of the February 10, 2015 study session regarding the Chautauqua lease.

Suggested Motion Language:

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

Motion to accept the study session summary of the February 10, 2015 study session, included as **Attachment A**.

BACKGROUND: The background information for this topic can be found in the Study Session Memorandum dated February 10, 2015.

NEXT STEPS:

Based on input at the study sessions, staff will:

1. Appoint a council subcommittee for lease negotiations. This committee was established at the February 17, 2015 council meeting.
2. Retain a facilitator and establish a meeting schedule for the subcommittee.

ATTACHMENT A – February 10, 2015 Study Session Summary

Study Session Summary
February 10, 2015
Chautauqua Lease

PRESENT

City Council: Mayor Matthew Appelbaum, Mayor Pro Tem Suzanne Jones, Council Members Macon Cowles, Suzanne Jones, George Karakehian, Tim Plass, Andrew Shoemaker, Sam Weaver and Mary Young.

Staff members: City Manager Jane S. Brautigam, City Attorney Tom Carr

PURPOSE

The purpose of this study session was for council to discuss and provide feedback on issues related to and process for the negotiation of the Chautauqua lease.

INTRODUCTION AND PRESENTATION

City attorney Tom Carr made a brief presentation regarding the history and purpose of the Chautauqua lease. The city has leased 26 acres to the Colorado Chautauqua Association (CCA) for 117 years. The lease is more than a lease. It is a document that governs an important and very successful public private partnership. Some of the key terms of the lease are the length, rent, responsibilities, governance, use of facilities, parking and limitation of subleases. The lease states that City Council appoints 2/15 of the CCA Board. No City Council members are currently on the CCA Board. The city, in cooperation with CCA and the community, developed guiding principles for Chautauqua. These principles were applied successfully to plan and construct new restrooms near the auditorium and can inform the lease negotiations. Potential issues were identified and a proposed process was suggested.

DISCUSSION

Council members considered the appropriate form of agreement. There seemed to be consensus that the lease should be limited to issues traditionally addressed in a lease, such as term, rent and subleasing. Management related issues could be better addressed in a separate agreement. These issues could include more difficult issues such as parking and maintenance responsibilities. The agreement could be more flexible than the lease to adapt to changing conditions over time.

Council members discussed other specific issues that either the lease or agreement should address. This includes the status of the Primrose cabin, future projects like undergrounding utilities, stormwater improvements, and the continued maintenance of various facilities in the Chautauqua area. Council members noted that any future lease subcommittee should also look at the distinction between public infrastructure and improvements (capital improvements) and private improvements (e.g., buildings operated

by CCA or cottage owners) in how the terms are structured. The historic context also creates conflicts – for example, city standards recently dictated curbs on the streets, yet that is inconsistent with the vision for the area. The lease or agreement should address conflicts like this.

Council also discussed issues such as term, governance and the appropriate contribution from cottage owners. Council did not reach any consensus on any of these issues. Council agreed to have a subcommittee address these issues first before they were brought before council.

Council also discussed the importance of community outreach early in the process, rather than later this summer. One approach that proved effective in the stewardship process was allowing public comment at some committee meetings.

Council directed staff to organize a subcommittee made of council members and representatives of CCA. City staff would serve in a support role to the committee. There was a suggestion that members of interested boards be included. The direction was that the committee be kept relatively small, but that the meetings should be public with a public comment period. Council members also suggested that the subcommittee consider devoting one session to board input. The committee should also focus on ensuring the correct issues are identified early in the process. Staff was directed to bring forward a motion to create the subcommittee.

NEXT STEPS

Staff presented a motion to adopt a charter for the subcommittee at the February 17, 2015 council meeting. After amending the charter, council adopted the motion unanimously. Council members George Karakehian and Tim Plass were appointed to serve on the subcommittee.

Staff will work to schedule the first subcommittee meeting shortly, with the anticipation that the committee will complete its work by May.



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: March 3, 2015

AGENDA TITLE Consideration of a motion to approve the disposal of an interest in Open Space lands pursuant to Boulder City Charter Section 177 through the grant of an easement to Public Service Company of Colorado for three power pole support beams on the Stanger Open Space property that were required to be relocated by the construction of the Boulder County/Colorado Department of Transportation road improvements on State Highway 93.

PRESENTER/S

Jane S. Brautigam, City Manager
Tracy Winfree, Interim Director, Open Space and Mountain Parks
Jim Schmidt, Property Agent

EXECUTIVE SUMMARY

As part of the Community Ditch underpass construction project, State Highway (SH) 93 is being widened and repaved in a project administered by Colorado Department of Transportation (CDOT) with assistance from Boulder County Transportation Department. Open Space and Mountain Parks (OSMP) has previously granted Public Service Company of Colorado (PSCo) an easement to move three power poles that had been in the CDOT right of way to the adjoining East Rudd Open Space land in order to facilitate the Community Ditch underpass construction. Project engineers later discovered that three additional PSCo power poles, north of the underpass construction zone also needed to be relocated to allow for the lane widening portion of the project (see Attachment A). These three poles required support beams to keep the poles upright against the strong winds in this area. At the Aug. 20, 2014 Open Space Board of Trustees (OSBT) meeting, the Board recommended granting, for expediency reasons, a nonexclusive revocable license to construct the pole supports on OSMP lands with the understanding that a permanent easement would be granted by the city.

OSMP staff is now requesting council approval to grant a permanent easement to PSCo for these power pole supports.

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 disposal of an interest in Open Space lands pursuant to Boulder City Charter Section 177 through the grant of an easement to Public Service Company of Colorado for three power pole support beams on the Stanger Open Space property that were required to be relocated by the construction of the Boulder County/Colorado Department of Transportation road improvements on State Highway 93.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – This SH 93 improvement project may entice more people to visit and do business in Boulder, possibly creating an economic gain for the community and increased tax base for the city.
- Environmental – There are no environmental impacts associated with the construction of the support beam on OSMP lands.
- Social - There are no known negative social impacts associated with this easement.

OTHER IMPACTS

- Fiscal – This easement will have no fiscal impact on the city. The poles have already been relocated at PSCo's expense.
- Staff time – The only staff time involved is the time needed to create and execute the easement document.

BOARD AND COMMISSION FEEDBACK

This item was heard at the Feb. 18 Open Space Board of Trustees public meeting which was advertised in the *Daily Camera* on Feb.15, 2015. A Notice of Disposal of Open Space Lands was published in the *Daily Camera* on Feb. 7 and 8, 2015 pursuant to Section 177 of the City Charter. The board unanimously approved this disposal.

PUBLIC FEEDBACK

There was no public feedback regarding this disposal.

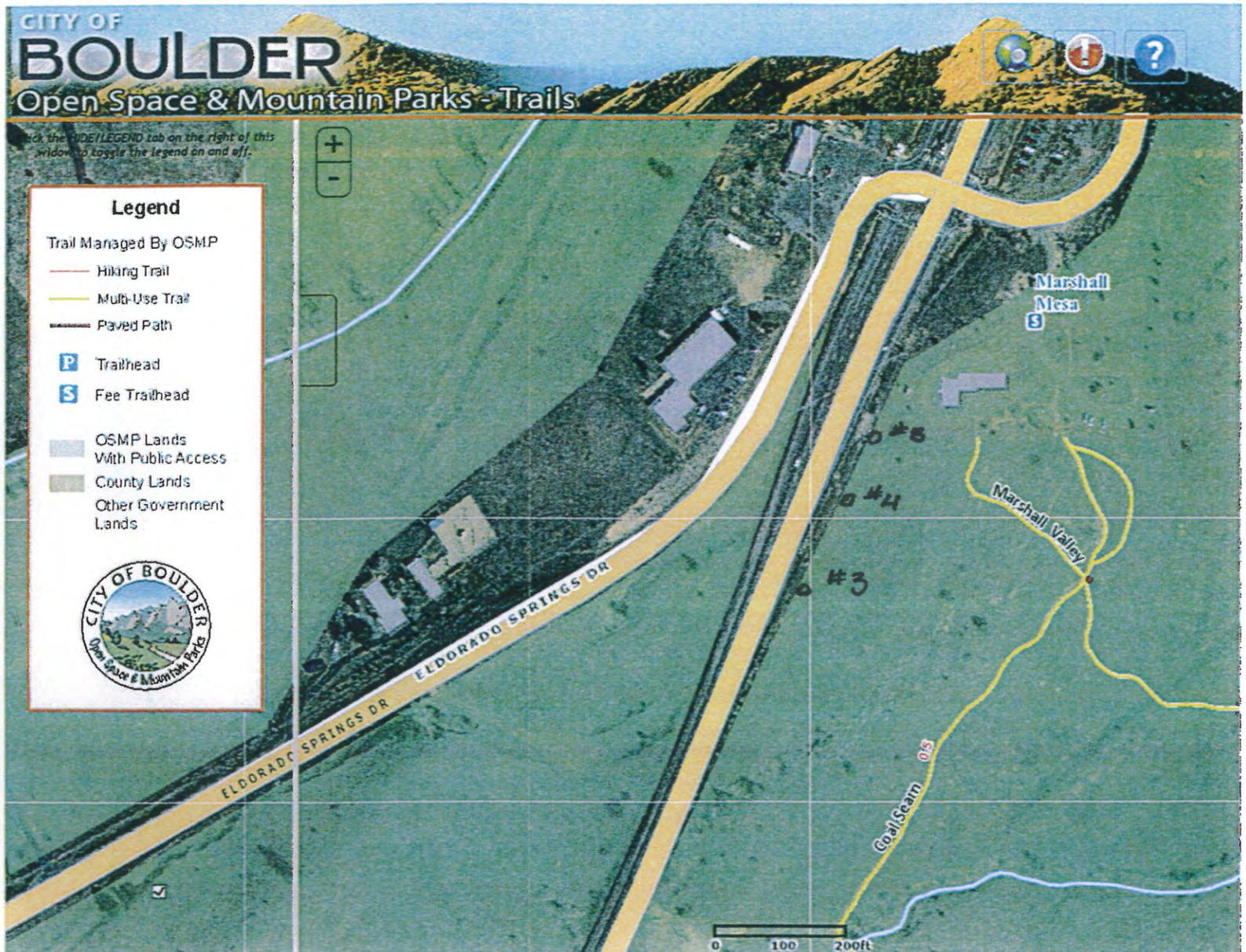
ANALYSIS

OSMP has previously granted PSCo an easement to move three power poles that had been in the CDOT right of way to the adjoining East Rudd Open Space land in order to facilitate the Community Ditch underpass construction. Project engineers later discovered that three additional PSCo power poles, north of the underpass construction zone, also needed to be relocated to allow for the lane widening portion of the project. These three poles required support beams to keep the poles upright against the strong winds in this area. Since granting an easement requires going through the Charter Section 177 disposal process which takes between 90 and 120 days to perfect, OSMP granted a nonexclusive license to PSCo in August 2014 to allow the poles to be relocated

as quickly as possible. Now that the poles have been relocated, PSCo requires an easement from the city to maintain the pole supports which are on the Stanger Open Space property.

ATTACHMENT

- A. Map of pole locations





**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: March 3, 2015

AGENDA TITLE Consideration of a motion to authorize an Intergovernmental Agreement with Boulder County for design and construction of the extension of the Boulder Creek Bike Path.

PRESENTER/S

Jane S. Brautigam, City Manager
Tracy Winfree, Interim Director, Open Space and Mountain Parks
Jim Reeder, Land and Visitor Services Division Manager

EXECUTIVE SUMMARY

Boulder County Transportation has been awarded a Colorado Department of Transportation (CDOT) grant to design and construct an extension of the Boulder Creek Bike Path from its existing terminus to the State Highway (SH) 119 tunnel. This regional trail has been a desire of both the city and county for some time.

Segments of the trail will be built on both city-owned land and CDOT right of way. This trail will provide non-motorized, grade-separated access to Open Space and Mountain Parks' (OSMP) Chapman Drive Trailhead and to the county's Betasso Link Trail, both on SH 119.

Both parties jointly participated in the development of a conceptual design for this trail in 2011. County staff used the conceptual designs developed at that time to apply for state transportation funds to design and construct the trail. This Intergovernmental Agreement (IGA) sets forth the framework by which the city and county will continue to partner on this project, such as developing final alignment, design, permitting, and cost sharing. The estimated cost of the project is approximately \$5.5 million. The grant awarded to the county is for \$4.4 million (80 percent of the total) which will require a 20 percent match of \$1.1 million split between the county and the city.

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 sign the Intergovernmental Agreement between the City of Boulder and Boulder County for design and construction of the extension of the Boulder Creek Bike Path, substantially in the form now before council.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic - Overall economic impacts on the business community are unknown. It is anticipated that this trail will attract more users (pedestrians and bike riders from outside the city). A portion of these users will shop in Boulder during their trip to the area.
- Environmental – While every trail has an environmental impact, both the city’s and the county’s staffs continue to work toward minimizing the environmental impacts of this trail.
- Social – This trail will connect downtown Boulder to the city’s Chapman Drive Trailhead and to the county’s Betasso Link Trail making additional progress on the city’s regional trails priority.

OTHER IMPACTS

- Fiscal – This project is receiving the majority of its funding from a CDOT grant of approximately \$4.4 million which is 80 percent of the estimated total cost. The city’s portion of the required 20 percent match will be \$546,635.
- Staff time – Under the proposal, city staff will facilitate needed design reviews by the city, facilitate obtaining all required city permits and assist with notification of public meetings.

BOARD AND COMMISSION FEEDBACK

This item was heard at the Feb. 18 Open Space Board of Trustees public meeting which was advertised in the *Daily Camera* on Feb. 15, 2015. The board unanimously approved authorization of the IGA.

PUBLIC FEEDBACK

Public comment at the Board meeting was very supportive of this extension. Additional comments were received concerning trailheads and parking along this extension. These are important issues but are not a part of this project. OSMP will address trailheads and parking as a separate issue.

ANALYSIS

Background

The extension of the Boulder Creek Bike Path has been a high priority for both the city and county for some time. It is a goal in the city’s West Trail Study Area Plan and is also in the county’s Regional Trail Master Plan.

In 2011, the city and Boulder County jointly commissioned the development of a conceptual design to extend the Boulder Canyon Bike Path from its present terminus at Four Mile Creek to the county's Betasso Link Trail (see Attachment A). This extension would provide access to both the city's Chapman Drive Trailhead and to the county's Betasso Open Space. The estimated cost of the extension at that time was close to \$5 million.

In 2013 the county used that conceptual plan as a basis to apply for a CDOT grant to help design and construct this trail extension. The county was awarded the grant which requires a 20 percent local match. In consideration of the mutual benefits of the project and council's Regional Trails priority, city and county staffs have agreed to partner for the design and construction of this trail. Attachment B, the IGA, spells out the terms of that agreement. The IGA includes an equal sharing of the local match. The total local match requirement for the CDOT award is \$1,093,270 with the city's share being \$546,635.

This construction, which is anticipated to begin in 2016, will result in a 10-foot wide path from downtown Boulder to Boulder County Parks and Open Space's network of trails in Betasso Reserve with access along the way to OSMP's Chapman Drive Trailhead and Trail. It will provide a much safer way for pedestrians and bicyclists to use the canyon. It will be advantageous for drivers since they will not need to be as concerned about pedestrians and bicyclists on the highway.

The county will be the lead agency on this project and will develop appropriate scopes of work for the design and construction. The city will review and provide comments on all aspects of the project. The city also agrees to facilitate any needed design reviews by city staff, boards and the City Council, to facilitate obtaining all required city permits and to assist with notification of public meetings.

Once built, the county will have maintenance responsibilities.

Recommendation

Since this trail is a highly desirable addition to regional trails in the Boulder area and the city and county can leverage substantial external funding, OSMP staff and the Open Space Board of Trustees recommend that City Council authorize this IGA.

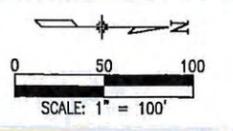
ATTACHMENTS:

- A. Maps of proposed trail alignment
- B. Intergovernmental Agreement

LEGEND

	PREFERRED ALIGNMENT
	ALTERNATE 1
	ALTERNATE 2
	ALTERNATE 3
	ALTERNATE 4

PROGRESS SET
2011-06-07

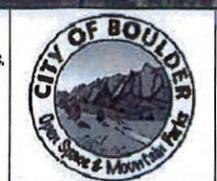


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File Name: 4/26/11	
Horiz. Scale: As Noted	Vert. Scale: As Noted
Unit Information	Unit Leader Initials

Sheet Revisions		
Date:	Comments	Init.

Lois and Associates, Inc.
2565 Trail Ridge Drive East
Lafayette, Colorado 80026
303.444.2073
www.LoisandAssociates.com



TRAIL STUDY	
No Revisions:	
Revised:	
Void:	

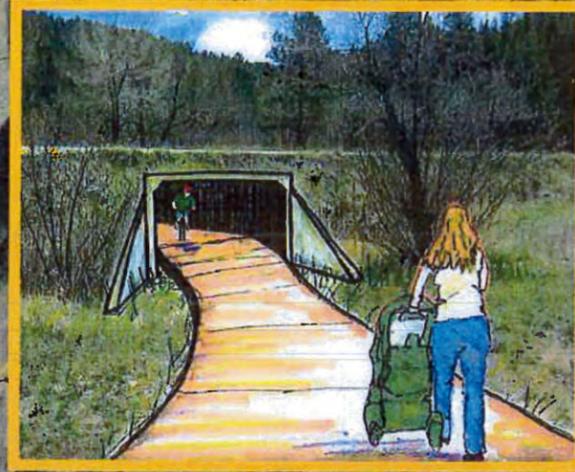
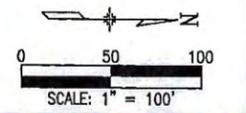
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S.H. 119 TRAIL FEASIBILITY STUDY	
FOUR MILE CANYON TO TUNNEL #1	
Designer:	Structure Numbers
Detailer:	
Sheet Subset:	Subset Sheets:

Project No./Code	
Sheet Number	1

LEGEND

	PREFERRED ALIGNMENT
	ALTERNATE 1
	ALTERNATE 2
	ALTERNATE 3
	ALTERNATE 4

PROGRESS SET
2011-06-07



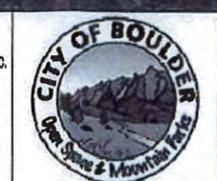
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Sheet Revisions		
Date:	Comments	Init.

Loris and Associates, Inc.
2688 Trail Ridge Drive East
Lafayette, Colorado 80026
303.444.2073
www.LorisandAssociates.com



TRAIL STUDY	
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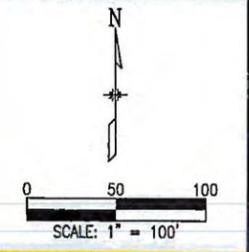
BOULDER CREEK PATH		
S.H. 119 TRAIL FEASIBILITY STUDY		
FOUR MILE CANYON TO TUNNEL #1		
Designer:	Structure Numbers	
Detailer:		
Sheet Subset:	Subset Sheets:	

Project No./Code	-
Sheet Number	2

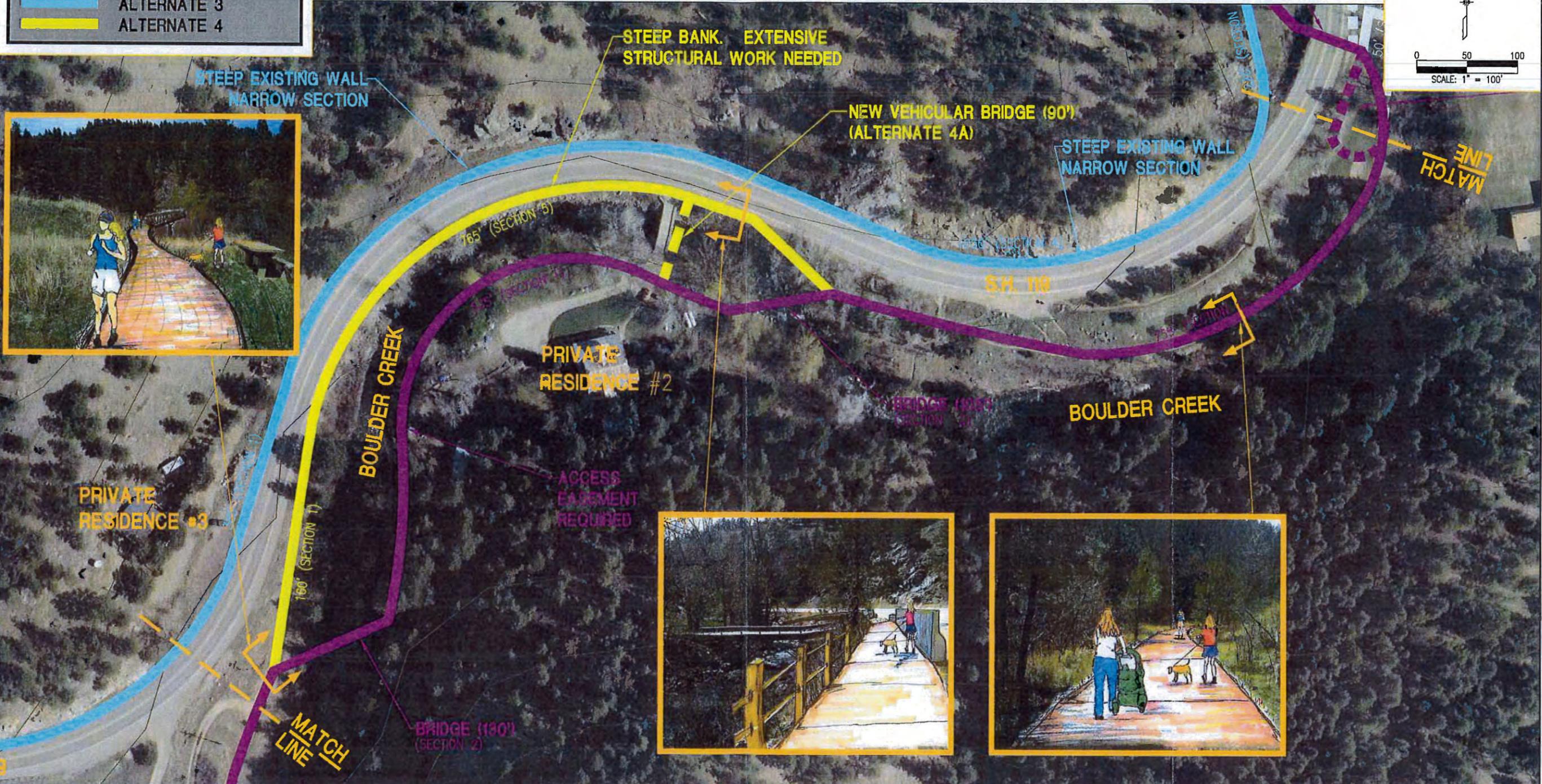
LEGEND

	PREFERRED ALIGNMENT
	ALTERNATE 1
	ALTERNATE 2
	ALTERNATE 3
	ALTERNATE 4

PROGRESS SET
2011-06-07



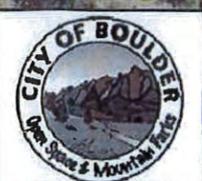
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Print Date: Jun 07, 2011	BAO
File Name: 4/26/11	
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Sheet Revisions		
Date:	Comments	Init.

Loris and Associates, Inc.
2585 Trail Ridge Drive East
Lafayette, Colorado 80026
303.444.2073
www.LorisandAssociates.com



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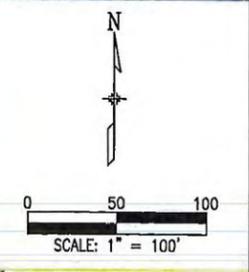
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Sheet Number	3

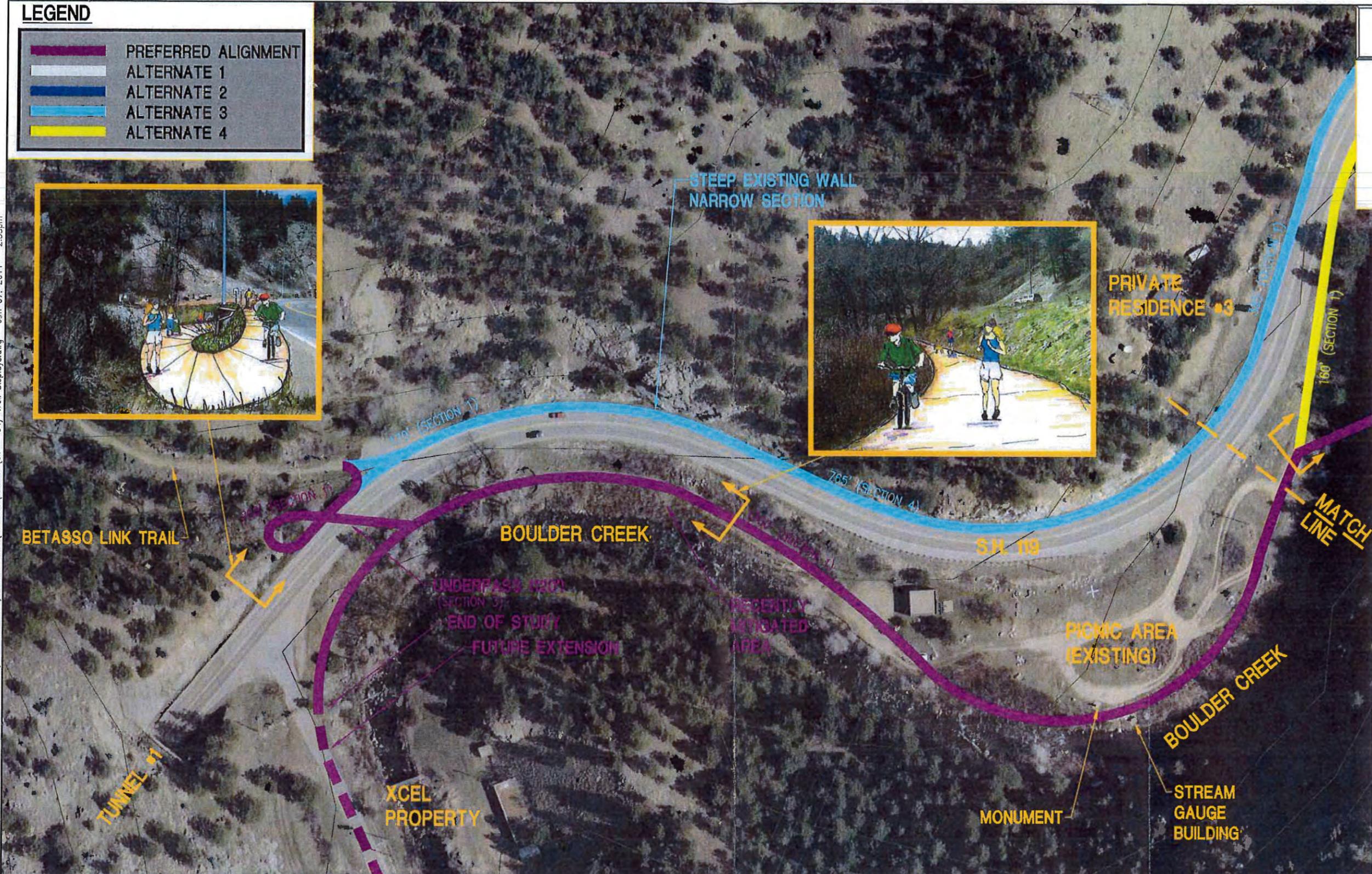
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	ALTERNATE 3
	ALTERNATE 4

PROGRESS SET
2011-06-07



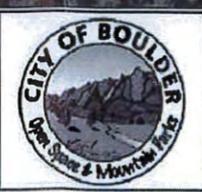
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Print Date: Jun 07, 2011	BAO
File Name: 4/26/11	
Horiz. Scale: As Noted	Vert. Scale: As Noted
Unit Information	Unit Leader Initials

Sheet Revisions		
Date:	Comments	Init.

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TRAIL STUDY
No Revisions:
Revised:
Void:

BOULDER CREEK PATH	
S.H. 119 TRAIL FEASIBILITY STUDY	
FOUR MILE CANYON TO TUNNEL #1	
Designer:	Structure Numbers
Detailer:	
Sheet Subset:	Subset Sheets:

Project No./Code	-
Sheet Number	4

INTERGOVERNMENTAL AGREEMENT

**FOR DESIGN AND CONSTRUCTION OF THE BOULDER CANYON TRAIL
EXTENSION**

THIS INTERGOVERNMENTAL AGREEMENT FOR DESIGN AND CONSTRUCTION OF THE BOULDER CANYON TRAIL (“the **Agreement**”) is entered into this _____ day of _____, 2015, 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.;

WHEREAS, the Parties jointly participated in the development of a conceptual design to extend the Boulder Canyon Trail (the “**Trail**”) from its existing terminus to the SH 119 tunnel; and

WHEREAS, the County used these conceptual designs to apply for state transportation funds to design and construct the Trail; and

WHEREAS, the Trail would in part provide non-motorized, grade separated access to the City’s recently completed Chapman Drive trailhead; and

WHEREAS, some segments of the Trail would be located on City owned parcels; and

WHEREAS, the County has been awarded Colorado Department of Transportation (“**CDOT**”) funds to design and construct the Trail; and

WHEREAS, the local match requirement of the CDOT award is \$1,093,270.00; and

WHEREAS, in consideration of the mutual benefit of the projects, the Parties have agreed to both participate in providing the local match;

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. The design and construction of the Trail, as referred to herein, pertains to all aspects of development of the Trail. This includes but is not limited to topographical survey, preliminary and final designs, environmental clearances, public process, traffic control, storm water management, mobilization, construction and construction management.
3. The County will be the lead agency on the development of the scopes of work for the design and construction of the Trail. The City will review and provide comments on all scopes of work. The County will be the sole agency to enter into agreements with selected contractors.
4. The City agrees to the contractor procurement processes established by and agreed to by CDOT and the County for all design and construction.
5. The City will contribute 50% of the local match requirements for the Trail via the following procedures:
 - a. As the agency entering into all contracts with selected contractors, the County at its sole discretion will approve and pay for all project invoices related to the design and construction of the Trail.
 - b. In a schedule that is in accordance with the agreement between the County and CDOT, the County will invoice CDOT for 80% of project expenditures.
 - c. The County will invoice the City for 10% of all project expenditures on a monthly basis.
 - d. The City shall pay all project related invoices within 30 days of receipt of the County invoice.
6. Project representatives from the Parties will meet in person no less than monthly to ensure smooth collaboration and communication. Meetings will begin at the signing of this IGA and continue to the conclusion of all invoicing and reimbursements.
7. Upon receipt of the bids for construction but before construction contractor award, the Parties will review remaining budget available for construction and all construction related activities. Based upon this information the Parties will in good faith effort revisit the scope of work and determine if all components identified in the design of the Trail can be constructed with the remaining budget. Should the Parties determine it necessary and prudent to contribute additional local funds to this project, an additional agreement between the Parties will be developed.
8. The City will be responsible for the following tasks:
 - a. Facilitate any needed design review by City staff, Boards and Commissions, and City Council.
 - b. Facilitate obtaining any and all city permits as needed for the design and construction of the Trail including construction on City owned parcels.
 - c. Assist with notification of public meetings through the City's public information officer(s).

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

19. 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.

20. The Parties 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.

21. Nothing herein shall constitute a multiple fiscal year obligation pursuant to Colorado Constitution, Article X, Section 20. Notwithstanding any other provision of this Agreement, the City's obligations under this Agreement are subject to annual appropriation by the City Council of the City. Any failure of a City Council annually to appropriate adequate monies to finance the City's obligations under this Agreement shall terminate this Agreement at such time as such then-existing appropriations are to be depleted. Notice shall be given promptly to the Parties of any failure to appropriate such adequate monies.

22. No Joint Venture. The Parties are independent contracting parties. Nothing in this Agreement shall create a joint venture, partnership, employer-employee or other relationship between the Parties. Except as expressly permitted under this Agreement, neither Party may act as agent for, on behalf of, or in the name of the other or otherwise make representations or commitments, verbal or written, on behalf of the other Party without the other Party's prior consent.

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

APPROVED AS TO FORM:

City Attorney

Date: _____

**COUNTY OF BOULDER, STATE OF
COLORADO COUNTY:**

Cindy Domenico, Chair, Board of County
Commissioners

ATTEST:

Mike Ryder, Clerk to the Board of Commissioners



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: March 3, 2015

AGENDA TITLE: Consideration of a motion to renew the employment agreement of Boulder Municipal Court Associate Judge Jeffrey Cahn and to award a 2.5% merit increase.

PRESENTER/S

Linda Cooke, Presiding Judge, Municipal Court
James Cho, Interim Court Administrator, Municipal Court

EXECUTIVE SUMMARY

The purpose of this item is to provide notice to the Council of Presiding Judge Linda Cooke's intent to renew the employment agreement of Jeffrey Cahn, Associate Judge for the Boulder Municipal Court. Unlike the Presiding Judge, the Associate Judge does not report directly to City Council. Rather, pursuant to both the Boulder Revised Code section 2-6-4(b)(6) and section 86 of the City Charter, the Presiding Judge is charged with hiring and supervising any associate judges. The Presiding Judge must provide notice to council of the appointment, evaluation, or removal of an Associate Judge.

Presiding Judge Cooke reviewed Associate Judge Cahn's performance using the City of Boulder's Performance Management process and template (See Attachment B). Application of that template can place a city of Boulder employee in one of four categories: Exceeds Our Highest Expectations, Fully Meets Our High Expectations, Meets Core Responsibilities, or Does Not Meet Expectations. While not reflected in Attachment B, each category correlates to a percentage increase in salary based on merit.

Judge Cahn's evaluation placed him in the Fully Meets Our High Expectations category. An employee in this category receives "Excellent" ratings on many of the Goals and Behaviors assessed. Based on this assessment of Judge Cahn's performance, Judge Cooke recommends that Judge Cahn be awarded a 2.5% merit increase in accordance with the salary guidelines of the City of Boulder's Performance Management model.

STAFF RECOMMENDATION

Suggested Motion Language:

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

- (a) Motion to support the renewal of the employment agreement of Boulder Municipal Court Associate Judge Jeffery Cahn; and
- (b) Motion in support of the award of 2.5% merit increase to Associate Judge Jeffery Cahn

PUBLIC FEEDBACK

Judge Cahn receives extremely positive feedback from members of the public who have completed juror surveys and provided anecdotal feedback to court staff.

BACKGROUND

Boulder Revised Code section 2-6-4(b)(6) provides that the presiding judge of the municipal court shall supervise and evaluate associate judge(s) who are employed under a yearly contract with renewal at the discretion of the City Council, and transmit such evaluation, together with a recommendation concerning renewal of the contract and any adjustment in salary, to the City Council. Judge Cahn's evaluation and recommendation for contract renewal and salary adjustment through a merit increase are submitted pursuant to this provision.

ANALYSIS

The performance review process is a 360° process. Feedback is gathered from court staff, jurors, attorneys, and defendants who appear in court. The feedback is gathered using court user feedback, court employee surveys, supervisor observations, and an employee self evaluation. Judge Cahn's annual performance evaluation demonstrates that he delivers outstanding results as a judge and department leadership team member. He is a highly respected jurist by his peers in the Colorado Municipal Judges Association. This past year Judge Cahn has worked at improving outcomes for homeless defendants in appropriate cases. He has also neared completion of a large project that has consumed much of his administrative time over the last couple of years. As he does every year, Judge Cahn has proven his value to the Municipal Court and the overall city organization.

ATTACHMENTS

- A. Employment Agreement for Jeffery Cahn
- B. Performance Management Individual PAF04

Attachment A

AMENDMENT TO EMPLOYMENT AGREEMENT with JEFFREY CAHN, ASSOCIATE JUDGE, BOULDER MUNICIPAL COURT DATED October 1, 2006

This Amendment is made as of the 25 day of February, 2015, by and between the City of Boulder, Colorado, a Colorado home rule city ("City"), and Jeffrey Cahn ("Employee").

The City and Contractor entered into a Contract dated October 1, 2006, to retain and employ Jeffrey Cahn as Associate Judge in the Boulder Municipal Court; and the parties wish to amend the terms of the Contract and to clarify the promises and obligations of the parties.

NOW THEREFORE, in consideration of the promises and obligations set forth below, the parties agree to amend the Contract as follows:

- 1. The parties agree to abide by the terms of the Contract, except as modified by this amendment.
2. The preamble of the Contract is replaced by the following section, to read:

This agreement is effective the 1st day of March, 2015, by and between Jeffrey Cahn, the "Employee," and the City of Boulder, a Colorado home rule city, the "City."

- 3. Section A of the Contract is replaced by the following section, to read:

Basic Compensation Employee's base salary will be \$73.538 per hour. Hours will be assigned by the Presiding Judge. Employee will work approximately 20 hours per week. This is an estimate only and shall not be deemed to create any contractual duty or right.

- 4. Except as amended herein, the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have set their hands to this Contract on the day and year above first written.

CITY OF BOULDER

By: _____
Presiding Judge

By: _____
Jeffrey Cahn, Employee

Approved as to form:

City Attorney

Performance Management Individual Plan

Employee Name: Jeffrey Cahn	Employee No: 000006665
Review: MERIT	Review Due: March 01, 2015

PAF04 Employee Review Form

Instructions for Managers: Please print only the two-page PAF04 (print button is below), then have employee and manager sign and date. If this is an Exceeds Our High Expectations Rating, it will also need your director's signature. Once signatures are obtained, e-mail to [HRSubmitForms](#). If you are unable to scan the document, please fax to 303-441-3049.

Employee Position Information

Distribution: 02000	Effective Payroll Number:
Name: Jeffrey Cahn	Employee No: 000006665
Hire Date: 09/03/2002	Title: Associate Municipal Judge
Position Code: 00003632	

Employee Payroll Information

Contract Grade: MGMT10	Current Rate: 71.7445
% to Max: 11.24	Range Distribution: Upper Third
Current Pay Range: \$51.9700 - \$79.8100	

The percent below is subject to proration if it has been less than 12 months since your last review.

Review Information

Type of Review: MERIT	Review Rating: Fully Meets Our High Expectations	% Increase: 2.50
-----------------------	--	------------------

To Be Completed By HR Department

Effective Date of Merit Increase: _____	Retro PP: _____
Type of Next Review: _____	Next Review Date: _____
Processed By : _____	Date: _____



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM
MEETING DATE: March 3, 2015**

AGENDA TITLE

Introduction, first reading and consideration of a motion to order published by title only Ordinance No. 8032 granting a 10-year franchise to Comcast of Colorado IV, LLC; approving a 10-year cable television franchise agreement between the City of Boulder and Comcast of Colorado IV, LLC; and authorizing the city manager to sign all agreements attendant thereto.

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 (the “Existing Franchise Agreement,” **Attachment A**) with Comcast of Colorado IV, LLC (“Comcast”) which allows Comcast to use the city’s public rights of way to provide cable television services. This agreement, originally set to expire on Dec. 31, 2011, has been extended three times, most recently from Jan. 1, 2015 to May 1, 2015. The purpose of this agenda item is to allow council to consider approving a new, 10-year agreement (“Proposed Franchise Agreement,”) with Comcast. Highlights of the Proposed Franchise Agreement are summarized below.

It is important to emphasize some points about why the city enters into cable franchise agreements and the powers and limitations that come with this authority:

- **Permission to Use City ROW** - The city enters into cable franchise agreements to permit private providers to use city right-of-way (“ROW”) to run their cable lines to provide multi-channel program service. Multi-channel program service providers that do not require use of city ROW (i.e., satellite service providers) are not required to enter into a cable franchise agreement with the city.
- **Non-Exclusive Agreement** – Pursuant to Section 109 of the Boulder Home Rule Charter, no exclusive franchises may ever be granted. This means franchise agreements may not prevent other entrants from using city ROW to provide competing services.
- **Renewal** – Under federal law, a cable franchise will generally be renewed unless it has not met the terms of its existing franchise agreement or will not be able to provide adequate service to meet the cable-related needs of the community in the future.
- **Permitted Areas for Regulation** - The issues that may be considered in deciding whether to renew a cable franchise agreement relate primarily with:
 - Substantial compliance with the terms of an 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.
- **Limitations on Regulations** - Federal law limits the city’s right to condition 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 services).
- **No Election for Renewal** - Boulder’s Home Rule Charter, at Article VIII, § 108, requires a vote of the electorate to approve all franchises. However, that charter provision was preempted by federal statute. *See Qwest v. Boulder*, 151 F. Supp.2d 1236 (2001), interpreting that statute. Accordingly, there will be no election concerning a renewal of the Comcast’s franchise agreement.

STAFF RECOMMENDATION

Suggested Motion Language:

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

Motion to introduce and order published by title only an ordinance granting a 10-year franchise to Comcast of Colorado IV, LLC, approving a 10-year cable television franchise agreement between the City of Boulder and Comcast of Colorado IV, LLC in substantially the form included as an attachment to the ordinance (**Attachment B**); and authorizing the City Manager to sign all agreements attendant thereto.

FISCAL IMPACTS

The city currently collects an annual franchise fee equal to 5 percent of Comcast's "gross revenue," as that term is defined in Section 11-6-2 of the Boulder Revised Code 1981. In 2014, this amounted to \$1,272,234. 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 Access Channel 54 in 2008, the city has allocated the PEG fees to Educational Channel 22 and for Government Channel 8. In 2014, the PEG revenue generated from these fees totaled \$147,346.73. This revenue is limited by federal law to capital costs associated with these access channels.

PUBLIC FEEDBACK

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 6 of 10 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.

BACKGROUND

The city last entered into a new franchise agreement with Comcast in February 2004. This agreement, originally set to expire on Dec. 31, 2011, has thrice been extended: first until Dec. 31, 2013; then until Dec. 31, 2014, then most recently for an additional 120 days until May 1, 2015, in order to allow time for staff to complete franchise negotiations. City Council granted the first two extensions to allow Denver and Aurora to complete their franchise negotiations with Comcast. The Colorado Communications and Utilities Alliance ("CCUA") has based its model franchise agreement on the agreements worked out with those cities. The Proposed Franchise Agreement is based on the CCUA model agreement, but also incorporates important requirements found in the city's Cable Code (Chapter 11-6 of the Boulder Revised Code 1981) and the Customer Service Standards found in Appendix A to the Cable Code.

ANALYSIS

The following are the main highlights of the requirements of the Proposed Franchised Agreement:

1. **Ten-Year Term** – Given the speed at which service in the telecommunications arena is changing, the Proposed Franchise Agreement would be in place for just ten-years.
2. **Customer Service Requirements** – Much has changed in the delivery of customer service since 2004 and the Customer Service Standards attached to the Proposed Franchise Agreement reflect those changes. The Customer Service Standards address several matters including minimum requirements for providing courtesy, accessibility, and responsiveness and establish a complaint procedure for receiving, acting upon and resolving customer complaints to Comcast, or to the city as the franchising authority, and the right of the city to impose financial assessments to remedy violations. While the standards do not require a service center in the City of Boulder, Comcast opened a new such service center in 2014 located at 2900 W. Baseline Road that serves multiple Boulder County cities. The new standards require Comcast to have that center fully staffed for longer hours than are currently required and to offer the following services: bill payment, equipment exchange, processing of change of service requests, and response to Customer inquiries and request.
3. **Franchise Fee** – As compensation for benefits received, Comcast will continue to pay an amount equal to 5 percent of its gross revenues to the city.
4. **PEG Channels and Fees** – Comcast will continue to provide the city with four standard definition channels for Public, Educational or Government Access (“PEG) use. In addition, Comcast will begin providing one high definition access channel and allow the city to request a second such channel three years after this agreement in exchange for giving up one of the three SD channels. Comcast will also continue to provide \$.50 per month per subscriber in PEG fees, and the city will continue to have the authority to increase that rate up to \$1.00 per month per subscriber. If a public access or government access channel is underutilized, the Proposed Franchise Agreement permits Comcast to use that channel for other programming until the city provides notice to Comcast that the channel will again be fully utilized.
5. **Web-Based Video on Demand and Streaming** – Comcast will provide a \$25,000 grant to the city for use in acquiring equipment to facilitate cable and web-based access programming.
6. **Free Service and Access Boxes for City Use** - Comcast will continue to provide, at no cost to the city, one outlet of Basic Service and Digital Starter Service to all city-owned and occupied buildings. Pursuant to a letter agreement that will be executed with Comcast, the form of which is attached as **Attachment C**, once the city activates an HD Digital Access Channel, Comcast will also provide, at no cost to the City, one outlet of basic HD service and one HD cable box to be located at the Channel 8 office, for the city to monitor the HD Digital Access Channel’s signal.

7. **Promotion of PEG Programming** - Comcast will work with the City to assist in the promotion of PEG programming. The side agreement calls for Comcast to provide both cable box and bill messages to subscribers and to accommodate a minimum of 25 30-second promotional spots per year.

8. **Applicability of City Ordinances** – In addition to the requirements spelled out in the Proposed Franchise Agreement, Comcast is also bound to comply with all applicable city ordinances and regulations, including the Boulder Cable Code (Title 6, Chapter 6, BRC) and the Construction Design Guidelines. However, if there is a direct conflict between the city’s current ordinances and the terms of the Proposed Franchise Agreement, the terms of the Proposed Franchise Agreement will control.

NEXT STEPS

Staff may return to council in the future with suggested amendments to the Cable Code (especially the Customer Service Standards) if staff concludes that amendments would reduce confusion or the current provisions no longer seem applicable.

ATTACHMENTS

Attachment A: Current Franchise Agreement with Comcast

Attachment B: Ordinance Approving Proposed Franchise Agreement with Comcast, inclusive of the Proposed Franchise Agreement

Attachment C: Letter Agreement with Comcast

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. **Construction 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 severally 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, Franchisee 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 Franchisee 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, Franchisee 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: [Signature]
City Manager

ATTEST:

[Signature]
City Clerk on behalf of the
Director of Finance and Record

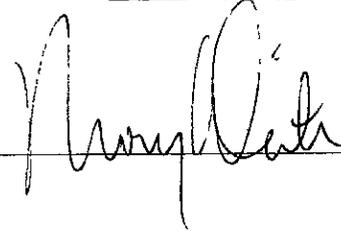
APPROVED AS TO FORM:

[Signature]
City Attorney

COMCAST OF COLORADO IV, LLC
By: [Signature]
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: 11/31/2007

(seal)

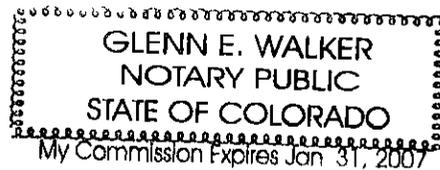


EXHIBIT A**LIST OF LOCATIONS RECEIVING FREE CABLE SERVICE**

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 33 rd
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
Dauy 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 Dailey
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, modulator provided and maintained by Comcast
use sole use is upstream transmission of PEG signal
- 2) 1777 Broadway to 1000 Canyon Blvd
technology coax, mod/demod provided and maintained by Comcast
use relay of programming originating in City Council Chambers
- 3) 1805 33rd to Comcast Boulder headend (33rd & Walnut)
technology coax, modulator provided and maintained by Comcast
use x5 year on test basis, designed as back up to main PEG facility
at 1000 Canyon in event of emergency that shuts down main studio
- 4) 2590 Walnut to Comcast Boulder headend (33rd & Walnut)
technology fiber, modulator provided and maintained by Comcast
use upstream carriage of PEG signal
- 5) CU stadium to Comcast Boulder headend (33rd & Walnut)
technology coax, modulator provided and maintained by Comcast
use upstream carriage of educational access programming
- 6) 6500 E Arapahoe to Comcast Boulder headend
technology coax, modulator provided and maintained by Comcast
use upstream carriage of school district board meetings to Comcast Boulder headend for insertion on
Government channel

ORDINANCE NO. 8032

AN ORDINANCE APPROVING THE RENEWAL OF A CABLE TELEVISION FRANCHISE AGREEMENT WITH COMCAST OF COLORADO IV, LLC. FOR THE PERIOD MAY 1, 2015 THROUGH AND INCLUDING APRIL 30, 2025.

THE CITY COUNCIL OF THE CITY OF BOULDER FINDS AND RECITES THAT:

A. A cable franchise agreement was previously granted to TCI and its successor AT&T Broadband, and Comcast of Colorado IV, LLC. Comcast of Colorado IV, LLC, is the current grantee of the non-exclusive franchise. The current franchise is scheduled to expire on April 30, 2015.

B. A negotiated agreement for a franchise renewal with Comcast of Colorado IV, LLC, has been achieved. That agreement is appended and incorporated into this ordinance as Exhibit A. The City Council finds that adoption of the proposed franchise agreement is in the best interests of the city and is in compliance with city policies and ordinances that regulate the granting of franchises.

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

Section 1. The City Council grants Comcast of Colorado IV, LLC, a non-exclusive franchise to make reasonable and lawful use of the Public Rights-of-Way within the City for the purpose of providing cable service to residents and business in the city.

Section 2. The City Council approves the Cable Franchise Agreement between the City of Boulder and Comcast of Colorado IV, LLC, in substantially the form of Exhibit A, and authorizes the City Manager to execute the Cable Franchise Agreement and all agreements attendant thereto.

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 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 March 2015.

Mayor

City Clerk

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED PUBLISHED BY
TITLE ONLY this _____ day of _____ 2015.

Mayor

City Clerk

CABLE FRANCHISE AGREEMENT

**COMCAST OF COLORADO IV, LLC
AND
THE CITY OF BOULDER, COLORADO**

May 1, 2015

**COMCAST OF COLORADO IV, LLC AND
THE CITY OF BOULDER, COLORADO**

CABLE FRANCHISE AGREEMENT

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**COMCAST OF COLORADO IV, LLC AND
CITY OF BOULDER, COLORADO**

CABLE FRANCHISE AGREEMENT

SECTION 1. DEFINITIONS AND EXHIBITS

(A) DEFINITIONS

For the purposes of this Franchise Agreement, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word “shall” is always mandatory and not merely directory.

1.1 “Access” means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including the City and its designees, of the Cable System to acquire, create, receive, and distribute video Cable Services and other services and signals as permitted under Applicable Law including, but not limited to:

a. “Public Access” means Access where community-based, noncommercial organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary users.

b. “Educational Access” means Access where schools are the primary users having editorial control over programming and services. For purposes of this definition, “school” means any State-accredited educational institution, public or private, including, for example, primary and secondary schools, colleges and universities.

c. “Government Access” means Access where governmental institutions or their designees are the primary users having editorial control over programming and services.

1.2 “Access Channel” means any Channel, or portion thereof, designated for Access purposes or otherwise made available to facilitate or transmit Access programming or services.

1.3 “Activated” means the status of any capacity or part of the Cable System in which any Cable Service requiring the use of that capacity or part is available without further installation of system equipment, whether hardware or software.

1.4 “Affiliate,” when used in connection with Grantee, means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

1.5 “Applicable Law” means any statute, ordinance, judicial decision, executive order or regulation having the force and effect of law, including specifically the Cable Act, the Boulder

Cable Code and the City's Design and Construction Standards, that determines the legal standing of a case or issue.

1.6 "Bad Debt" means amounts lawfully billed to a Subscriber within the City and owed by that Subscriber for Cable Service and accrued as revenues on the books of Grantee, but not collected after reasonable efforts have been made by Grantee to collect the charges.

1.7 "Basic Service" is the level of programming service which includes, at a minimum, all Broadcast Channels, all PEG SD Access Channels required in this Franchise Agreement, and any additional Programming added by the Grantee, and is made available to all Cable Services Subscribers in the Franchise Area.

1.8 "Boulder Cable Code" means Title 11, Chapter 6 of the Boulder Revised Code 1981 (B.R.C. 1981), as the same may be amended from time to time.

1.9 "Broadcast Channel" means local commercial television stations, qualified low power stations and qualified local noncommercial educational television stations, as referenced under 47 USC § 534 and 535.

1.10 "Broadcast Signal" means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System by antenna, microwave, satellite dishes or any other means.

1.11 "Cable Act" means the Title VI of the Communications Act of 1934, as amended.

1.12 "Cable Operator" means any Person or groups of Persons, including Grantee, who provide(s) Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System or who otherwise control(s) or is (are) responsible for, through any arrangement, the management and operation of such a Cable System.

1.13 "Cable Service" means the one-way transmission to Subscribers of video programming or other programming service, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.14 "Cable System" means any facility, including Grantee's, consisting of a set of closed transmissions paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any Public Right-of-Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system

that complies with federal statutes; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

1.15 “Channel” means a portion of the electromagnetic frequency spectrum which is used in the Cable System and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

1.16 “City” is the city of Boulder, Colorado, a body politic and corporate under the laws of the State of Colorado.

1.17 “City Council” means the Boulder City Council, or its successor, the governing body of the City.

1.18 “Colorado Communications and Utility Alliance” or “CCUA” means the non-profit entity formed by franchising authorities and/or local governments in Colorado or its successor entity, whose purpose is, among other things, to communicate with regard to franchising matters collectively and cooperatively.

1.19 “Commercial Subscribers” means any Subscribers other than Residential Subscribers.

1.20 “Demarcation Point” means up to and including the modulator where the City signal is converted into a format to be transmitted over a fiber connection to the Grantee.

1.21 “Designated Access Provider” means the entity or entities designated now or in the future by the City to manage or co-manage Access Channels and facilities. The City may be a Designated Access Provider.

1.22 “Digital Starter Service” means the Tier of optional video programming services, which is the level of Cable Service received by most Subscribers above Basic Service, and does not include Premium Services.

1.23 “Downstream” means carrying a transmission from the Headend to remote points on the Cable System or to interconnection points on the Cable System.

1.24 “Dwelling Unit” means one room or rooms with internal connections for residential occupancy and including bathroom and kitchen facilities. Multiple Dwelling Units exist if there is more than one meter for any utility, address to the property or kitchen; or if there are separate entrances to rooms which could be used as separate Dwelling Units; or if there is a lockable, physical separation between rooms in the Dwelling Unit such that a room or rooms on each side of the separation could be used as a Dwelling Unit or rooms with no internal connections.

1.25 “Effective Date” means May 1, 2015.

1.26 “FCC” means the Federal Communications Commission.

1.27 “Fiber Optic” means a transmission medium of optical fiber cable, along with all

associated electronics and equipment, capable of carrying Cable Service by means of electric lightwave impulses.

1.28 “Franchise” shall mean a nonexclusive authorization granted in accordance with the Boulder Cable Code to install cables, wires, lines, optical fiber, underground conduit, and other devices necessary and appurtenant to the construction, operation, maintenance and repair of a cable system along the public rights of way within all or a specified area of the City. Any such authorization, in whatever form granted, shall not mean or include: a) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City; b) any permit or authorization required in connection with operations on public streets, rights of way or other property, including, without limitation, permits for attaching devices to poles or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along public rights of way; c) agreements required for the use of conduits and poles, whether publicly or privately owned; or d) express or implicit authorization to provide service to, or install a cable system on, private property without owner consent (except for use of compatible easements pursuant to section 621(a)(2) of the Cable Act, 47 USC § 541(a)(2)).

1.29 “Franchise Agreement” means the document in which this definition appears, *i.e.*, the contractual agreement, executed between the City and Grantee, containing the specific provisions of the authorization granted, including references, specifications, requirements and other related matters.

1.30 “Franchise Area” means the area within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise Agreement.

1.31 “Franchise Fee” means that fee payable to the City described in Subsection 3.1.

1.32 “Grantee” means Comcast of Colorado IV, LLC or its successor, transferee or assignee.

1.33 “Gross Revenues” means, and shall be construed broadly to include all revenues derived directly or indirectly by Grantee and/or an Affiliated Entity that is the cable operator of the Cable System, from the operation of Grantee’s Cable System to provide Cable Services within the City. Gross revenues include, by way of illustration and not limitation:

- monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event and video-on-demand Cable Services);
- installation, reconnection, downgrade, upgrade or similar charges associated with changes in subscriber Cable Service levels;
- fees paid to Grantee for channels designated for commercial/leased access use, allocated on a *pro rata* basis using total Cable Service subscribers within the City;

- converter, remote control, and other Cable Service equipment rentals, leases, or sales;
- revenues derived from sales of advertising that are made available to Grantee's Cable System Subscribers within the City and shall be allocated on a *pro rata* basis using total Cable Service Subscribers reached by the advertising;
- all commissions, rep fees, Affiliate fees, or rebates paid to National Cable Communications ("NCC") and Comcast Spotlight ("Spotlight") or their successors associated with sales of advertising on the Cable System within the City allocated on a *pro rata* basis using total Cable Service subscribers reached by the advertising;
- late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the City;
- revenues from program guides;
- FCC Regulatory Fees; and,
- commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service subscribers within the City.

(A) "Gross Revenues" shall not include:

- actual Bad Debt write-offs, except any portion that is subsequently collected;
- any taxes and/or fees on services furnished by Grantee imposed by any municipality, state or other governmental unit, provided that Franchise Fees and the FCC regulatory fee shall not be regarded as such a tax or fee;
- fees imposed by any municipality, state or other governmental unit on Grantee including but not limited to Public, Educational and Government (PEG) Fees;
- launch fees and marketing co-op fees; and,
- unaffiliated third party advertising sales agency fees which are reflected as a deduction from revenues.

(B) To the extent revenues are received by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a *pro rata* basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card

value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the City. The City reserves its right to review and to challenge Grantee's calculations.

(C) Grantee reserves the right to change the allocation methodologies set forth in this Section 1.32 in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Grantee will explain and document the required changes to the City within three (3) months of making such changes, and as part of any audit or review of Franchise Fee payments, and any such changes shall be subject to 1.29(D) below.

(D) Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles ("GAAP") as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Notwithstanding the forgoing, the City reserves its right to challenge Grantee's calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

1.34 "Headend" means any facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals, equipment for the Interconnection of the Cable System with adjacent Cable Systems and interconnection of any networks which are part of the Cable System, and all other related equipment and facilities.

1.35 "Leased Access Channel" means any Channel or portion of a Channel commercially available for video programming by Persons other than Grantee, for a fee or charge.

1.36 "Manager" means the City Manager of the City or designee.

1.37 "Person" means any individual, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.

1.38 "Premium Service" means programming choices (such as movie Channels, pay-per-view programs, or video on demand) offered to Subscribers on a per-Channel, per-program or per-event basis.

1.39 "Public Right(s)-of-Way" shall mean the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkway, waterway, easement, or similar property in which the City now or hereafter holds any property interest, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining a Cable System. No reference herein to a "Public Right-of-Way" shall be deemed to be a representation or guarantee by the City that its interest or other right to control the use of such property is sufficient to permit

its use for such purposes, and Grantee shall be deemed to gain only those rights to use as are properly in the City and as the City may have the undisputed right and power to give.

1.40 “Residential Subscriber” means any Person who receives Cable Service delivered to Dwelling Units or Multiple Dwelling Units, excluding such Multiple Dwelling Units billed on a bulk-billing basis.

1.41 “Standard Drop” means 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.

1.42 “State” means the State of Colorado.

1.43 “Subscriber” means any Person who or which elects to subscribe to, for any purpose, Cable Service provided by Grantee by means of or in connection with the Cable System and whose premises are physically wired and lawfully Activated to receive Cable Service from Grantee's Cable System, and who is in compliance with Grantee’s regular and nondiscriminatory terms and conditions for receipt of service.

1.44 “Subscriber Network” means that portion of the Cable System used primarily by Grantee in the transmission of Cable Services to Subscribers.

1.45 “Telecommunications” means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received (as provided in 47 U.S.C. Section 153(43)).

1.46 “Telecommunications Service” means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used (as provided in 47 U.S.C. Section 153(46)).

1.47 “Tier” means a group of Channels for which a single periodic subscription fee is charged.

1.48 “Two-Way” means that the Cable System is capable of providing both Upstream and Downstream transmissions.

1.49 “Upstream” means carrying a transmission to the Headend from remote points on the Cable System or from interconnection points on the Cable System.

(B) EXHIBITS

The following documents, which are occasionally referred to in this Franchise Agreement, are formally incorporated and made a part of this Franchise Agreement by this reference:

- 1) *Exhibit A*, entitled Customer Service Standards.

- 2) *Exhibit B*, entitled Report Form.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

(A) The City hereby grants to Grantee a nonexclusive authorization to make reasonable and lawful use of the Public Rights-of-Way within the City to construct, operate, maintain, reconstruct and rebuild a Cable System for the purpose of providing Cable Service subject to the terms and conditions set forth in this Franchise Agreement and in any prior utility or use agreements entered into by Grantee with regard to any individual property. This Franchise Agreement shall constitute both a right and an obligation to provide the Cable Services required by, and to fulfill the obligations set forth in, the provisions of this Franchise Agreement. 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 City nor Grantee may take any unilateral action which materially changes the explicit mutual promises in this contract. Subject to the foregoing, Grantee does not waive its right to challenge the lawfulness of any particular amendment to the Boulder Cable Code 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.

(B) Nothing in this Franchise Agreement shall be deemed to waive the lawful requirements of any generally applicable City ordinance. 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 Public Rights-of-Way covered by the Franchise, including without limitation the right to perform work on its roadways, Public 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. Grantee 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.

(C) Each and every term, provision or condition herein is subject to the provisions of Applicable Law. In the event of a conflict between the Boulder Cable Code as it existed on the Effective Date of this Franchise Agreement and this Franchise Agreement, 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 Boulder Cable Code, the Boulder Cable Code is not a contract. Nothing in this Section 2.1 shall prevent Grantee from challenging a particular amendment to the Boulder Cable Code as an impairment of this Franchise Agreement.

(D) This Franchise Agreement shall not be interpreted to prevent the City from imposing additional lawful conditions, including additional compensation conditions for use of the Public Rights-of-Way, should Grantee provide service other than Cable Service.

(E) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise Agreement, that any Affiliate of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the obligations of this Franchise Agreement.

(F) No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise Agreement shall not include or be a substitute for:

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City;

(2) Any permit, agreement, or authorization required by the City for Public Right-of-Way users in connection with operations on or in Public Rights-of-Way or public property including, by way of example and not limitation, street cut permits; or

(3) Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Franchise Agreement including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

(G) This Franchise Agreement is intended to convey limited rights and interests only as to those Public Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Public Right-of-Way; it does not provide the Grantee with any interest in any particular location within the Public Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

(H) This Franchise Agreement does not authorize Grantee to provide Telecommunications Service, or to construct, operate or maintain Telecommunications facilities. This Franchise Agreement is not a bar to the provision of non-Cable Services, or to the imposition of any lawful conditions on Grantee with respect to Telecommunications, whether similar, different or the same as the conditions specified herein. This Franchise Agreement does not relieve Grantee of any obligation it may have to obtain from the City an authorization to provide Telecommunications Services, or to construct, operate or maintain Telecommunications facilities, or relieve Grantee of its obligation to comply with any such authorizations that may be lawfully required.

2.2 Use of Public Rights-of-Way

(A) Subject to the City's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Public Rights-of-Way within the City such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as are necessary and

appurtenant to the operation of a Cable System within the City. Grantee, through this Franchise Agreement, is granted extensive and valuable rights to operate its Cable System for profit using the City's Public Rights-of-Way in compliance with all applicable City construction codes and procedures. As trustee for the public, the City is entitled to fair compensation as provided for in Section 3 of this Franchise Agreement to be paid for these valuable rights throughout the term of the Franchise Agreement.

(B) Grantee must follow City established nondiscriminatory requirements for placement of Cable System facilities in Public Rights-of-Way, including the specific location of facilities in the Public Rights-of-Way, and must in any event install Cable System facilities in a manner that minimizes interference with the use of the Public Rights-of-Way by others, including others that may be installing communications facilities. Within limits reasonably related to the City's role in protecting public health, safety and welfare, the City may require that Cable System facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Public Right-of-Way; may deny access if Grantee is not willing to comply with City's requirements; and may remove, or require removal of, any facility that is not installed by Grantee in compliance with the requirements established by the City, or which is installed without prior City approval of the time, place or manner of installation, and charge Grantee for all the costs associated with removal; and may require Grantee to cooperate with others to minimize adverse impacts on the Public Rights-of-Way through joint trenching and other arrangements.

2.3 Effective Date and Term of Franchise Agreement

This Franchise Agreement and the rights, privileges and authority granted hereunder shall take effect on January 1, 2015 (the "Effective Date"), and shall terminate at midnight on December 31, 2024 unless terminated sooner as hereinafter provided.

2.4 Franchise Nonexclusive

The Franchise granted herein shall be nonexclusive, and subject to all prior franchises, rights, interests, easements or licenses granted by the City to any Person to use any Public Right-of-Way for any purpose whatsoever, including the right of the City to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder.

2.5 Competitive Equity

(A) The Grantee acknowledges and agrees that the City reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Cable Services within the City. If the City grants such an additional franchise or other similar lawful authorization containing material terms and conditions that differ from Grantee's material obligations under this Franchise Agreement, then the City agrees that the obligations in this Franchise Agreement will, pursuant to the process set forth in this Section, be amended to include any material terms or conditions that it imposes upon the new entrant, or provide relief from existing material terms or conditions, so as to insure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but

are not limited to: Franchise Fees and Gross Revenues; insurance; System build-out requirements; security instruments; Public, Education and Government Access Channels and support; customer service standards; required reports and related record keeping; competitive equity (or its equivalent); audits; dispute resolution; remedies; and notice and opportunity to cure breaches. The Parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are materially equivalent. Video programming services (as defined in the Cable Act) delivered over wireless broadband networks are specifically exempted from the requirements of this Section.

(B) The modification process for this Franchise Agreement, as provided for in Section 2.5 (A), shall only be initiated by written notice by the Grantee to the City regarding specified franchise obligations. Grantee's notice shall address the following: (1) identifying the specific terms or conditions in the competitive cable services franchise which are materially different from Grantee's obligations under this Franchise Agreement; (2) identifying the Franchise Agreement terms and conditions for which Grantee is seeking amendments; (3) providing text for any proposed Franchise Agreement amendments to the City, with a written explanation of why the proposed amendments are necessary and consistent.

(C) Upon receipt of Grantee's written notice as provided in Section 2.5 (B), the City and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed Franchise Agreement modifications, and that such negotiation will proceed and conclude within a ninety-day (90) time period, unless that time period is reduced or extended by mutual agreement of the Parties. If the City and Grantee reach agreement on the Franchise Agreement modifications pursuant to such negotiations, then the City shall amend this Franchise Agreement to include the modifications.

(D) In the alternative to Franchise Agreement modification negotiations as provided for in Section 2.5 (C), or if the City and Grantee fail to reach agreement in such negotiations, Grantee may, at its option, elect to replace this Franchise Agreement by substituting the franchise agreement or other similar lawful authorization that the City grants to another provider of Cable Services (with the exception of any system design requirements unique to the competitive provider) so as to insure that the regulatory and financial burdens on each entity are equivalent. If Grantee so elects, the City shall immediately commence proceedings to replace this Franchise Agreement with the franchise agreement entered into by the City with the other Cable Services provider.

(E) Notwithstanding anything contained in this Section 2.5(A) through (D) to the contrary, the City shall not be obligated to amend or replace this Franchise Agreement unless the new entrant makes Cable Services available for purchase by Subscribers or customers under its franchise agreement with the City.

(F) Subject to Section 15, Severability, 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.

2.6 Familiarity with Franchise Agreement

The Grantee acknowledges and warrants by acceptance of the rights, privileges and agreements granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise Agreement and is willing to and does accept all lawful and reasonable risks of the meaning of the provisions, terms and conditions herein. The Grantee further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise Agreement, and finds that the same are commercially practicable at this time, and consistent with all local, State and federal laws and regulations currently in effect, including the Cable Act. The City and Grantee agree that this Franchise Agreement is a negotiated agreement and that for the purpose of interpretation neither City nor Grantee shall be deemed the drafter of this Franchise Agreement.

2.7 Effect of Acceptance

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the City's legal right to issue and enforce the Franchise Agreement; (2) accepts and agrees to comply with each and every provision of this Franchise Agreement subject to Applicable Law; and (3) 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.

SECTION 3. FRANCHISE FEE PAYMENT AND FINANCIAL CONTROLS

3.1 Franchise Fee

As compensation for the benefits and privileges granted under this Franchise Agreement and in consideration of permission to use the City's Public Rights-of-Way, Grantee shall continue to pay as a Franchise Fee to the City, throughout the duration of and consistent with this Franchise Agreement, an amount equal to five percent (5%) of Grantee's Gross Revenues.

3.2 Payments

Grantee's Franchise Fee payments to the City shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than thirty (30) days after said dates.

3.3 Acceptance of Payment and Recomputation

No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the

performance of any other obligation of Grantee.

3.4 Quarterly Franchise Fee Reports

A written report, verified by an authorized representative of Grantee and containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount, shall accompany each payment to the City or be sent concurrently under separate cover. Such report shall detail all Gross Revenues of the Cable System.

3.5 Annual Franchise Fee Reports

Grantee shall, within sixty (60) days after the end of each year this Franchise is in effect, furnish to the City a statement stating the total amount of Gross Revenues for the year and all payments, deductions and computations for the period.

3.6 Audits

Upon thirty (30) days' prior written notice, but no more frequently than annually, the City, including the City's Auditor or his/her authorized auditors, shall have the right to conduct an independent audit/review of Grantee's records reasonably related to the administration or enforcement of this Franchise Agreement. Pursuant to subsection 1.32, as part of the Franchise Fee audit/review, the City shall specifically have the right to review relevant data related to the allocation of revenue to Cable Services in the event Grantee offers Cable Services bundled with non-Cable Services. For purposes of this section, "relevant data" shall include, at a minimum, Grantee's records, produced and maintained in the ordinary course of business, showing the subscriber counts per package and the revenue allocation per package for each package that was available for City subscribers during the audit period. To the extent that the City does not believe that the relevant data supplied is sufficient for the City to complete its audit/review, the City may require other relevant data. For purposes of this Section 3.6, the "other relevant data" shall generally mean all: (1) billing reports, (2) financial reports (such as General Ledgers) and (3) sample customer bills used by Grantee to determine Gross Revenues for the Franchise Area that would allow the City to recompute the Gross Revenue determination. If the audit/review shows that Franchise Fee payments have been underpaid by five percent (5%) or more (or such other contract underpayment threshold as set forth in a generally applicable and enforceable regulation or policy of the City related to audits, whichever is less), Grantee shall pay the total reasonable cost of the audit/review, such cost not to exceed seven thousand dollars (\$7,000) for each year of the audit period. The City's right to audit/review and the Grantee's obligation to retain records related to this subsection shall expire three (3) years after each Franchise Fee payment has been made to the City.

3.7 Late Payments

In the event any payment due quarterly is not received within thirty (30) days from the end of the calendar quarter, Grantee shall pay interest on the amount due (at the prime rate as listed in the Wall Street Journal on the date the payment was due), compounded daily, calculated

from the date the payment was originally due until the date the City receives the payment.

3.8 Underpayments

If a net Franchise Fee underpayment is discovered as the result of an audit, Grantee shall pay interest at the rate of the eight percent (8%) per annum, compounded quarterly, calculated from the date each portion of the underpayment was originally due until the date Grantee remits the underpayment to the City.

3.9 Alternative Compensation

In the event the obligation of Grantee to compensate the City through Franchise Fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall pay to the City compensation equivalent to the compensation paid to the City by other similarly situated users of the City's Public Rights-of-Way for Grantee's use of the City's Public Rights-of-Way, such payments shall be the equivalent of five percent (5%) of Grantee's Gross Revenues (subject to the other provisions contained in this Franchise Agreement), to the extent consistent with Applicable Law.

3.10 Maximum Legal Compensation

The parties acknowledge that, at present, applicable federal law limits the City to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that at any time during the duration of this Franchise Agreement, the City is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then this Franchise Agreement may be amended unilaterally by the City to provide that such excess amount shall be added to the Franchise Fee payments to be paid by Grantee to the City hereunder, provided that Grantee has received at least ninety (90) days prior written notice from the City of such amendment, so long as all cable operators in the City are paying the same Franchise Fee amount.

3.11 Additional Commitments Not Franchise Fee Payments

No term or condition in this Franchise Agreement, including the funding required by Section 9, shall in any way modify or affect Grantee's obligation to pay Franchise Fees. Although the total sum of Franchise Fee payments and additional commitments set forth elsewhere in this Franchise Agreement may total more than five percent (5%) of Grantee's Gross Revenues in any twelve (12) month period, Grantee agrees that the additional commitments herein are not Franchise Fees as defined under any federal law, nor are they to be offset or credited against any Franchise Fee payments due to the City, nor do they represent an increase in Franchise Fees.

3.12 Tax Liability

The Franchise Fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the City, the State or the United States including, without limitation, sales, use and other taxes, business

license fees or other payments. Payment of the Franchise Fees under this Franchise Agreement shall not exempt Grantee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by the City. Any other license fees, taxes or charges shall be of general applicability in nature and shall not be levied against Grantee solely because of its status as a Cable Operator, or against Subscribers, solely because of their status as such.

3.13 Financial Records

Grantee agrees to meet with a representative of the City upon request to review Grantee's methodology of record-keeping, financial reporting, the computing of Franchise Fee obligations and other procedures, the understanding of which the City deems necessary for reviewing reports and records.

3.14 Payment on Termination

If this Franchise Agreement terminates for any reason, the Grantee shall file with the City within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The City reserves the right to satisfy any remaining financial obligations of the Grantee to the City by utilizing the funds available in the letter of credit or other security provided by the Grantee.

SECTION 4. ADMINISTRATION AND REGULATION

4.1 Authority

(A) The City shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise Agreement in the public interest.

(B) Nothing in this Franchise Agreement shall limit nor expand the City's right of eminent domain under State law; provided, however, that in any condemnation action no award shall be made for the value of the Franchise or the use of Public Rights-of-Way.

4.2 Rates and Charges

All of Grantee's rates and charges related to or regarding Cable Services shall be subject to regulation by the City to the full extent authorized by applicable federal, State and local laws.

4.3 Rate Discrimination

All of Grantee's rates and charges shall be published (in the form of a publicly-available rate card) and be non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with Applicable Law, with identical rates and charges for all Subscribers receiving identical Cable Services, without regard to race, color, ethnic or national origin, religion, age, sex, sexual

orientation, marital, military or economic status, or physical or mental disability or geographic location within the City. Grantee shall offer the same Cable Services to all Residential Subscribers at identical rates to the extent required by Applicable Law and to Multiple Dwelling Unit Subscribers to the extent authorized by FCC rules or applicable Federal law. Grantee shall permit Subscribers to make any lawful in-residence connections the Subscriber chooses without additional charge nor penalizing the Subscriber therefor. However, if any in-home connection requires service from Grantee due to signal quality, signal leakage or other factors, caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the Subscriber may be charged reasonable service charges by Grantee. Nothing herein shall be construed to prohibit:

(A) The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns; or

(B) The offering of reasonable discounts to senior citizens or economically disadvantaged citizens; or

(C) The offering of rate discounts for Cable Service; or

(D) The Grantee from establishing different and nondiscriminatory rates and charges and classes of service for Commercial Subscribers, as allowable by federal law and regulations.

4.4 Filing of Rates and Charges

(A) Throughout the term of this Franchise Agreement, Grantee shall maintain on file with the City a complete schedule of applicable rates and charges for Cable Services provided under this Franchise Agreement. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.

(B) Upon request of the City, Grantee shall provide a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Grantee. The schedule shall include a description of the price, terms, and conditions established by Grantee for Leased Access Channels.

4.5 Cross-Subsidization

Grantee shall comply with all Applicable Laws regarding rates for Cable Services and all Applicable Laws covering issues of cross-subsidization.

4.6 Reserved Authority

Both Grantee and the City reserve all rights they may have under the Cable Act and any other relevant provisions of Applicable Law.

4.7 Time Limits Strictly Construed

Whenever this Franchise Agreement sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a breach of this Franchise Agreement and sufficient grounds for the City to invoke any relevant remedy.

4.8 Amendment Procedure

Any amendment to this Franchise Agreement shall be made pursuant to the provisions of the Boulder Cable Code as it existed on the Effective Date of this Franchise Agreement. Within thirty (30) days of receipt of written notice that a Party wishes to amend this Franchise Agreement, the City and Grantee shall meet to discuss the proposed amendment(s). If the Parties reach a mutual agreement upon the suggested amendment(s), such amendment(s) shall be submitted to the City Council for its approval. If so approved by the City Council and the Grantee, then such amendment(s) shall be deemed part of this Franchise Agreement. If mutual agreement is not reached, there shall be no amendment.

4.9 Performance Evaluations

(A) Biennial performance evaluations shall be conducted pursuant to the terms of the Boulder Cable Code provided that the City give Grantee thirty (30) days written notice prior to holding any performance evaluation. All such evaluation sessions shall be conducted by the City.

(B) Special evaluation sessions may be held at any time by the City during the term of this Franchise Agreement, upon ninety (90) days written notice to Grantee.

(C) All regular evaluation sessions shall be open to the public and announced one (1) week in advance in any manner within the discretion of the City. Grantee shall also include with or on the Subscriber billing statements for the billing period immediately preceding the commencement of the session, written notification of the date, time, and place of the regular performance evaluation session, and any special evaluation session as required by the City, provided Grantee receives appropriate advance notice.

(D) Topics that may be discussed at any evaluation session may include, but are not limited to, Cable System construction and performance, Grantee's compliance with the Boulder Cable Code and this Franchise Agreement, Cable Service rate structures; Franchise Fee payments; liquidated damages; free or discounted Cable Services; application of new technologies; Cable System performance; Cable Services provided; programming offered; Subscriber complaints; privacy; amendments to this Franchise Agreement; judicial and FCC rulings; line extension policies; and the City or Grantee's rules; provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise Agreement.

(E) During evaluations under this subsection, Grantee shall fully cooperate with the City and shall provide such information and documents as the City may reasonably require to perform the evaluation.

4.10 Late Fees

(A) For purposes of this subsection, any assessment, charge, cost, fee or sum, however characterized, that the Grantee imposes upon a Subscriber solely for late payment of a bill is a late fee and shall be applied in accordance with the City's Customer Service Standards, as the same may be amended from time to time by the City Council acting by ordinance or resolution, or as the same may be superseded by legislation or final court order.

(B) Nothing in this subsection shall be deemed to create, limit or otherwise affect the ability of the Grantee, if any, to impose other assessments, charges, fees or sums other than those permitted by this subsection, for the Grantee's other services or activities it performs in compliance with Applicable Law, including FCC law, rule or regulation.

(C) The Grantee's late fee and disconnection policies and practices shall be nondiscriminatory and such policies and practices, and any fees imposed pursuant to this subsection, shall apply equally in all parts of the City without regard to the neighborhood or income level of the Subscriber.

4.11 Force Majeure

In the event Grantee is prevented or delayed in the performance of any of its obligations under this Franchise Agreement by reason beyond the control of Grantee, Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise Agreement or to procure a substitute for such obligation which is satisfactory to the City. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, work stoppages or labor disputes, power outages, telephone network outages, and severe or unusual weather conditions which have a direct and substantial impact on the Grantee's ability to provide Cable Services in the City and which was not caused and could not have been avoided by the Grantee which used its best efforts in its operations to avoid such results.

If Grantee believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Franchise Agreement, Grantee shall provide documentation as reasonably required by the City to substantiate the Grantee's claim. If Grantee has not yet cured the deficiency, Grantee shall also provide the City with its proposed plan for remediation, including the timing for such cure.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Indemnification

(A) Grantee shall, at its sole cost and expense, 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 Grantee, its employees, Affiliates or agents; copyright infringements or a failure by Grantee to secure consents from the owners, authorized distributors, or franchisees of programs to be delivered by the Cable System; the conduct of Grantee's business in the City; or in any way arising out of Grantee'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.

(B) Without limiting the foregoing, Grantee 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 Grantee, its employees, affiliates or agents, including without limitation any claim against Grantee 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 Grantee 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 Grantee 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 Grantee.

(C) The indemnity provision includes, but is not limited to, the City's reasonable attorneys' fees consented to by Grantee and payment for any reasonable 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.

(D) Grantee shall indemnify the City for any damages, claims, additional costs or reasonable expenses assessed against, or payable by, the City arising out of, or resulting from, directly or indirectly, Grantee's failure to remove, adjust or relocate any of its facilities in the Public Rights-of-Way in a timely manner in accordance with any relocation required by the City.

(E) Grantee shall also indemnify, defend and hold the City harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses in any way arising out of:

(1) The lawful actions of the City in granting this Franchise Agreement to the extent such actions are consistent with this Franchise Agreement and Applicable Law.

(2) Damages arising out of any failure by Grantee to secure consents from the owners, authorized distributors, or licensees/licensors of programs to be delivered by the Cable System, whether or not any act or omission complained of is authorized, allowed or prohibited by this Franchise Agreement.

(F) The fact that Grantee carries out any activities under this Franchise Agreement through independent contractors shall not constitute an avoidance of or defense to Grantee's duty of defense and indemnification under this subsection.

(G) The provisions of this Section 5.1 shall not be construed to limit the liability of Grantee for damages.

5.2 Insurance

Grantee shall maintain adequate insurance throughout the Term as required by the Boulder Cable Code as of the Effective Date.

5.3 Letter of Credit

(A) If there is a claim by the City of an uncured breach by Grantee of a material provision of this Franchise or pattern of repeated violations of any provision(s) of this Franchise, then the City may require and Grantee shall establish and provide within thirty (30) days from receiving notice from the City, to the City as security for the faithful performance by Grantee of all of the provisions of this Franchise, a letter of credit from a financial institution satisfactory to the City in the amount of One Hundred Thousand dollars (\$100,000).

(B) In the event that Grantee establishes a letter of credit pursuant to the procedures of this Section, then the letter of credit shall be maintained until the allegations of the uncured breach have been resolved.

(C) As an alternative to the provision of a Letter of Credit to the City as set forth in Subsections 5.4 (A) and (B) above, if the City is a member of CCUA, and if Grantee provides a Letter of Credit to CCUA in an amount agreed to between Grantee and CCUA for the benefit of its members, in order to collectively address claims reference in 5.4 (A), Grantee shall not be required to provide a separate Letter of Credit to the City.

(D) After completion of the procedures set forth in Section 13.1 or other applicable provisions of this Franchise, the letter of credit may be drawn upon by the City for purposes including, but not limited to, the following:

(1) Failure of Grantee to pay the City sums due under the terms of this Franchise;

(2) Reimbursement of costs borne by the City to correct Franchise violations not corrected by Grantee;

(3) Monetary remedies or damages assessed against Grantee due to default or

breach of Franchise requirements; and,

(4) Failure to comply with the Customer Service Standards of the City, as the same may be amended from time to time by the City Council acting by ordinance or resolution.

(E) The City shall give Grantee written notice of any withdrawal under this subsection upon such withdrawal. Within seven (7) days following receipt of such notice, Grantee shall restore the letter of credit to the amount required under this Franchise.

(F) Grantee shall have the right to appeal to the City Council for reimbursement in the event Grantee believes that the letter of credit was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes the letter of credit has not been properly drawn upon in accordance with this Franchise. Any funds the City erroneously or wrongfully withdraws from the letter of credit shall be returned to Grantee with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal.

SECTION 6. CUSTOMER SERVICE

6.1 Customer Service Standards

Grantee shall comply with the City's Customer Service Standards, attached hereto as Exhibit A and incorporated herein by this reference, as the same may be amended from time to time. Grantee reserves the right to challenge any future customer service ordinance that it believes is inconsistent with its contractual rights under this Franchise Agreement.

6.2 Subscriber Privacy

Grantee shall fully comply with any provisions regarding the privacy rights of Subscribers contained in Applicable Law.

6.3 Subscriber Contracts

Grantee shall not enter into a contract with any Subscriber which is in any way inconsistent with the terms of this Franchise Agreement, or any Exhibit hereto, or the requirements of any applicable Customer Service Standard. Upon request, Grantee will provide to the City a sample of the Subscriber contract or service agreement then in use.

6.4 Advance Notice to City

The Grantee shall use reasonable efforts to furnish information provided to Subscribers or the media in the normal course of business to the City in advance.

6.5 Identification of Local Franchise Authority on Subscriber Bills

Within sixty (60) days after written request from the City, Grantee shall identify the City on Subscriber bills as the Franchising Authority.

SECTION 7. REPORTS AND RECORDS

7.1 Open Records

Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the City. The City, including the City's auditors, shall have access to, and the right to inspect any books or records of Grantee, its parent corporations and Affiliates which are reasonably related to the administration or enforcement of the terms of this Franchise Agreement or Applicable Law. Grantee shall not deny the City access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, Affiliate or a third party. The City may, in writing, request copies of any such records or books and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One (1) copy of all reports and records required under this or any other subsection of this Franchise Agreement or Applicable Law shall be furnished to the City, at the sole expense of Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) days, that the City inspect them at Grantee's local offices. If any books or records of Grantee are not kept in a local office and not made available in copies to the City upon written request as set forth above, and if the City determines that an examination of such records is necessary or appropriate for the performance of any of the City's duties, administration or enforcement of this Franchise Agreement, then all reasonable travel and related expenses incurred in making such examination shall be paid by Grantee.

7.2 Confidentiality

The City shall protect Grantee's confidential commercial data, identified as such by Grantee, from disclosure under the Colorado Open Records Act, § 24-72-204, C.R.S. The City agrees to treat as confidential any books or records that constitute proprietary or confidential information under federal or State law, to the extent Grantee makes the City aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under State or federal law. If the City believes it must release any such confidential books and records in the course of enforcing this Franchise Agreement, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If the City receives a demand from any Person for disclosure of any information designated by Grantee as confidential, the City shall, so far as consistent with Applicable Law, advise Grantee, provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time, and shall withhold release for the maximum period permitted by law to provide the Grantee the opportunity to seek court protection against the release of the requested documents. Grantee shall reimburse the City for all reasonable costs and attorneys fees incurred in any legal proceedings pursued under this Section.

7.3 Records Required

(A) Grantee shall at all times maintain, and shall furnish to the City upon 30-days

written request and subject to Applicable Law:

(1) A complete set of maps showing the exact location of all Cable System equipment and facilities in the Public Right-of-Way, but excluding detail on proprietary electronics contained therein and Subscriber drops. As-built maps including proprietary electronics shall be available at Grantee's offices for inspection by the City's authorized representative(s) or agent(s) and made available to such during the course of technical inspections as reasonably conducted by the City. These maps shall be certified as accurate by an appropriate representative of the Grantee;

(2) A copy of all FCC filings on behalf of Grantee, its parent corporations or Affiliates which relate to the operation of the Cable System in the City;

(3) Current Subscriber Records and information;

(4) A log of Cable Services added or dropped, Channel changes, number of Subscribers added or terminated, and total homes passed for the previous twelve (12) months; and

(5) A list of Cable Services, rates and Channel line-ups.

(B) Subject to subsection 7.2, all information furnished to the City, except for information involving the privacy rights of individual Subscribers, is public information and shall be treated as such.

(C) "As-built" drawings for all construction completed by Grantee since the City's last request for such drawings.

(D) Grantee shall maintain for a period of at least six months those records listed in Section 11-6-6(d) of the Boulder Cable Code.

7.4 Annual Reports

No later than ninety (90) days after the end of its fiscal year, Grantee shall submit to the City a written report, in a form acceptable to the City, which shall include, but not necessarily be limited to, the following information:

(A) A Gross Revenue statement, as required by subsection 3.5 of this Franchise Agreement;

(B) A summary of the previous year's activities in the development of the Cable System, including, but not limited to, Cable Services begun or discontinued during the reporting year, and the number of Subscribers for each class of Cable Service (*i.e.*, Basic, Digital Starter, and Premium);

(C) The number of homes passed, beginning and ending plant miles, any

services added or dropped, and any technological changes occurring in the Cable System;

- (D) A statement of planned construction, if any, for the then-current year;
- (E) A copy of the most recent annual report Grantee filed with the SEC or other governing body; and
- (F) A list of officers and members of Grantee's board of directors and its parent;
- (G) An ownership report, indicating all persons who at the time of filing control or won an interest in the Franchise of ten percent or more;
- (H) A report on the Cable System's technical test and measurements; and
- (I) A summary of the number and type of outages (an outage being a loss of sound or video on any signal or a significant deterioration of any signal affecting Subscribers) known by Grantee, specifying all details of each outage known to Grantee and the cause thereof.

7.5 Copies of Federal and State Reports

Within thirty (30) days of a written request, Grantee shall submit to the City copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its parent corporation(s), to any federal, State or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Grantee's Cable System within the City. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency.

7.6 Complaint File and Reports

(A) Grantee shall keep an accurate and comprehensive file of any complaints regarding the Cable System, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints. These files shall remain available for viewing to the City during normal business hours at Grantee's local business office.

(B) On or before April 30, July 31, October 31 and January 31 of each year this Franchise Agreement is in effect and for one month thereafter, Grantee shall provide the City a quarterly executive summary in the form attached hereto as Exhibit B, which shall include the following information from the preceding quarter:

- (1) A summary of service calls, identifying the number and nature of the requests and their disposition;
- (2) A log of all service interruptions;

(3) A summary of customer complaints referred by the City to Grantee; and,

(4) Such other information as reasonably requested by the City, including but not limited to a summary of escalated complaints, indentifying both the number and nature of the complaints received and an explanation of their disposition.

The provisions of this subsection (B) shall survive for one full quarter after the expiration, or termination for any reason, of this Franchise Agreement.

7.7 Failure to Report/Maintain Records

The failure or neglect of Grantee to file any of the reports or filings required under this Franchise Agreement or such other reports as the City may reasonably request (not including clerical errors or errors made in good faith), or to keep any records required to be kept may, at the City's option, be deemed a breach of this Franchise Agreement.

7.8 False Statements

Any false or misleading statement or representation in any report required by this Franchise Agreement (not including clerical errors or errors made in good faith) may be deemed a material breach of this Franchise Agreement and may subject Grantee to all remedies, legal or equitable, which are available to the City under this Franchise Agreement or otherwise.

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories

Grantee shall provide or enable the provision of at least the following initial broad categories of programming to the extent such categories are reasonably available:

- (A) Educational programming;
- (B) Colorado news, weather & information;
- (C) Sports;
- (D) General entertainment (including movies);
- (E) Children/family-oriented;
- (F) Arts, culture and performing arts;
- (G) Foreign language;
- (H) Science/documentary;

(I) National news, weather and information (including direct coverage of federal and/or state legislative proceedings); and,

(J) Public, Educational and Government Access, to the extent required by this Franchise Agreement.

8.2 Deletion or Reduction of Broad Programming Categories

(A) Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without the prior written consent of the City.

(B) In the event of a modification proceeding under federal law, the mix and quality of Cable Services provided by Grantee on the Effective Date shall be deemed the mix and quality of Cable Services required under this Franchise Agreement throughout its term.

8.3 Obscenity

Grantee shall not transmit, or permit to be transmitted over any Channel subject to its editorial control, any programming which is obscene under, or violates any provision of, Applicable Law relating to obscenity, and is not protected by the Constitution of the United States. Grantee shall be deemed to have transmitted or permitted a transmission of obscene programming only if the Federal Communications Commission or a court of competent jurisdiction has found that any of Grantee's officers or employees or agents have permitted programming which is obscene under, or violative of, any provision of Applicable Law relating to obscenity, and is otherwise not protected by the Constitution of the United States, to be transmitted over any Channel subject to Grantee's editorial control. Grantee shall comply with all relevant provisions of federal law relating to obscenity.

8.4 Parental Control Device

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, traps or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter. Any device offered shall be at a rate, if any, in compliance with Applicable Law.

8.5 Continuity of Service Mandatory

(A) It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are honored. The Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances. For the purposes of this subsection, "uninterrupted" does not include short-term outages of the Cable System for maintenance or testing.

(B) In the event of a change of grantee, or in the event a new Cable Operator acquires

the Cable System in accordance with this Franchise Agreement, Grantee shall cooperate with the City, new franchisee or Cable Operator in maintaining continuity of Cable Service to all Subscribers. During any transition period, Grantee shall be entitled to the revenues for any period during which it operates the Cable System; and in the event of a change of Grantee not caused by a breach of this Franchise Agreement by Grantee, Grantee shall be entitled to reasonable costs for its services when it no longer operates the Cable System.

(C) In the event Grantee fails to operate the Cable System for four (4) consecutive days without prior approval of the Manager, or without just cause, the City may, at its option, operate the Cable System itself or designate another Cable Operator until such time as Grantee restores service under conditions acceptable to the City or a permanent Cable Operator is selected. If the City is required to fulfill this obligation for Grantee, Grantee shall reimburse the City for all reasonable costs or damages that are the result of Grantee's failure to perform.

8.6 Services for the Disabled

Grantee shall comply with the Americans with Disabilities Act and any amendments thereto.

SECTION 9. ACCESS

9.1 Designated Access Providers

(A) The City shall have the sole and exclusive responsibility for identifying the Designated Access Providers, including itself, for Access purposes, to control and manage the use of any or all Access Facilities provided by Grantee under this Franchise Agreement. As used in this Section, such "Access Facilities" includes the Channels, services, facilities, equipment, technical components and/or financial support provided under this Franchise Agreement, which is used or useable by and for Public Access, Educational Access, and Government Access ("PEG" or "PEG Access").

(B) Grantee shall cooperate with City in City's efforts to provide Access programming, but will not be responsible or liable for any damages resulting from a claim in connection with the programming placed on the Access Channels by the Designated Access Provider.

9.2 Channel Capacity and Use

(A) On the Effective Date, Grantee shall make available to City five (5) Downstream Channels for PEG use as provided for in this Section.

(B) Grantee shall have the right to temporarily use any Public Access or Government Access Channel, or portion thereof, within sixty (60) days after a written request for such temporary use is submitted to City, if such Public Access or Government Access Channel is not fully utilized. A Public Access or Government Access Channel shall be considered "fully utilized" if substantially unduplicated programming is delivered over it more than an average of

38 hours per week over a calendar year. Programming that is repeated on a Public Access or Government Access Channel up to two times per day shall be considered “substantially unduplicated programming.” Character-generated programming shall be included for purposes of this subsection, but may be counted towards the total average hours only with respect to two (2) Channels provided to the City. If a Public Access or Government Access Channel will be used by Grantee in accordance with the terms of this subsection, the institution to which the Public Access or Government Access Channel has been allocated shall have the right to require the return of the Public Access or Government Access Channel or portion thereof. The City shall request return of such Public Access or Government Access Channel space by delivering written notice to Grantee stating that the institution is prepared to fully utilize the Public Access or Government Access Channel, or portion thereof, in accordance with this subsection. In such event, the Public Access or Government Access Channel or portion thereof shall be returned to such institution within sixty (60) days after receipt by Grantee of such written notice.

(C) Standard Definition (“SD”) Digital Access Channels.

(1) Grantee shall provide four (4) Activated Downstream Channels for PEG Access use in a standard definition (“SD”) digital format in Grantee’s Basic Service (“SD Access Channel”). Grantee shall carry all components of the SD Access Channel Signals provided by a Designated Access Provider including, but not limited to, closed captioning, stereo audio and other elements associated with the Programming. A Designated Access Provider shall be responsible for providing the SD Access Channel Signal in an SD format to the Demarcation Point at the designated point of origination for the SD Access Channel. Grantee shall transport and distribute the SD Access Channel signal on its Cable System and shall not unreasonably discriminate against SD Access Channels with respect to accessibility, functionality and to the application of any applicable Federal Communications Commission Rules & Regulations, including without limitation Subpart K Channel signal standards.

(2) With respect to signal quality, Grantee shall not be required to carry an SD Access Channel in a higher quality format than that of the SD Access Channel signal delivered to Grantee, but Grantee shall distribute the SD Access Channel signal without degradation. Upon reasonable written request by a Designated Access Provider, Grantee shall verify signal delivery to Subscribers with the Designated Access Provider, consistent with the requirements of this Section 9.2(C).

(3) Grantee shall be responsible for costs associated with the transmission of SD Access signals on its side of the Demarcation Point. The City or Designated Access Provider shall be responsible for costs associated with SD Access signal transmission on its side of the Demarcation Point.

(4) SD Access Channels may require SD Subscribers to buy or lease special equipment, available to all SD Subscribers. Grantee is not required to provide free SD equipment to Subscribers, including complimentary government and educational accounts, nor modify its equipment or pricing policies in any manner.

(5) If Grantee does not carry the Audio Information Network of Colorado as

part of its commercial service, and it is available for carriage, Grantee shall continue to provide an FM band PEG channel for carriage of the Audio Information Network of Colorado service on the Basic or Expanded Basic Service tier for at least twelve (12) months from the Effective Date of this Franchise Agreement. The termination of such service on the Cable System shall be publicized by Grantee at its sole cost through bill messages provided to Subscribers at 12 months, 6 months and 3 months prior to the time such service is terminated.

(D) High Definition (“HD”) Digital Access Channels.

(1) Upon written request and within one hundred twenty (120) days of the Effective Date, Grantee shall activate one (1) HD Access Channel, for which the City may provide Access Channel signals in HD format to the Demarcation Point at the designated point of origination for the Access Channel. After the third anniversary of the Effective Date, and with at least 120 day written notice to Grantee, the City may request, and Grantee shall provide on its Cable System, one (1) additional Activated Downstream Channel for PEG Access use in a High Definition (“HD”) digital format (“HD Access Channel or Channels”). Activation of HD Access Channels shall only occur after the following conditions are satisfied:

(a) The City shall, in its written notice to Grantee as provided for in this Section, confirm that it or its Designated Access Provider has the capabilities to produce, has been producing and will produce programming in an HD format for the newly activated HD Access Channel(s); and,

(b) There will be a minimum of five (5) hours per-day, five days per-week of HD PEG programming available for each HD Access Channel.

(2) The City shall be responsible for providing the HD Access Channel signal in an HD digital format to the Demarcation Point at the designated point of origination for the HD Access Channel. For purposes of this Franchise Agreement, an HD signal refers to a television signal delivering picture resolution of either 720p or 1080i, or such other resolution in this same range that Grantee utilizes for other similar non-sport, non-movie programming channels on the Cable System, whichever is greater.

(3) Grantee shall transport and distribute the HD Access Channel signal on its Cable System and shall not unreasonably discriminate against HD Access Channels with respect to accessibility, functionality and to the application of any applicable Federal Communications Commission Rules & Regulations, including without limitation Subpart K Channel signal standards. With respect to signal quality, Grantee shall not be required to carry a HD Access Channel in a higher quality format than that of the HD Access Channel signal delivered to Grantee, but Grantee shall distribute the HD Access Channel signal without degradation. Grantee shall carry all components of the HD Access Channel signals provided by the Designated Access Provider including, but not limited to, closed captioning, stereo audio and other elements associated with the Programming. Upon reasonable written request by the City, Grantee shall verify signal delivery to Subscribers with the City, consistent with the requirements of this Section 9.2(D).

(4) HD Access Channels may require Subscribers to buy or lease special equipment, available to all Subscribers, and subscribe to those tiers of Cable Service, upon which HD channels are made available. Grantee is not required to provide free HD equipment to Subscribers, including complimentary government and educational accounts, nor modify its equipment or pricing policies in any manner.

(5) The City or any Designated Access Provider is responsible for acquiring all equipment necessary to produce programming in HD.

(6) Grantee shall cooperate with the City to procure and provide, at City's cost, all necessary transmission equipment from the Designated Access Provider channel origination point, at Grantee's headend and through Grantee's distribution system, in order to deliver the HD Access Channels. The City shall be responsible for the costs of all transmission equipment, including HD modulator and demodulator, and encoder or decoder equipment, and multiplex equipment, required in order for Grantee to receive and distribute the HD Access Channel signal, or for the cost of any resulting upgrades to the video return line. The City and Grantee agree that such expense of acquiring and installing the transmission equipment or upgrades to the video return line qualifies as a capital cost for PEG Facilities within the meaning of the Cable Act 47 U.S.C.A. Section 542(g)(20)(C), and therefore is an appropriate use of revenues derived from those PEG Capital fees provided for in this Franchise Agreement.

(E) Grantee shall simultaneously carry the one (1) HD Access Channels provided for in Section 9.2(D) in high definition format on the Cable System, in addition to simultaneously carrying in standard definition format the SD Access Channels provided pursuant to Subsection 9.2(C). At such time as Grantee activates the second HD Access Channel, the number of SD Access Channels Grantee is obligated to provide in Section 9.2(C) shall be reduced from four (4) to three (3).

(F) There shall be no restriction on Grantee's technology used to deploy and deliver SD or HD signals so long as the requirements of the Franchise Agreement are otherwise met. Grantee may implement HD carriage of the PEG channel in any manner (including selection of compression, utilization of IP, and other processing characteristics) that produces a signal quality for the consumer that is reasonably comparable and functionally equivalent to similar commercial HD channels carried on the Cable System. In the event the City believes that Grantee fails to meet this standard, City will notify Grantee of such concern, and Grantee will respond to any complaints in a timely manner.

9.3 Access Channel Assignments

Grantee will use reasonable efforts to minimize the movement of SD and HD Access Channel assignments. Grantee shall also use reasonable efforts to institute common SD and HD Access Channel assignments among the local governments served by the same Headend as City for compatible Access programming, for example, assigning all Educational Access Channels programmed by higher education organizations to the same Channel number. In addition, Grantee will make reasonable efforts to locate HD Access Channels provided pursuant to Subsection 9.2(D) in a location on its HD Channel line-up that is easily accessible to

Subscribers.

9.4 Relocation of Access Channels

Grantee shall provide City and all Subscribers within City with a minimum of sixty (60) days' notice, and use its best efforts to provide one hundred and twenty (120) days notice, prior to the time Public, Educational, and Government Access Channel designations are changed.

9.5 Web-Based Video On Demand and Streaming

(A) Within one hundred twenty (120) days after written request of the City, Grantee shall additionally provide the City with a one-time grant of funding, in an amount not to exceed TWENTY-FIVE THOUSAND dollars (\$25,000), which the City shall use to acquire and/or replace equipment to facilitate cable and web-based Access programming.

(B) The City's Designated Access Provider(s) may provide web-based video on demand programming on line; provided however, that such Designated Access Provider(s) shall be responsible for its own costs related to a video on demand server, broadband connection and service and any other associated equipment.

(C) Any costs incurred by Grantee in facilitating the web-based on demand Access programming described in this Section 9.5 may be recovered from Subscribers by Grantee in accordance with Applicable Law.

9.6 Support for Access Costs

During the term of this Franchise Agreement, Grantee shall provide fifty cents (\$0.50) per month per Subscriber (the "PEG Contribution") until a new rate is made effective as set forth below, to be used solely for capital costs related to Public, Educational and Government Access and the web-based on demand Access programming described in Section 9.5, or as may be permitted by Applicable Law. Following City Council decision, made by motion, Grantee shall provide the City with up to seventy-five cents (\$0.75) per month per Subscriber. Prior to the implementation of any change in the amount of this support the City shall give Grantee one hundred and twenty (120) days' written notice of the City Council's decision and any change will only be implemented concurrent with Grantee's annual price increase. Additional increases may be required by ordinance (including a mandatory public hearing) no sooner than 42 months after the Effective Date, to an amount over seventy-five cents (\$0.75), but in no event will the amount exceed a total of One Dollar (\$1.00) per Subscriber per month and such amount must be applicable to all franchised cable operators in the City. Prior to the implementation of any change in the amount of this support the City must give Grantee one hundred and twenty (120) days' written notice of the City Council's decision and any change will only be implemented concurrent with Grantee's annual price increase. 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. Grantee shall make PEG Contribution payments quarterly, following the effective date of this Franchise Agreement for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment

shall be due and payable no later than thirty (30) days following the end of the quarter. If this Franchise expires or terminates for any reason, Grantee is required to make the final PEG Contribution. City shall have sole discretion to allocate the expenditure of such payments for any capital costs related to PEG Access. The parties agree that this Franchise Agreement shall provide City discretion to utilize Access payments for new internal network connections and enhancements to the City's existing network..

9.7 Access Support Not Franchise Fees

Grantee agrees that capital support for Access Costs arising from or relating to the obligations set forth in this Section shall in no way modify or otherwise affect Grantee's obligations to pay Franchise Fees to City. Grantee agrees that although the sum of Franchise Fees plus the payments set forth in this Section may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, the additional commitments shall not be offset or otherwise credited in any way against any Franchise Fee payments under this Franchise Agreement so long as such support is used for capital Access purposes consistent with this Franchise Agreement and Applicable Law.

9.8 Access Channels on Basic Service or Lowest Priced HD Service Tier

All SD Access Channels under this Franchise Agreement shall be included by Grantee, without limitation, as part of Basic Service. All HD Access Channels under this Franchise Agreement shall be included by Grantee, without limitation, as part of the lowest priced tier of HD Cable Service upon which Grantee provides HD programming content.

9.9 Change In Technology

In the event Grantee makes any change in the Cable System and related equipment and Facilities or in Grantee's signal delivery technology, which directly or indirectly affects the signal quality or transmission of Access services or programming, Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment, and full training of City's Access personnel to ensure that the capabilities of Access services are not diminished or adversely affected by such change. If the City implements a new video delivery technology that is currently offered and can be accommodated on the Grantee's local Cable System then the same provisions above shall apply. If the City implements a new video delivery technology that is not currently offered on and/or that cannot be accommodated by the Grantee's local Cable System, then the City shall be responsible for acquiring all necessary equipment, facilities, technical assistance, and training to deliver the signal to the Grantee's headend for distribution to subscribers.

9.10 Technical Quality

Grantee shall maintain all upstream and downstream Access services and Channels on its side of the Demarcation Point at the same level of technical quality and reliability required by this Franchise Agreement and all other Applicable Law. Grantee shall provide routine maintenance for all transmission equipment on its side of the Demarcation Point, including

modulators, decoders, multiplex equipment, and associated cable and equipment necessary to carry a quality signal to and from City's facilities for the Access Channels provided under this Franchise Agreement, including the business class broadband equipment and services necessary for the video on demand and streaming service described in Section 9.5. Grantee shall also provide, if requested in advance by the City, advice and technical expertise regarding the proper operation and maintenance of transmission equipment on the City's side of the Demarcation Point. The City shall be responsible for all initial and replacement costs of all HD modulator and demodulator equipment, web-based video on demand servers and web-based video streaming servers. The City shall be responsible, at its own expense, to replace any of the Grantee's equipment that is damaged by any negligent or intentional act or omission by City staff. The Grantee shall be responsible, at its own expense, to replace any of the Grantee's equipment that is damaged by any negligent or intentional act or omission of Grantee's staff. The City will be responsible for the cost of repairing and/or replacing any HD PEG Access and web-based video on demand transmission equipment that Grantee maintains that is used exclusively for transmission of the City's and/or its Designated Access Providers' HD Access programming.

9.11 Access Cooperation

City may designate any other jurisdiction which has entered into an agreement with Grantee or an Affiliate of Grantee based upon this Franchise Agreement, any CCUA member, the CCUA, or any combination thereof to receive any Access benefit due City hereunder, or to share in the use of Access Facilities hereunder. The purpose of this subsection shall be to allow cooperation in the use of Access and the application of any provision under this Section as City in its sole discretion deems appropriate, and Grantee shall cooperate fully with, and in, any such arrangements by City.

9.12 Return Lines/Access Origination

(A) Grantee shall continuously maintain the previously constructed return lines throughout the Term of the Franchise Agreement, in order to enable the distribution of Access programming to Subscribers on the Access Channels; provided, however, that Grantee's maintenance obligations with respect to a particular location shall cease if it is no longer used by the City to originate Access programming.

(B) Grantee shall construct and maintain new Fiber Optic return lines to the Headend from production facilities of new or relocated Designated Access Providers delivering Access programming to Subscribers as requested in writing by the City. All actual construction costs incurred by Grantee from the nearest interconnection point to the Designated Access Provider shall be paid by the City or the Designated Access Provider. New return lines shall be completed within one (1) year from the request of the City or its Designated Access Provider, or as otherwise agreed to by the parties. If an emergency situation necessitates movement of production facilities to a new location, the parties shall work together to complete the new return line as soon as reasonably possible.

SECTION 10. GENERAL PUBLIC RIGHT-OF-WAY USE AND CONSTRUCTION

10.1 Public Right-of-Way Meetings

Grantee will regularly attend and participate in meetings of the City, of which the Grantee is made aware, regarding Public Right-of-Way issues that may impact the Cable System.

10.2 Joint Trenching/Boring Meetings

Grantee will regularly attend and participate in planning meetings of the City, of which the Grantee is made aware, to anticipate joint trenching and boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, licensees, permittees, and franchisees so as to reduce so far as possible the number of Public Right-of-Way cuts within the City.

10.3 General Standard

Grantee shall construct, operate and maintain the Cable System subject to the supervision of all of the authorities of the City who have jurisdiction in such matters and in strict compliance with all Applicable Law, including specifically the Boulder Cable Code and the City's Design and Construction Standards. All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. All installations of equipment shall be permanent in nature, durable and installed in accordance with good engineering practices.

10.4 Permits Required for Construction

Prior to doing any work in the Public Right-of Way or other public property, Grantee shall apply for, and obtain, all required permits from the City. As part of the permitting process, the City may impose such conditions and regulations including but not limited to those necessary for the purpose of protecting any structures in such Public Rights-of-Way, proper restoration of such Public Rights-of-Way and structures, the protection of the public, and the continuity of pedestrian or vehicular traffic. Such conditions may also include the provision of a construction schedule and maps showing the location of the facilities to be installed in the Public Right-of-Way. Grantee shall pay all applicable fees for the requisite City permits received by Grantee.

10.5 Emergency Permits

In the event that emergency repairs are necessary, Grantee shall immediately notify the City of the need for such repairs. Grantee may initiate such emergency repairs, and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.

10.6 Compliance with Applicable Codes

(A) City Construction Codes. Grantee shall comply with all applicable City construction codes, including, without limitation, the International Building Code and other building codes, the International Fire Code, and the International Mechanical Code, zoning codes and regulations, and the City's Design and Construction Standards.

(B) Tower Specifications. Antenna supporting structures (towers) shall be designed for the proper loading as specified by the Electronics Industries Association (EIA), as those specifications may be amended from time to time. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and

regulations of the Federal Aviation Administration and all Applicable Law.

(C) Safety Codes. Grantee shall comply with all federal, State and City safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by Applicable Law during construction, operation and repair of its Cable System. By way of illustration and not limitation, Grantee shall comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

10.7 GIS Mapping

Grantee shall comply with any generally applicable ordinances, rules and regulations of the City regarding geographic information mapping systems for users of the Public Rights-of-Way.

10.8 Minimal Interference

Work in the Public Right-of-Way, on other public property, near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the Public Rights-of-Way by, or under, the City's authority. The Grantee's Cable System shall be located, erected and maintained so as not to endanger or interfere with the lives of Persons, or to interfere with new improvements the City may deem proper to make or to unnecessarily hinder or obstruct the free use of the Public Rights-of-Way or other public property, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation or removal thereof, and shall not obstruct or impede traffic. In the event of such interference, the City may require the removal or relocation of Grantee's lines, cables, equipment and other appurtenances from the property in question at Grantee's expense.

10.9 Prevent Injury/Safety

Grantee shall provide and use any equipment and facilities necessary to control and carry Grantee's signals so as to prevent injury to the City's property or property belonging to any Person. Grantee, at its own expense, shall repair, renew, change and improve its facilities to keep them in good repair, and safe and presentable condition. All excavations made by Grantee in the Public Rights-of-Way shall be properly safeguarded for the prevention of accidents by the placement of adequate barriers, fences or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights.

10.10 Hazardous Substances

(A) Grantee shall comply with any and all Applicable Law concerning hazardous substances relating to Grantee's Cable System in the Public Rights-of-Way.

(B) Upon reasonable notice to Grantee, the City may inspect Grantee's facilities in the Public Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Franchise Agreement, Grantee shall also remove all residue of hazardous substances related thereto.

(C) Grantee agrees to indemnify the City against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the City arising out of a release of hazardous substances arising out of or related to Grantee's Cable System.

10.11 Locates

Prior to doing any work in the Public Right-of-Way, Grantee shall give appropriate notices to the City and to the notification association established in C.R.S. Section 9-1.5-105, as such may be amended from time to time.

Within forty-eight (48) hours after any City bureau or franchisee, licensee or permittee notifies Grantee of a proposed Public Right-of-Way excavation, Grantee shall, at Grantee's expense:

(A) Mark on the surface all of its located underground facilities within the area of the proposed excavation;

(B) Notify the excavator of any unallocated underground facilities in the area of the proposed excavation; or

(C) Notify the excavator that Grantee does not have any underground facilities in the vicinity of the proposed excavation.

10.12 Notice to Private Property Owners

Grantee shall give notice to private property owners of work on or adjacent to private property in accordance with the City's Customer Service Standards, as the same may be amended from time to time by the City Council acting by Ordinance or resolution.

10.13 Underground Construction and Use of Poles

(A) When required by Applicable Law, Grantee's Cable System shall be placed underground at Grantee's expense unless funding is generally available for such relocation to all users of the Public Rights-of-Way. Placing facilities underground does not preclude the use of ground-mounted appurtenances.

(B) Where electric, telephone, and other above-ground utilities are installed underground at the time of Cable System construction, or when all such wiring is subsequently placed underground, all Cable System lines shall also be placed underground with other wireline service at no expense to the City or Subscribers unless funding is generally available for such

relocation to all users of the Public Rights-of-Way. Related Cable System equipment, such as pedestals, must be placed in accordance with the City's applicable code requirements and rules. In areas where either electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

(C) If installing cable lines aerially, Grantee shall utilize existing poles and conduit wherever possible.

(D) In the event Grantee cannot obtain the necessary poles and related facilities pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for Grantee to make all needed excavations in the Public Rights-of-Way for the purpose of placing, erecting, laying, maintaining, repairing, and removing poles, supports for wires and conductors, and any other facility needed for the maintenance or extension of Grantee's Cable System. All poles of Grantee shall be located as designated by the proper City authorities.

(E) This Franchise Agreement does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the City or any other Person. Copies of agreements for the use of poles, conduits or other utility facilities must be provided upon request by the City.

(F) The Grantee and the City recognize that situations may occur in the future where the City may desire to place its own cable or conduit for Fiber Optic cable in trenches or bores opened by the Grantee. The Grantee agrees to cooperate with the City in any construction by the Grantee that involves trenching or boring, provided that the City has first notified the Grantee in some manner that it is interested in sharing the trenches or bores in the area where the Grantee's construction is occurring. The Grantee shall allow the City to lay its cable, conduit and Fiber Optic cable in the Grantee's trenches and bores, provided the City shares in the reasonable cost of the trenching and boring. The City shall be responsible for maintaining its respective cable, conduit and Fiber Optic cable buried in the Grantee's trenches and bores under this paragraph.

10.14 Undergrounding of Multiple Dwelling Unit Drops

In cases of single site Multiple Dwelling Units, Grantee shall minimize the number of individual aerial drop cables by installing multiple drop cables underground between the pole and Multiple Dwelling Unit where determined to be technologically feasible in agreement with the owners and/or owner's association of the Multiple Dwelling Units.

10.15 Burial Standards on Private Property

(A) Depths. Unless otherwise required by law, Grantee, and its contractors, shall comply with the following burial depth standards when burying lines on private property. In no event shall Grantee be required to bury its cable deeper than electric or gas facilities, or existing telephone facilities in the same portion of the Public Right-of-Way, so long as those facilities have been buried in accordance with Applicable Law:

Underground cable drops from the curb shall be buried at a minimum depth of twelve (12) inches, unless a sprinkler system or other construction concerns preclude it, in which case, underground cable drops shall be buried at a depth of at least six (6) inches.

Feeder lines shall be buried at a minimum depth of eighteen (18) inches.

Trunk lines shall be buried at a minimum depth of thirty-six (36) inches.

Fiber Optic cable shall be buried at a minimum depth of thirty-six (36) inches.

Grantee shall comply with the City's Design and Construction Standards when buying lines on public property.

(B) Timeliness. Cable drops installed by Grantee to residences shall be buried according to these standards within one calendar week of initial installation, or at a time mutually-agreed upon between the Grantee and the Subscriber. When freezing surface conditions prevent Grantee from achieving such timetable, Grantee shall apprise the Subscriber of the circumstances and the revised schedule for burial, and shall provide the Subscriber with Grantee's telephone number and instructions as to how and when to call Grantee to request burial of the line if the revised schedule is not met.

10.16 Cable Drop Bonding

Grantee shall ensure that all cable drops are properly bonded at the home, consistent with applicable code requirements.

10.17 Repair and Restoration of Property

(A) Notice of Damage. The Grantee shall protect public and private property from damage. If damage occurs, the Grantee shall promptly notify the property owner within twenty-four (24) hours in writing.

(B) Prompt Restoration. Whenever Grantee disturbs or damages any Public Right-of-Way, other public property or any private property, Grantee shall promptly restore the Public Right-of-Way or property to at least its prior condition, normal wear and tear excepted, at its own expense.

(C) Public Rights-of-Way and Other Public Property. Grantee shall warrant any restoration work performed by or for Grantee in the Public Right-of-Way or on other public property in accordance with Applicable Law. If restoration is not satisfactorily performed by the Grantee within a reasonable time, the City may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and

equipment, the Grantee shall pay the City.

(D) Private Property. Upon completion of the work which caused any disturbance or damage, Grantee shall promptly commence restoration of private property, and will use best efforts to complete the restoration within seventy-two (72) hours, considering the nature of the work that must be performed. Grantee shall also perform such restoration in accordance with the City's Customer Service Standards, as the same may be amended from time to time by the City Council acting by ordinance or resolution.

10.18 Use of Conduits by the City

The City may install or affix and maintain wires and equipment owned by the City for City purposes in or upon any and all of Grantee's ducts, conduits or equipment in the Public Rights-of-Way and other public places if such placement does not interfere with Grantee's use of its facilities, without charge to the City, to the extent space therein or thereon is reasonably available, and pursuant to all applicable ordinances and codes. This right shall not extend to affiliates of Grantee who have facilities in the right-of-way for the provision of non-cable services. For the purposes of this subsection, "City purposes" includes, but is not limited to, the use of the structures and installations for City fire, police, traffic, water, telephone, and/or signal systems, but not for Cable Service or transmission to third parties of telecommunications or information services in competition with Grantee. Grantee shall not deduct the value of such use of its facilities from its Franchise Fee payments or from other fees payable to the City.

10.19 Common Users

(A) For the purposes of this subsection:

(1) "Attachment" means any wire, optical fiber or other cable, and any related device, apparatus or auxiliary equipment, for the purpose of voice, video or data transmission.

(2) "Conduit" or "Conduit Facility" means any structure, or section thereof, containing one or more Ducts, conduits, manholes, handhole or other such facilities in Grantee's Cable System.

(3) "Duct" means a single enclosed raceway for cables, Fiber Optics or other wires.

(4) "Licensee" means any Person licensed or otherwise permitted by the City to use the Public Rights-of-Way.

(5) "Surplus Ducts or Conduits" are Conduit Facilities other than those occupied by Grantee or any prior Licensee, or unoccupied Ducts held by Grantee as emergency use spares, or other unoccupied Ducts that Grantee reasonably expects to use within two (2) years from the date of a request for use.

(B) Grantee acknowledges that the Public Rights-of-Way have a finite capacity for containing Conduits. Therefore, Grantee agrees that whenever the City determines it is impracticable to permit construction of an underground Conduit system by any other Person which may at the time have authority to construct or maintain Conduits or Ducts in the Public Rights-of-Way, but excluding Persons providing Cable Services in competition with Grantee, the City may require Grantee to afford to such Person the right to use Grantee's Surplus Ducts or Conduits in common with Grantee, pursuant to the terms and conditions of an agreement for use of Surplus Ducts or Conduits entered into by Grantee and the Licensee. Nothing herein shall require Grantee to enter into an agreement with such Person if, in Grantee's reasonable determination, such an agreement could compromise the integrity of the Cable System.

(C) A Licensee occupying part of a Duct shall be deemed to occupy the entire Duct.

(D) Grantee shall give a Licensee a minimum of one hundred twenty (120) days notice of its need to occupy a licensed Conduit and shall propose that the Licensee take the first feasible action as follows:

(1) Pay revised Conduit rent designed to recover the cost of retrofitting the Conduit with multiplexing, Fiber Optics or other space-saving technology sufficient to meet Grantee's space needs;

(2) Pay revised Conduit rent based on the cost of new Conduit constructed to meet Grantee's space needs;

(3) Vacate the needed Ducts or Conduit; or

(4) Construct and maintain sufficient new Conduit to meet Grantee's space needs.

(E) When two or more Licensees occupy a section of Conduit Facility, the last Licensee to occupy the Conduit Facility shall be the first to vacate or construct new Conduit. When Conduit rent is revised because of retrofitting, space-saving technology or construction of new Conduit, all Licensees shall bear the increased cost.

(F) All Attachments shall meet local, State, and federal clearance and other safety requirements, be adequately grounded and anchored, and meet the provisions of contracts executed between Grantee and the Licensee. Grantee may, at its option, correct any attachment deficiencies and charge the Licensee for its costs. Each Licensee shall pay Grantee for any fines, fees, damages or other costs the Licensee's attachments cause Grantee to incur.

(G) In order to enforce the provisions of this subsection with respect to Grantee, the City must demonstrate that it has required that all similarly situated users of the Public Rights-of-Way to comply with the provisions of this subsection.

10.20 Acquisition of Facilities

Upon Grantee's acquisition of Cable System-related facilities in any City Public Right-of-Way, or upon the addition to the City of any area in which Grantee owns or operates any such facility, Grantee shall, at the City's request, submit to the City a statement describing all such facilities involved, whether authorized by franchise, permit, license or other prior right, and specifying the location of all such facilities to the extent Grantee has possession of such information. Such Cable System-related facilities shall immediately be subject to the terms of this Franchise Agreement.

10.21 Discontinuing Use/Abandonment of Cable System Facilities

Whenever Grantee intends to discontinue using any facility within the Public Rights-of-Way, Grantee shall submit for the City's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that the City permit it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, the City may require Grantee to remove the facility from the Public Right-of-Way or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. The City may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a schedule set by the City. Until such time as Grantee removes or modifies the facility as directed by the City, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Public Right-of-Way, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility. If Grantee abandons its facilities, the City may choose to use such facilities for any purpose whatsoever including, but not limited to, Access purposes, or may remove the facilities at Grantee's expense and Grantee shall reimburse the City within thirty (30) days after receipt of a written invoice.

10.22 Movement of Cable System Facilities for City Purposes

If the City generally makes funds available to users of the Public Rights-of-Way for the relocation of those users' facilities in the Public Rights-of-Way for City purposes, Grantee shall be entitled to its pro rata share of such funds.

10.23 Temporary Changes for Other Permittees

At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder, and Grantee may require a reasonable deposit of the estimated payment in advance.

10.24 Reservation of City Use of Public Right-of-Way

Nothing in this Franchise Agreement shall prevent the City or public utilities owned, maintained or operated by public entities other than the City from constructing sewers; grading,

paving, repairing or altering any Public Right-of-Way; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System.

10.25 Tree Trimming

Subject to obtaining advance permission from the Manager, which shall not be unreasonably refused, Grantee may prune or cause to be pruned, using pruning practices approved by the City Forester, any tree that overhangs the City's Public Rights-of-Way so as to prevent the branches of such trees from coming into contact with the wires of the Cable System. At the option of the City, such trimming may be done by it for by Grantee, but in either case, at the expense of Grantee. Grantee shall comply with any general ordinance or regulations of the City regarding tree trimming. Except in emergencies, Grantee may not prune trees at a point below thirty (30) feet above sidewalk grade until one (1) week written notice has been given to the owner or occupant of the premises abutting the Public Right-of-Way in or over which the tree is growing. The owner or occupant of the abutting premises may prune such tree at his or her own expense during this one (1) week period. If the owner or occupant fails to do so, Grantee may prune such tree at its own expense. For purposes of this subsection, emergencies exist when it is necessary to prune to protect the public or Grantee's facilities from imminent danger only.

10.26 Inspection of Construction and Facilities

The City may conduct inspections of the Cable System including, without limitation, the headend, construction areas and Subscriber installations to assess, among other things, Grantee's compliance with this Franchise Agreement and Applicable Law. Inspection does not relieve Grantee of its obligation to build the Cable System in compliance with all provisions of this Franchise Agreement and Applicable Law.

10.27 Work of Contractors and Subcontractors

Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the City's ordinances, regulations and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise Agreement and all Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise Agreement and the Applicable Law governing the work performed by them.

SECTION 11. CABLE SYSTEM, TECHNICAL STANDARDS AND TESTING

11.1 Subscriber Network

(A) Grantee's Cable System shall be equivalent to or exceed technical characteristics of a traditional HFC 750 MHz Cable System and provide Activated Two-Way capability. The Cable System shall be capable of supporting video and audio. The Cable System shall deliver no less than one hundred ten (110) Channels of digital video programming services to Subscribers, provided that the Grantee reserves the right to use the bandwidth in the future for other uses based on market factors.

(B) Equipment must be installed so that all closed captioning programming received by the Cable System shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards. Equipment must be installed so that all local signals received in stereo or with secondary audio tracks (broadcast and Access) are retransmitted in those same formats.

(C) All construction shall be subject to the City's permitting process and all Applicable Law.

(D) Grantee and City shall meet, at the City's request, to discuss the progress of the design plan and construction.

(E) Grantee will take prompt corrective action if it finds that any facilities or equipment on the Cable System are not operating as expected, or if it finds that facilities and equipment do not comply with the requirements of this Franchise Agreement or Applicable Law.

(F) Grantee's construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular community within the Franchise Area.

11.2 Technology Assessment

(A) The City may notify Grantee on or after five (5) years after the Effective Date, that the City will conduct a technology assessment of Grantee's Cable System. The technology assessment may include, but is not be limited to, determining whether Grantee's Cable System technology and performance are consistent with current technical practices and range and level of services existing in the fifteen (15) largest U.S. cable systems owned and operated by Grantee's Parent Corporation and/or Affiliates pursuant to franchises that have been renewed or extended since the Effective Date.

(B) Grantee shall cooperate with the City to provide necessary information upon the City's reasonable request as part of the technology assessment. If confidential or proprietary information is requested by the City, Grantee shall provide such information subject to the terms of a non-disclosure agreement acceptable to both parties.

(C) At the discretion of the City, findings from the technology assessment may be included in any proceeding commenced for the purpose of identifying future cable-related community needs and interests undertaken by the City pursuant to 47 U.S.C. §546.

11.3 Standby Power

Grantee's Cable System Headend shall be capable of providing at least twelve (12) hours of emergency operation. In addition, throughout the term of this Franchise Agreement, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than four (4) hours. This outage plan and evidence of requisite implementation resources shall be presented to the City no later than thirty (30) days following receipt of a request.

11.4 Emergency Alert Capability

(A) Grantee shall provide an operating Emergency Alert System ("EAS") throughout the term of this Franchise Agreement in compliance with FCC standards. Grantee shall test the EAS as required by the FCC. Upon request, the City shall be permitted to participate in and/or witness the EAS testing up to twice a year on a schedule formed in consultation with Grantee. If the test indicates that the EAS is not performing properly, Grantee shall make any necessary adjustment to the EAS, and the EAS shall be retested.

(B) The City shall permit only appropriately trained and authorized Persons to operate the EAS equipment provided pursuant to this subsection.

11.5 Technical Performance

The technical performance of the Cable System shall meet or exceed all applicable federal (including, but not limited to, the FCC), State and local technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The City shall have the full authority permitted by Applicable Law to enforce compliance with these technical standards.

11.6 Cable System Performance Testing

(A) Grantee shall, at Grantee's expense, perform the following tests on its Cable System:

- (1) All tests required by the FCC;
- (2) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Franchise Agreement; and
- (3) All other tests as otherwise specified in this Franchise Agreement.

(B) At a minimum, Grantee's tests shall include:

- (1) Cumulative leakage index testing of any new construction;

(2) Semi-annual compliance and proof of performance tests in conformance with generally accepted industry guidelines;

(3) Tests in response to Subscriber or Designated Access Provider complaints;

(4) Periodic monitoring tests, at intervals not to exceed six (6) months, of Subscriber (field) test points, the Headend, and the condition of standby power supplies; and

(5) Cumulative leakage index tests, at least annually, designed to ensure that one hundred percent (100%) of Grantee's Cable System has been ground or air tested for signal leakage in accordance with FCC standards.

(C) Grantee shall maintain written records of all results of its Cable System tests, performed by or for Grantee. Copies of such test results will be provided to the City upon reasonable request.

(D) If the FCC no longer requires proof of performance tests for Grantee's Cable System during the term of this Franchise Agreement, Grantee agrees that it shall continue to conduct proof of performance tests on the Cable System in accordance with the standards that were in place on the Effective Date, or any generally applicable standards later adopted, at least once a year, and provide written results of such tests to the City upon request.

(E) The FCC semi-annual testing is conducted in January/February and July/August of each year. If the City contacts Grantee prior to the next test period (*i.e.*, before December 15 and June 15 respectively of each year), Grantee shall provide City with no less than seven (7) days prior written notice of the actual date(s) for FCC compliance testing. If City notifies Grantee by the December 15th and June 15th dates that it wishes to have a representative present during the next test(s), Grantee shall cooperate in scheduling its testing so that the representative can be present. Notwithstanding the above, all technical performance tests may be witnessed by representatives of the City.

(F) Grantee shall be required to promptly take such corrective measures as are necessary to correct any performance deficiencies fully and to prevent their recurrence as far as possible. Grantee's failure to correct deficiencies identified through this testing process shall be a material violation of this Franchise Agreement. Sites shall be re-tested following correction.

11.7 Additional Tests

Where there exists other evidence which, in the judgment of the City, casts doubt upon the reliability or technical quality of Cable Service, the City shall have the right and authority to require Grantee to test, analyze and report on the performance of the Cable System. Grantee shall fully cooperate with the City in performing such testing and shall prepare the results and a report, if requested, within thirty (30) days after testing. Such report shall include the following information:

(A) the nature of the complaint or problem which precipitated the special tests;

- (B) the Cable System component tested;
- (C) the equipment used and procedures employed in testing;
- (D) the method, if any, in which such complaint or problem was resolved; and
- (E) any other information pertinent to said tests and analysis which may be required.

SECTION 12. SERVICE AVAILABILITY, INTERCONNECTION AND SERVICE TO SCHOOLS AND PUBLIC BUILDINGS

12.1 Service Availability

(A) In General. Except as otherwise provided in herein, Grantee shall provide Cable Service within seven (7) days of a request by any Person within the City. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request.

(B) Residential Subscribers. Except where Grantee is unable to obtain required easements or permits and subject to Section 12.1(D), upon the request of a potential Subscriber, Grantee shall extend Cable Service at its then-prevailing installation charge for such service to any residence located within the City as of the Effective Date. There shall be no charge for extending plant to a point where Cable 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. There shall be no charge for extending plant to areas with a residential density of twenty-five (25) residences per mile of Cable System plant. There shall be no charge for extension of plant for residences located within the City as of January 1, 2004. Where these standards are not satisfied, Grantee 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. Grantee may require that the payment of the capital contribution in aid of construction borne by such potential customers be paid in advance. For purposes of this subsection, in areas where Grantee has not constructed Cable System lines as of the Effective Date, each dwelling unit within a Multiple Dwelling Unit will count as a residential unit if and only if Grantee can obtain access to the Multiple Dwelling Unit on reasonable terms and conditions.

(C) Commercial Subscribers; Annexations After Effective Date. For non-residential locations in the City and for areas annexed to the City after the Effective Date, except where Grantee is unable to obtain required easements or permits and subject to Section 12.1(E), Grantee shall provide Cable Service upon request at its then-prevailing installation charge, but may charge for any required plant extension except where fifteen (15) commercial locations per mile of Cable System plant agree to subscribe to Grantee's cable service for one year at commercial rates in which case there shall be no charge for plant extension. Notwithstanding the foregoing, Grantee may charge any potential customer located in a mall or strip mall for any line

extension greater than 100' required to cross a parking lot to provide Cable Service.

(D) No Service Required. Grantee is not required to provide Cable Service to any:

(1) Occupant of a mall or strip mall where such occupant is unwilling to pay its portion of any applicable line extension costs;

(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;

(3) Occupant of unlawful dwelling units; or,

(4) Potential customer in a building or building complex where Grantee is denied access.

(E) Service to Multiple Dwelling Units. Consistent with this Section 12.1, the Grantee shall offer the individual units of a Multiple Dwelling Unit all Cable Services offered to other Dwelling Units in the City and shall individually wire units upon request of the property owner or renter who has been given written authorization by the owner; provided, however, that any such offering is conditioned upon the Grantee having legal access to said unit. The City acknowledges that the Grantee cannot control the dissemination of particular Cable Services beyond the Public Right of Way at a Multiple Dwelling Unit.

12.2 Connection of Public Facilities

Grantee shall, at no cost to the City, provide one outlet of Basic Service and Digital Starter Service to all City owned and/or occupied buildings, schools and public libraries located in areas where Grantee provides Cable Service, so long as these facilities are already served or are located within 150 feet of its Cable System. For purposes of this subsection, "school" means all State-accredited K-12 public and private schools. Such obligation to provide free Cable Service shall not extend to areas of City buildings where the Grantee 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). Outlets of Basic and Digital Starter 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 general technical standards are maintained. Such outlets may only be used for lawful purposes. The Cable Service provided shall not be distributed beyond the originally installed outlets without authorization from Grantee, which shall not be unreasonably withheld.

12.3 Provision of Broad Categories of Services

This Section 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, Grantee agrees to continue to provide the twelve locally-available FM radio stations,

or if lower, the number of locally available FM radio stations from which Grantee 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) for at least twelve (12) months from the Effective Date of this Franchise Agreement. The termination of FM radio service on the Cable System shall be publicized by Grantee at its sole cost through bill messages provided to Subscribers at 12 months, 6 months, and 3 months prior to the time such service is terminated.

SECTION 13. FRANCHISE VIOLATIONS

13.1 Notice of Violation; Right to Cure

(A) If the City reasonably believes that Grantee has failed to perform any obligation under this Franchise Agreement, has violated this Agreement or has failed to perform in a timely manner, the City shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have thirty (30) days from the receipt of such notice to:

(1) respond to the City, contesting the City's assertion that a default has occurred, and requesting a meeting in accordance with subsection (B), below;

(2) cure the default; or,

(3) notify the City, that Grantee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the City in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the City may set a meeting in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.

(B) If Grantee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection (A)(3), or denies the default and requests a meeting in accordance with (A)(1), or the City orders a meeting in accordance with subsection (A)(3), the City shall set a meeting to investigate said issues or the existence of the alleged default. The City shall notify Grantee of the meeting in writing and such meeting shall take place no less than thirty (30) days after Grantee's receipt of notice of the meeting. At the meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

(C) If, after the meeting, the City determines that a default exists, the City shall order Grantee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable time frame as the City shall determine. In the event Grantee does not cure within such time to the City's reasonable satisfaction, the City may:

(1) Withdraw an amount from the letter of credit as monetary damages;

(2) Commence the procedures for the revocation of the Franchise pursuant to

subsection 13.3; or,

(3) Pursue any other legal or equitable remedy available under this Franchise Agreement or any Applicable Law.

(D) The determination as to whether a material breach of this Franchise Agreement has occurred shall be within the discretion of the City, provided that any such final determination may be subject to appeal to a court of competent jurisdiction under Applicable Law.

13.2 Material Breach

In addition to revocation of the Franchise in accordance with other provisions of this Franchise Agreement, the City may revoke the Franchise and rescind all rights and privileges associated with this Franchise Agreement in the following circumstances, each of which represents a material breach of this Franchise Agreement:

(A) If Grantee fails to perform any material obligation under this Franchise Agreement or under any other agreement, ordinance or document regarding the City and Grantee;

(B) If Grantee willfully fails for more than forty-eight (48) hours to provide continuous and uninterrupted Cable Service;

(C) If Grantee attempts to evade any material provision of this Franchise Agreement or to practice any fraud or deceit upon the City or Subscribers;

(D) If Grantee becomes insolvent, or if there is an assignment for the benefit of Grantee's creditors; or

(E) If Grantee makes a material misrepresentation of fact in the application for the Franchise or the negotiation of this Franchise Agreement.

13.3 Procedure for Revocation of Franchise and Termination of Franchise Agreement

(A) Pursuant to the procedures herein, the Franchise granted by this Franchise Agreement may be revoked by the City Council and this Franchise Agreement may be terminated for Grantee's failure to construct, operate or maintain the Cable System as required by this Franchise Agreement, or for any other material breach of this Franchise Agreement.

(B) Upon completing the procedures set forth in subsection 13.1 and prior to forfeiture, revocation of the Franchise or termination of this Franchise Agreement, the City Council shall hold a public hearing, upon at least forty-five calendar days' prior written notice, at which time Grantee and the public shall be given an opportunity to be heard. At such proceeding, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of such proceeding and the cost shall be shared

equally between the parties. The City Council shall hear any Persons interested in the revocation, and shall allow Grantee, in particular, an opportunity to state its position on the matter.

(C) Following the public hearing, the City Council may determine whether to revoke the Franchise based on the evidence presented at the hearing, and other evidence of record. If the City Council determines to revoke a Franchise, it shall issue a written decision setting forth the reasons for its decision. A copy of such decision shall be transmitted to Grantee. Grantee shall be bound by the City's decision to revoke the Franchise unless it appeals the decision to a court of competent jurisdiction within fifteen (15) days of the date of the decision.

(1) Grantee shall be entitled to such relief as the court may deem appropriate.

(2) The City Council may at its sole discretion take any lawful action which it deems appropriate to enforce the City's rights under the Franchise Agreement in lieu of revocation of the Franchise Agreement.

13.4 Remedies in the Case of Revocation or Abandonment

(A) If the City revokes the Franchise and terminates this Franchise Agreement pursuant to this Section 13, or if, for any other reason, Grantee abandons or fails to operate or maintain service to its Subscribers as required by the Franchise, the City may, subject to Applicable Law:

(1) Order the removal of the above-ground Cable System facilities and such underground facilities from the City at Grantee's sole expense within a reasonable period of time as determined by the City. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Rights-of-Way, public places and private property in as good condition as that prevailing prior to Grantee's removal of its equipment without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions and the letter of credit shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefore; or

(2) By resolution of the City Council, acquire ownership or effect a transfer of the Cable System at fair market value, with no value assigned to the Franchise itself, with the price adjusted to account for other equitable factors that may be considered consistent with Applicable Law.

(B) If Grantee fails to complete any removal required by subsection 13.4 (A)(1) to the City's satisfaction, after written notice to Grantee, the City may cause the work to be done and Grantee shall reimburse the City for the costs incurred within thirty (30) days after receipt of an itemized list of the costs, or the City may recover the costs through the letter of credit provided by Grantee.

(C) If the Grantee abandons its Cable System during the Franchise term, or fails to

operate its Cable System in accordance with its duty to provide continuous service, the City, at its option, may operate the Cable System; designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the City, or until the Franchise is revoked and a new franchisee is selected by the City; or obtain an injunction requiring the Grantee to continue operations. If the City is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the City or its designee for all reasonable costs, expenses and damages incurred.

(D) The City may seek legal and equitable relief to enforce the provisions of this Franchise Agreement.

13.5 What Constitutes Abandonment

As used in Section 13.4, above, abandonment means:

(A) The Grantee fails to provide Cable Service in accordance with this Franchise Agreement over a substantial portion of the Franchise Area for four (4) consecutive days, unless the City authorizes a longer interruption of service; or

(B) The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Franchise Agreement.

13.6 Receivership and Foreclosure

(A) At the option of the City, subject to Applicable Law, this Franchise may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

(1) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment; or

(2) The receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise and have remedied all defaults under the Franchise. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Franchise.

(B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, the City may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise shall be revoked thirty (30) days after service of such notice, unless:

(1) The City has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and

(2) The purchaser has covenanted and agreed with the City to assume and be bound by all of the terms and conditions of this Franchise.

13.7 No Monetary Recourse Against the City

Grantee shall not have any monetary recourse against the City or its officers, officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Franchise Agreement or the enforcement thereof, in accordance with the provisions of applicable federal, State and local law. The rights of the City under this Franchise Agreement are in addition to, and shall not be read to limit, any immunities the City may enjoy under federal, State or local law.

13.8 Alternative Remedies

No provision of this Franchise Agreement shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of the Franchise Agreement or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise Agreement nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violations by Grantee, or to seek and obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

13.9 Assessment of Monetary Damages

(A) The City may assess against Grantee monetary damages (i) up to five hundred dollars (\$500.00) per day for general construction delays, violations of PEG obligations or payment obligations, (ii) up to two hundred fifty dollars (\$250.00) per day for any other material breaches, or (iii) up to one hundred dollars (\$100.00) per day for defaults, and withdraw the assessment from the letter of credit or collect the assessment as specified in this Franchise Agreement. Damages pursuant to this Section shall accrue for a period not to exceed one hundred twenty (120) days per violation proceeding. To assess any amount from the letter of credit, City shall follow the procedures for withdrawals from the letter of credit set forth in the letter of credit and-in this Franchise Agreement. Such damages shall accrue beginning thirty (30) days following Grantee's receipt of the notice required by subsection 13.1(A), or such later date if approved by the City in its sole discretion, but may not be assessed until after the procedures in subsection 13.1 have been completed.

(B) The assessment does not constitute a waiver by City of any other right or remedy it may have under the Franchise Agreement or Applicable Law, including its right to recover from Grantee any additional damages, losses, costs and expenses that are incurred by City by reason of the breach of this Franchise Agreement.

SECTION 14. FRANCHISE RENEWAL AND TRANSFER

14.1 Renewal

(A) The City and Grantee agree that any proceedings undertaken by the City that relate to the renewal of the Franchise shall be governed by and comply with the provisions of Applicable Law, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or State law.

(B) In addition to the procedures set forth in said Section 626(a), the City agrees to notify Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise Agreement term. Notwithstanding anything to the contrary set forth herein, Grantee and City agree that at any time during the term of the then-current Franchise Agreement, while affording the public adequate notice and opportunity for comment, the City and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise Agreement and the City may grant a renewal thereof. Grantee and City consider the terms set forth in this subsection to be consistent with the express provisions of Section 626 of the Cable Act.

(C) Should the Franchise expire without a mutually agreed upon renewed Franchise Agreement and Grantee and City are engaged in a renewal process, Grantee shall continue to provide Cable Service to its Subscribers on a month-to-month basis, on the same terms and conditions as provided in this Franchise Agreement and the Cable Code. During any such "hold over" period, Franchisee shall continue to pay the Franchise Fee as set forth above, in addition to honoring all other provisions of this Franchise Agreement.

14.2 Transfer of Ownership or Control

(A) The Cable System and this Franchise shall not be sold, assigned, transferred, leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger or consolidation; nor shall title thereto, either legal or equitable, or any right, interest or property therein pass to or vest in any Person or entity without the prior written consent of the City, which consent shall be by the City Council/Commission, acting by ordinance/resolution.

(B) The Grantee shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of the Grantee shall make this Franchise subject to cancellation unless and until the City shall have consented in writing thereto.

(C) The parties to the sale or transfer shall make a written request to the City for its approval of a sale or transfer and furnish all information required by App and the City.

(D) In seeking the City's consent to any change in ownership or control, the proposed transferee shall indicate whether it:

(1) Has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;

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

(3) Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a cable system or a broadband system;

(4) Is financially solvent, by submitting financial data including financial statements that are audited by a certified public accountant who may also be an officer of the transferee, along with any other data that the City may reasonably require; and

(5) Has the financial, legal and technical capability to enable it to maintain and operate the Cable System for the remaining term of the Franchise.

(E) No Transfer application shall be granted unless the proposed transferee:

(1) Agrees in writing that it will abide by and accept the terms of the Boulder Cable Code, 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;

(2) Agrees in writing to assume and be responsible for the obligations and liabilities of Grantee, known and unknown, under this Franchise Agreement and Applicable Law;

(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;

(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

(5) Posts all required bonds, securities in a manner to ensure that there is no gap in coverage.

(F) The City shall act by ordinance on the request within one hundred twenty (120) days of the request, provided it has received all information required by this Franchise and/or by Applicable Law. The City and the Grantee may by mutual agreement, at any time, extend the 120 day period. Subject to the foregoing, if the City fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

(G) Within thirty (30) days of any transfer or sale, if approved or deemed granted by

the City, Grantee shall file with the City a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee, and the transferee shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to Applicable Law. In the event of a change in control, in which the Grantee is not replaced by another entity, the Grantee will continue to be bound by all of the provisions of the Franchise Agreement, subject to Applicable Law, and will not be required to file an additional written acceptance.

(H) In reviewing a request for sale or transfer, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the City in so inquiring. The City may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, in accordance with Applicable Law.

(I) Notwithstanding anything to the contrary in this subsection, the prior approval of the City shall not be required for any sale, assignment or transfer of the Franchise Agreement or Cable System to an entity controlling, controlled by or under the same common control as Grantee, provided that (i) the proposed assignee or transferee must show financial responsibility as may be determined necessary by the City and must agree in writing to comply with all of the provisions of the Franchise; (ii) Grantee affirms that it shall be responsible for all of Grantee'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; (iv) required bonds, securities and the like must be maintained so that there is no gap in coverage, if there will be any change I the same as a result of the transaction; (v) Grantee and the 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 (vi) 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 Grantee and the party being added to the chain of control. Further, Grantee may pledge the assets of the Cable System for the purpose of financing without the consent of the City; provided that such pledge of assets shall not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

SECTION 15. SEVERABILITY

If any Section, subsection, paragraph, term or provision of this Franchise Agreement is determined to be illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other Section, subsection, paragraph, term or provision of this Franchise Agreement, all of which will remain in full force and effect for the term of the Franchise Agreement.

SECTION 16. MISCELLANEOUS PROVISIONS

16.1 Preferential or Discriminatory Practices Prohibited

In connection with the performance of work under this Franchise Agreement, the Grantee agrees not to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any Person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Grantee further agrees to insert the foregoing provision in all subcontracts hereunder. Throughout the term of this Franchise Agreement, Grantee shall fully comply with all equal employment or non-discrimination provisions and requirements of federal, State and local laws, and in particular, FCC rules and regulations relating thereto.

16.2 Notices

Throughout the term of the Franchise Agreement, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent overnight delivery postage prepaid to such respective address and such notices shall be effective upon the date of mailing. These addresses may be changed by the City or the Grantee by written notice at any time. At the Effective Date of this Franchise Agreement:

Grantee's address shall be:

Comcast of Colorado, IV, LLC
8000 E. Iliff Ave.
Denver, CO 80231
Attn: Government Affairs

The City's address shall be:

City Manager
City of Boulder
1777 Broadway
Boulder, CO 80302

16.3 Descriptive Headings

The headings and titles of the Sections and subsections of this Franchise Agreement are for reference purposes only, and shall not affect the meaning or interpretation of the text herein.

16.4 Publication Costs to be Borne by Grantee

Grantee shall reimburse the City for all costs incurred in publishing this Franchise Agreement, if such publication is required.

16.5 Binding Effect; No Third Party Beneficiaries

This Franchise Agreement shall be binding upon the parties hereto, their permitted successors and assigns. This Franchise Agreement is entered into solely for the benefit of the Parties and shall not confer any rights upon any Person not a party to this Agreement.

16.6 No Joint Venture

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the Parties and neither Party is authorized to, nor shall either Party act toward third Persons or the public in any manner which would indicate any such relationship with the other.

16.7 Waiver

The failure of the City at any time to require performance by the Grantee of any provision hereof shall in no way affect the right of the City hereafter to enforce the same. Nor shall the waiver by the City of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

16.8 Reasonableness of Consent or Approval

Whenever under this Franchise Agreement “reasonableness” is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.

16.9 Time of Essence

In determining whether Grantee has substantially complied with this Franchise Agreement, the Parties agree that time is of the essence to this Franchise Agreement.

16.10 Entire Agreement

This Franchise Agreement and all Exhibits represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral negotiations between the parties.

16.11 Applicable Law

This Agreement shall be construed in accordance with the laws of the State of Colorado and the Cable Act. Jurisdiction and venue for any judicial dispute between the City and Grantee arising under or out of this Franchise Agreement shall be in Boulder County District Court, Colorado, or in the United States District Court in Denver.

16.12 Counterparts

This Franchise Agreement may be executed in counterparts.

Customer Service Standards

I. POLICY

The Cable Operator should resolve citizen complaints without delay and interference from the Franchising Authority.

Where a given complaint is not addressed by the Cable Operator to the citizen's satisfaction, the Franchising Authority should intervene. In addition, where a pattern of unremedied complaints or noncompliance with the Standards is identified, the Franchising Authority should prescribe a cure and establish a reasonable deadline for implementation of the cure. If the noncompliance is not cured within the established deadlines, monetary sanctions should be imposed to encourage compliance and deter future non-compliance.

These Standards are intended to be of general application, and are expected to be met under Normal Operating Conditions; however, the Cable Operator shall be relieved of any obligations hereunder if it is unable to perform due to a region-wide natural emergency or in the event of force majeure affecting a significant portion of the franchise area. The Cable Operator is free to exceed these Standards to the benefit of its Customers and such shall be considered performance for the purposes of these Standards.

These Standards supersede any contradictory or inconsistent provision in federal, state or local law (Source: 47 U.S.C. § 552(a)(1) and (d)), provided, however, that any provision in federal, state or local law, or in any original franchise agreement or renewal agreement, that imposes a higher obligation or requirement than is imposed by these Standards, shall not be considered contradictory or inconsistent with these Standards. In the event of a conflict between these Standards and a Franchise Agreement, the Franchise Agreement shall control.

These Standards apply to the provision of any Cable Service, provided by a Cable Operator over a Cable System, within the City Boulder, Colorado.

II. DEFINITIONS

When used in these Customer Service Standards (the "Standards"), the following words, phrases, and terms shall have the meanings given below.

"Affiliate" shall mean any person or entity that is owned or controlled by, or under common ownership or control with, a Cable Operator, and provides any Cable Service or Other Service.

"Applicable Law" means, with respect to these standards and any Cable Operator's privacy policies, any statute, ordinance, judicial decision, executive order or regulation having the force and effect of law, that determines the legal standing of a case or issue.

"Cable Operator" shall mean the Grantee, as described in the Franchise Agreement, and the Grantee's employees, agents, Contractors or Subcontractors.

"Cable Service" shall mean (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Source: 47 U.S.C. § 522(6). For purposes of this definition, "video programming" is programming provided by, or generally considered comparable to programming provided by a television broadcast station. Source: 47 U.S.C. § 522(20). "Other programming service" is information that a Cable Operator makes available to all subscribers generally. Source: 47 U.S.C. § 522(14).

"Cable System" shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the televisions signals of one or more television broadcast stations, or (B) a facility that serves subscribers without using any public right of way. Source: 47 U.S.C. § 522(7).

"City" shall mean the city of Boulder, Colorado.

"Colorado Communications and Utilities Alliance" or "CCUA" shall mean an association comprised primarily of local governmental subdivisions of the State of Colorado, or any successor entity. The CCUA may, on behalf of its members, be delegated the authority to review, investigate or otherwise take some related role in the administration and/or enforcement of any functions under these Standards.

"Contractor" shall mean a person or entity that agrees by contract to furnish materials or perform services for another at a specified consideration.

"Customer" shall mean any person who receives any Cable Service from a Cable Operator.

"Customer Service Representative" (or "CSR") shall mean any person employed with or under contract or subcontract to a Cable Operator to assist, or provide service to, customers, whether by telephone, writing service or installation orders, answering customers' questions in person, receiving and processing payments, or performing any other customer service-related tasks.

"Escalated Complaint" shall mean a complaint that is referred to a Cable Operator by the Franchising Authority.

"Franchising Authority" shall mean the City.

"Necessary" shall mean required or indispensable.

“Normal Business Hours” shall mean those hours during which most similar businesses in the community are open to serve customers. In all cases, Normal Business Hours must include at least some evening hours one night per week, and include some weekend hours.

“Normal Operating Conditions” shall mean those service conditions which are within the control of a Cable Operator. Conditions which are not within the control of a Cable Operator include, but are not necessarily limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Conditions which are ordinarily within the control of a Cable Operator include, but are not necessarily limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods and maintenance or upgrade to the Cable System.

“Other Service(s)” shall mean any wire or radio communications service provided using any of the facilities of a Cable Operator that are used in the provision of Cable Service.

"Personally Identifiable Information" shall mean specific information about an identified Customer, including, but not be limited to, a Customer's (a) login information for the use of Cable Service and management of a Customer's Cable Service account, (b) extent of viewing of video programming or Other Services, (c) shopping choices, (d) interests and opinions, (e) energy uses, (f) medical information, (g) banking data or information, or (h) any other personal or private information. "Personally Identifiable Information" shall not mean any aggregate information about Customers which does not identify particular persons, or information gathered by a Cable Operator Necessary to install, repair or service equipment or Cable System facilities at a Customer's premises.

“Service Interruption” or “Interruption” shall mean (i) the loss or substantial impairment of picture and/or sound on one or more cable television channels.

“Service Outage” or “Outage” shall mean a loss or substantial impairment in reception on all channels.

“Subcontractor” shall mean a person or entity that enters into a contract to perform part or all of the obligations of another's contract.

“Writing” or “written” as the term applies to notification shall include electronic communications.

Any terms not specifically defined in these Standards shall be given their ordinary meaning, or where otherwise defined in applicable federal law, such terms shall be interpreted consistent with those definitions.

III. CUSTOMER SERVICE

A. Courtesy

Cable Operator employees, Contractors and Subcontractors shall be courteous, knowledgeable and helpful and shall provide effective and satisfactory service in all contacts with Customers.

B. Accessibility

1. A Cable Operator shall provide Customer service centers/business offices (“Service Centers”) which are conveniently located, and which are open during Normal Business Hours. Service Centers shall be fully staffed with Customer Service Representatives offering the following services to Customers who come to the Service Center: bill payment, equipment exchange, processing of change of service requests, and response to Customer inquiries and request.

Unless otherwise requested by the City, a Cable Operator shall post a sign at each Service Center, visible from the outside of the Service Center, advising Customers of its hours of operation and of the telephone number at which to contact the Cable Operator if the Service Center is not open at the times posted.

The Cable Operator shall use commercially reasonable efforts to implement and promote “self-help” tools and technology, in order to respond to the growing demand of Customers who wish to interact with the Cable Operator on the Customer’s own terms and timeline and at their own convenience, without having to travel to a Service Center. Without limitation, examples of self-help tools or technology may include self-installation kits to Customers upon request; pre-paid mailers for the return of equipment upon Customer request; an automated phone option for Customer bill payments; and equipment exchanges at a Customer’s residence in the event of damaged equipment. A Cable Operator shall provide free exchanges of faulty equipment at the Customer’s address if the equipment has not been damaged in any manner due to the fault or negligence of the Customer.

2. A Cable Operator shall maintain local telephone access lines that shall be available twenty-four (24) hours a day, seven (7) days a week for service/repair requests and billing/service inquiries.

3. A Cable Operator shall have dispatchers and technicians on call twenty-four (24) hours a day, seven (7) days a week, including legal holidays.

4. If a customer service telephone call is answered with a recorded message providing the Customer with various menu options to address the Customer’s concern, the recorded message must provide the Customer the option to connect to and speak with a CSR within sixty (60) seconds of the commencement of the recording. During Normal Business Hours, a Cable Operator shall retain sufficient customer service representatives and telephone line capacity to ensure that telephone calls to technical service/repair and billing/service inquiry lines are answered by a customer service representative within thirty (30) seconds or less from the time a Customer chooses a menu option to speak directly with a CSR or chooses a menu option that pursuant to the automated voice message, leads to a direct connection with a CSR. Under Normal Operating Conditions, this thirty (30) second telephone answer time requirement standard shall be met no less than ninety (90) percent of the time measured quarterly.

5. Under Normal Operating Conditions, a Customer shall not receive a busy signal more than three percent (3%) of the time. This standard shall be met ninety (90) percent or more of the time, measured quarterly.

C. Responsiveness

1. Guaranteed Seven-Day Residential Installation

a. A Cable Operator shall complete all standard residential installations or modifications to service requested by Customers within seven (7) business days after the order is placed, unless a later date for installation is requested. "Standard" residential installations are those located up to one hundred twenty five (125) feet from the existing distribution system. If the Customer requests a nonstandard residential installation, or the Cable Operator determines that a nonstandard residential installation is required, the Cable Operator shall provide the Customer in advance with a total installation cost estimate and an estimated date of completion.

b. All underground cable drops to the home shall be buried at a depth of no less than twelve inches (12"), or such other depth as may be required by the Franchise Agreement or local code provisions, or if there are no applicable Franchise or code requirements, at such other depths as may be agreed to by the parties if other construction concerns preclude the twelve inch requirement, and within no more than one calendar week from the initial installation, or at a time mutually agreed upon between the Cable Operator and the Customer.

2. Residential Installation and Service Appointments

a. The "appointment window" alternatives for specific installations, service calls, and/or other installation activities will be either a specific time, or at a maximum, a four (4) hour time block between the hours of 8:00 a.m. and 6:00 p.m., six (6) days per week. A Cable Operator may schedule service calls and other installation activities outside of the above days and hours for the express convenience of Customers. For purposes of this subsection "appointment window" means the period of time in which the representative of the Cable Operator must arrive at the Customer's location.

b. A Cable Operator may not cancel an appointment with a Customer after the close of business on the business day prior to the scheduled appointment, unless the Customer's issue has otherwise been resolved.

c. If a Cable Operator is running late for an appointment with a Customer and will not be able to keep the appointment as scheduled, the Cable Operator shall take reasonable efforts to contact the Customer promptly, but in no event later than the end of the appointment window. The appointment will be rescheduled, as Necessary at a time that is convenient to the Customer, within Normal Business Hours or as may be otherwise agreed to between the Customer and Cable Operator.

d. A Cable Operator shall be deemed to have responded to a request for service under the provisions of this section when a technician arrives within the agreed upon time, and, if the

Customer is absent when the technician arrives, the technician leaves written notification of arrival and return time, and a copy of that notification is kept by the Cable Operator. In such circumstances, the Cable Operator shall contact the Customer within forty-eight (48) hours.

3. Residential Service Interruptions

a. In the event of system outages resulting from Cable Operator equipment failure, the Cable Operator shall correct such failure within 2 hours after the 3rd Customer call is received.

b. All other Service Interruptions resulting from Cable Operator equipment failure shall be corrected by the Cable Operator by the end of the next calendar day.

c. Records of Complaints.

i. A Cable Operator shall keep an accurate and comprehensive file of any complaints regarding the Cable System or its operation of the Cable System, in a manner consistent with the privacy rights of Customers, and the Cable Operator's actions in response to those complaints. These files shall remain available for viewing by the Franchising Authority during normal business hours at the Cable Operator's business office, and shall be retained by the Cable Operator for a period of at least three (3) years.

ii. A Cable Operator shall provide the Franchising Authority an executive summary quarterly, which shall include information concerning Customer complaints referred by the Franchising Authority to the Grantee, a summary of service calls, a log of all Service Interruptions, and any other requirements of a Franchise Agreement, including a summary of complaints, but no Personally Identifiable Information. These summaries shall be provided within fifteen (15) days after the end of each quarter. Once a request is made, it need not be repeated and quarterly executive summaries shall be provided by the Cable Operator until notified in Writing by the Franchising Authority that such summaries are no longer required.

d. All Service Outages and Service Interruptions for any cause beyond the control of the Cable Operator shall be corrected within thirty-six (36) hours, after the conditions beyond its control have been corrected.

4. TV Reception

a. A Cable Operator shall provide clear television reception that meets or exceeds technical standards established by the United States Federal Communications Commission (the "FCC"). A Cable Operator shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled Interruptions shall be preceded by notice and shall occur during periods of minimum use of the system, preferably between midnight and six a.m. (6:00 a.m.).

b. If a Customer experiences poor video or audio reception attributable to a Cable Operator's equipment, the Cable Operator shall:

- i. Assess the problem within one (1) day of notification;
- ii. Communicate with the Customer regarding the nature of the problem and the expected time for repair;
- iii. Complete the repair within two (2) days of assessing the problem unless circumstances exist that reasonably require additional time.

c. If an appointment is Necessary to address any video or audio reception problem, the Customer may choose a block of time described in Section III.C.2.a. At the Customer's request, the Cable Operator shall repair the problem at a later time convenient to the Customer, during Normal Business Hours or at such other time as may be agreed to by the Customer and Cable Operator. A Cable Operator shall maintain periodic communications with a Customer during the time period in which problem ascertainment and repair are ongoing, so that the Customer is advised of the status of the Cable Operator's efforts to address the problem.

5. Problem Resolution

A Cable Operator's customer service representatives shall have the authority to provide credit for interrupted service, to waive fees, to schedule service appointments and to change billing cycles, where appropriate. Any difficulties that cannot be resolved by the customer service representative shall be referred to the appropriate supervisor who shall contact the Customer within four (4) hours and resolve the problem within forty eight (48) hours or within such other time frame as is acceptable to the Customer and the Cable Operator.

6. Billing, Credits, and Refunds

a. In addition to other options for payment of a Customer's service bill, a Cable Operator shall make available a telephone payment option where a Customer without account irregularities can enter payment information through an automated system, without the necessity of speaking to a CSR.

b. A Cable Operator shall allow at least thirty (30) days from the beginning date of the applicable service period for payment of a Customer's service bill for that period. If a Customer's service bill is not paid within that period of time the Cable Operator may apply an administrative fee to the Customer's account. The administrative fee must reflect the average costs incurred by the Cable Operator in attempting to collect the past due payment in accordance with Applicable Law. If the Customer's service bill is not paid within forty-five (45) days of the beginning date of the applicable service period, the Cable Operator may perform a "soft" disconnect of the Customer's service. If a Customer's service bill is not paid within fifty-two (52) days of the beginning date of the applicable service period, the Cable Operator may disconnect the Customer's service, provided it has provided two (2) weeks' notice to the Customer that such disconnection may result.

c. The Cable Operator shall issue a credit or refund to a Customer within 30 days after determining the Customer's entitlement to a credit or refund.

d. Whenever the Cable Operator offers any promotional or specially priced service(s) its promotional materials shall clearly identify and explain the specific terms of the promotion, including but not limited to manner in which any payment credit will be applied.

7. Treatment of Property

To the extent that a Franchise Agreement does not contain the following procedures for treatment of property, Operator shall comply with the procedures set forth in this Section.

a. A Cable Operator shall keep tree trimming to a minimum; trees and shrubs or other landscaping that are damaged by a Cable Operator, any employee or agent of a Cable Operator during installation or construction shall be restored to their prior condition or replaced within seven (7) days, unless seasonal conditions require a longer time, in which case such restoration or replacement shall be made within seven (7) days after conditions permit. Trees and shrubs shall not be removed without the prior permission of the owner or legal tenant of the property on which they are located. This provision shall be in addition to, and shall not supersede, any requirement in any franchise agreement.

b. A Cable Operator shall, at its own cost and expense, and in a manner approved by the property owner and the Franchising Authority, restore any property to as good condition as before the work causing such disturbance was initiated. A Cable Operator shall repair, replace or compensate a property owner for any damage resulting from the Cable Operator's installation, construction, service or repair activities. If compensation is requested by the Customer for damage caused by any Cable Operator activity, the Cable Operator shall reimburse the property owner one hundred (100) percent of the actual cost of the damage.

c. Except in the case of an emergency involving public safety or Service Interruption to a large number of Customers, a Cable Operator shall give reasonable notice to property owners or legal tenants prior to entering upon private premises, and the notice shall specify the work to be performed; provided that in the case of construction operations such notice shall be delivered or provided at least twenty-four (24) hours prior to entry. Nothing herein shall be construed as authorizing access or entry to private property, or any other property, where such right to access or entry is not otherwise provided by law. In the case of an emergency, the cable operator shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made., unless such notice is waived by the Customer. For purposes of this subsection, "reasonable notice" shall be considered:

- i. For pedestal installation or similar major construction, seven (7) days.
- ii. For routine maintenance, such as adding or dropping service, tree trimming and the like, reasonable notice given the circumstances. Unless a Franchise Agreement has a different requirement, reasonable notice shall require, at a minimum,

prior notice to a property owner or tenant, before entry is made onto that person's property.

iii. For emergency work a Cable Operator shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made. Door hangars must describe the issue and provide contact information where the property owner or tenant can receive more information about the emergency work.

Nothing herein shall be construed as authorizing access or entry to private property, or any other property, where such right to access or entry is not otherwise provided by law.

d. Cable Operator personnel shall clean all areas surrounding any work site and ensure that all cable materials have been disposed of properly.

D. Services for Customers with Disabilities

1. For any Customer with a disability, a Cable Operator shall deliver and pick up equipment at Customers' homes at no charge unless the malfunction was caused by the actions of the Customer. In the case of malfunctioning equipment, the technician shall provide replacement equipment, hook it up and ensure that it is working properly, and shall return the defective equipment to the Cable Operator.

2. A Cable Operator shall provide either TTY, TDD, TYY, VRS service or other similar service that are in compliance with the Americans With Disabilities Act and other Applicable Law, with trained operators who can provide every type of assistance rendered by the Cable Operator's customer service representatives for any hearing-impaired Customer at no charge.

3. A Cable Operator shall provide free use of a remote control unit to mobility-impaired (if disabled, in accordance with Section III.D.4) Customers.

4. Any Customer with a disability may request the special services described above by providing a Cable Operator with a letter from the Customer's physician stating the need, or by making the request to the Cable Operator's installer or service technician, where the need for the special services can be visually confirmed.

E. Cable Services Information

1. At any time a Customer or prospective Customer may request, a Cable Operator shall provide the following information, in clear, concise written form, easily accessible and located on Cable Operator's website (and in Spanish, when requested by the Customer):

a. Products and services offered by the Cable Operator, including its channel lineup;

b. The Cable Operator's complete range of service options and the prices for these services;

- c. The Cable Operator's billing, collection and disconnection policies;
 - d. Privacy rights of Customers;
 - e. All applicable complaint procedures, including complaint forms and the telephone numbers and mailing addresses of the Cable Operator, and the FCC;
 - f. Use and availability of parental control/lock out device;
 - g. Special services for Customers with disabilities;
 - h. Days, times of operation, and locations of the service centers;
2. At a Customer's request, a Cable Operator shall make available either a complete copy of these Standards and any other applicable customer service standards, or a summary of these Standards, in a format to be approved by CCA and the Franchising Authority, which shall include at a minimum, the URL address of a website containing these Standards in their entirety; provided however, that if the CCA or Franchising Authority does not maintain a website with a complete copy of these Standards, a Cable Operator shall be under no obligation to do so;

If acceptable to a Customer, Cable Operator may fulfill Customer requests for any of the information listed in this Section by making the requested information available electronically, such as on a website or by electronic mail.

3. Upon written request, a Cable Operator shall meet annually with the Franchising Authority to review the format of the Cable Operator's bills to Customers. Whenever the Cable Operator makes substantial changes to its billing format, it will contact the Franchising Authority at least thirty (30) days prior to the time such changes are to be effective, in order to inform the Franchising Authority of such changes.
4. Copies of notices provided to the Customer in accordance with subsection 5 below shall be filed (by fax or email acceptable) concurrently with the Franchising Authority and the CCA.
5. A Cable Operator shall provide Customers with written notification of any change in rates for nondiscretionary Cable Services, and for service tier changes that result in a deletion of programming from a Customer's service tier, at least thirty (30) days before the effective date of change. For purposes of this section, "nondiscretionary" means the subscribed tier and any other Cable Services that a Customer has subscribed to, at the time the change in rates are announced by the Cable Operator.
6. All officers, agents, and employees of the Cable Operator or its Contractors or Subcontractors who are in personal contact with Customers and/or when working on public property, shall wear on their outer clothing identification cards bearing their name and photograph and identifying them as representatives of the Cable Operator. The Cable Operator shall account for all identification cards at all times. Every vehicle of the Cable Operator shall be clearly visually

identified to the public as working for the Cable Operator. Whenever a Cable Operator work crew is in personal contact with Customers or public employees, a supervisor must be able to communicate clearly with the Customer or public employee. Every vehicle of a Subcontractor or Contractor shall be labeled with the name of the Contractor and further identified as contracting or subcontracting for the Cable Operator.

7. Each CSR, technician or employee of the Cable Operator in each contact with a Customer shall state the estimated cost of the service, repair, or installation orally prior to delivery of the service or before any work is performed, and shall provide the Customer with an oral statement of the total charges before terminating the telephone call or before leaving the location at which the work was performed. A written estimate of the charges shall be provided to the Customer before the actual work is performed.

F. Customer Privacy

1. Notice to Customers Regarding Personally Identifiable Information; Definitions

(1) At the time of entering into an agreement to provide any Cable Service or Other Service to a Customer and at least once a year thereafter, the Cable Operator shall provide notice in the form of a separate, written statement to such Customer which clearly and conspicuously informs the Customer of—

(A) the nature of Personally Identifiable Information collected or to be collected with respect to the Customer and the nature of the use of such information;

(B) the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;

(C) the period during which such information will be maintained by the Cable Operator;

(D) the times and place at which the Customer may have access to such information in accordance with subsection (4) of this section; and

(E) the limitations provided by this section with respect to the collection and disclosure of information by the Cable Operator and the right of the Customer under 47 U.S.C. §§ 551(f) and (h) to enforce such limitations.

In the case of Customers who have entered into such an agreement before the effective date of this section, such notice shall be provided within 180 days of such date and at least once a year thereafter.

(2) For purposes of this section F:

(A) the term “Personally Identifiable Information” does not include any record of aggregate data that does not identify particular persons;

(B) the term “Other Service” includes any wire or radio communications service provided using any of the facilities of the Cable Operator that are used in the provision of Cable Service; and

(C) the term “Cable Operator” includes, in addition to persons within the definition of Cable Operator, above, any person or group of persons who

(i) provides Cable Service over the Cable System and directly or through one or more Affiliates owns a significant interest in such Cable System

(ii) otherwise controls or is responsible for, through any arrangement, the management and operation of the Cable System;

(iii) is owned or controlled by, or under common ownership or control with, the Cable Operator; and

(iv) provides any wire or radio communications service.

2. Collection of Personally Identifiable Information Using Cable System

(1) Except as provided in paragraph (2) below, a Cable Operator shall not use the Cable System to collect Personally Identifiable Information concerning any Customer without the prior written or electronic consent of the Customer concerned.

(2) A Cable Operator may use the Cable System to collect such information in order to—

(A) obtain information Necessary to render a Cable Service or Other Service provided by the Cable Operator to the Customer; or

(B) detect unauthorized reception of cable communications.

3. Disclosure of Personally Identifiable Information

(1) Except as provided in paragraph (2) below, a Cable Operator shall not disclose Personally Identifiable Information concerning any Customer without the prior written or electronic consent of the Customer concerned and shall take such actions as are Necessary to prevent unauthorized access to such information by a person other than the Customer or Cable Operator.

(2) A Cable Operator may disclose such information if the disclosure is—

(A) Necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other Service provided by the Cable Operator to the Customer;

(B) subject to 47 U.S.C. §§ 551 (h) (Disclosure of information to governmental entity pursuant to court order), made pursuant to a court order authorizing such disclosure, if the Customer is notified of such order by the person to whom the order is directed;

(C) a disclosure of the names and addresses of Customers to any Cable Service or Other Service, if—

(i) the Cable Operator has provided the Customer the opportunity to prohibit or limit such disclosure, and

(ii) the disclosure does not reveal, directly or indirectly, the—

(I) extent of any viewing or other use by the Customer of a Cable Service or Other Service provided by the Cable Operator, or

(II) the nature of any transaction made by the Customer over the Cable System of the Cable Operator; or

(D) to a government entity as authorized under chapters 119, 121, or 206 of title 18, U.S.C. , except that such disclosure shall not include records revealing Customer selection of video programming from a Cable Operator.

4. Customer Access to Information

A Customer shall be provided access to all Personally Identifiable Information regarding that Customer that is collected and maintained by a Cable Operator. Such information shall be made available to the Customer at reasonable times and at a convenient place designated by such Cable Operator. A Customer shall be provided reasonable opportunity to correct any error in such information.

G. Safety

A Cable Operator shall install and locate its facilities, Cable System, and equipment in compliance with all federal, state, local, and company safety standards, and in such manner as shall not unduly interfere with or endanger persons or property. Whenever a Cable Operator receives notice that an unsafe condition exists with respect to its equipment, the Cable Operator shall investigate such condition immediately, and shall take such measures as are Necessary to remove or eliminate any unsafe condition.

H. Cancellation of New Services

In the event that a new customer requests installation of Cable Service and is unsatisfied with their initial Cable Service, and provided that the customer so notifies the Cable Operator of their dissatisfaction within 30 days of initial installation, then such customer can request disconnection of Cable Service within 30 days of initial installation, and the Cable Operator shall provide a credit to the customer's account consistent with this Section. The customer will be required to return all equipment in good working order; provided such equipment is returned in such order, then the Cable Operator shall refund the monthly recurring fee for the new customer's first 30 days of Cable Service and any charges paid for installation. This provision does not apply to existing customers who request upgrades to their Cable Service, to discretionary Cable Service such as PPV or movies purchased and viewed On Demand, or to customer moves and/or transfers of Cable Service. The service credit shall be provided in the next billing cycle.

IV. COMPLAINT PROCEDURE

A. Complaints to a Cable Operator

1. A Cable Operator shall establish written procedures for receiving, acting upon, and resolving customer complaints, and crediting customer accounts and shall have such procedures printed and disseminated at the Cable Operator's sole expense, consistent with Section III.E.1.e of these Standards.
2. Said written procedures shall prescribe a simple manner in which any customer may submit a complaint by telephone or in Writing to a Cable Operator that it has violated any provision of these Customer Service Standards, any terms or conditions of the customer's contract with the Cable Operator, or reasonable business practices. If a representative of the Franchising Authority notifies the Cable Operator of a customer complaint that has not previously been made by the customer to the Cable Operator, the complaint shall be deemed to have been made by the customer as of the date of the Franchising Authority's notice to the Cable Operator.
3. At the conclusion of the Cable Operator's investigation of a customer complaint, but in no more than ten (10) calendar days after receiving the complaint, the Cable Operator shall notify the customer of the results of its investigation and its proposed action or credit.
4. A Cable Operator shall also notify the customer of the customer's right to file a complaint with the Franchising Authority in the event the customer is dissatisfied with the Cable Operator's decision, and shall thoroughly explain the Necessary procedures for filing such complaint with the Franchising Authority.
5. A Cable Operator shall immediately report all customer Escalated Complaints that it does not find valid to the Franchising Authority.
6. A Cable Operator's complaint procedures shall be filed with the Franchising Authority prior to implementation.

B. Complaints to the Franchising Authority

1. Any Customer who is dissatisfied with any proposed decision of the Cable Operator or who has not received a decision within the time period set forth below shall be entitled to have the complaint reviewed by the Franchising Authority.
2. The Customer may initiate the review either by calling the Franchising Authority or by filing a written complaint together with the Cable Operator's written decision, if any, with the Franchising Authority.
3. The Customer shall make such filing and notification within thirty (30) days of receipt of the Cable Operator's decision or, if no decision has been provided, within thirty (30) days after with the last response to the Customer from the Cable Operator.

4. If the Franchising Authority decides that further evidence is warranted, the Franchising Authority shall require the Cable Operator and the Customer to submit, within ten (10) days of notice thereof, a written statement of the facts and arguments in support of their respective positions.

5. The Cable Operator and the Customer shall produce any additional evidence, including any reports from the Cable Operator, which the Franchising Authority may deem Necessary to an understanding and determination of the complaint.

6. The Franchising Authority shall issue a determination within fifteen (15) days of receiving the Customer complaint, or , if further evidence has been requested, after examining the materials submitted, setting forth its basis for the determination.

7. The Franchising Authority may extend these time limits for reasonable cause and may intercede and attempt to negotiate an informal resolution.

D. Verification of Compliance

A Cable Operator shall establish its compliance with any or all of the standards required through annual reports that demonstrate said compliance, or as requested by the Franchising Authority.

E. Procedure for Remediating Violations

1. If the Franchising Authority has reason to believe that a Cable Operator has failed to comply with any of these Standards, or has failed to perform in a timely manner, the Franchising Authority may pursue the procedures in its Franchise Agreement to address violations of these Standards in a like manner as other franchise violations are considered.

2. Following the procedures set forth in any Franchise Agreement governing the manner to address alleged Franchise violations, if the Franchising Authority determines in its sole discretion that the noncompliance has been substantiated, in addition to any remedies that may be provided in the Franchise Agreement, the Franchising Authority may:

a. Impose assessments of up to one thousand dollars (\$1,000.00) per day, to be withdrawn from the Security Fund in addition to any franchise fee until the non-compliance is remedied; and/or

b. Order, after further hearing, such rebates and credits to affected customers as in its sole discretion it deems reasonable and appropriate for degraded or unsatisfactory services that constituted noncompliance with these Standards; and/or

c. Reverse any decision of the Cable Operator in the matter; and/or

d. Grant a specific solution as determined by the Franchising Authority; and/or

e. Except for in emergency situations, withhold licenses and permits for work by the Cable Operator or its Subcontractors in accordance with Applicable Law; and/or

f. Pursue any other legal or equitable remedy available under the Franchise Agreement or Applicable Law.

3. Any assessment or remedy shall not constitute a waiver by the Franchising Authority of any other right or remedy it may have under the Franchise Agreement or Applicable Law including any right to recover from the Cable Operator any additional damages, losses, costs, and expenses, including actual attorney's fees that are incurred by the Franchising Authority by reason of, or arise out of non-compliance with these standards.

EXHIBIT B

Report Form

City of Boulder
 Comcast Quarterly Executive Summary of Escalated Complaints
 Referenced in Franchise Agreement Section 7.6 (B)(4)
 For the Quarter Ending _____

<u>Type of Complaint</u>	<u>No. of Calls</u>
Accessibility	
Billing, Credit and Refunds	
Courtesy	
Drop Bury	
Installation	
Notices/Easement Issues (Non-Rebuild)	
Pedestal	
Problem Resolution	
Programming	
Property Damage (Non-Rebuild)	
Rates	
Rebuild/Upgrade Damage	
Rebuild/Upgrade Notices/Easement Issues	
Reception/Signal Quality	
Safety	
Service and Install Appointments	
Service Interruptions	
Serviceability	
<u>TOTAL</u>	

Compliments	



Jane S. Brautigam, City Manager
City of Boulder
1777 Broadway, Second Floor
P.O. Box 791
Boulder, CO 80302

Dear Ms. Brautigam:

The purpose of this letter agreement is to set forth several commitments between Comcast of Colorado IV, LLC (“Comcast”) and the city of Boulder, Colorado (the “City”) that are in addition to the Franchise Agreement to be adopted by Ordinance (the “Franchise Agreement”). These items have been negotiated in good faith and agreed to as part of the informal franchise renewal process pursuant to 47 U.S.C. § 546(h), and specifically relate to the unique community needs that exist in the City. This letter agreement shall take effect on May 1, 2015, and shall terminate at 11:59 p.m. on April 30, 2025.

- A. **Channel Capacity and Use – High Definition (“HD”) Digital Access Channels:** Pursuant to Section 12.2 of the Franchise, Comcast is required to provide at no cost to the City one outlet of Basic Service and Digital Starter Service to all City owned and occupied buildings. In addition to those Section 12.2 requirements, and at the time that the City activates an HD Digital Access Channel pursuant to Section 9.2 of the Franchise, Comcast shall provide to the City, at no cost to the City, one (1) outlet of basic HD service and one (1) HD cable box to be located at the Channel 8 office, for the sole purpose and use by the City to monitor the HD Digital Access Channel’s signal.
- B. **Promotion of PEG Programming:** Following the Effective Date of the Franchise, Comcast will work with the City to assist in the promotion of PEG programming, which includes the following:
1. Upon reasonable advanced notice but not more than two (2) times during the term of the Franchise, Comcast will provide one (1) cable box message to Subscribers’ cable boxes that receive messages per quarter per year for a total of four (4) messages in a calendar year;
 2. Upon reasonable advanced notice but not more than three (3) times during the term of the Franchise, Comcast will include one (1) written bill message to Subscribers as part of their bills, provided that space for such bill message is available; and
 3. Comcast shall use reasonable efforts to accommodate PEG promotional spots received from the City on a reasonable basis in Comcast’s cross-channel ad avails, up to a minimum of 25, 30 second spots per year, with the intention of accommodating additional spots if available at Comcast’s reasonable discretion. Any such ad avails provided for PEG promotional spots shall be at no cost to the City or its designated access providers; however, the City or its designated access

provider shall be responsible for all the necessary production costs and shall deliver the ad avail in the format and method requested by Comcast.

The terms and conditions of this letter agreement are binding upon the City and Comcast and their successors and assigns. Comcast agrees that a violation of these terms by Comcast may be considered by the City as a material violation of the Franchise, subject to the provisions of Section 13 of the Franchise. It is understood that fulfillment of these obligations is also necessary and part of the consideration to secure the renewed Franchise.

Sincerely,
Comcast of Colorado IV, LLC

By: _____
Its: _____
Date: _____

Acknowledged and agreed to this ___ day of _____ 2015.

City of Boulder, Colorado

By: _____
Its: _____
Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: March 3, 2015

AGENDA TITLE: Introduction, first reading and consideration of a motion to order published by title only Ordinance No. 8033 approving supplemental appropriations to the 2015 Budget.

PRESENTERS:

Jane S. Brautigam, City Manager
Bob Eichen, Chief Financial Officer
Cheryl Pattelli, Director of Finance
David Driskell, Executive Director of Community Planning and Sustainability (CP&S)
Tracy Winfree, Interim Director of Open Space and Mountain Parks (OSMP)
Peggy Bunzli, Budget Officer
Trish Jimenez, Senior Financial Manager, Public Works and CP&S
Mike Orosel, Financial Manager, OSMP

EXECUTIVE SUMMARY

As described in the *Budget Philosophy and Process* section of the annual budget document, each year at least two supplemental ordinances (known as Adjustments to Base, where the “base” is the original annual budget) are presented to City Council for review and approval. Council receives what is often the first ordinance, the **Carryover and Budget Supplemental**, in April/May. In years where new initiatives are launched and other unique circumstances become apparent after annual budget approval, additional adjustments to base may be brought forward for council consideration. The proposed adjustments to the 2015 Budget included in this memo are an example of the latter scenario.

Since the adoption of the 2015 Budget in October of 2014, new work plan related initiatives in the Community Planning & Sustainability (CP&S) and Open Space and Mountain Parks (OSMP) Departments have been discussed and considered by City Council and staff. In response to the identified priorities, proposed adjustments to the work plan, and the acknowledgement that the additional work cannot be accomplished

with existing resources, new resources are proposed for council consideration in both areas to successfully achieve the desired 2015 work plan outcomes.

Key investments in Open Space:

At the January retreat, council expressed interest for OSMP to focus on doing existing priorities well, including a focus on flood recovery, North Trail Study Area (TSA) planning, West TSA implementation, Regional Trails, and other efforts. In parallel, staff had been conducting a 2015 work plan update in late 2014/early 2015 and has identified the need to increase resources to adequately advance these community/council priorities. The proposed one-time increases, outlined below, are able to be covered through the existing OSMP fund balance and are expected to be partially reimbursed through FEMA.

Key investments in Community Planning:

Based on Council direction, the 2015 work plan for CP&S has been revised and expanded to address a number of key priorities, including next steps on the Design Excellence work (form based code pilot; site review criteria update; community benefit definition); expanded analysis, modeling and engagement for the Boulder Valley Comprehensive Plan update; and completion of the Housing Boulder strategy process and beginning of implementation, including its ongoing governance. Achieving these outcomes (near term and long term) and ensuring a high level of community engagement will require the addition of both ongoing and fixed term resources, as well as consultant budget, as outlined later in this memo. These resources can be supported in large part from the Planning and Development Services fund balance, as well as from the city's Affordable Housing fund, with the remainder requiring General Fund support. The proposed CP&S adjustments were presented in draft form by staff at a check-in on planning issues as part of the February 24 council study session.

As the impact of some of the adjustments is ongoing, staff have matched these with identified ongoing revenues and this impact will be reflected in all revenue and expenditure projections used in 2015 budget implementation and in 2016 budget development.

This packet includes budget supplemental line items that represent new budgeted amounts for 2015. A proposed ordinance is provided as **Attachment A** to this packet. Detailed narrative information on each budget supplemental request is included in **Attachment B**.

STAFF RECOMMENDATION

Suggested Motion Language:

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

Motion to introduce and order published by title only an ordinance approving supplemental appropriations to the 2015 Budget.

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 \$142,000 from fund balance.

In **restricted funds**, this ordinance will appropriate \$4,786,375 from fund balance.
- Staff time for this process is allocated in the Budget Division's regular annual work plan.

ANALYSIS

Supplemental Request Related to Community Planning

The supplemental request for Community Planning identifies five and a half positions needed to address both current resource deficiencies related to increased work load and to successfully complete additional work items requested at Council's January retreat.

Increased demands on staff resources over the past year is the result of both increased development activity and heightened expectations from the council, boards and community for additional analysis, information, and participation in shaping responsive policies and facilitating public review and input processes. Two areas where it has become clear in recent months that there is an ongoing deficiency in staff resources are urban design and housing policy.

The city's Senior Urban Designer is increasingly tapped as a resource to support major policy initiatives (such as Civic Area, Design Excellence and area planning) as well as

ongoing development review, where expectations for high quality design outcomes are (and will remain) high. The proposed addition of an ongoing “Urban Designer I” position as part of the city team recognizes the importance of this function, the need for additional resource to meet current and projected work load, and the centrality of good design in a city where nearly all new development is infill and must be sensitive to context and the creation of a high quality public realm. The position will help support current project initiatives (e.g., Form-based Code and Civic Area) as well as ongoing development review needs and design support for other departments. It will also provide the opportunity to “build the bench” in the city team in relation to design skills, support succession planning, and provide better support to design-related boards such as the Design Advisory Board, Landmarks Board and Planning Board.

The Senior Housing Planner is proposed as a new, ongoing position in recognition of a key issue area that is the focus of current work efforts but which also represents an area of ongoing need and priority. The position will support successful completion of the current Housing Boulder initiative and then have primary responsibility for ongoing implementation of the housing strategy’s priorities and continued monitoring of housing outcomes and policies. The addition of this position – shared between the city’s Housing Division and Comprehensive Planning Division – recognizes that housing affordability will be an ongoing challenge in Boulder, and that responding successfully to this challenge will require the integration of policy and program approaches linking land use and community design with financial and regulatory tools. The position will also be responsible for ongoing research and analysis related to housing market trends and conditions, with the aim of helping the council and boards (including any new board charged with responsibility for housing) to be more proactive in advancing community priorities.

The remaining three and a half positions are all requested as fixed-term, in support of current work program priorities, including items added to the 2015/16 work plan at the January council retreat. These include a full-time, two-year Planner Associate position in Comprehensive Planning to support data research, analysis and mapping expectations for the 2015 Comprehensive Plan update and resilience planning; a two-year extension and repurposing of a Senior Project Manager position to both refill the vacant Civic Area Coordinator position and provide the necessary support for that ongoing effort as well as support for related efforts (Civic Use Pad, Uni Hill Revitalization, coordination with CU, and, potentially, evaluation and planning related to the Broadway campus of Boulder Community Health); the addition of 0.5 FTE to an existing part-time position in Comprehensive Planning to support community outreach and engagement on several initiatives, including working as a partner with Code for America to help ensure continuity of engagement initiatives set in motion by their work; and lastly, but definitely not least, a fixed term Administrative Support position to help ensure the success of all of these positions and the priority work efforts they will be undertaking.

In summary, the total personnel budget requested (including related non-salary expenses) is approximately \$541,000 of which \$223,000 is ongoing and \$318,000 is fixed-term. Based on the nature of the work for each position, these proposed budget additions will

be shared between the General Fund (\$142,000), the Affordable Housing Fund (\$59,000), and the Planning and Development Services Fund (\$340,000).

Lastly, this Adjustment to Base for Community Planning includes requested non-personnel expenses for consultant support specific to two new initiatives: the Form-Based Code Pilot and work on Site Review Criteria and Community Benefit. The total estimated budget to support these two work efforts is \$175,000 and will be funded from the Planning and Development Services Fund.

The Form-Based Code Pilot is proposed for a specified area of the city (Boulder Junction) in which there is a clear agreed upon vision for development and the implementation tool of a form-based code could be most easily tested. A form-based code is an emerging tool in the planning field that is used to provide more certainty and direction for the form of built outcomes through a prescriptive approach, in which discussions and policy decisions regarding building height, bulk, setback and other issues occur prior to there being a specific building proposal. In its purest form, adoption of a form-based code creates the opportunity to have little or no public participation in the development review process, as issues of building form and even architecture are determined in advance, and the review is simply to confirm compliance. The form-based code pilot will be an opportunity for the Boulder community to better understand this tool, and decide if it's the right tool (and in what form) to guide better outcomes in Boulder, for use in both the pilot area and, subsequently, in other parts of the city. The proposed budget of \$125,000 (paid for from the Planning and Development Services Fund) will cover the cost of consultant work for the pilot and, potentially, next steps.

The work on Site Review Criteria and Community Benefit is proposed to proceed in parallel with the Form-Based Code Pilot, but as a separate initiative, as it relates to development review citywide (recognizing that implementation of a citywide form-based code, should that be the direction decided upon, will take several years to implement). The proposed budget will cover anticipated consultant support for the effort, working under the direction of a staff project manager and with active participation from the community and boards. The proposed budget of \$50,000 will be funded from the Planning and Development Services Fund.

Supplemental Request Related to Open Space and Mountain Parks (OSMP)

As noted at the council retreat, there are a number of high priority initiatives that OSMP needs to focus on doing well in the near future, including recovery from the 2013 Flood, North Trail Study Area (TSA) Process, continued implementation of the West TSA, Regional Trails and other initiatives. OSMP is requesting one-time and fixed-term increases to assure that the department is sufficiently resourced to deliver on these commitments.

In late 2014 and early 2015, OSMP staff developed more in-depth 2015 work plan priorities and milestones, which were presented to the Open Space Board of Trustees (OSBT) at its February meeting. The OSBT also discussed the North TSA scope, goals,

objectives, and process framework in a study session on the same evening. Based on new information from the work plan process, including additional design and estimating work for flood recovery projects, it became apparent that significant one-time resources are needed for flood recovery in particular. Also, given council and OSBT interest in pursuing existing priorities with enough support to deliver quality results, staff is proposing added resources to support the environmental planning group and the ecological systems group. These teams are largely responsible for advancing the North TSA planning and evaluation process, reviewing and issuing permits for West TSA, and flood recovery projects, in addition to their regular duties.

OSMP is requesting a total supplemental appropriation of \$4,212,375 from the Open Space fund balance to fund additional projects related to recovery from the 2013 Flood, preparation of a draft plan for the North Trail Study Area (TSA) and implementation of the West TSA Plan.

Staff proposes accelerating flood recovery work to maximize FEMA reimbursement and to provide more timely repairs for the community. The OSBT was updated and provided positive feedback about this request for supplemental funding at its February meeting and will receive additional information at its March meeting. Recently completed engineering and design have resulted in updated cost information for projects, such as the Chapman trail and Bear Creek Canyon Road improvements. With the availability of this updated information, one-time dollars are being requested to bid projects for timely repair. The highest priority category of flood recovery projects that are reimbursable involve 14 projects that meet community desires or are needed for logistical purposes. Six projects are included in the second category of flood recovery that is not reimbursable. However, these latter projects are of high value to the community, given that they restore natural habitats; FEMA does not consider such work to be reimbursable. The total cost of these flood recovery projects is \$3.86 million.

Additional funding of \$190,000 for the North TSA is requested for a consultant to facilitate the public process, to support temporary services supporting planning, analysis and outreach, and to provide funding for ancillary costs. Additional costs for the Joder interim trail are included in this category as well.

Supplemental funding of \$90,000 for West TSA Plan implementation is requested for unfunded projects. Additionally, funds totaling \$290,000 previously allocated to Flagstaff summit improvements will be reallocated to other West TSA projects as the Flagstaff summit improvements will not be made in 2015.

Finally, funding of \$76,800 is requested for a three-year fixed term ecologist position to assist with flood recovery and West TSA plan implementation permitting, and North TSA resource evaluation. Given the significant load of timely projects that all must be reviewed, analyzed and/or permitted through this work group, this added staff resource will help with timely delivery of projects and assessments.

Overview of Total Requests

A summary table of the supplemental requests by fund can be found in **Attachment C**. In total, the city recommends \$4,928,375 in appropriations from fund balance.

Attachment D is a schedule reflecting the impact of the supplemental appropriations for 2015 on the projected fund balance for each fund.

The council's second reading of this item is scheduled for the Mar. 17 City Council meeting.

ATTACHMENTS

- A. Proposed Ordinance containing supplemental appropriations to the 2015 Budget
- B. Narrative descriptions of supplemental appropriations to the 2015 Budget by fund
- C. Table of all proposed supplemental appropriations to the 2015 Budget by fund
- D. 2015 Fund Activity Summary

ORDINANCE NO. 8033

AN ORDINANCE RELATING TO THE FINANCIAL AFFAIRS OF THE CITY OF BOULDER, COLORADO, MAKING SUPPLEMENTAL APPROPRIATIONS FOR THE FISCAL YEAR ENDING DECEMBER 31, 2015 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 2015 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 to the listed funds:

Section 1. General Fund

Appropriation from Fund Balance \$142,000

Section 2. Affordable Housing Fund

Appropriation from Fund Balance \$59,000

Section 3. Open Space Fund

Appropriation from Fund Balance \$4,212,375

Section 4. Planning and Development Services Fund

Appropriation from Fund Balance \$515,000

Section 5. 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 6. 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 7. The 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 March, 2015.

Mayor

Attest:

City Clerk

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED PUBLISHED BY TITLE ONLY this 17th day of March, 2015.

Mayor

Attest:

City Clerk

BUDGET SUPPLEMENTAL DETAILS BY FUND**GENERAL FUND**

Budget Supplemental From Fund Balance

CP&S – Senior Housing Planner – \$59,000

This request provides ongoing funding for .50FTE of a Senior Housing Planner (the other .50FTE is funded from the Affordable Housing Fund – see below) to support successful completion of the current Housing Boulder initiative and ongoing implementation of the housing strategy's priorities and continued monitoring of housing outcomes and policies. This position will also be responsible for ongoing research and analysis related to housing market trends and conditions.

CP&S – Planner Associate – \$83,000

This request supports a 2-year fixed term position to help address current work program priorities including items added to the 2015/16 workplan at the January council retreat. This position will support data research, analysis and mapping expectations for the 2015 Comprehensive Plan update and resilience planning.

AFFORDABLE HOUSING FUND

Budget Supplemental From Fund Balance

Housing – Senior Housing Planner – \$59,000

This request provides ongoing funding for .50FTE of a Senior Housing Planner (the other .50FTE is funded from the General Fund – see above) to support successful completion of the current Housing Boulder initiative and ongoing implementation of the housing strategy's priorities and continued monitoring of housing outcomes and policies. This position will also be responsible for ongoing research and analysis related to housing market trends and conditions.

OPEN SPACE FUND

Budget Supplemental From Fund Balance

OSMP – Flood Recovery projects partially reimbursable / community desire / logistically needed – \$3,336,200

This request appropriates additional funds for flood recovery projects that are partially reimbursable by FEMA and/or the state, satisfy community desires or are necessary logistically because they are required before other work can be more efficiently performed. Major projects include Chapman Drive flood repairs; design and replacement of the bridge over South Boulder Creek at the South Mesa Trailhead; replacement of the flood damaged bridge over South Boulder Creek at South Boulder Road; Bear Canyon Road design and construction; and Boulder Falls trail repair.

OSMP – Flood Recovery projects non reimbursable – \$519,375

This request appropriates additional funds for flood recovery projects that have been determined to be non reimbursable by FEMA. Major projects include restoration of Boulder Creek at Green ditch; restoration of the Boulder Creek/South Boulder Creek confluence area; and repair of habitat structures on South Boulder Creek that had been damaged during the flood.

OSMP – North Trail Study Area Plan development – \$190,000

These funds will provide for a consultant to facilitate the public process when needed and ancillary costs associated with the North Trail Study Area Plan development. In addition, funding will be provided for a traffic study for the Joder Trailhead and for construction of an interim trail on Joder.

OSMP – West Trail Study Area Plan implementation – \$90,000

These funds, and funds available after reallocation from other projects, will enable additional work towards West TSA Plan implementation. Funds totaling \$290,000 previously allocated to Flagstaff summit improvements will be reallocated to other West TSA projects as the Flagstaff summit improvements will not be made in 2015. Major projects include continuation of construction of the Anemone Hill Trail; a second sediment basin on Flagstaff; additional climbing access at Boulder Falls; completion of the Lion’s Lair Trail on the Wittemyer Property; and repair and rerouting of the trail at NIST.

OSMP – Additional Ecologist position to support permitting – \$76,800

These funds will allow the hiring of a 3-year fixed term Ecologist position to provide a resource to obtain necessary permits for flood recovery projects, West TSA Plan implementation projects and for North TSA Plan preparation and implementation. Obtaining necessary permits for projects is a critical step in the construction process.

PLANNING AND DEVELOPMENT SERVICES FUND

Budget Supplemental From Fund Balance

CP&S – Urban Designer – \$105,000

This request supports the ongoing funding for an Urban Designer position to meet current and projected work load and expectations for high quality design outcomes related to development. The position will help support current project initiatives (e.g., Form-based Code and Civic Area), better support design related boards such as the Design Advisory Board, Landmarks Board and Planning Board, as well as ongoing development review needs and design support for other departments.

CP&S – Senior Project Manager – \$118,000

This request provides funding for a 2-year extension and repurposing of the Civic Area Coordinator position to provide the necessary support for that ongoing effort as well as support for related efforts such as Civic Use Pad, Uni Hill Revitalization, coordination with CU, and, potentially, evaluation and planning related to the Broadway campus of Boulder Community Health.

CP&S – Community Outreach and Engagement – \$52,000

This request provides funding for a 1-year fixed term .50FTE in Comprehensive Planning to support community outreach and engagement on several planning initiatives, including working as a partner with Code for America to ensure continuity of engagement initiatives as a result of their work.

CP&S – Administrative Support – \$65,000

This request provides funding for a 2-year fixed term position to provide administrative support to the new positions and to help ensure the success of all the priority work efforts the department is undertaking.

CP&S – Form Based Code Pilot –\$125,000

This request provides funding for consultant work for a Form-Based Code Pilot which is proposed for a specified area of the city (Boulder Junction). A form-based code is an emerging tool in the planning field that is used to provide more certainty and direction for the form of built outcomes through a prescriptive approach, in which discussions and policy decisions regarding building height, bulk, setback and other issues occur prior to there being a specific building proposal. The form-based code pilot will be an opportunity for the Boulder community to better understand this tool, and decide if it's the right tool (and in what form) to guide better outcomes in Boulder, for use in both the pilot area and, subsequently, in other parts of the city.

CP&S – Site Review Criteria/Community Benefit – \$50,000

The request provides funding for a consultant to support work related to Site Review Criteria and Community Benefit. This project is proposed to proceed in parallel with the Form-Based Code Pilot, but as a separate initiative, as it relates to development review citywide (recognizing that implementation of a citywide form-based code, should that be the direction decided upon, will take several years to implement).

REQUEST BY FUND AND DEPT

Fund/ Dept#	Dept Title	Type / Item	Source			
			Budget Supplemental	Additional Revenue	Fund Balance	Increase (Decrease) in Revenue Only
GENERAL FUND						
Budget Supplemental(s) from Fund Balance						
385	Community Planning & Sustainability	Senior Housing Planner	\$ 59,000		\$ 59,000	
385	Community Planning & Sustainability	Planner Associate	83,000		83,000	
Subtotal			\$ 142,000	\$ -	\$ 142,000	\$ -
AFFORDABLE HOUSING FUND						
Budget Supplemental(s) from Fund Balance						
405	Housing	Senior Housing Planner	\$ 59,000		\$ 59,000	
Subtotal			\$ 59,000	\$ -	\$ 59,000	\$ -
OPEN SPACE FUND						
Budget Supplemental(s) from Fund Balance						
555	Open Space and Mountain Parks	Flood Recovery (reimbursable)	\$ 3,336,200		\$ 3,336,200	
555	Open Space and Mountain Parks	Flood Recovery (non reimbursable)	519,375		519,375	
555	Open Space and Mountain Parks	North Trail Study Area Plan Development	190,000		190,000	
555	Open Space and Mountain Parks	West Trail Study Area Plan Implementation	90,000		90,000	
555	Open Space and Mountain Parks	Ecologist	76,800		76,800	
Subtotal			\$ 4,212,375	\$ -	\$ 4,212,375	\$ -
PLANNING & DEVELOPMENT SERVICES FUND						
Budget Supplemental(s) from Fund Balance						
385	Community Planning & Sustainability	Urban Designer	\$ 105,000		\$ 105,000	
385	Community Planning & Sustainability	Senior Project Manager	118,000		118,000	
385	Community Planning & Sustainability	Community Outreach and Engagement	52,000		52,000	
385	Community Planning & Sustainability	Administrative Support	65,000		65,000	
385	Community Planning & Sustainability	Form Based Code Pilot	125,000		125,000	
385	Community Planning & Sustainability	Site Review Criteria/Community Benefit	50,000		50,000	
Subtotal			\$ 515,000	\$ -	\$ 515,000	\$ -
Total General Fund			\$ 142,000	-	\$ 142,000	-
Total Restricted Funds			4,786,375		4,786,375	
Total All Funds			\$ 4,928,375	\$ -	\$ 4,928,375	\$ -

2015 FUND ACTIVITY SUMMARY (in \$1,000s)
COMMUNITY PLANNING AND OSMP BUDGET SUPPLEMENTAL OF 2015

FUND	At January 1, 2015			Appropriation Ordinance March 17, 2015	Projected Dec 31, 2015
	Unreserved Fund Balance	Original Estimated Revenues (Including Xfers In)	Original Appropriations (Including Xfers Out)	Appropriations	Fund Balance
General	34,251	120,575	128,483	142	26,201
Affordable Housing	6,491	1,264	1,221	59	6,475
Open Space and Mountain Parks	13,399	30,280	29,720	4,212	9,747
Planning and Development Services	5,007	9,815	11,209	515	3,098



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: February 3, 2015

AGENDA TITLE: Introduction, first reading and consideration of a motion to publish by title only Ordinance No. 8034 amending the capital facilities impact fee in Section 4-20-62, “and Chapter 8–9, B.R.C. 1981 by the addition of a new affordable housing linkage fee on non-residential development, and setting forth related details.

PRESENTER/S

Jane S. Brautigam, City Manager
David Driskell, Executive Director of Community Planning and Sustainability
Susan Richstone, Deputy Director of Community Planning and Sustainability
Tom Carr, City Attorney
David Gehr, Deputy City Attorney

EXECUTIVE SUMMARY

The purpose of this item is first reading of Ordinance No. 8034 (**Attachment A**) that would put in place a citywide housing linkage fee based upon the analysis in [the 2009 TischlerBise Development Excise Tax Study](#) (pp. 16-20). A housing linkage fee is charged on new non-residential uses to mitigate impacts on the demand for affordable housing created by those uses. The 2009 study is the basis for the existing linkage fee in the DT-5 zoning district, currently only applied to the commercial floor area resulting from the downtown floor area ratio (FAR) bonus for office space. This fee is anticipated to be in place for an interim period until a new comprehensive housing linkage fee study is completed later this year.

Impact fees are assessed at the time of building permit application and paid prior to final inspection. The ordinance has a proposed effective date of July 6, providing a window of time for projects with approved site reviews to apply for building permit without being required to pay the fee. **Attachment B** includes a list of site review approvals that have not yet applied for a building permit.

STAFF RECOMMENDATION

Suggested Motion Language:

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

Motion to introduce and order published by title only Ordinance No. 8034 amending the capital facilities impact fee in Section 4-20-62, “and Chapter 8–9, B.R.C. 1981 by the addition of a new affordable housing linkage fee on non-residential development, and setting forth related details.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – The proposed fee would increase the costs of constructing non-residential square footage in the city.
- Environmental – The fee would not have a direct impact on environmental issues.
- Social – The fee will provide additional funding to the city’s affordable housing program, helping to mitigate impacts on the housing needs of lower income persons in the community.

OTHER IMPACTS

- Fiscal - This fee would provide more funding for the city’s affordable housing program.
- Staff time – Implementation of the fee would be possible within the city’s current work plan.

BACKGROUND

Community concerns have been expressed that the economic recovery in the past few years combined with increased housing costs have only further increased the need for low, moderate and middle income housing in the community in addition to impacting city infrastructure.

Additionally, concerns have also been raised about the extent to which development-related fees and taxes are fully implementing the city’s policy that “growth pay its own way.” Policy 1.30 *Growth to Pay Fair Share of New Facility Costs* of the Boulder Valley Comprehensive Plan states that “.... Growth will be expected to pay its own way, with the requirement that new development pay the cost of providing needed facilities and an equitable share of services, including affordable housing, and to mitigate negative impacts such as those to the transportation system.”

The city contracted with the firm of TischlerBise in 2008 to prepare a Development Excise Tax and Impact Fee study in order to evaluate all of the components of the city’s Development Excise Tax and consider potential changes related to impact fees. The impetus for the study was that the Development Excise Tax and Housing Excise Tax

were at or near the limits the city could charge based on the ballot item approved by the voters, and the belief was that the level of the excise taxes did not cover the growth-related costs for the services included.

As a result of the 2009 study and council direction:

1. At the beginning of 2010, the city implemented capital facility impact fees and allocated DET capacity to address growth-related costs for fire, human services, library, police, municipal facilities, parks and recreation capital improvements, transportation, and parkland. This was a significant change to the city's development-related tax/ fee structure and, due to concerns about the overall cost increase in fees and taxes (including Plant Investment Fees for the various city utilities), City Council reduced the Education Excise Tax to zero. In addition, City Council approved placing an increase to the Housing Excise Tax (based on the rates in the 2009 study) on the ballot. The ballot item did not pass.
2. In 2011, City Council amended Section 9-8-1 Table 8-2 "Floor Area Additions" B.R.C. 1981 to allow for floor area additions of up to a maximum of 1.0 for commercial uses in DT-5 zone district and establish a housing linkage fee that would apply to the additional commercial square footage.

The changes implemented in 2010 put in place *impact fees* to fund growth-related capital improvements for a number of city services formerly included in the DET. Prior to 2010, the city had in place *excise taxes* approved by the voters in 1998. Impact fees and excise taxes are both used to fund capital improvements and address impacts of new development. An impact fee must be based on a study that establishes the nexus between the impact of development, amount of the fee and how the funds will be spent (see additional information below). An excise tax requires approval by the voters of the proposed tax.

Linkage fee Implementation in the DT-5 Zone District

The base FAR in the DT-5 is 1.7. Prior to 2011, developments in the Downtown could be approved for up to 2.7 FAR (a 1.0 FAR addition) if the additional square footage was for housing (.5) and/or structured parking (.5). In 2011, this "FAR bonus" provision in the code was amended to also allow additional square footage above the 1.7 base FAR for commercial uses. This change also put in place the city's first "linkage fee" for affordable housing, with the floor area addition subject to the established fee. The purpose of the change was to provide the opportunity for "Class A" office space in the downtown where there was very little available, particularly larger office floor plates.

The linkage fee is intended to offset some of the affordable housing impacts that the additional floor area would have on the community. The DT-5 linkage fee is currently set at \$9.53 per square foot and has been applied to four downtown developments that have opted to use the commercial FAR bonus. Approximately \$875,000 has been collected from the linkage fee into the city's affordable housing program.

Background on Impact Fees

An “impact fee” is a one time fee to fund capital improvements necessitated by new development. Colorado law explicitly authorizes municipalities to impose impact fees to defray the cost of any improvements that are necessary to accommodate new developments and also sets out requirements for the adoption of impact fees including:

1. The fee is for capital facilities needed to serve new development
2. The amount of the fee must be based upon “the reasonable impacts of proposed development on existing capital facilities” and must be assessed at a level no greater than necessary to defray the impacts directly related to the proposed development
3. A “capital facility” is “any improvement or facility that: (a) is directly related to any service that a local government is authorized to provide; (b) has an estimated useful life of five years or longer; and (c) is required by the charter or general policy of a local government pursuant to resolution or ordinance.”
4. An impact fee cannot be imposed to remedy any deficiency in capital facilities that exists without regard to the proposed development.
5. The fee needs to be based on a study that quantifies the impacts.
6. The fee needs to be accounted for separately and earmarked for the capital expenses for which they were collected.

ANALYSIS

Current Impact Fee and Excise Tax Rates

Attachment C includes the city’s current tax/fee schedule for the Development Excise Tax (DET), Housing Excise Tax (HET), and Capital Facility Impact Fees.

Implementation of a Housing Linkage Fee Citywide based on the 2009 TischlerBise Study

The following chart shows the rates included in the proposed ordinance, which are based on the 2009 study adjusted for cost increases. The table below includes all of the categories of uses that would be included based on the 2009 study. Please note that for certain uses the fee would be based on demand indicators such as number of rooms, beds or students as opposed to square footage. This would be an interim measure until a new linkage fee study is prepared.

Nonresidential (Floor Area)

	<i>Fee per sq. ft.</i>
Retail/Restaurant	\$6.96
Business Park	\$7.70
Office	\$9.53
Hospital	\$8.23
School	\$2.24
Mini-Warehouse	\$0.09
Warehousing	\$3.11
Light Industrial	\$5.62

Other Nonresidential

	<i>Fee per Demand Indicator</i>
Nursing Home (per bed)	\$877.64
Day Care (per student)	\$389.60
Lodging (per room)	\$1,072.44

The funds collected would be placed in a dedicated fund and may be used to create additional permanently affordable housing that contributes to achieving the city’s goal of increasing the proportion of permanently affordable housing units to an overall goal of at least ten percent of the total housing stock.

Since the fee is assessed at building permit, council members requested information on the standard or threshold for a complete building permit application. Applicants must submit materials that comply with the “[Building Permit Submittal Checklist](#)” to be considered complete.

Effective Date of the Ordinance

At the February 3 City Council meeting, council members indicated that, at the time the subject ordinance is brought forward, the appropriate effective date would need to be determined. Considerations identified include: fairness to applicants who have approved site reviews, potential impact to the viability of projects, providing a window of time for projects to apply for building permit prior to the fee being effective, and past practice when adopting new fee schedules.

Staff has a proposed effective date in the ordinance of July 6. If council approves first reading of the fee on March 3 this would provide a four month window from first reading to the fee becoming effective, which would provide adequate time for those currently moving forward with projects to complete Technical Document Review and apply for a permit. The period of time from site review approval to building permit application is highly variable. Following site review approval, a project normally completes Technical Document Review prior to applying for building permit. The Tec Doc process takes on average two months to complete.

Council members requested additional information on the projects with site review approval that have not yet applied for a building permit, including date of approval. **Attachment B** includes this information. The linkage fee would apply to net new square footage and to a change in use of existing square footage. Therefore, for example, in the case of the Eads/ Golden Buff project, the previously existing hotel rooms and non-residential square footage is credited. The linkage fee put in place at this time would be updated by the new study, with the appropriate fee level established based on updated data and analysis. Of the projects in **Attachment B**, five are currently in the Tec Doc review process.

Fee changes have either been adopted by ordinance as part of the annual budget adoption and then take effect the first business day of the new year or when adopted through a separate ordinance, usually become effective 30 days after adoption.

In the case of code changes, some more complex amendments such as the compatible development code changes, took effect 90 days after adoption, and the 2012 building codes became effective 120 days after adoption due to concerns around the energy codes.

Non-residential development in recent years

Staff was requested to calculate how much would have been collected over the past few years had the city implemented a citywide housing linkage fee at the time the linkage fee was implemented for the FAR bonus in the DT-5 zone in late 2011.

Based on analysis of building permit records, city staff estimates that between November 1, 2011 and the end of 2014, the city would have assessed between \$7 and \$8 million in fees on approximately one million square feet of new non-residential development. This preliminary analysis was based on additional square footage of nonresidential space included in building permit applications from November 2011 through the end of December 2014 (subtracting out the square footage that paid the existing linkage fee and some of the larger projects that had existing buildings on the site). Since the fee varies by type of non-residential use, this is a rough estimate and staff was not able to go back through every permit and verify the specific nature of the use. A more in depth analysis of the uses, square footage by uses, and demolitions would be needed to develop a more refined estimate. Impact fees are assessed on net new square footage and also for change in use.

ATTACHMENTS

- A: Ordinance No. 8034
- B: Recently Approved Site Review Projects that have not yet applied for Building Permits
- C: City of Boulder current Development Excise Tax (DET), Housing Excise Tax (HET), and Capital Facility Impact Fee

ORDINANCE NO. 8034

AN ORDINANCE AMENDING THE CAPITAL FACILITIES IMPACT FEE IN CHAPTER 4-20-62, AND CHAPTER 8-9, B.R.C. 1981 BY THE ADDITION OF A NEW AFFORDABLE HOUSING LINKAGE FEE ON NON-RESIDENTIAL DEVELOPMENT, AND SETTING FORTH RELATED DETAILS.

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

Section 1. Table 3 in Subsection 4-20-62(a), B.R.C. 1981, is amended to read:

4-20-62. - Capital Facility Impact Fee.

(a) Impact Fee Rate: No person engaged in nonresidential or residential development in the city shall fail to pay a development impact fee. Fees shall be assessed and collected according to the standards of Chapter 8-9, "Capital Facility Impact Fee," B.R.C. 1981, and the following rates:

Table 3: Impact Fee Rates for Nonresidential

Nonresidential Uses	Impact Fee Rates Per Square Foot of Nonresidential Floor Area				
	Municipal Facilities	Police	Fire	Affordable Housing	Total
Retail/Restaurant	\$0.14	\$0.50	\$0.40	\$6.96	\$1,048.00
Business Park	\$0.17	\$0.11	\$0.10	\$7.70	\$0,388.08
Office	\$0.21	\$0.17	\$0.59	\$9.53	\$0,9710.50
Hospital	\$0.18	\$0.15	\$0.51	\$8.23	\$0,849.07
School	\$0.04	\$0.08	\$0.13	\$2.24	\$0,252.49
Mini-Warehouse	\$0.00	\$0.02	\$0.00	\$0.09	\$0,020.11
Warehousing	\$0.07	\$0.04	\$0.04	\$3.11	\$0,153.26
Light Industrial	\$0.12	\$0.06	\$0.08	\$5.62	\$0,265.88

Other Nonresidential Uses	Impact Fee Rates for Other Nonresidential Uses Based on Unique Demand Indicators				
	Municipal Facilities	Police	Fire	<u>Affordable Housing</u>	Total
Nursing Home (per bed)	\$19.80	\$22.00	\$53.89	<u>\$877.64</u>	\$95.69 <u>973.33</u>
Day Care (per student)	\$7.70	\$19.80	\$24.19	<u>\$389.60</u>	\$51.69 <u>441.29</u>
Lodging (per room)	\$24.19	\$52.80	\$67.10	<u>\$1072.44</u>	\$144.09 <u>1216.53</u>

(b) Additional Floor Area—Affordable Housing Linkage Fee. Section 9-8-2, "Floor Area Ratio Requirements," B.R.C. 1981, permits floor area components above the base floor area in the DT-5 zoning district. No person engaged in nonresidential development that is associated with constructing additional floor area components permitted under the requirements of Section 9-8-2, "Floor Area Ratio Requirements," B.R.C. 1981, shall fail to pay a housing linkage fee of \$9.53 per sq. ft. for such floor area.

Section 2. Section 8-9-1, B.R.C. 1981, is amended to read:

8-9-1. Purpose and legislative intent.

(a) Purpose: The purpose of this chapter is to charge an impact fee to applicants for nonresidential and residential development in the City to fund capital improvements needed to address demand attributable to new development for police, fire, library, human services, general municipal facilities and parks and recreation. The purpose of this section is to also charge an impact fee to applicants for nonresidential development in the city attributable to new development for affordable housing.

(b) Legislative Intent: The city council recites the following legislative findings and statements of intent that were taken into consideration in the adoption of this chapter:

- (1) The fees collected pursuant to this chapter are not intended to fund operation, maintenance or replacement costs or otherwise fund the general costs of government.
- (2) The capital facility impact fee applies regardless of the value of the property developed. The capital facility impact fee shall be imposed in addition to the development excise taxes imposed by chapters 3-8 and 3-9 and water, sanitary sewer and storm water and flood management plant investment fees imposed by sections 11-1-52, "Water Plant Investment Fee," 11-2-33, "Wastewater Plant

1 Investment Fee," and 11-5-11, "Storm Water and Flood Management Utility Plant
2 Investment Fee," B.R.C. 1981, or other fees, taxes or charges of the City.

3 (3) The capital facility impact fee established in this chapter and section 4-20-62,
4 "Capital Facility Impact Fee," B.R.C. 1981, is based in part on the methodology in
5 the "Development Impact Fee Study" prepared by Tischler-Bise, Fiscal, Economic
& Planning Consultants, dated January 8, 2009.

6 (4) The portion of the capital facility impact fee for affordable housing established in
7 this chapter and section 4-20-62, "Capital Facility Impact Fee," B.R.C. 1981, is
8 based in part on the methodology in the "Development Excise Tax" prepared by
9 Tischler-Bise, Fiscal, Economic & Planning Consultants, dated January 9, 2009.
10 The methodology used in that study is an approach based on the Boulder Valley
11 Comprehensive Plan goal of at least ten percent of the total existing housing stock
12 as permanently affordable housing. The fee is intended to defray the costs of
13 providing permanently affordable housing that is associated with non-residential
14 development.

15 (45) The city council finds that the development impact fee study and this chapter define
16 classifications that are generally applicable to broad classes of property; quantifies
17 the reasonable impacts of proposed development on capital facilities; and
18 establishes charges at a level no greater than necessary to defray such impacts
19 directly related to proposed development.

20 (56) The city council intends that the impact fees collected pursuant to this chapter are to
21 be used to fund expenditures for capital facilities attributable to new development.

22 Section 3. The definition of "capital facility classification" in Section 8-9-2, B.R.C.

23 1981, is amended to read:

24 **8-9-2. - Definitions.**

25 Capital facility classification means each separate municipal capital facility area for which
the capital facility impact fee is charged, including library, parks and recreation, human services,
affordable housing, municipal facilities, police and fire.

Section 4. Section 8-9-5, B.R.C. 1981, is amended to read:

8-9-5. - Capital Facility Impact Fee to be Earmarked.

- (a) The city shall establish and maintain an impact fee account for each category of public facility for which an impact fee is imposed. Each such account must be clearly identified as to the category of public facility for which the impact fee has been imposed.
- (b) The city shall reflect the historical allocation of the impact fee in each annual budget. The funds collected will be allocated according to the following public facility categories; library, parks and recreation, human services, affordable housing, municipal facilities, police and fire and shall be used exclusively for the purpose of capital improvements related to each particular category.

Section 5. The increase in fees described in this ordinance shall be applied to all building permit applications that are made to the city on or after July 6, 2015.

Section 6. 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 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 3rd day of March, 2015.

Mayor

Attest:

City Clerk

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READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED
PUBLISHED BY TITLE ONLY this ____ day of _____, 2015.

Mayor

Attest:

City Clerk

Recently Approved Site Review Projects that have not yet applied for Building Permits

Project	Use	Pre-existing non-residential	Total non residential SF	Net new non-residential	Site Review Approval Date	Estimated Fees
1725 28 th (Eads / Golden Buff)	Hotels, Office & Retail	112-room Golden Buff Lodge (demolished), 10,625 sf restaurant (approximate) and 1,380 sf Eads building	375 hotel rooms, 42,900 office, retail	263 rooms, 30,895 sf office and retail	Feb. 19, 2013	\$536,781
1750 14 th (James Travel)	Residential & Office	10,379 sf	20,600 sf office	10,221 sf	Nov.3, 2014	\$97,406
2655 N. 63 rd (Western Disposal)	Industrial	0 sf	110,000 sf	110,000 sf	Oct. 18, 2014	\$618,200
2250 Canyon (Residence Inn)	Hotel	5,818 sf (demolished)	163 hotel rooms	163 hotel rooms	Sept. 29, 2014	\$174,808
5675 Arapahoe (Flatirons Storage)	Self Service and Climate Controlled Storage	18,898 sf	187,000 sf	168,102 sf	Jan. 5, 2015	\$522,797
2930 Pearl (Pearl Place: Google)	Office	61,000 sf (to be demolished)	330,000 sf	269,000 sf Phase I = 147,567 sf Phase II = 121,433 sf	Jan.5, 2015	Phase I = \$1,406,314 Phase II = 1,157,256
2880 Wilderness (Boulder Beer Expansion)	Brewery	15,022 sf	16,599 sf	1,577 sf	Dec. 12, 2014	\$9,919
1215 Cedar (Washington Village II)	Attached & Detached Dwelling Units with Office	29,016 sf school (10,624 sf converted to residential/18,392 sf demolished)	2,650 sf office	2,650 sf	April 3, 2014	\$25,255
3365 Diagonal (Kum & Go)	Gas Station & Convenience Store	2980 sf (to be demolished)	4,992 sf	2,012 sf	June 23, 2014	\$14,004
2200 Broadway (Trinity Commons)	Residential, Community Meeting Space and Office	0 sf	5,015 meeting space and office	5,015 sf	June 3, 2014	\$47,793

EXCISE TAXES

Section 3-8-3, and Section 3-9-2

Development Excise Taxes fund the cost of future capital improvements. The Housing Excise Tax was established to promote the development and provision of housing in the city that is affordable to low-income people.

Development and Housing Excise Taxes are assessed on new residential and nonresidential development and nonresidential additions. Excise taxes are paid prior to final inspection for new construction, or at the time of permit issuance for all other types of construction. The tax rate in effect at the time of application applies.

Tax Name	Nonresidential	Residential	
	<i>Per Square Foot</i>	<i>Per Detached Dwelling Unit</i>	<i>Per Attached Dwelling Unit or Mobile Home</i>
Development Excise Tax			
Park Land	N/A	\$1,144.84	\$795.98
Transportation	\$2.48	\$2,226.93	\$1,650.29
Total	\$2.48	\$3,371.77	\$2,446.27
Housing Excise Tax	\$0.51	\$0.23 per square foot	\$0.23 per square foot

CAPITAL FACILITY IMPACT FEES

Section 4-20-62

Capital facility impact fees will be collected for capital improvements to serve new development. Residential development will be charged impact fees based on unit size. Residential additions will be charged on net additional square footage. Non-residential development will be charged impact fees based on square footage by type of use. Redevelopment will be charged for net new square footage and a change of use. Capital facility impact fees are paid prior to final inspection for new construction, or at the time of permit issuance for all other types of construction. The tax rate in effect at the time of application applies.

Impact Fee Rates for Single Family Residential per Dwelling Unit

Square Feet	Library	Parks & Recreation	Human Services	Municipal Facilities	Police	Fire	TOTAL
900 or less	\$218	\$1,489	\$70	\$133	\$139	\$99	\$2,148
901-1000	\$252	\$1,728	\$80	\$154	\$162	\$115	\$2,491
1001-1100	\$282	\$1,935	\$91	\$172	\$182	\$127	\$2,789
1101-1200	\$310	\$2,126	\$100	\$189	\$199	\$140	\$3,064
1201-1300	\$335	\$2,301	\$109	\$205	\$216	\$154	\$3,320
1301-1400	\$359	\$2,463	\$116	\$219	\$231	\$163	\$3,551
1401-1500	\$382	\$2,616	\$123	\$232	\$244	\$173	\$3,770
1501-1600	\$402	\$2,758	\$130	\$247	\$258	\$183	\$3,978

Impact Fee Rates for Single Family Residential per Dwelling Unit (con't)

Square Feet	Library	Parks & Recreation	Human Services	Municipal Facilities	Police	Fire	TOTAL
1601-1700	\$421	\$2,893	\$136	\$257	\$271	\$191	\$4,169
1701-1800	\$442	\$3,017	\$141	\$268	\$282	\$200	\$4,350
1801-1900	\$458	\$3,135	\$148	\$279	\$294	\$209	\$4,523
1901-2000	\$474	\$3,248	\$154	\$289	\$304	\$216	\$4,685
2001-2100	\$489	\$3,354	\$158	\$298	\$313	\$222	\$4,834
2101-2200	\$505	\$3,457	\$163	\$308	\$325	\$229	\$4,987
2201-2300	\$519	\$3,554	\$167	\$315	\$333	\$235	\$5,123
2301-2400	\$533	\$3,649	\$172	\$326	\$343	\$241	\$5,264
2401-2500	\$545	\$3,738	\$176	\$333	\$350	\$249	\$5,391
2501-2600	\$559	\$3,824	\$181	\$341	\$357	\$254	\$5,516
2601-2700	\$570	\$3,906	\$185	\$348	\$366	\$259	\$5,634
2701-2800	\$582	\$3,986	\$188	\$354	\$374	\$265	\$5,749
2801-2900	\$593	\$4,064	\$191	\$361	\$381	\$270	\$5,860
2901-3000	\$604	\$4,138	\$194	\$368	\$388	\$275	\$5,967
3001-3100	\$614	\$4,208	\$197	\$375	\$394	\$280	\$6,068
3101-3200	\$625	\$4,279	\$201	\$381	\$401	\$285	\$6,172
3201-3300	\$635	\$4,346	\$205	\$388	\$408	\$289	\$6,271
3301-3400	\$645	\$4,413	\$209	\$393	\$414	\$294	\$6,368
3401-3500	\$653	\$4,476	\$212	\$399	\$419	\$297	\$6,456
3501-3600	\$663	\$4,538	\$215	\$405	\$424	\$301	\$6,546
3601-3700	\$673	\$4,598	\$217	\$409	\$429	\$304	\$6,630

Impact Fee Rates for Multifamily Residential per Dwelling Unit

Square Feet	Library	Parks & Recreation	Human Services	Municipal Facilities	Police	Fire	TOTAL
600 or less	\$229	\$1,573	\$73	\$139	\$148	\$171	\$2,333
601-700	\$278	\$1,904	\$90	\$168	\$179	\$207	\$2,826
701-800	\$319	\$2,192	\$103	\$194	\$205	\$238	\$3,251
801-900	\$356	\$2,445	\$116	\$218	\$229	\$267	\$3,631
901-1000	\$390	\$2,671	\$125	\$237	\$251	\$291	\$3,965
1001-1100	\$419	\$2,875	\$136	\$256	\$270	\$313	\$4,269
1101-1200	\$448	\$3,062	\$143	\$273	\$287	\$334	\$4,547
1201-1300	\$473	\$3,234	\$152	\$288	\$302	\$353	\$4,802
1301-1400	\$494	\$3,394	\$160	\$302	\$318	\$370	\$5,038
1401-1500	\$517	\$3,543	\$166	\$314	\$332	\$388	\$5,260
1501-1600	\$537	\$3,680	\$173	\$328	\$345	\$402	\$5,465

Impact Fee Rates for Nonresidential

		Impact Fee Rates Per Square Foot of Nonresidential Floor Area			
		<i>Municipal Facilities</i>	<i>Police</i>	<i>Fire</i>	<i>TOTAL</i>
<i>Nonresidential Uses</i>	Retail / Restaurant	\$0.14	\$0.50	\$0.40	\$1.04
	Business Park	\$0.17	\$0.11	\$0.10	\$0.38
	Office	\$0.21	\$0.17	\$0.59	\$0.97
	Hospital	\$0.18	\$0.15	\$0.51	\$0.84
	School	\$0.04	\$0.08	\$0.13	\$0.25
	Mini-Warehouse	\$0.00	\$0.02	\$0.00	\$0.02
	Warehousing	\$0.07	\$0.04	\$0.04	\$0.15
	Light Industrial	\$0.12	\$0.06	\$0.08	\$0.26
		Impact Fee Rates for Other Nonresidential Uses Based on Unique Demand Indicators			
		<i>Municipal Facilities</i>	<i>Police</i>	<i>Fire</i>	<i>TOTAL</i>
<i>Other Nonresidential Uses</i>	Nursing Home (per bed)	\$19.80	\$22.00	\$53.89	\$95.69
	Day Care (per student)	\$7.70	\$19.80	\$24.19	\$51.69
	Lodging (per room)	\$24.19	\$52.80	\$67.10	\$144.09

Affordable Housing Linkage Fee (DT-5 nonresidential density bonus only) Nonresidential developments in the DT-5 zoning district that receive a density bonus (additional floor area) are assessed an affordable housing linkage fee of **\$9.53** per square foot for the bonus floor area. This fee is due prior to the issuance of a building permit.



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: March 3, 2015

AGENDA TITLE: Introduction, first reading and consideration of a motion to publish by title only emergency Ordinance No. 8035 amending Section 4-20-68, “Flood Related Fee Waiver,” B.R.C. 1981, to extend temporary authority to waive certain fees to facilitate recovery and repair work resulting from flood impacts and amending Section 9-10-2 “Continuation or Restoration of Nonconforming Uses and Nonstandard Buildings, Structures, and Lots,” B.R.C., 1981, to extend the time to resume uses and restore buildings affected by the September 2013 flood.

PRESENTER/S

Jane S. Brautigam, City Manager
Maureen Rait, Executive Director of Public Works, Flood Recovery Manager
Susan Richstone, Deputy Director, Community Planning and Sustainability (CP&S)
Hella Pannewig, Assistant City Attorney
Dave Thacker, Building Services Manager/Chief Building Official
Chris Meschuk, Flood Recovery Coordinator for Community Services

EXECUTIVE SUMMARY

On Oct. 15, 2013, City Council adopted Emergency Ordinance No. 7946 authorizing the city manager to waive certain permit and application fees for permits applied for and applications made before Dec. 31, 2013. On Feb 18, 2014 this ordinance was extended by Ordinance No. 7961 through March 1, 2015. These emergency ordinances were adopted to facilitate recovery and repair work resulting from flood impacts.

This item requests that City Council temporarily extend this authority to waive fees and add a time extension to restore and replace nonstandard and nonconforming buildings and uses to facilitate flood recovery through March 1, 2016.

STAFF RECOMMENDATION

Suggested Motion Language:

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

Motion to introduce and order published by title only emergency Ordinance No. 8035 amending Section 4-20-68, "Flood Related Fee Waiver," B.R.C. 1981, to extend the authority to waive certain fees to facilitate recovery and repair work resulting from flood impacts and amending Section 9-10-2 "Continuation or Restoration of Nonconforming Uses and Nonstandard Buildings, Structures, and Lots," B.R.C., 1981, to extend the time to resume uses and restore buildings affected by the September 2013 flood.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

Economic: These changes will continue to support the flood recovery process and minimally impact city revenues during the next year. This ordinance reduces the economic burden on those seeking to obtain permits to restore the damage caused by the flood event.

Environmental: Waiving permit and application fees is meant to encourage compliance with applicable building codes and regulations as part of the recovery process. Structures that are repaired or built in compliance with city building codes are more environmentally sound than buildings not build up to code.

Social: Rebuilding and repairing homes and businesses and restoring neighborhoods positively contributes to the social fabric of the Boulder community.

OTHER IMPACTS

- Fiscal – See section on economic impacts above.
- Staff time – All work can be accommodated within the existing flood recovery work plan.

ANALYSIS

The fee waiver provides financial relief to affected parties and encourages residents and businesses to obtain building permits and inspection services. From September 2013 to date, 760 flood permits have been issued and fees waived total approximately \$250,000.

In 2015, applications for flood recovery and repair related permits continue to be filed, but at a much slower pace. Currently, 82 Boulder households have applied for CDBG-DR housing rehabilitation financial assistance, and 19 open City of Boulder cases with the Long Term Flood Recovery Group of Boulder County still need construction assistance. Based on this data, we anticipate less than 100 additional flood recovery permits will be processed under the time extension proposed in the attached ordinance.

Many of these households, residents and businesses still seeking repairs have been negotiating insurance settlements or have not had the financial means to rebuild to date. Much of the federal CDBG-DR housing rehabilitation grant funding is assisting these people, who are now obtaining permits to repair and rebuild. Because of this time delay, some properties have issues regarding non-standard or non-conforming buildings or uses being repaired based on the limitations in the code. This ordinance also provides a time extension to restore and replace nonstandard and nonconforming buildings to help people and businesses recover.

Additionally, providing time to obtain fee-waived flood restoration permits will continue to encourage property owners to utilize city permitting and inspections services.

This ordinance is consistent with the council adopted objectives for flood recovery #1: *Help People Get Assistance*, and #3: *Assist Business Recovery*.

ATTACHMENTS

Attachment A: Proposed ordinance

EMERGENCY ORDINANCE NO. 8035

AN EMERGENCY ORDINANCE AMENDING SECTION 4-20-68, "FLOOD RELATED FEE WAIVER," B.R.C. 1981, EXTENDING THE TIME DURING WHICH THE CITY MANAGER IS AUTHORIZED TO WAIVE CERTAIN FEES TO FACILITATE RECOVERY AND REPAIR RESULTING FROM FLOODING, AND AMENDING SECTION 9-10-2, "CONTINUATION OR RESTORATION OF NONCONFORMING USES AND NONSTANDARD BUILDINGS, STRUCTURES, AND LOTS," B.R.C. 1981, EXTENDING THE TIME TO RESUME NONCONFORMING USES AND RESTORE NONCONFORMING BUILDINGS AFFECTED BY THE SEPTEMBER 2013 FLOOD AND SETTING FORTH RELATED DETAILS.

WHEREAS the City Council finds that

A. Between Monday, September 9, 2013, and Tuesday, September 19, 2013, the City of Boulder received an estimated 17.2 inches of rainfall;

B. The city set daily precipitation records on September 10, 11, 12, 13, and 15. The 9.08 inches received on September 12th was the most rainfall ever received on a single day in Boulder's recorded history. The rain also set records for the month of September and for annual precipitation;

C. The storm has been characterized as both a 100-year flood and a 1000-year event;

D. The storm inflicted severe damage on many homes, businesses, parks and on open space and public infrastructure;

E. On September 12, 2013, the city manager issued a Declaration of Disaster Emergency pursuant to the authority granted in Section 2-2.5-3, B.R.C. 1981, and Colo. Rev. Stat. § 24-33.5-709;

F. On September 17, 2013, the City Council approved the Declaration of Disaster Emergency and extended it until October 15, 2013;

G. On October 15, 2013, the city council adopted Emergency Ordinance No. 7946 to facilitate disaster response in the city beyond October 16, 2013, the date when the powers of the city manager pursuant to Section 2-2.5-9, B.R.C. 1981 terminated.

1 H. Ordinance No. 7946 included city manager authority to waive certain fees for
2 permits applied for and applications made before December 31, 2013, as set forth in Section 4-
20-68, "Flood Related Fee Waiver," B.R.C. 1981.¹

3 I. Emergency Ordinance No. 7961 extended the city manager's authority to waive
4 certain fees for permits applied for and applications made before March 1, 2015, as set forth in
Section 4-20-68, "Flood Related Fee Waiver," B.R.C. 1981.

5 J. Flood recover and repair work continue in the city; therefore, the City Council
6 deems it necessary to extend the authority to waive certain fees to continue to facilitate recovery
7 and repair work resulting from flooding and to extent the time within which to resume
nonconforming uses discontinued as a result from flooding and restore nonconforming
structures and buildings damaged by flooding.

8 NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY
9 OF BOULDER, COLORADO:

10
11 Section 1. Section 4-20-68, B.R.C. 1981, is amended to read:

12 **4-20-68. Flood Related Fee Waiver.**

13 For permits applied for or applications made before March 1, 2015~~6~~, the city manager may
14 waive any fee required under any of the following sections to facilitate recovery and repair
resulting from flooding:

- 15 (1) Building Permit fees as required by Subsection 4-20-4(c) and Paragraph 4-20-4(f)(7),
16 Subsection 4-20-8(a), Subsections 4-20-13(c) and (d), and Subsection 4-20-15(b), B.R.C.
1981.
- 17 (2) Right of Way Permit fees as required by Subsection 4-20-6(b), B.R.C. 1981.
- 18 (3) Water Permit fees as required by Paragraphs 4-20-23(a)(3), (b)(1) and (b)(2), B.R.C. 1981.
- 19 (4) Water Service fees as required by Subsection 4-20-24(g), B.R.C. 1981.
- 20 (5) Wastewater Permit fees as required by Paragraphs 4-20-27(a)(1)—(3), (b)(1) and (b)(2),
21 B.R.C. 1981.

22
23 ¹ Ordinance No. 7946 provided for such fee waivers to be located in Section 4-20-67, "Flood Related Fee Waiver,"
24 B.R.C. 1981. Following adoption of Ordinance No. 7946, the Flood Related Fee Waiver section was included in the
25 Boulder Revised Code in Section 4-20-68, "Flood Related Fee Waiver," B.R.C. 1981, as section 4-20-67 had also been
approved by City Council for Section 4-20-67, "Recreational Marijuana Businesses," B.R.C. 1981.

1 (6) Floodplain Development Permit fees as required by Paragraphs 4-20-44 (a)(2), (a)(4) and
2 (b)(1), B.R.C. 1981.

3 Section 2. Section 9-10-2, B.R.C. 1981, is amended to read:

4 **9-10-2. Continuation or Restoration of Nonconforming Uses and Nonstandard Buildings,
5 Structures, and Lots.**

6 Nonconforming uses and nonstandard buildings and lots in existence on the effective date of the
7 ordinance which first made them nonconforming may continue to exist subject to the following:

8 (a) One-Year Expiration for Nonconforming Uses: A nonconforming use, except for a use that
9 is nonconforming only because it fails to meet the required off street parking standards in
10 Sections 9-9-6, "Parking Standards," and 9-7-1, "Schedule of Form and Bulk Standards,"
11 B.R.C. 1981, that has been discontinued for at least one year shall not be resumed or
12 replaced by another nonconforming use as allowed under Subsection 9-2-15(f), B.R.C.
13 1981, unless an extension of time is requested in writing prior to the expiration of the one-
14 year period. The approving authority will grant such a request for an extension upon
15 finding that an undue hardship would result if such extension were not granted.

16 (b) Damage by Fire, Flood, Wind, or Other Calamity or Act of God and Unsafe Buildings: A
17 nonstandard building or structure, a building or structure that contains a nonconforming
18 use, or a building or structure on a nonstandard lot, that has been damaged by fire, flood,
19 wind, or other calamity or act of God may be restored to its original condition, or any
20 building declared unsafe under the building code or any other applicable safety or health
21 code may be restored to a safe condition, provided that such work is consistent with the
22 requirements of Section 9-3-3, "Regulations Governing the One Hundred-Year
23 Floodplain," B.R.C. 1981, started within twelve months of such event, and completed
24 within twenty-four months of the date on which the restoration commenced.

25 . . .

(e) Discontinuance of Use and Damage to Buildings or Structures related to the September
2013 Flood Event: The city manager may grant extensions of time to resume or replace a
nonconforming use under subsection (a) if such extension would facilitate recovery and
repair resulting from flooding and provided that the applicant requests the extension in
writing on or before June 1, 2015 and shows that undue hardship would result if the
extension was not granted. The city manager may extend time to start work under
subsection (b) to restore a structure or building that has been damaged by flooding if such
work is started no later than March 1, 2016 and is completed within twenty-four months of
the date on which the restoration is commenced. The city manager may grant one
additional six-month extension to start work under subsection (b) to restore a structure or
building if a request is made in writing prior to March 1, 2016 and the applicant shows that
it exercised reasonable diligence towards completing the project and will be able to

complete the work within twenty-four months of the date on which the restoration is commenced.

Section 3. For the limited purposes of this ordinance, the city council suspends the provisions of Subsection 9-1-5(a), "Amendments and Effect of Pending Amendments," B.R.C. 1981, for the limited purpose of adopting this ordinance.

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.

Section 6. The City Council finds that public health, peace and safety justify the adoption of this ordinance as an emergency measure.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY this 3rd day of March 2015.

Mayor

Attest:

City Clerk

1 READ ON SECOND READING, PASSED, AND ADOPTED AS AN EMERGENCY
2 MEASURE BY TWO-THIRDS OF COUNCIL MEMBERS PRESENT, AND ORDERED
3 PUBLISHED BY TITLE ONLY this 17th day of March, 2015.

6 _____
Mayor

7 Attest:

8 _____
9 City Clerk

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**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: March 3, 2015

AGENDA TITLE:

Second reading and consideration of a motion to adopt Ordinance No. 8029 designating the building and property at 747 12th St., to be known as the **Cowgill Property**, as an individual landmark under the city's Historic Preservation Ordinance.

Owner: 747 Twelfth Street, LLC

Applicant: Landmarks Board

PRESENTERS:

Jane S. Brautigam, City Manager

David Driskell, Executive Director of Community Planning & Sustainability

Susan Richstone, Deputy Director of Community Planning & Sustainability

Debra Kalish, Senior Assistant City Attorney

Lesli Ellis, Comprehensive Planning Manager

James Hewat, Senior Historic Preservation Planner

Marcy Cameron, Historic Preservation Planner

EXECUTIVE SUMMARY:

The purpose of this quasi-judicial hearing is to allow the City Council to determine whether the proposed individual landmark designation of the property at 747 12th St. meets the purposes and standards of the Historic Preservation Ordinance (*Sections 9-11-1 and 9-11-2, B.R.C. 1981*), in balance with the goals and policies of the Boulder Valley Comprehensive Plan, including that:

1. The designation will promote the public health, safety, and welfare by protecting, enhancing and perpetuating buildings, sites, and areas of the city reminiscent of past eras, events, and persons important in local, state, or national history or providing significant examples of architectural styles of the past.
2. The designation will develop and maintain appropriate settings and environments for such buildings, sites, and areas to enhance property values, stabilize neighborhoods, promote tourist trade and interest, and foster knowledge of the city's living heritage.
3. Landmark designation is not intended to preserve every old building in the city but instead to draw a reasonable balance between private property rights and the public interest in preserving the city's cultural, historic, and architectural heritage by

ensuring that demolition of buildings and structures important to that heritage will be carefully weighed with other alternatives and that alterations to such buildings and structures and new construction will respect the character of each setting, not by imitating surrounding structures, but by being compatible with them.

If approved, this ordinance (see **Attachment A**) would designate the house, garage and property as an individual landmark. This designation, initiated by the Landmarks Board, is opposed by the property owners. On October 1, 2014, the Landmarks Board passed a resolution to initiate landmark designation pursuant to § 9-11-3, *Initiation of Designation for Individual Landmarks and Historic Districts*, B.R.C. 1981, finding that it met the criteria for Individual Landmark Designation. The designation hearing was held by the Landmarks Board on January 7, 2015. The board voted (4-0, F. Sheets absent) to recommend the designation to City Council. The first reading of the ordinance was approved by City Council (7-1, G. Karakehian opposed, Shoemaker absent) on Feb. 3, 2015. The second reading for this designation will be a quasi-judicial public hearing.

Suggested Motion Language:

Staff requests the City Council's consideration of this matter and action in the form of the following motion:

Motion to adopt ordinance No. 8029 designating the property at 747 12th St., to be known as the Cowgill Property, as an individual landmark under the City of Boulder's Historic Preservation Ordinance.

FINDINGS

The City Council finds, based upon the application and evidence presented, that the proposed designation application is consistent with the purposes and standards of the Historic Preservation Ordinance, in balance with the goals and policies of the Boulder Valley Comprehensive Plan, and:

1. The proposed designation will protect, enhance, and perpetuate a building reminiscent of a past era and important in local and state history and provide a significant example of architecture from the past. Sec. 9-11-1(a), B.R.C. 1981.
2. The proposed designation will maintain an appropriate setting and environment and will enhance property values, stabilize the neighborhood, promote tourist trade and interest, and foster knowledge of the city's living heritage. 9-11-1(a), B.R.C. 1981.
3. The buildings proposed for designation have exceptionally high architectural, historic and environmental significance. The property is associated with Marthana and Josephine Cowgill, who cared for tuberculosis patients in the house prior to purchasing the Mesa Vista Sanatorium; the property possesses a high level of architectural integrity as an example of architecture of that period, and the property has been identified as contributing resource to the identified potential University Hill local and National Register of Historic Places District. Sec. 9-11-2(a)(1), B.R.C. 1981.
4. In this case, designation over an owner's objection is appropriate because (i) the house and garage are of exceptionally high architectural, historic, and environmental significance; (ii) the house and garage are in need of protection

provided through the designation as the buildings are proposed for demolition; and (iii) it has not been demonstrated that the cost of restoration or repair would be unreasonable or that it would not be feasible to preserve the buildings and incorporate them into future development plans.

5. The proposed designation draws a reasonable balance between private property rights and the public interest in preserving the city's cultural, historic, and architectural heritage by ensuring that demolition of buildings important to that heritage will be carefully weighed with other alternatives. Due to the location of the house on the south side of the lot, and the gradual grade change away from the house, redevelopment of the site in a manner that preserves the historic buildings and provides for a modern residential use will be possible if the property is individually landmarked. 9-11-1(b), B.R.C. 1981.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS:

Economic: Owners of locally designated landmarked properties are eligible for state and local tax credits for approved rehabilitations and repairs, and studies have found that historic preservation adds to economic vitality and tourism. Exterior changes to individually landmarked buildings require a Landmark Alteration Certificate, issued by the Community Planning and Sustainability Department at no charge. The additional review process for landmarked buildings may, however, add time and design expense to a project.

Environmental: The preservation of historic buildings is inherently sustainable. Owners of individually landmarked buildings are encouraged to reuse and repair as much of the original building as possible when making exterior alterations, thereby reducing the amount of building material waste deposited in landfills. City staff can assist architects, contractors and homeowners with design and material selections and sources that are environmentally friendly. Also, the city's Historic Preservation website provides information on improving the energy efficiency of older buildings.

Social: The Historic Preservation Ordinance was adopted to "...enhance property values, stabilize neighborhoods, promote tourist trade and interest, and foster knowledge of the city's living heritage." Section 9-11-1 (a), B.R.C., 1981. The primary beneficiaries of historic designation are the property owners of a historic landmark and adjacent neighbors, who are ensured that the character of the immediate area will be protected through the design review process. The greater community also benefits from the preservation of the community's character and history.

OTHER IMPACTS:

Fiscal: The designation of individual historic landmarks is an anticipated and ongoing function of the Historic Preservation Program.

Staff Time: This designation application is within the staff work plan.

LANDMARKS BOARD ACTION

On January 7, 2015, the Landmarks Board voted (4-0, **F. Sheets** absent) to recommend to City Council that the property at 747 12th St., to be known as the Cowgill Property, be designated as a local historic landmark, finding that it meets the standards for individual

landmark designations in sections 9-11-1 and 9-11-2, B.R.C. 1981, and is consistent with the criteria specified in section 9-11-5(c), B.R.C. 1981. Staff recommended that the Landmarks Board recommend landmark designation for the property.

PUBLIC FEEDBACK

The property is owned by the 747 12th St., LLC, which is comprised of members of the Johnson family who have owned the property since 1970. The property owners and applicant oppose the landmark designation.

At the Jan. 7, 2015 Landmarks Board meeting, comments from the owner's representative included that the property does not possess architectural, historic or environmental significance, and that the Cowgill sisters later resided at 2107-2109 Bluff St. and that they also took in boarders there. He stated that the Cowgills built the Terrace-style building and that the building was more conducive to caring for tubercular patients as the porch extends the width of the façade.

At the Jan. 7, 2015 Landmarks Board meeting, twelve members of the public spoke to the item. Six members of the public, most of whom live in the immediate area, spoke in support of the landmark designation. A representative of Historic Boulder, Inc. also spoke in support of landmark designation. Five members of the public, including two of the property owners and the potential buyer, spoke in opposition of the designation. The board received four letters expressing opposition to landmark designation prior to the hearing.

At the demolition hearing at the Sept. 3, 2014 Landmarks Board hearing, four neighbors spoke in opposition to the demolition of the house and presented a letter in support of its preservation signed by 51 Boulder residents.

At the first reading of the ordinance by the City Council on Feb. 3, 2015 two members of the public spoke in opposition to the designation and five spoke in support of designation.

BACKGROUND:

On January 7, 2015, the Landmarks Board voted 4-0 (F. Sheets absent) to recommend to City Council that the building at 747 12th St. be designated as a local historic landmark, finding that it meets the standards for individual landmark designations in sections 9-11-1 and 9-11-2, B.R.C. 1981, and is consistent with the criteria specified in section 9-11-5(c), B.R.C. 1981. Prior to the designation hearing:

- On Mar. 19, 2014, the applicants submitted a demolition permit application to demolish the house and garage at 747 12th St.
- On Mar. 26, 2014, the Landmarks design review committee (Ldrc) referred the application to the Landmarks Board for a public hearing, finding there was “probable cause to believe that the property may be eligible for designation as an individual landmark.”
- On June 4, 2014, the Landmarks Board imposed a stay-of-demolition for a period of up to 180 days in order to seek alternatives to the demolition of the house and garage.
- During the stay-of-demolition, staff and representatives of the Landmarks Board and Historic Boulder, Inc. met with the applicant and owner on several occasions to discuss alternatives to the demolitions, including landmarking, the use of historic preservation tax credits for rehabilitation, and the possibility of constructing an addition to the main

house. During these meetings, the applicants indicated they did not consider the buildings historically or architecturally significant and are were not interested in preserving the buildings.

- On Oct. 1, 2014, the Landmarks Board passed a resolution to initiate landmark designation for the property located at 747 12th St. pursuant to § 9-11-3 , *Initiation of Designation for Individual Landmarks and Historic Districts*, B.R.C. 1981, finding that it met the criteria for Individual Landmark Designation.
- The property needs the protection of the preservation ordinance, as the house and garage are proposed for demolition.
- It has not been demonstrated that it would be unfeasible or cost prohibitive to preserve the house and incorporate it into future development plans.
- Because of its exceptional significance and that the proposal would result in the loss of a very important piece of the Boulder's heritage, staff and the Landmarks Board found that, in this case, designation over the owner's objection would be consistent with Section 9-11-1(b) of the historic preservation ordinance, as redevelopment of the site in a manner that preserves the historic buildings and provides for a modern residential use will be possible if the property is individually landmarked.

PROPERTY DESCRIPTION:

The approximately 12,500 sq. ft. property is located on the west side of the 700 block of 12th Street, between Baseline Rd. and Cascade Ave. and located in the identified potential University Hill Historic District (potentially eligible at the local level as well as on the National Register of Historic Places).

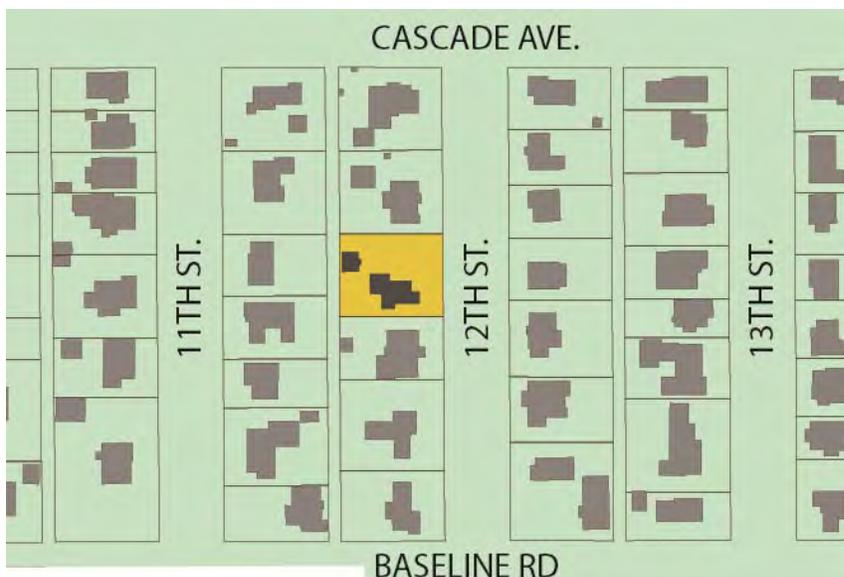


Figure 1. Location Map showing 747 12th St.

The one-story blonde brick main house at 747 12th St. was constructed in 1916 and features a pyramidal hipped roof with overhanging eaves and off-center, open front porch with solid brick walls and brick pillar supports on the east facing facade. The porch is accessed by a set of stairs on the north side, with the front door centered and a group of three, one over one, double-hung windows located to its right. Window surrounds on the house include brick sills. The building rests on a rough faced stone foundation.



Figure 2. Façade, 747 12th St., 2014.



Figure 3. Façade, 747 12th St., 2014.



Figure 4. Façade, 747 12th St., c.1949

The north (side) elevation of the house features a small gable-roofed projection with a large brick corbelled chimney and a group of three windows at the basement and first levels. One-over-one, double-hung windows behind non-historic metal storm windows on all faces of the house appear to be historic.



Figure 5. Bay window and chimney at north elevation, 747 12th St., 2014.



Figure 6. North (side) elevation of house, 747 12th St., 2014



Figure 7. West (rear) Face of House, 747 12th St., 2014

The west (rear) elevation features a low gable roofed addition that is clad in wood shingles. The exact date of construction of the addition is unknown, but it appears on the c. 1938 tax assessor card and is typical of 1920s construction, with wood double-hung windows and wood shingles. A fieldstone chimney is located on the north side of the addition.



Figure 8. West (rear) Face of House, 747 12th St., 2014



Figure 9. Bay window and rear porch at south elevation, 747 12th St., 2014.



Figure 10. West elevation (facing alley) of garage, 747 12th St., 2014.

The south elevation features a bay window with corbelled brick, and two groupings of three double-hung windows, similar to the north elevation. A wooden porch wrapping from the west end of the south face to the west side of the house differs in fenestration from the main body of the house with nine-light casement windows set behind either wood or aluminum storm windows.



Figure 11. East elevation (facing 12th St.) of garage, 2014.

A brick, hipped roof garage is located at the rear of the lot, along the alley. Constructed in 1929, the simply detailed accessory building features over-hanging eaves, exposed rafter tails, and large one-over-one windows on the south and east elevations. A pair of two large

wooden double-hung windows are located on the south (side) elevation with the east elevation (facing 12th St.) featuring a centrally-located wooden paneled door flanked by two double-hung windows with brick sills. A small gable-roofed portico is located above the entrance. Permit research indicates that in 1938 under the ownership of Dr. Oscar Gilbert, a request to convert the garage into living space was denied by the City of Boulder. The garage is identified as an associated building on the Historic Building Inventory Form (1991) and as potentially contributing to a National Register and local historic district on the Cultural Resource Re-evaluation Form (2001).

The house and garage appear to remain largely intact from their original construction with the frame addition at the rear of the house constructed prior to 1938. Building permit records and on-site inspection of the house and garage do not indicate additional changes, other than the installation of aluminum storm windows.



Figure 12. 700 block of 12th St., facing north, 2014.





Figure 13. Examples of houses on the 00 block of 12th St., 2014
(L-R: 707 12th St., 750 12th St., 740 12th St., and 728 12th St.)

The lot slopes to the north and features mature landscaping, including a very large pine tree at the front of the house. The 700 block of 12th St. is notably intact, with examples of an eclectic mix of architecture of the 1910s to the 1930s, including Tudor Revival, Colonial Revival and Craftsman Bungalow houses. Three houses on the block, including one that has been designated as an individual landmark, were designed by noted Boulder architect Glen Huntington. Many of the properties on the block are associated with significant figures to Boulder’s history. In addition to the Cowgills, the block was also home to faculty members of the University of Colorado, prominent businessmen and socialites. The 2001 Re-Survey identified buildings that would be contributing and non-contributing to a potential National or Local historic district. 12 of the 14 (85%) primary buildings on the 700 block of 12th St., including the house at 747 12th St., were considered to be contributing to a potential district. The accessory building at 747 12th St. was the only one of the six accessory buildings on the block found to be potentially contributing. Little change appears to have occurred in the past twelve years to affect the historic integrity of the district.

PROPERTY HISTORY

The house at 747 12th St. was purchased shortly after construction in 1916 by Samuel Cowgill for his daughters Marthana and Josephine, who resided there for sixteen years, from 1916 until 1932. They sold the property to Dr. Oscar Gilbert in 1936. The Cowgills and Dr. Gilbert are associated with the Mesa Vista Sanatorium, which provided care for tubercular patients from its establishment in 1918 through the 1960s.

As noted in the Public Feedback section, the applicant’s testimony at Jan.7, 2014 Landmarks Board hearing suggested that the Cowgills resided at 2107-2109 Bluff St. after moving from 747 12th St. and that that property had a stronger association with the Cowgills. A 1967 articles notes that the Cowgills “operated a nursing home at their residence at 747 12th St. and later at 2107-09 Bluff St.,” however, there is no evidence that the Cowgills lived at the house on Bluff St.¹ City directory research indicates that after moving from 12th St., the Cowgills resided at 2121 North St. (Mesa Vista Sanitarium) from 1932 until 1951 and at 2048 Alpine Ave. from 1953 until their deaths in the 1960s. Further, the Bluff St. residence was constructed before 1911, prior to the Cowgill’s ownership. It does not appear to have been altered by the Cowgills during their ownership and the front porch is typical of that building

¹ Miss Marthana Cowgill Dies After Long Illness. *Daily Camera*. 7 March 1967.

type. The building was recognized as a Structure of Merit in 1989 as a representative example of the Terrace architecture in Boulder.

While there are other properties in Boulder that are also associated with the theme of health seekers, the property at 747 12th St. is proposed for demolition and is particularly significant for its association with the Cowgill sisters and Boulder's tuberculosis history. It was the first house the Cowgills owned in Boulder, there is evidence that they took in tuberculosis patients in the home prior to operating the Mesa Vista Sanitarium, and that use is expressed in the building's form with rear and side porches added by the Cowgills in the 1920s. Detailed research and analysis indicates the property possesses exceptional architectural and historic significance and integrity, is an important example of early twentieth century architecture modified to function as a convalescent home for tuberculosis patients in the 1920s and is associated with the Cowgill family, which made a significant contribution to the care of tuberculosis patients in Boulder. The Landmarks Board found the property to be of exceptionally high architectural and historic integrity and eligible for individual landmark designation pursuant to Section 9-11-1(a), B.R.C.1981.

The Cowgill Sisters and the Mesa Vista Sanatorium²

Tuberculosis was one of the most common and deadly diseases in the 19th and early 20th centuries. With no identified drug or vaccine, doctors encouraged patients to seek healthier climates, noting that rest, fresh air and a good diet would help strengthen the body's defenses. In the late 19th century, tuberculosis sanatoriums were established across the country. The Battle Creek Sanitarium in Michigan, founded by Dr. John Harvey Kellogg and the Seventh Day Adventists, was one of the most influential.

In 1896, the Boulder-Colorado Sanitarium, a branch of the Battle Creek Sanitarium, opened. First located on University Hill, facilities were soon constructed at 4th and Mapleton Ave. The institution was initially founded to care for tuberculosis patients, but it was "soon found that this was a handicap to the work, for other patients were often afraid to come because of their dread of this disease."³ To meet the need of a tuberculosis facility, smaller treatment centers were opened. In 1918, Dr. Gilbert, a nationally-recognized expert on the disease, founded the Mesa Vista Sanatorium at 2121 North St. (now 2121 Mesa Ave.) specifically for the care of tuberculosis patients. In 1931, Dr. Gilbert sold the facility to Marthana and Josephine Cowgill, who operated the sanatorium until their deaths in the 1960s.

Josephine (b. 1878) and Marthana (b. 1885) Cowgill were born in Cadiz, Indiana, to Samuel C. and Carolyn Macy Cowgill. Samuel owned a number of successful drain tile factories across the country and family later moved from Indiana to San Benito, Texas. The Cowgills had four daughters and two sons, all of whom graduated from Earlham College, a Quaker liberal arts college in Richmond, Indiana.

² *Sanatorium* refers to a hospital designed for treatment of a specific disease. *Sanitarium* refers to a health resort. The terms can be used interchangeably in modern terminology. www.lawprose.org

³ Brief History –Boulder, Colorado Sanitarium. Carnegie Library for Local History. Accessed 19 December 2014. <http://www.boulderlibrary.org/cpdfs/328-145-18.pdf>

During World War I, Josephine pursued a nurse's training program, becoming a registered nurse. Marthana had been a school teacher in Texas until she contracted tuberculosis. According to an interview with Marthana's son, Dr. Joseph Cowgill, Marthana, each of her five siblings, and her parents all contracted the disease at some point in their lives. Marthana's condition was considered severe and in 1915 she traveled to Boulder to stay at the Alps, a summer resident hotel in Boulder Canyon. Soon after, her sister Josephine was sent to the Alps to help care for her.

In 1920, Josephine received a degree from the University of Colorado Nursing School. Following Marthana's recovery, the sisters began operating a convalescent home at their residence at 747 12th St. and later 2107-09 Bluff St.⁴ A 1951 newspaper article about the history of the Mesa Vista Sanatorium notes that the "after the financial difficulties suffered by their father in the 1920-21 depression, [the Cowgill sisters] decided to rent out rooms in their home to other tuberculosis sufferers."⁵ In Dr. Cowgill's interview, he stated that there were about four or five patients that lived at 747 12th St. during this time. In addition to taking care of patients, Josephine began working as an office nurse for Dr. Oscar M. Gilbert at the Mesa Vista Sanatorium.⁶

In the 1920s, Marthana adopted two boys, David and Joseph. Marthana and Josephine also cared for two children of their sister, Louise Whitney, who had died of tuberculosis some years earlier. Later, the sisters also adopted Bergen, an orphaned son of one of their patients. The Cowgill family was active in the Quaker community in Boulder and is cited in a 1960 article as the "backbone of the current Quaker fellowship."

In 1930, Marthana and Josephine took over the management of Mesa Vista Sanatorium from Dr. Gilbert. Dr. Cowgill explained in his interview that during the Great Depression Marthana and Josephine traded the property at 747 12th St. for the sanatorium. After the trade, Marthana, Josephine, and the two boys moved into an old barn-turned-residence that was located on the Mesa Vista property.⁷

Marthana served as president and owner of the sanatorium while Josephine acted as vice president and superintendent of nurses. In 1933, their sister Mary moved to Boulder from Texas and joined the business as secretary-treasurer. During WWI, Dr. Gilbert was enlisted in the military and served as a contract surgeon with the rank of captain. He had retired to consulting practice, but in Sept. 1942, he returned to active practice because of the need at that time for physicians to replace those going into military service. Dr. Gilbert remained associated with the Mesa Vista Sanatorium until he died of a heart attack in 1944. His obituary notes that he was "one of Colorado's most widely known physicians and one of Boulder's most prominent citizens."⁸

⁴ Miss Marthana Cowgill Dies After Long Illness. *Daily Camera*. 7 March 1967.

⁵ Mesa Vista Sanatorium Purchased by The Misses Cowgill In 1930. *Daily Camera*. 13 December 1951.

⁶ Joseph Cowgill, interview by Sue F. Lacey.

⁷ Joseph Cowgill, interview with Sue F. Lacey.

⁸ Dr. O. M. Gilbert Dies in Sleep Early Today. *Daily Camera*. 18 Oct. 1944.



Figure 12. Photograph of Sun Porch at 2121 North St. from Mesa Vista Sanatorium Brochure, c. 1930.



Figure 13. Photograph advertising “one of five bed porches” in a Mesa Vista Sanatorium Brochure, c. 1930.

With the advent of penicillin and the resulting decline of tuberculosis cases after World War II, the Cowgill sisters devoted the institution to treating tuberculosis among the Navajo tribe beginning in 1952. Funding became available through the Bureau of Indian Affairs and Dr. Joseph Cowgill noted that Mesa Vista was the only sanatorium outside of New Mexico that primarily cared for Navajo patients. Members of the Navajo tribal council frequently visited the Mesa Vista Sanatorium. Dr. Cowgill talks briefly in his interview about how Marthana became good friends with Annie Wauneka, a highly influential member of the Navajo tribe.⁹ Wauneka’s 1997 obituary posted in the *New York Times* states that she “received much of the credit for defeating tuberculosis among the Navajo beginning in the 1950s and received national recognition for her role.”¹⁰

⁹ Joseph Cowgill, interview with Sue F. Lacey.

¹⁰ “Annie d. Wauneka, 87, Dies; Navajo Medical Crusader,” *New York Times* (New York City, NY), Nov 16, 1997.



Figure 13. Navajo children and Ms. Marthana Cowgill at Mesa Vista Sanatorium, c.1950s

By the 1960s, the institution began to expand its services to take care of all types of chronically ill patients, and in 1964 the sanatorium underwent extensive modernization and construction of an addition. The facilities still exist today, and operate as the Terrace Heights Care Center.

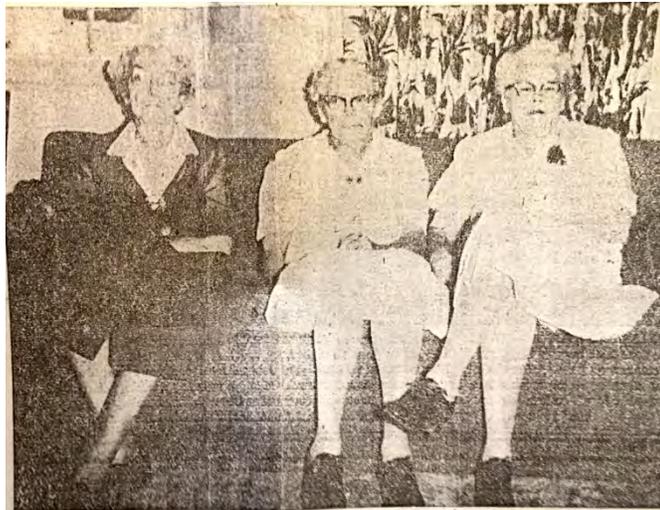


Figure 14. "The Cowgill Sisters – The Misses Mary, Josephine and Marthana." Daily Camera, July 15, 1960.

The Cowgill sisters never married. Dr. Cowgill became a prominent Boulder physician, a founding member of the Boulder Medical Center and later vice president of Mesa Vista Sanatorium. Bergen died in the 1950s, and David in the mid-1960s. Josephine died February 1, 1960, and was followed by her sister Mary almost a year later. Marthana died March 7, 1967.

The Cowgill sisters made a significant contribution to the treatment of tuberculosis patients in Boulder. The roots of their efforts can be traced to the property at 747 12th St., where they lived and operated a treatment home in the 1920s. The use as a treatment facility is expressed through its architectural form, with porches constructed at the rear and sides of the house with pocket windows to allow fresh air for the patients. The Mesa Vista Sanatorium, as well as the Boulder-Colorado Sanitarium, were major institutions in Boulder and drew many visitors and residents to Boulder.

Subsequent Residents of 747 12th St.

In 1940, Dr. Gilbert sold to Ralph and Dorothy Feather. Ralph attended the University of Colorado in 1938 and in 1940 worked as a janitor in an office building. The Feathers had three children, Gilbert, Gaynor and Kenneth.

In 1944, the property then passed to Lucile Tandy, who resided there until 1968. Lucile May (née Morrison) Tandy was born 1893 in Rockford, Illinois. She graduated from the University of Colorado in 1917 and also attended the Chicago Institute of Fine Arts. She married Ben G. Tandy in 1918 Worcester, Massachusetts. Her husband died in 1943 and the following year she moved to Boulder from Grand Junction. She was employed as a teacher in various Colorado locations including Louisville, and was a member of the Colorado Education Association, and attended the First Baptist church of Boulder. Lucile died October 2, 1986.

Subsequently, the property passed from Mrs. Tandy to Rex Sheppard, who owned it from 1968 until 1970. From 1970 until 2013, the property was owned by Orval and Nina Johnson. It is currently owned by members of the Johnson family.

The 1991 Historic Building Inventory Form for 747 12th St. identified the main house on the property as being architecturally significant representing a type, period or method of construction, and historically significant for its association with significant persons and events or patterns. The garage is identified as a contributing feature of the property. The 2001 Re-survey indicated the buildings would be contributing to a potential local or National Register historic district, but would not be individually eligible at the local or national level.

ANALYSIS

Code Criteria for Review

Section 9-11-6(b), *Council Ordinance Designating Landmark of Historic District*, B.R.C. 1981, specifies that in its review of an application for local landmark designation, the council must consider “whether the designation meets the purposes and standards in Subsection 9-11-1(a) and Section 9-11-2, *City Council May Designate Landmarks and Historic Districts*, B.R.C., 1981, in balance with the goals and policies of the Boulder Valley Comprehensive Plan. The city council shall approve by ordinance, modify and approve by ordinance, or disapprove the proposed designation.”

Section 9-11-1, *Legislative Intent*, states:

- (a) The purpose of this chapter is to promote the public health, safety, and welfare by protecting, enhancing, and perpetuating buildings, sites, and areas of the city

reminiscent of past eras, events, and persons important in local, state, or national history or providing significant examples of architectural styles of the past. It is also the purpose of this chapter to develop and maintain appropriate settings and environments for such buildings, sites, and areas to enhance property values, stabilize neighborhoods, promote tourist trade and interest, and foster knowledge of the city's living heritage.

- (b) The City Council does not intend by this chapter to preserve every old building in the city but instead to draw a reasonable balance between private property rights and the public interest in preserving the city's cultural, historic, and architectural heritage by ensuring that demolition of buildings and structures important to that heritage will be carefully weighed with other alternatives and that alterations to such buildings and structures and new construction will respect the character of each such setting, not by imitating surrounding structures, but by being compatible with them.
- (c) The City Council intends that in reviewing applications for alterations to and new construction on landmarks or structures in a historic district, the Landmarks Preservation Advisory Board shall follow relevant city policies, including, without limitation, energy-efficient design, access for the disabled, and creative approaches to renovation.

Section 9-11-2, City Council may Designate Landmarks and Historic Districts, states:

- (a) Pursuant to the procedures in this chapter the City Council may by ordinance:
 - (1) Designate as a landmark an individual building or other feature or an integrated group of structures or features on a single lot or site having a special character and historical, architectural, or aesthetic interest or value and designate a landmark site for each landmark;
 - (2) Designate as a historic district a contiguous area containing a number of sites, buildings, structures or features having a special character and historical, architectural, or aesthetic interest or value and constituting a distinct section of the city;
 - (3) Designate as a discontinuous historic district a collection of sites, buildings, structures, or features which are contained in two or more geographically separate areas, having a special character and historical, architectural, or aesthetic interest or value that are united together by historical, architectural, or aesthetic characteristics; and
 - (4) Amend designations to add features or property to or from the site or district.
- (b) Upon designation, the property included in any such designation is subject to all the requirements of this code and other ordinances of the city.

Significance Criteria.

To assist in the interpretation of the historic preservation ordinance, the Landmarks Board has adopted significance criteria to use when evaluating applications for individual landmarks. The criteria are included in *Attachment A: Significance Criteria*. An evaluation of the property's significance in relation to the significance criteria is as follows:

Historic, Architectural, and Environmental Significance

A. Does the proposed application protect, enhance, and perpetuate buildings, sites, and areas of the city reminiscent of past eras, events, and persons important in local, state, or national history or providing significant examples of architectural styles of the past?

The Landmarks Board has found that the proposed application would perpetuate a building and site of the city reminiscent of past eras and persons important in local history. The property has a strong association with evolving health care in Boulder during the 1910s through the 1950s in Boulder, particularly in the treatment and care of tuberculosis patients, many of whom came to Boulder specifically for health reasons. The board considers that the application meets the historic and architectural criteria for individual landmark designation as outlined below.

Historic Significance:

Summary: The house located at 747 12th St. is historically significant under criteria 1, 2 and 4.

1. Date of Construction: 1916

Elaboration: Tax Assessor records indicate that the building was constructed in 1916.

2. Association with Persons or Events: Josephine and Marthana Cowgill

Elaboration: Josephine and Marthana Cowgill, two sisters who operated a tuberculosis sanitarium in Boulder. The house functioned as a convalescent home for tuberculosis patients during the 1920s. From 1930 until the 1960s, the Cowgills owned and operated the Mesa Vista Sanatorium. It is possible and quite likely that the rear porches were constructed during this period to provide outdoor areas for consumptive patients.

3. Development of the Community: Following the Civil War, and construction of the railroads, mountain communities around the country including Boulder, were popular destinations for the treatment of tuberculosis patients and other visitors hoping to improve their health. Opened in 1896, the Boulder Sanitarium stopped accepting tuberculosis patients after WWI citing concerns about contagion to other patients. Apparently responding to a shortage of treatment alternatives to consumptives in Boulder the Cowgill sisters, began taking consumptive convalescents into their house at 747 12th St. beginning about 1920. In association with nationally noted physician Dr. Oscar Gilbert, the Cowgills continued nursing TB patients at the house until 1930 when they took over ownership and management of the Mesa Vista Sanitarium. In 1934, Gilbert bought the house which he sold in 1940. The Cowgill's adopted son Joseph went on to become a doctor and assistant director of Mesa Vista Sanitarium. For more than 50 years the Cowgill family and Dr. Gilbert engaged in innovative treatments of tuberculosis including those that took place at the Boulder-Colorado Sanitarium, 747 12th St. and the Mesa Vista Sanitarium. These efforts represent an important element of Boulder's twentieth-century history and development. The property at 747 12th St. survives as a well preserved reminder of this chapter of the city's past.

4. Recognition by Authorities: Historic Building Survey

Elaboration: The 1991 Historic Building Inventory Form indicates that the house at 747 12th St. is architecturally significant as it represents a type, period or method of

construction, and historically significant as it is associated with significant persons and significant events or patterns. The form states:

This house is significant for its association with Josephine and Marthana Cowgill, two sisters who operated a tuberculosis sanitarium in Boulder. The house functioned as a nursing home, probably for tuberculars, during the 1920s. The house is a well-preserved example of the Bungalow style popular during the early twentieth century, as typified by its hipped roof, brick walls, double-hung windows, and porch with brick pillars and walls.

No changes appear to have taken place to the buildings since the survey was undertaken. The 2001 Re-survey form indicates that the property would be contributing to a potential local or National Register historic district, but would not be individually eligible for listing at the local or national level. The basis for the 2001 determination is unclear. Staff considers that the property meets the significance criteria for individual landmark designation at the local level in terms of architectural, historic and environmental significance.

Architectural Significance:

Summary: The house located at 747 12th St. is architecturally significant under criterion 1.

1. Recognized Period or Style: Bungalow

Elaboration: The house is an unusually well-preserved example of bungalow influenced house construction popular during the early twentieth century, as typified by its hipped roof, brick walls, double-hung windows, and porch with brick pillars and walls. Of particular interest is the use of blonde brick, corbelling at the south bay and north faces, construction of the enclosed rear and side porches of the house indicating early adaptive changes to the building, presumably, in response to use of the house as a convalescence home for consumptive during the 1920s. The garage appears to have been constructed somewhat later than the main house. Both the house and garage appear to be essentially unaltered from their original construction.

2. Architect or Builder of Prominence: None observed.

3. Artistic Merit: None observed.

4. Example of the Uncommon: None observed.

5. Indigenous Qualities: None observed

B. Does the proposed application develop and maintain appropriate settings and environments for such buildings, sites, and areas to enhance property values, stabilize neighborhoods, promote tourist trade and interest, and foster knowledge of the City's living heritage?

The Landmarks Board found that the proposed application would maintain an appropriate setting and environment for the buildings. The property is located within the identified

boundaries of the potential University Hill Historic District of which the 700 block of 12th Street represents one of the best preserved areas of University Hill.

Environmental Significance:

Summary: The house located at 747 12th St. meets environmental significance under criteria 1, 2 and 5.

1. **Site Characteristics:** The house sits on a large lot with mature landscaping, including large pine trees.
2. **Compatibility with Site:** The buildings are representative of the typical building patterns in University Hill and contribute to the residential character of the neighborhood.
3. **Geographic Importance:** None observed.
4. **Environmental Appropriateness:** None observed.
5. **Area Integrity:** The 700 block of 12th Street is located in the identified potential University Hill Historic District and retains a high degree of historic integrity to the original development of that neighborhood. The block is notably intact, with examples of an eclectic mix of architectural styles characteristic of the 1910s to the 1930s, including Tudor Revival, Colonial Revival and Craftsman Bungalow houses. Three houses on the block, including one that has been designated as an individual landmark, were designed by noted Boulder architect Glen Huntington. Many of the properties on the block are associated with significant figures to Boulder's history. In addition to the Cowgills, the block was also home to faculty members of the University of Colorado, prominent businessmen and socialites.

C. Does the proposed application draw a reasonable balance between private property rights and the public interest in preserving the City's cultural, historic, and architectural heritage by ensuring that demolition of buildings and structures important to that heritage will be carefully weighed with other alternatives?

The Landmarks Board has found that this application draws a reasonable balance between private property rights and the public's interest in preserving the city's cultural, historic, and architectural heritage. The property has exceptional historic significance through its association with the Cowgill sisters and the evolution of the care of consumptives in Boulder. Two generations of Cowgills were directly involved in this often overlooked chapter of history that saw momentous changes from the chronic care of consumptive patients, to cure of tuberculosis with the advent of penicillin, to direct and effective efforts to eradicating the disease in the Navajo Nation. To this extent, the property represents a direct link to the Cowgill sisters, Dr. Oscar Gilbert and Dr. Joseph Cowgill.

During the stay-of-demolition, staff and representatives of the Landmarks Board and Historic Boulder, Inc. met with the applicant and owner to discuss alternatives to the demolitions, including landmarking, rehabilitation, and the possibility of constructing an addition to the main house. The applicants have indicated they do not consider the buildings historically or architecturally significant and are not interested in preserving them. It has not been

demonstrated that the cost of rehabilitation and the incorporation of the buildings into future development plans would be unreasonable. The house is located on the southern portion of the lot, which slopes to the north. This configuration would allow for an addition to the north that would not overwhelm the existing house. No major structural issues have been identified, and it has not been demonstrated that the cost of rehabilitation or restoration would be unreasonable. Considerable community support for the proposed designation has been expressed through the demolition review process.

At the June 4, 2014 meeting, Historic Boulder, Inc. spoke in support of imposing a stay on the property to explore alternatives to the demolition. The Landmarks Board has received letters from five neighboring property owners in support of the stay of demolition, and seven neighbors spoke against the demolition of the buildings at the June 4th Landmarks Board meeting.

Four neighbors spoke in opposition to the demolition of the house at the Sept 3rd Landmarks Board hearing and presented a letter in support of its preservation signed by 51 Boulder residents. Oct. 1st meeting, three neighbors spoke in support of landmark designation. In September 2014, an application for historic district designation for the 700 block of 12th St. was received but later withdrawn due to lack of support from the property owners. One property owner has indicated that they will submit an application for individual landmark designation for their property.

In the history of the historic preservation program, individual landmark designations over the owner's objection have occurred very rarely.

Of the 168 designated individual landmarks since 1980 (1974 to 1979 records do not clearly identify the initiator), 157 were initiated by the property owner. Four were initiated by Historic Boulder, one by the Modern Architecture Preservation League (Bandshell), and six by the Landmarks Preservation Advisory Board. Of these designations, five are known to have been initially over the owner's objection:

- 1980: 2032 14th Street – Boulder Theater
- 1990: 646 Pearl St – Arnett-Fullen House
- 1998: 1949 Pearl Street – Campbell Grocery
- 2007: 1936 Mapleton Avenue – Frakes House
- 2007: 3231 11th Street – Chambers Cottage

The historic preservation code states that its purpose is to draw a “reasonable balance between private property rights and the public interest.” In this case, staff considers that initiating landmark designation for this property may be appropriate, as the property possesses exceptional historic and architectural significance of state and local significance. At the same time, it has not been demonstrated that the buildings' incorporation into future development plans would be unreasonable.

The house is located on the south side of the lot, and the grade slopes gradually to the north, allowing for an addition that preserves the mass, scale, location and character-defining features of the house and also accommodates addition space desired for a modern residence. Character-defining features of the house include the hipped roof, blond brick with corbel

details, and the rear porches. An addition that is sympathetic to the historic character of the house could be approved through Landmark Alteration Certificate review if the house were landmarked. For instance, constructing a substantial addition at the north side of the house would likely be feasible if it was setback from the front corner of the historic portion of the house.

OPTIONS:

The City Council may approve, modify or not approve the second reading of this ordinance.

Approved By:

Jane S. Brautigam,
City Manager

ATTACHMENTS:

- A: Ordinance No. 8029
- B: Sections 9-11-1 and 9-11-2, "*Purposes and Intent*," B.R.C., 1981
- C: Significance Criteria for individual landmarks

ORDINANCE NO. 8029

AN ORDINANCE DESIGNATING THE BUILDINGS AND PROPERTY AT 747 12TH ST., CITY OF BOULDER, COLORADO, ALSO KNOWN AS THE COWGILL PROPERTY, A LANDMARK UNDER CHAPTER 9-11, "HISTORIC PRESERVATION" B.R.C. 1981, AND SETTING FORTH DETAILS IN RELATION THERETO.

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

Section 1. The council enacts this ordinance pursuant to its authority under Chapter 9-11, "Historic Preservation," B.R.C. 1981, to designate as a landmark a property having a special character or special historic, architectural, or aesthetic interest or value.

Section 2. The council finds that: 1) on or about October 1, 2014, the Landmarks Board passed a resolution to initiate landmark designation for the property at 747 12th St. 2) the Landmarks Board held a public hearing on the proposed designation on January 7, 2015; and 3) on January 15, 2015, the board recommended that the council approve the proposed designation.

Section 3. The council also finds that upon public notice required by law, the council held a public hearing on the proposed designation on February 3, 2015 and upon the basis of the presentations at that hearing finds that the building and the property at 747 12th St. does possess a special character and special historic, architectural, or aesthetic interest or value warranting its designation as a landmark.

Section 4. The characteristics of the subject property that justify its designation as a landmark are: 1) its historic significance is relevant to its construction in 1916, its association with the Cowgill family, who opened a convalescent home for tuberculosis patients and later operated the Mesa Vista Sanatorium, and for its association with the development of Boulder; and 2) its

1 architectural significance indicative of an example of a bungalow influenced house, and; 3) its
2 environmental significance for its location within the potential University Hill Historic District,
3 which retains its residential historic character.

4 Section 5. The council further finds that the foregoing landmark designation is necessary
5 to promote the public health, safety, and welfare of the residents of the city.

6 Section 6. There is hereby created as a landmark the building and property located at 747
7 12th St., also known as the Cowgill Property, whose legal landmark boundary encompasses a
8 portion of the legal lots upon which it sits:

9 LOTS 35-38 INC BLK 32 UNIVERSITY PLACE

10 as depicted in the proposed landmark boundary map, attached hereto as Exhibit A.

11 Section 7. The council directs that the department of Community Planning and
12 Sustainability give prompt notice of this designation to the property owner and cause a copy of
13 this ordinance to be recorded as described in Subsection 9-11-6(d), B.R.C. 1981.

14 Section 8. The council deems it appropriate that this ordinance be published by title only
15 and orders that copies of this ordinance be made available in the office of the city clerk for public
16 inspection and acquisition.

17
18 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE
19 ONLY THIS 3RD DAY OF FEBRUARY, 2015.

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22 Mayor

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Attest:

City Clerk

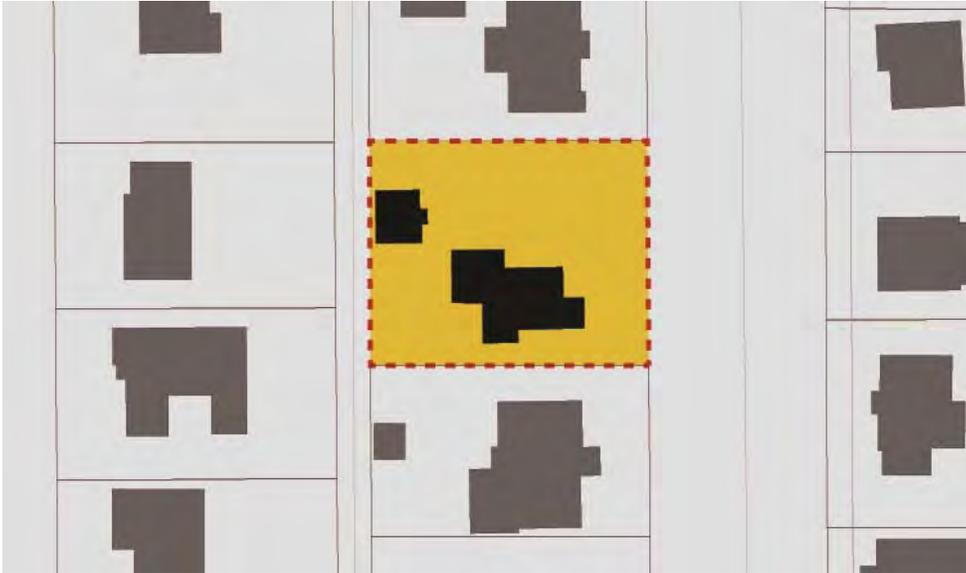
READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED PUBLISHED BY
TITLE ONLY THIS 3RD DAY OF MARCH, 2015.

Mayor

Attest:

City Clerk

Exhibit A – Landmark Boundary Map for 747 12th St.



LOTS 35-38 INC BLK 32 UNIVERSITY PLACE

**9-11-1 & 9-11-2 Purposes and Intent
Boulder Revised Code, 1981**

9-11-1: *Purpose and Legislative Intent* states:

- (a) The purpose of this chapter is to promote the public health, safety, and welfare by protecting, enhancing, and perpetuating buildings, sites, and areas of the city reminiscent of past eras, events, and persons important in local, state, or national history or providing significant examples of architectural styles of the past. It is also the purpose of this chapter to develop and maintain appropriate settings and environments for such buildings, sites, and areas to enhance property values, stabilize neighborhoods, promote tourist trade and interest, and foster knowledge of the city's living heritage.
- (b) The City Council does not intend by this chapter to preserve every old building in the city but instead to draw a reasonable balance between private property rights and the public interest in preserving the city's cultural, historic, and architectural heritage by ensuring that demolition of buildings and structures important to that heritage will be carefully weighed with other alternatives and that alterations to such buildings and structures and new construction will respect the character of each such setting, not by imitating surrounding structures, but by being compatible with them.
- (c) The City Council intends that in reviewing applications for alterations to and new construction on landmarks or structures in a historic district, the Landmarks Board shall follow relevant city policies, including, without limitation, energy-efficient design, access for the disabled and creative approaches to renovation.

9-11-2: *City Council may Designate or Amend Landmarks and Historic Districts* states:

- (a) Pursuant to the procedures in this chapter the City Council may by ordinance:
 - (1) Designate as a landmark an individual building or other feature or an integrated group of structures or features on a single lot or site having a special character and historical, architectural, or aesthetic interest or value and designate a landmark site for each landmark;
 - (2) Designate as a historic district a contiguous area containing a number of sites, buildings, structures or features having a special character and historical, architectural, or aesthetic interest or value and constituting a distinct section of the city;
 - (3) Designate as a discontinuous historic district a collection of sites, buildings, structures, or features which are contained in two or more geographically separate areas, having a special character and historical, architectural, or aesthetic interest or value that are united together by historical, architectural, or aesthetic characteristics; and
 - (4) Amend designations to add features or property to or from the site or district.
- (b) Upon designation, the property included in any such designation is subject to all the requirements of this code and other ordinances of the city.

SIGNIFICANCE CRITERIA

Individual Landmark

September 1975

On September 6, 1975, the City Council adopted Ordinance #4000 providing procedures for the designation of Landmarks and Historic Districts in the City of Boulder. The purpose of the ordinance is the preservation of the City's permitted cultural, historic, and architectural heritage. The Landmarks Board is permitted by the ordinance to adopt rules and regulations as it deems necessary for its own organization and procedures. The following Significance Criteria have been adopted by the board to help evaluate each potential designation in a consistent and equitable manner.

Historic Significance

The place (building, site, area) should show character, interest or value as part of the development, heritage, or cultural characteristics of the community, state or nation; be the site of a historic, or prehistoric event that had an effect upon society; or exemplify the cultural, political, economic, or social heritage of the community.

Date of Construction: This area of consideration places particular importance on the age of the structure.

Association with Historical Persons or Events: This association could be national, state, or local.

Distinction in the Development of the Community of Boulder: This is most applicable to an institution (religious, educational, civic, etc) or business structure, though in some cases residences might qualify. It stresses the importance of preserving those places which demonstrate the growth during different time spans in the history of Boulder, in order to maintain an awareness of our cultural, economic, social or political heritage.

Recognition by Authorities: If it is recognized by Historic Boulder, Inc. the Boulder Historical Society, local historians (Barker, Crossen, Frink, Gladden, Paddock, Schooland, etc), State Historical Society, The Improvement of Boulder, Colorado by F.L. Olmsted, or others in published form as having historic interest and value.

Other, if applicable.

Architectural Significance

The place should embody those distinguishing characteristics of an architectural type specimen, a good example of the common; be the work of an architect or master builder, known nationally, state-wide, or locally, and perhaps whose work has influenced later development; contain elements of architectural design, detail, materials or craftsmanship which represent a significant innovation; or be a fine example of the uncommon.

Recognized Period/Style: It should exemplify specific elements of an architectural period/style, i.e.: Victorian, Revival styles, such as described by *Historic American Building Survey Criteria*, Gingerbread Age (Maass), 76 Boulder Homes (Barkar), The History of Architectural Style (Marcus/Wiffin), Architecture in San Francisco (Gebhard et al), History of Architecture (Fletcher), Architecture/Colorado, and any other published source of universal or local analysis of a style.

Architect or Builder of Prominence: A good example of the work of an architect or builder who is recognized for expertise in his field nationally, state-wide, or locally.

Artistic Merit: A skillful integration of design, material, and color which is of excellent visual quality and/or demonstrates superior craftsmanship.

Example of the Uncommon: Elements of architectural design, details, or craftsmanship that are representative of a significant innovation.

Indigenous Qualities: A style or material that is particularly associated with the Boulder area.

Other, if applicable.

Environmental Significance

The place should enhance the variety, interest, and sense of identity of the community by the protection of the unique natural and man-made environment.

Site Characteristics: It should be of high quality in terms of planned or natural vegetation.

Compatibility with Site: Consideration will be given to scale, massing placement, or other qualities of design with respect to its site.

Geographic Importance: Due to its unique location or singular physical characteristics, it represents an established and familiar visual feature of the community.

Environmental Appropriateness: The surroundings are complementary and/or it is situated in a manner particularly suited to its function.

Area Integrity: Places which provide historical, architectural, or environmental importance and continuity of an existing condition, although taken singularly or out of context might not qualify under other criteria.



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: March 3, 2015

AGENDA TITLE

Council decision and direction on items related to the University Hill Commercial District Moratorium Project, including:

1. Second reading and consideration of a motion to adopt Emergency Ordinance No. 8030 amending Title 9, "Land Use Code," B.R.C. 1981, to limit residential uses within the University Hill General Improvement District in the BMS (Business Main Street) zoning district and correct BMS zone standards, and setting forth related details.
2. Direction to staff about strategies to consider further as part of the on-going Hill Reinvestment Strategy and the Community Planning and Sustainability Work Plan.

PRESENTER/S

Jane S. Brautigam, City Manager

Tom Carr, City Attorney

David Driskell, Executive Director, Community Planning & Sustainability (CP&S)

Susan Richstone, Deputy Director, CP&S

Molly Winter, Director, Downtown and Hill Management Division/ Parking Services

Sarah Wiebenson, Hill Community Development Coordinator

Karl Guiler, Senior Planner/Code Amendment Specialist

Ted Harberg, Planning Intern

Hella Pannewig, Assistant City Attorney

Ruth McHeyser, University Hill Moratorium Project Manager

EXECUTIVE SUMMARY

The purpose of this agenda item is to review the final materials related to the University Hill Commercial District Moratorium Project and provide direction on:

- 1) A proposed ordinance to limit new residential uses in the University Hill commercial district in the BMS zoning district and correct BMS zone standards; and
- 2) Which recommended strategies to move forward on as part of the on-going Uni Hill Reinvestment Strategy and the Community Planning and Sustainability Work Plan outlined below.

The proposed ordinance and strategies were developed to address the concern that the current economic environment strongly favors student rental housing in the Hill commercial district, making it difficult for other more diverse uses to compete in the

market place—uses that are essential to implement the long-term vision for the Hill. The vision, defined in the Boulder Valley Comprehensive Plan (BVCP), is that the Hill be “an activity center that serves a variety of commercial, entertainment, educational and civic functions,” and “also serves as a neighborhood center for the surrounding area [and] draws people from the entire city as well as the region.”

In August 2014, Council passed a temporary moratorium on new residential uses in the Business Main Street (BMS) zoning district on the Hill to allow time to analyze and study the issue and present options to address community concerns. The moratorium expires on March 18, 2015.

Among the **project findings** are that:

- There is already an over-concentration of housing in this small commercial district, and under current market trends, student rental housing will be the predominate use favored in new development or redevelopment projects.
- Adding more housing units will limit opportunities for non-residential uses that would attract more diverse users; and
- There are very few offices on the Hill, yet office uses could potentially play a crucial role in adding a year-round diversity of ages and professions, and benefit from the proximity to both CU and downtown.
- Among the current barriers to attracting office and other diverse uses are: the current market that favors student rental housing over other uses; insufficient public parking; lack of anchor uses; and lack of office “comps” for financing.

Staff analyzed potential strategies to address these and other project findings (see **Attachment B**). In addition to the ordinance in **Attachment A**, staff recommends moving forward on strategies that would encourage the addition of diverse users to the Hill. In the near term, these could include:

1. Having the city work with the university and private sector partners, including Hill property owners, to attract an anchor use on the Hill that could change current market dynamics and entice non-residential uses that would add diverse users to the Hill.
2. As part of the Uni Hill Reinvestment Strategy Work Plan and the city’s Access Management and Parking Strategy (AMPS), moving forward on several fronts to improve multimodal access and address concerns about lack of public parking on the Hill, including continuing to explore public/ private partnerships to redevelop existing surface parking lots with desired uses and add more parking in the district.
3. Developing a public education and outreach process to explore local and/ or National Register historic district designation for the commercial district to celebrate the area’s history and sense of place and provide financial incentives for rehabilitation. Exploration of a façade improvement program would be done in conjunction with this process.
4. Preparing options for Council consideration at a later date with analysis of tax policies and/or other public investment strategies that would encourage and facilitate implementation of the Hill vision. This could include facilitating recommendations regarding anchor uses, public/private partnerships; and other future strategies associated with the Hill Reinvestment Strategy.

More detail on these and additional recommended long-term strategies are described in the Analysis Section C at the end of this memo. If directed to move forward with these strategies, staff will provide an update and more information on the approaches to implementing them at the May 26, 2015, council study session on the Hill Reinvestment Strategy Work Plan.

STAFF RECOMMENDATION

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motions:

1. Motion to adopt Emergency Ordinance No. 8030 amending Title 9, "Land Use Code," B.R.C. 1981, to limit residential uses within the University Hill General Improvement District in the BMS zoning district and correct BMS zone standards, and setting forth related details.
2. Motion to direct staff to move forward on the following strategies as part of the Hill Reinvestment Strategy and the CP&S Work Plan:
 - a. Have the city take a lead role in working with the university and property owners to attract one or more 'anchor' uses to the Hill Commercial District with the potential in turn to attract a greater diversity of uses and customers to the area.
 - b. Address concerns about lack of public parking and improve multimodal access on the Hill by moving forward on several items as described in Analysis Section C, including continuing to explore public/ private partnerships to redevelop existing surface parking lots with desired uses and add more parking in the district.
 - c. Develop a public education and outreach process to explore local and/ or National Register Historic District designation for the commercial district to highlight the area's history and allow property owners to receive rehabilitation tax credits. In conjunction with this, explore creation of a façade improvement program.
 - d. Prepare options for later council direction regarding tax policies and other public investment strategies that encourage and facilitate implementation of the Hill vision.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic - The intent of the proposed ordinance is to refine the zoning in the area to support the long term diversity of land uses on the Hill that promote a diverse and sustainable economy
- Environmental – The zoning change may slightly increase the city's overall jobs:housing imbalance over-time; however, the Hill is one of the most transit-rich locations in the region and staff is also recommending moving forward on several fronts to improve multimodal access here.
- Social – The proposed ordinance is intended to promote a diverse mix of uses on the Hill and would support a more diverse demographic mix of community members spending time on the Hill. Encouraging permanently affordable and senior housing units is consistent with city policies to add more of these types of housing in the community, and would contribute to diversifying the residential mix of the Uni Hill commercial district.

OTHER IMPACTS

- Fiscal – the proposed ordinance change is an anticipated part of the CP&S work plan, as it relates to updating and maintaining the land use regulations. Additional resources will be needed for the exploration and implementation of the some of the proposed strategies as outlined in Analysis Section B. If Council directs staff to move forward on the recommended strategies, specific cost estimates will be developed and discussed with Council in more detail at the May 26 Study Session on

the Hill Reinvestment Strategy Work Plan. Specific to local and/ or National Register historic district designation, staff anticipates that it would cost \$20,000 to hire a consultant to resurvey the properties and prepare the nomination.

- Staff time – Implementing the BMS zoning code changes is part of the CP&S on-going work plan. The proposed strategies (historic district designation, and exploration of anchor uses, public/private partnerships and tax policies or other public investments) would be integrated into the work plans of the appropriate city staff, both CP&S and DUHMD/PS.

BOARD AND COMMISSION FEEDBACK

Landmarks Board

On February 4, the Landmarks Board discussed the staff recommendations to explore local and/ or National Register Historic District designation of the Hill. The board generally supported the recommendation and agreed that public education and outreach would be an important part of the process. Several board members said that it would be appropriate to start with National Register designation and then later consider local designation if there was sufficient property owner support.

Planning Board

On February 5, 2015, Planning Board discussed the proposed ordinance, held a public hearing, and unanimously approved the following motion:

Planning Board recommends to City Council the adoption of the proposed ordinance revising the BMS zone district standards for the Uni Hill commercial area to limit new residential uses, except for permanently affordable units or housing for persons 62 years or old (moved by J. Putnam, seconded by C. Gray, approved 7-0).

The Board expressed appreciation for correcting the BMS errors related to first floor retail and Site Review threshold. The Board had previously described these as issues that needed to be resolved.

The Board also generally **supported the recommended strategies** and provided the following comments:

- Support local and National Register Historic District designation (all board members agreed).
- Questioned whether local designation is required to take advantage of State income tax credits, or whether being on the National Register makes property owners eligible for both National and State income tax credits (Staff clarified that properties on the National Register are automatically listed on the State Register and would therefore be eligible for the State income tax credits).
- Suggest moving façade improvement program to a short term action in conjunction with historic district designation. May help address appearance standards. Current property maintenance standards in the city code are minimal.
- If/ when the strategy to consider office uses in the RH-5 zone is developed, need to tie it to improvements or historic designation and need to define what

area would be included- don't make it too broad. Staff clarified that this is not recommended in the near term. Would need significant outreach and analysis.

- Asked what type of anchor uses are feasible and whether the city knows what residents want. (Staff indicated that they are in the process of surveying the residents about this).
- Moving city offices to the Hill would be great investment and potential catalyst.
- CU Conference Center on Grandview and redevelopment of UHGID lot with a private partner would be an enormous catalyst, especially if with some amount of city office.
- What goes into the Harbeck House could also provide support for the Hill. Would the city consider it for non-profit office uses?
- Some ideas for anchor uses that would draw from larger city/ region: a movie theater, a place for non-alcohol activities- Swallow Hill in Denver is an example; that is, a place for concerts, music lessons and workshops.
- Support all the strategies, but it's important to think how all the pieces will fit together.
- Finding an appropriate anchor is key; for example, Conference Center at Grandview paired with redevelopment of UHGID lots, but more than just offices. The scale/ size will need to fit into historic district and design.
- Start thinking holistically with transportation systems, etc; the façade improvement program is a good opportunity; consider design competition using CU students;
- Start thinking how everything will fit together. Important to have art, but problem paying – could the city and CU chip in? Could there be a place for CU theatre space?
- Need creative partnerships.
- Like the “event street” idea with 2A funding – city of Golden has done something similar and may be a good example; they sponsor events (eg, clean-ups) that create community.

UHCAMC

On February 11, 2015, the University Hill Commercial Area Management Commission (UHCAMC) held a public hearing and discussed moratorium project. Although the commission supported the proposed strategies and general direction of the staff recommendations, they felt that the zoning change should restrict all new housing on the Hill.

The Commission approved the following motions:

Given the current saturation of residential uses in the commercial area, and consistent with the goals and vision to add diverse uses on the Hill, UHCAMC recommends use Strategy A-1 [prohibiting any new residential uses in the BMS zoning district on the Hill]. Moved by D. Soifer, seconded by J. Raj, approved 4-0 (H. Griffith absent)

UHCAMC supports the other staff-recommended near-term and long-term strategies related to the Commercial district. Moved by C. Liguri, seconded by A. Rubino, approved 4-0 (H. Griffith absent).

PUBLIC FEEDBACK

[The Phase Two Public Input Report](#) contains a compilation of all public comments received on the Hill Moratorium project, and a chart summarizing the outreach efforts in each of the project phases. The report includes about 50 public comment forms that were submitted during an Open House and during drop-in “staff open hours” on the Hill November 19th and 20th and from a survey that was posted on the moratorium project website. The comments were in response to questions about the preliminary findings and potential strategies to address the findings that were presented at the Open House/ Open Hours and available on-line.

BACKGROUND

Background on the Moratorium Project can be found in the February 17, 2015, 1st reading memo on Ordinance No. 8020 and at the [project website](#).

ANALYSIS

A. Responses to First Reading Questions

On February 17, 2015, City Council introduced the 1st reading ordinance as an emergency measure. Following are Council questions posed on HOTLINE and staff responses:

1. **Q:** The EPS economic analysis shows that *under current conditions including land and rent prices*, commercial redevelopment of the Hill is uneconomic. While UHGID provided parking would improve the feasibility somewhat, commercial redevelopment still is a losing proposition under current conditions, and so we cannot expect it to occur until conditions change.

This does not mean that commercial development will continue to be uneconomic in the future, correct?

A: *Correct. The purpose of the four strategies recommended in addition to the BMS zoning change is to counteract (or break down) the current “barriers” to office development under current conditions (see Finding # 4 in Attachment B). If the city is successful in implementing these strategies, it should change the economic conditions such that office development will be more economically feasible. In a recent email in response to this question, EPS stated that “an all of the above [staff-recommended strategies] approach is needed to improve the demand for market for office uses, but parking is a major component of that.” It should also be noted that there might be properties on the Hill for which office development is economically feasible today. EPS did not test all scenarios, but rather what they determined to be “typical” conditions, and they noted that conditions vary significantly on the Hill.*

2. **Q:** Certain tax credits or other incentives would be available to property owners if the Hill were designated as a Historic District. But such incentives were not mentioned in conjunction with EPS economic analysis. Would such tax credits and other incentives make commercial development financially feasible in the near term?

A: *Possibly. Although the preservation tax credits are significant (up to 50% of rehab costs, with Federal and State tax credits combined), it is difficult to say for certain, since each property and ownership situation is different. The EPS Jan 16, 2015 report states that, “the use of the income tax credits for rehabbing properties could be a tool used to reduce development feasibility gaps... [but are] difficult to include with a feasibility model because of the link to an individual state income tax return. However, EPS estimates that the use of the Federal tax credits for costs associated with the renovation of the existing building within the Building and Parcel Addition office scenario would reduce total project costs by 7.5 to 8.0 percent....” (page 21). As an example of how this might work, the scenario to which this quote refers is summarized in Table 6 on page 15 of the EPS Jan 16 report. It shows the difference between the development value and cost of the addition and renovation as -9%. Assuming EPS’ estimate of reducing total costs by 7.5 – 8% using Federal tax credits, it is possible that if a property owner were also able to use up to 30% in State tax credits, it might make enough of a difference to make that scenario feasible. It should be noted that starting this year, State income tax credits can be sold or transferred, which make them more valuable than they have ever been.*

3. **Q:** Whatever comes next on the hill seems to hinge critically on getting the parking element right. I understand that this is being worked on as part of the Access Management and Parking Strategy (AMPS). But, to make a decision on this ordinance, I would like to know:
- a. What is the current number of public parking spaces (University Hill General Improvement District (UHGID) lots + on-street and University lot)? *There are a total of 307 public parking spaces on the Hill (122 in the two UHGID lots, 33 in the CU owned lot, and 152 on-street metered spaces.*
 - b. What is estimated number to meet the current (or perceived) need given the current use pattern? *See range, depending on use mix, described below.*
 - c. How many underground spaces would be needed in addition to the current (or perceived) need if any of the housing and/or commercial strategies were to go forward? *The current thinking is that all spaces in the current UHGID lots will be placed into structured parking (including a portion underground) as part of a public/ private sector redevelopment partnership as described in more detail below.*
 - d. Are estimates of projected parking needs taking into consideration how the companies that might move to the hill would use their office space (i.e. the 250 sq ft/person standard is falling rapidly)? *See second paragraph description below.*
 - e. Is it physically, economically and socially feasible to provide all of the necessary parking spaces? *Once the potential future uses are determined,*

a more fine-grained access analysis will be conducted for the hill commercial district. This analysis will explore multi-modal solutions – transit, biking, pedestrian and automobile access. This approach is in line with the guiding principles of the AMPS project underway which focus on access by all modes, customization of tools by area, supporting a diversity of people and cultivating partnerships. The end result will be a total package of solutions including all modes and a clearer understanding of the capacity of the area to physically absorb additional parking. Economically, the first approach will be cost-effective access solutions with the greatest impact, such as a hill employee Ecopass program. An Ecopass feasibility survey of the 92 Hill employers was completed in February 2015 that determined the 351 full-time non-student employees on the Hill was sufficient to pursue a master contract with RTD if desired. Also understanding the financial capacity of UHGID to provide additional parking will be analyzed. Socially, the goal would be to ensure access to a wider diversity of uses and users than currently exist to ensure the district's long term economic, social and economic sustainability.

A: *Staff is recommending that a public/private partnership that would result in the addition of public parking and appropriate above-ground uses be explored further in the next phase. The EPS analysis revealed that having sufficient parking is important if we want to attract office and non-student retail uses that are a critical component to adding diverse users to the Hill. As a next step, staff proposes a parking utilization study and updates to previous studies about future demand as described below.*

As a parking district the University Hill General Improvement District (UHGID) regularly anticipates the future district development to ensure it is prepared to address access demand in the coming decades. UHGID needs to project potential district uses (retail, office, residential, etc.) because each use has a different access/parking demand. In early 2013, DUHMD/PS hired RRC associates to estimate future development patterns based on the build out potential within the district by the year 2025. Since we could not be certain of these future development patterns, RRC created different scenarios – one in which there was a higher level of commercial use (Scenario A) and the other more residential uses (Scenario B). Based on those projections, Fox Tuttle developed future access demand including the number of parking spaces that would be needed based on current assumptions. These assumptions include: a 20% share of modes other than single occupant vehicles reducing parking demand; residential demand at 1.5 spaces per dwelling unit and 2 spaces per 1,000 square feet. Under current zoning, any residential development would be required to provide onsite parking; this demand is the not responsibility of UHGID.

Given these assumptions used in 2013 under the existing zoning, the scenario with the higher commercial focus, Scenario A, would have a new commercial parking demand, including a reduction of access demand through other modes of transportation, of 416 spaces; the scenario with the higher residential focus, Scenario B, would be 338 spaces. Scenario A with the higher commercial use does includes 168 dwelling units representing 150,000 square feet. Should the new zoning take effect on the Hill limiting future residential uses, the UHGID access demand projections would be higher and need to be re-calibrated to represent greater commercial use.

The options for addressing this access demand include increasing multi-modal options to reduce parking demand, redeveloping the two UHGID parking lots adding underground parking, and seeking partnerships with private and public entities, including CU's parking lot at Broadway and Pennsylvania, for additional managed parking. A feasibility study is currently being conducted to understand the potential for an employee Eco Pass program, similar to the one in downtown; the results will be available at the beginning of March 2015.

4. **Q:** I would like to better understand the facade improvement program.
- a. Could it go forward before a National Historic District designation
 - b. If yes, how quickly could we move forward?
 - c. Would it apply only to contributing buildings?
 - d. If it would apply to non-contributing buildings, what set of criteria would apply?
 - e. The memo mentioned low-interest loans and rebates, who would facilitate/provide these?

A: *If council direction is to work on this strategy further, staff will provide answers to these and other questions as part of the May 26, 2015 Study Session on the Hill Reinvestment Strategy. In the coming months, staff will look at what other communities around the country with these types of programs have done and what has worked and hasn't worked well for them.*

5. **Q:** The memo reads as though the senior housing would not fall under the affordable housing category. Is this correct?

A: *Yes, that is correct.*

6. **Q:** What is the thinking on moving forward with the Harbeck House?

A: *The Harbeck House is located at 1206 Euclid, outside of the Uni Hill commercial district and therefore was not considered as part of the moratorium project. The suggestion from Planning Board to consider non-profit uses there was passed along to the Parks and Recreation Department staff, who provided background information about the restrictions and potential options for the property in Attachment C. In short, because the property was purchased with permanent parks funds, any proceeds from the disposition of the property must be returned to the same fund and expenditures can only be made upon the favorable recommendation of the PRAB for appropriation by City Council. Options regarding future use or disposition of the property will be discussed with PRAB during the March meeting of the Board.*

7. **Q:** Is there any work being done on the Arts District ideas as part of the Community Cultural Plan? If yes, what? Could we expedite ideas?

A: *The staff recommendation to is consider an innovation district as a longer term strategy once the four strategies listed in the staff recommendation are underway. However, staff has already begun discussions with the university on the important role that they could play in exploring the innovative district*

concept. It may be slightly different from an Arts District. Matt Chasansky, the city's Arts Coordinator is on the Hill staff planning team and is involved in the discussions surrounding the potential of an innovation/arts/creative district.

8. **Q:** The memo states: "The potential demand from area residents that are non-students is not sizeable enough to drive retail demand on the Hill." This statement raises the following question: Could we tap in to faculty and staff more aggressively with uses targeted at them?

A: *If successful, the four strategies recommended in addition to the BMS zoning change that are intended to counteract (or break down) the current "barriers" to attracting a diversity of uses will also provide the types of uses that would be attractive to faculty and staff.? At the request of the University Hill Commercial Area Management Commission, City staff collaborated with the University Hill Neighborhood Association to draft a retail preference study to identify the types of commercial uses that would encourage non-student residents on the Hill to frequent the Hill Commercial Area. The results of the survey will be distributed to Hill property owners and brokers as a reference in their tenant attraction efforts. The City also contracted in December 2014 with the consulting firm RRC Associates to establish baseline stakeholder perceptions of the Hill at the start of the Hill Reinvestment Strategy (HRS). The baseline measurements include satisfaction with the retail mix on the Hill and what, if any, improvements would encourage more frequent visits to the Hill Commercial Area. The same questions, among others, will be asked of the stakeholders periodically throughout the two-year duration of the HRS. The stakeholders will include representatives from CU.*

9. **Q:** On page 67 of the memo, Richard Florida's claims are driving policy. His claims have been credited with increasing inequality in the cities that have heeded to them. See <http://interventionseconomiques.revues.org/489> Would it be possible to cite more rigorous work to support his claims?

A: *The reference to Florida's description of Creative Class was meant to point out that quality of life plays an important role in where businesses choose to locate. This is relevant in this location because, although there is a perception that the Hill is not a good professional environment, there are in fact many positive aspects to being in a college-oriented area such as the Hill that could attract business to the area.*

10. **Q:** The memo makes reference to recommendations being contrary to Boulder Valley Comprehensive Plan (BVCP) Policy 1.19. Has staff considered a holistic view of commercial space in the city to balance this out?

A: *In past major updates to the BVCP, land use changes have been made to add housing in appropriate locations to address this issue in the type of holistic fashion you suggest. One such change just east of the CU campus, along the 28th Street frontage road, eventually resulted in the re-development of the area and added more than 500 housing units within walking distance of the campus, next to the underpass that connects to the university. This is 5 times the number of units that could theoretically be added to the Hill commercial district.*

As has been noted previously, because the subject area is a commercial district, the long term vision is an area that is primarily for commercial uses, with a small amount of housing included (especially given the small size of the district and the abundance of nearby housing). Because it is located in one of the most transit-rich locations in the region and is adjacent to a significant amount of housing, people who work here have a high potential to arrive by bus, bike, or foot.

B. Proposed Ordinance No. 8030

Staff recommends adoption of Ordinance No. 8030, as it:

- does not exacerbate the current over-concentration of student rental housing on the Hill;
- could remove an imbalance that discourages other more diverse land uses like offices to locate on the Hill; and
- continues to allow for permanently affordable or senior housing units, which address an identified housing need in Boulder.

Under the provisions of the ordinance, all attached dwelling units and efficiency living units within the Hill's BMS zone are 'conditional uses' requiring staff level review. Like other conditional use reviews, specific standards are proposed that would require new units to be permanently affordable or senior housing units. No additional market-rate housing would be permitted, thus—over time—shifting the current market dynamic that is driven by the economics of market rate student rentals. The new criteria are added to Chapter 9-6, "Use Standards," B.R.C. 1981.

Pursuant to Section 9-10, B.R.C., 1981, all existing residential units would be considered legal, non-conforming uses that would be allowed to remain in place, unless they were vacant for more than a year. They would also be allowed to expand a maximum of 10% of existing floor area.

The ordinance also corrects two errors uncovered during staff's analysis of the BMS zoning district standards, allowing for buildings over 15,000 square feet to be considered through the Site Review process and changing the residential use standards for areas outside the Uni Hill area back to being allowed only above or below the first floor, unless approved through Use Review. Further, because detached dwelling units, duplexes and townhomes are by definition, ground floor residential uses and are contrary to housing seen in "main street" contexts, staff is proposing to prohibit these uses in the BMS zone as part of this ordinance.

Finally, the ordinance corrects inconsistencies between the Inclusionary Housing definition for "permanently affordable unit" and the inclusionary housing regulations in Chapter 9-13. The proposed ordinance, therefore, includes revisions to the definition for "permanently affordable unit" to clean up these inconsistencies. Currently, some income limits described in Chapter 9-13 are more restrictive than described in the current definition for permanently affordable unit. To fix that, the reference to specific income limits is proposed to be deleted and replaced with a reference to the limits specified in Chapter 9-13. In addition, a few years ago state law was amended to clarify that rental restrictions pursuant to "voluntary agreements" are excluded from Colorado's prohibition of rent control. The language in 9-13 has already been revised to allow voluntary agreements as an option to meet inclusionary housing requirements, the proposed ordinance would add that option in the definition for permanently affordable units consistent with the inclusionary housing regulations.

The ordinance is being considered as an emergency measure in order to put the new regulations into effect prior to the expiration of the moratorium on March 18, 2015. Non-emergency ordinances do not go into full effect until 30 days after council adoption. Emergency ordinances go into effect upon a vote of council and can only be approved if two-third of the council vote for adoption.

It should also be noted that another ordinance on the March 3 agenda (i.e., Ordinance No. 8028 to limit height modifications) includes a proposal to amend the same land use code section 9-2-14(c), B.R.C. 1981 as this Ordinance No. 8030 relative to Site Review modifications. Passage of one ordinance before the other will slightly affect the final wording. Staff will update the ordinances accordingly to make sure that the adopted language will work for both amendments.

C. Recommended Strategies

In order to address the project findings described in the 1st reading memo and included in **Attachment B**, in addition to the BMS zoning changes, staff is seeking Council's direction on whether to move forward on the recommended strategies below. If so directed, these items would be incorporated into the Hill Revitalization Strategy and Community Planning and Sustainability Work Plans, and staff would return to Council at the May 26, 2015, study session on the Hill Reinvestment Strategy with more information.

Near Term Actions

1. **Have the city take a lead role in working with the university and property owners in attracting one or more 'anchor' uses** to the Hill Commercial District with the potential in turn to attract a greater diversity of uses and customers to the area.
2. **Move forward on several fronts to improve multimodal access and address concerns about lack of public parking on the Hill** as part of the Uni Hill Reinvestment Strategy Work Plan and the city's Access Management and Parking Strategy (AMPS).
 - a. Study the utilization of existing public parking to determine whether there is an insufficient supply of parking to meet the needs of existing demand on the Hill, and the extent to which the two UHGID lots are under-utilized due to their locations and/or lack of visibility.
 - b. Continue to explore public/ private partnerships to redevelop existing surface parking lots with desired uses and add more parking in the district.
 - c. Continue efforts to shift Single Occupant Vehicle travel to other modes. An Eco Pass study for the commercial district is underway.
3. **Develop a public education and outreach process to explore local and/ or National Register Historic District designation** for the commercial district to highlight the area's history and allow property owners to receive Federal and State rehabilitation tax credits (for up to 50% of rehabilitation costs). In conjunction with this, explore creation of a façade improvement program.

4. **Prepare options and analysis for later Council consideration related to tax policies and public investment strategies to encourage and facilitate implementation of the Hill vision.** This could include a catalytic anchor use, office uses, public infrastructure and balanced multi-modal options including parking. The tax policies could include allocation of some portion of taxes (sales, construction use, or property) from Hill projects to cover a “gap” in project financing or to invest in Hill public infrastructure; adding a Public Improvement Fee to Hill sales tax revenues; creating other redevelopment or revitalization district concepts such as Downtown Development Authority, Community Development Corporation or business improvement district. Several of these concepts have already been used within the city. For example, tax increment financing for Crossroads Mall and the public parking garage portion of the St. Julien Hotel redevelopment, and the downtown Business Improvement District. Consideration of these policies would need to be integrated into the Hill Reinvestment Strategy priority to explore sustainable, long term governance and funding for the Hill. A pilot approach could be incorporated into some of the policies, or they could be time-limited.

Preliminary Suggested Approaches to Implementing Near Term Strategies

At the May 26 Study Session on the Hill Reinvestment Strategy Work Plan, staff will outline the suggested approaches for implementing the above recommended strategies. Preliminarily, staff has identified approaches as outlined below.

Strategies # 1-3:

For the first three strategies above, staff recommends a coordinated approach since the strategies are interrelated: anchor uses, public private partnerships and potential use of tax policies and other investment strategies. Staff is in discussion with CU about convening a professionally facilitated year-long Hill stakeholder task force to explore the feasibility and opportunities to diversify uses and engage partnerships with the longer term view of implementing these and other revitalization strategies on the Hill. Staff envisions the stakeholder group would include CU representatives, city staff, Hill businesses and property owners and representatives from the technology, creative, business and redevelopment/real estate sectors.

Resources required would include funding for the facilitator, the economic consultant and eventually a contract with the redevelopment and/or tenant recruitment professional. Staff will provide more information and detail about this concept at the May 26 Study Session on the Hill Reinvestment Strategy work program.

Strategy # 4:

Exploration of National Register and local historic district designation will include working with stakeholders, including property owners, business owners, neighbors and university students to share information about the area’s history, explain the difference between local and national designation, including the benefits and responsibilities of each. The intent at this time is to explore both levels of designation through input with

stakeholders while simultaneously confirming the area's National Register eligibility through the Colorado Office of Archaeology and Historic Preservation.

Staff has established an internal working group consisting of staff from historic preservation and the Hill Reinvestment Strategy team to coordinate and design a process for exploring historic district designation and other possible related incentives such as a façade improvement program. Staff considers that the logical path would be to proceed with exploration of National Register of Historic Places district designation and, if appropriate, discussion of local historic district designation in the University Hill commercial area. This would include, at a minimum, the steps outlined below. Staff estimates that this exploration process would take approximately a year to complete.

National Register Historic District Designation

National Register Historic District nominations are submitted to the State Office of Archeology and Historic Preservation (OAHP) for review by the State Review Committee and ultimately approved or denied by the Keeper of the National Register of Historic Places in Washington, DC. An important first step is to get an official determination of eligibility from the OAHP. If the proposed district is found to be eligible, staff would organize at least one neighborhood meeting to discuss the benefits and responsibilities of designation, including state and federal tax credits, explain the difference between local and national listing, and answer questions. If there is support from property owners to pursue National Register designation, the city would hire a consultant to resurvey the area and prepare the nomination. During this process, staff would organize public meetings to share information about the history and answer questions. The city would submit the nomination to OAHP at the end of 2015. OAHP sends notification to all owners and certified local officials and includes instructions to express support or objection to the nomination. A majority of owners must object for the nomination to not go forward.

Depending on when a National Register nomination was submitted the OAHP staff, the consultants and interested property owners would attend one of the twice yearly State Review Board meetings. If exploration of a district was to commence in March 2015, we anticipate that a nomination could be submitted for review by the State Review Board in June of 2016. Properties recommended for listing by the Review Board are forwarded to the Keeper of the National Register for its consideration. If the district is listed in the National Register, the OAHP sends notification of the designation including a letter, official listing, certificate, plaque information and press release information. A community event would be organized to celebrate the new designation and the district would be recognized during Historic Preservation Month.

Local Historic District Designation

Section 9-11-3 B.R.C., 1981 describes the detailed process for local historic district designation. An application must be submitted by the city, a recognized historic preservation organization, or more than 25% of the affected property

owners. Following verification of a local district application, staff would organize a preliminary meeting with the property owners to share information about the benefits and responsibilities of designation and answer questions. Subsequently, the Landmarks Board would hold an initiation hearing (within 45 days of the application date). If the Landmarks Board finds that the application meets the designation criteria in Section 9-11-3(d), the board would vote to proceed with the application by adopting a resolution and staff would organize neighborhood meetings to meet with property owners to further explain the implications of local district designation. Such discussions would include whether design guidelines are appropriate to address unique or special conditions in the proposed district. If so, they would be developed with input from stakeholders and be reviewed by the Landmarks Board and City Council as part of the designation process. At least 28 days prior to the designation hearing, a questionnaire and the proposed design guidelines would be mailed to property owners. The questionnaire would be anonymous and allow a property owner to indicate support, objection, or no opinion on the proposed district. Results of the questionnaire would be included in the public record, but would not necessarily dictate whether the district designation would be recommended. Based upon information presented at the Landmarks Board hearing, the board would determine whether the proposed district conforms with the applicable criteria and forward the application to Planning Board and City Council with a recommendation to designate the area, or not. The Planning Board would provide input on the designation's potential land use implications. Within 100 days of the Landmarks Board hearing, the City Council would be required to hold a designation hearing to approve, approve with modification, or deny an ordinance designating the district. Final notification is mailed to property owners, including a copy of the design guidelines (if applicable). A community event would be organized to celebrate the new designation and the district would be recognized during Historic Preservation Month.

Longer Term Actions

1. Depending on the success of the above actions in attracting office uses, determine whether to consider revisions to portions of the RH-5 zoning district adjacent to the Hill commercial district to encourage office uses in existing residential structures. If so, design an appropriate public outreach and analysis process before moving forward.
2. Consider other strategies as part of the on-going Uni Hill Reinvestment Strategy, including:
 - o Creation of Innovation/ Creative/ Arts District.
 - o Creation of a Façade Improvement Program (if not implemented as part of the near-term actions).

ATTACHMENTS

Attachment A	Ordinance No. 8030
Attachment B	Moratorium Project Findings
Attachment C	Harbeck House background and next steps

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ORDINANCE NO. 8030

AN EMERGENCY MEASURE ORDINANCE AMENDING TITLE 9, "LAND USE CODE," B.R.C. 1981, TO LIMIT RESIDENTIAL USES WITHIN THE UNIVERSITY HILL GENERAL IMPROVEMENT DISTRICT WITHIN THE BMS ZONING DISTRICT AND CORRECT BMS ZONE STANDARDS, AND SETTING FORTH RELATED DETAILS.

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

Section 1. Table 2-1 of Section 9-2-1, "Types of Review," B.R.C. 1981, shall be amended as follows:

9-2-1 Types of Reviews.

(a) Purpose: This section identifies the numerous types of administrative and development review processes and procedures. The review process for each of the major review types is summarized in Table 2-1 of this section.

(b) Summary Chart:

TABLE 2-1: REVIEW PROCESSES SUMMARY CHART

<i>I. ADMINISTRATIVE REVIEWS</i>	<i>II. ADMINISTRATIVE REVIEWS - CONDITIONAL USES</i>	<i>III. DEVELOPMENT REVIEW AND BOARD ACTION</i>
<ul style="list-style-type: none"> • Building permits • Change of address • Change of street name • Demolition, moving, and removal of buildings with no historic or architectural significance, per Section 9- 	<ul style="list-style-type: none"> • Accessory Units (Dwelling, Owners, Limited) • Antennas for Wireless Telecommunications Services • <u>Attached Dwelling</u> 	<ul style="list-style-type: none"> • Annexation/initial zoning • BOZA variances • Concept plans • Demolition, moving, and removal of buildings with potential historic or

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<p>11-23, "Review of Permits for Demolition, On-Site Relocation, and Off-Site Relocation of Buildings Not Designated," B.R.C. 1981</p> <ul style="list-style-type: none"> • Easement vacation • Extension of development approval/staff level • Landmark alteration certificates (staff review per Section 9-11-14, "Staff Review of Application for Landmark Alteration Certificate," B.R.C. 1981) • Landscape standards variance • Minor modification • Nonconforming use (extension, change of use (inc. parking)) • Parking deferral per Subsection 9-9-6(e), B.R.C. 1981 • Parking reductions and modifications for bicycle parking per Paragraph 9-9-6(g)(6), B.R.C. 1981 • Parking stall variances • Public utility • Rescission of development approval • Revocable permit • Right of way lease • Setback variance • Site access variance • Solar exception • Zoning verification 	<p><u>Units and Efficiency Living Units in the University Hill General Improvement District</u></p> <ul style="list-style-type: none"> • Bed and Breakfasts • Cooperative Housing Units • Daycare Centers Detached Dwelling Units with Two Kitchens • Drive-Thru Uses • Group Home Facilities • Home Occupations • Manufacturing Uses with Off-Site Impacts • Neighborhood Service Centers • Offices, Computer Design and Development, Data Processing, Telecommunications, Medical or Dental Clinics and Offices, or Addiction Recovery Facilities in the Service Commercial Zoning Districts • Recycling Facilities • Religious Assemblies • Residential Care, Custodial Care, and Congregate Care Facilities • Residential Development in Industrial Zoning Districts • Restaurants, 	<p>architectural significance, per Section 9-11-23, "Review of Permits for Demolition, On-Site Relocation, and Off-Site Relocation of Buildings Not Designated," B.R.C. 1981</p> <ul style="list-style-type: none"> • Landmark alteration certificates other than those that may be approved by staff per Section 9-11-14, "Staff Review of Application for Landmark Alteration Certificate," B.R.C. 1981 • Lot line adjustments • Lot line elimination • Minor Subdivisions • Out of city utility permit • Rezoning • Site review • Subdivisions • Use review • Vacations of street, alley, or access easement
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	<p>Brewpubs, and Taverns</p> <ul style="list-style-type: none"> • Sales or Rental of Vehicles on Lots Located 500 Feet or Less from a Residential Zoning District • Service Stations • Shelters (Day, Emergency, Overnight, temporary) • Temporary Sales • Transitional Housing 	
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Section 2. Section 9-2-14, B.R.C. 1981, is amended to read:

9-2-14 Site Review.

...

(c) Modifications to Development Standards: The following development standards of B.R.C. 1981 may be modified under the site review process set forth in this section:

- (1) 9-7-1, "Schedule of Form and Bulk Standards," and standards referred to in that section except for the floor area requirements that the standards referred to as "FAR Requirements" may not be modified under this paragraph and are subject to Section 9-8-2, B.R.C. 1981.

...

Section 3. Section 9-6-1, B.R.C. 1981, is amended to read:

9-6-1 Schedule of Permitted Land Uses.

The schedule shows the uses which are permitted, conditionally permitted, prohibited, or which may be permitted through use review pursuant to Section 9-2-15, "Use Review," B.R.C. 1981.

(a) Explanation of Table Abbreviations: The abbreviations used in Table 6-1 of this section have the following meanings:

- 1 (1) Allowed Uses: An "A" in a cell indicates that the use type is permitted by right in the
 2 respective zoning district. Permitted uses are subject to all other applicable regulations
 of this title.
- 3 (2) Conditional Uses: A "C" in a cell indicates that the use type will be reviewed in
 4 accordance with the procedures established in Section 9-2-2, "Administrative Review
 5 Procedures," B.R.C. 1981. Conditional use applications shall also meet the additional
 standards set forth in Sections 9-6-2 through 9-6-9, B.R.C. 1981, for "Specific Use
 Standards," or other sections of this title.
- 6 (3) Use Review Uses: A "U" in a cell indicates that the use type will be reviewed in
 7 accordance with the procedures established in Section 9-2-15, "Use Review," B.R.C.
 1981. Use review applications shall also meet the additional standards set forth in
 Sections 9-6-2 through 9-6-9, B.R.C. 1981, for "Specific Use Standards."
- 8 (4) Ground Floor Restricted Uses: A "G" in a cell indicates that the use type is permitted by
 9 right in the respective zoning district, so long as it is not located on the ground floor
facing a street, with the exception of minimum necessary ground level access, it is
 10 located above or below the ground floor, otherwise by use review only.
- 11 (5) Residential Restricted Uses - M: An "M" in a cell indicates the use is permitted,
 12 provided at least fifty percent of the floor area is for residential use and the
 nonresidential use is less than seven thousand square feet per building, otherwise by use
 review only.
- 13 (6) Residential Restricted Uses - N: An "N" in a cell indicates the use is permitted,
 14 provided at least fifty percent of the floor area is for nonresidential use, otherwise by
 use review only.
- 15 (7) Prohibited Uses: An asterisk symbol ("*") in a cell indicates that the use type is
 prohibited in the zoning district.
- 16 (8) Additional Regulations: There may be additional regulations that are applicable to a
 17 specific use type. The existence of these specific use regulations is noted through a
 reference in the last column of the use table entitled "Specific Use." References refer to
 18 subsections of Sections 9-6-2 through 9-6-9, B.R.C. 1981, for "Specific Use Standards,"
 or other sections of this title. Such standards apply to all districts unless otherwise
 19 specified.
- 20 (9) n/a: Not applicable; more specific use applications apply.
- 21 (b) Interpretation: The city manager may decide questions of interpretation as to which category
 22 uses not specifically listed are properly assigned to, based on precedents, similar situations,
 and relative impacts. Upon written application, the BOZA may determine whether a specific
 use not listed in Table 6-1 of this section is included in a specific use category. Any use not
 23 specifically listed in Table 6-1 of this section is not allowed unless it is determined to be
 included in a use category as provided by this section.
- 24 (c) Multiple Uses of Land Permitted: Permitted uses, conditional uses, and uses permitted by
 use review may be located in the same building or upon the same lot.
- 25 (d) Use Table:

TABLE 6-1: USE TABLE

Zoning District	RR-1, RR-2, RE, RL-1	RL-2, RM-2	RM-1, RM-3	RMX-1	RMX-2	RH-1, RH-2, RH-4, RH-5	RH-3, RH-7	RH-6	MH	MU-3	MU-1	MU-2	MU-4	BT-1, BT-2	BMS	BC-1, BC-2	BCS	BR-1, BR-2	DT-4	DT-5	DT-1, DT-2, DT-3	IS-1, IS-2	IG	IM	IMS	P	A		
Use Modules	R1	R2	R3	R4	R5	R6	R7	R8	MH	M1	M2	M3	M4	B1	B2	B3	B4	B5	D1	D2	D3	I1	I2	I3	I4	P	A	Specific Use Standard	
Residential Uses																													
Detached dwelling units	A	A	A	A	C	A	A	*	*	A	U	U	A	A	<u>A*</u>	A	*	A	A	A	A	*	U	U	*	U	U		9-8-4
Detached dwelling unit with two kitchens	C	C	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	C	C	9-6-3(c)
Duplexes	*	A	A	A	C	A	A	*	*	A	A	A	A	A	<u>A*</u>	A	*	A	A	A	A	G	U	U	N	U	*	9-8-4	
Attached dwellings	*	A	A	A	C	A	A	C	*	A	A	A	A	A	<u>An/a</u>	A	*	A	A	A	A	G	U	U	N	U	*	9-8-4	
Mobile home parks	*	U	U	*	U	U	*	*	A	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	
Townhouses	*	A	A	A	C	A	A	A	*	A	A	A	A	A	<u>A*</u>	A	*	A	A	A	A	G	U	U	N	U	*	9-8-4	
Live-work	*	*	*	*	*	*	*	*	*	*	*	*	A	*	*	*	*	*	*	*	*	U	U	U	A	*	*		

1	Cooperative housing units	C	C	C	C	C	C	C	*	*	C	C	C	*	*	*	*	*	*	*	*	*	U	U	*	*	*	9-6-3(b)	
2																													
3	<u>Attached dwelling units outside of the University Hill general improvement district</u>	<u>n/a</u>	<u>G</u>	<u>n/a</u>																									
4																													
5																													
6	<u>Attached dwelling units and efficiency living units in the University Hill general improvement district</u>	<u>n/a</u>	<u>C</u>	<u>n/a</u>	<u>9-6-3(i)</u>																								
7																													
8																													
9																													
10	Efficiency living units <u>outside of the University Hill general improvement district</u> :																												
11	A. If <20% of total units	*	*	*	*	U	A	A	*	*	M	A	A	A	A	G	A	*	A	A	A	A	G	U	U	N	U	*	
12	B. If ≥20% of total units	*	*	*	*	*	U	A	*	*	U	A	A	U	U	U	U	*	U	U	U	U	U	U	U	U	U	*	
13																													
14	Accessory units:																												
15	A. Accessory dwelling unit	C	C	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	C	C	9-6-3(a)
16	B. Owner's accessory unit	C	*	*	C	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	9-6-3(a)
17																													
18	C. Limited	C	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	9-6-3(a)

1	<u>Fraternities, sororities, dormitories, and boarding houses in the University Hill general improvement district</u>	<u>n/a</u>																										
2		C	C	C	C	C	C	C	C	C	C	C	C	C	C	*	C	C	C	C	C	C	C	C	C	C	C	9-6-3(e)
3		C	C	C	C	C	C	C	C	*	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	*	9-6-3(h)
4																												
5	Home occupation	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	*	C	C	C	C	C	C	C	C	C	C	9-6-3(e)
6	Transitional housing	C	C	C	C	C	C	C	C	*	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	*	9-6-3(h)
7																												
8																												
9	...																											

- 9 ...
- 10 **A:** Allowed use.
- 11 **C:** Conditional use. See Section 9-2-2 for administrative review procedures.
- 12 **U:** Use review. See Section 9-2-15 for use review procedures.
- 13 **G:** Allowed use provided that it is not located on the ground floor facing a street above or below the ground floor, with the exception of minimum necessary ground level access, otherwise by use review only.
- 14 **M:** Allowed use provided at least 50% of the floor area is for residential use and the nonresidential use is less than 7,000 square feet per building, otherwise use review.
- 15 **N:** Allowed use provided at least 50% of the floor area is for nonresidential use, otherwise by use review.
- 16 **n/a:** Not applicable; more specific use applications apply.

Section 4. Section 9-6-3, B.R.C. 1981, is amended to add a new subsection (j):

9-6-3 Specific Use Standards - Residential Uses.

(d) Group Home Facilities: The following criteria apply to any group home facility:

(1) For purposes of density limits in section 9-8-1, "Schedule of Intensity Standards," B.R.C. 1981, and occupancy limits, eight occupants, not including staff, in any group home facility constitute one dwelling unit, but the city manager may increase the occupancy of a group home facility to ten occupants, not including staff, if:

(A) The floor area ratio for the facility complies with standards of the Colorado State Departments of Public Health and Environment and Social Services and chapter 10-2, "Property Maintenance Code," B.R.C. 1981; and

(B) Off-street parking is appropriate to the use and needs of the facility and the number of vehicles used by its occupants, regardless of whether it complies with other off-street parking requirements of this chapter.

(2) In order to prevent the potential creation of an institutional setting by concentration of group homes in a neighborhood, no group home facility may locate within three hundred feet of another group home facility, but the city manager may permit two such facilities to be located closer than three hundred feet apart if they are separated by a physical barrier, including, without limitation, an arterial collector, a commercial district, or a topographic feature that avoids the need for dispersal. The planning department will maintain a map showing the locations of all group home facilities in the City.

(3) No person shall make a group home facility available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. A determination that a person poses a direct threat to the health or safety of others or a risk of substantial physical damage to property must be based on a history of overt acts or current conduct of that individual and must not be based on general assumptions or fears about a class of disabled persons.

(4) Group home uses allowed in the BMS district shall not be located on the ground floor facing a street, with the exception of minimum necessary ground level access, otherwise by use review only.

1 (f) Residential Care, Custodial Care, and Congregate Care Facilities: The following criteria
2 apply to any residential care facility, custodial care facility, or congregate care facility:

3 (1) For purposes of density limits in section 9-7-1, "Schedule of Form and Bulk Standards,"
4 B.R.C. 1981, and occupancy limits, six occupants, including staff, in any custodial,
5 residential or congregate care facility constitute one dwelling unit, but the city manager
6 may increase the occupancy of a residential care facility to eight occupants, including
7 staff, if:

8 (A) The floor area ratio for the facility complies with standards of the Colorado State
9 Departments of Health and Social Services and chapter 10-2, "Property Maintenance
10 Code," B.R.C. 1981; and

11 (B) Off-street parking is appropriate to the use and needs of the facility and the number of
12 vehicles used by its occupants, regardless of whether it complies with other off-street
13 parking requirements of this chapter.

14 (2) In order to prevent the potential creation of an institutional setting by concentration of
15 custodial, residential or congregate care facilities in a neighborhood, no custodial,
16 residential or congregate care facility may locate within seven hundred fifty feet of
17 another custodial, residential or congregate care facility, but the approving agency may
18 permit two such facilities to be located closer than seven hundred fifty feet apart if they
19 are separated by a physical barrier, including, without limitation, an arterial collector, a
20 commercial district, or a topographic feature that avoids the need for dispersal. The
21 planning department will maintain a map showing the locations of all custodial,
22 residential or congregate care facilities in the City.

23 (3) Uses allowed in the BMS district shall not be located on the ground floor facing a street,
24 with the exception of minimum necessary ground level access~~must be located above or~~
25 ~~below the ground floor~~; otherwise by use review only.

26 ...
27
28 (j) Residential Development within the University Hill General Improvement District in the
29 BMS Zoning District: The following standards and criteria apply to any attached dwelling
30 units and efficiency living units within the University Hill General Improvement District in
31 the BMS zoning district:

32 (1) The units meet the requirements for permanently affordable units set forth in Chapter
33 9-13, "Inclusionary Housing," B.R.C. 1981, or

34 (2) All occupants of the units are 62 years of age or older and all requirements of the
35 federal Fair Housing Act, 42 U.S.C. §3601, et seq., as amended, and the Colorado

Housing Practices Act, §24-34-501, et seq., C.R.S., as amended, with respect to housing for older persons are complied with, and

(3) With the exception of minimum necessary ground level access, the use shall not be located on the ground floor facing a street, otherwise by use review only.

(4) Requirement for Efficiency Living Units: Where efficiency living units comprise twenty percent or more of the total number of units in the development, the use may only be approved pursuant to Section 9-2-15, "Use Review," B.R.C. 1981.

Section 5. Section 9-16-1, B.R.C. 1981, is amended to read:

9-16-1 General Definitions.

(a) The definitions contained in Chapter 1-2, "Definitions," B.R.C. 1981, apply to this title unless a term is defined differently in this chapter.

(b) Terms identified with the references shown below after the definition are limited to those specific sections or chapters of this title:

- (1) Airport influence zone (AIZ).
- (2) Floodplain regulations (Floodplain).
- (3) Historic preservation (Historic).
- (4) Inclusionary housing (Inclusionary Housing).
- (5) Residential growth management system (RGMS).
- (6) Solar access (Solar).
- (7) Wetlands Protection (Wetlands).
- (8) Signs (Signs).

(c) The following terms as used in this title have the following meanings unless the context clearly indicates otherwise:

...

Permanently affordable unit means a dwelling unit that is pledged to remain affordable forever to households earning no more than the income limits specified in this Chapter 9-13, "Inclusionary Housing," B.R.C. 1981~~HUD low income limit for the Boulder Primary Metropolitan Statistical Area, or, for a development with two or more permanently affordable units, the average cost of such units to be at such low income limit, with no single unit exceeding ten percentage points more than the HUD low income limit, and the unit:~~

- (1) ~~The unit is~~ owner occupied;
- (2) Is owned or managed by the Housing Authority of the City of Boulder or its agents; or

1 (3) Is a rental unit in which the city has an interest through the Housing Authority of the
2 City of Boulder or a similar agency that is consistent with § 38-12-301, C.R.S., or that
3 is otherwise legally bound by rent restrictions consistent with §38-12-301, C.R.S., or
4 successor statutes.

5 Permanently affordable units shall be attained and secured through contractual arrangements,
6 restrictive covenants, resale and rental restrictions, subject to reasonable exceptions, including,
7 without limitation, subordination of such arrangements, covenants and restrictions to a
8 mortgagee, for both owner-occupied and rental units. No unit shall be considered a permanently
9 affordable unit until the location, construction methods, floor plan, fixtures, finish and the
10 cabinetry of the dwelling unit have been approved by the city manager. (Inclusionary Housing)

11 . . .

12 **Section 6.** This ordinance replaces Ordinance No. 7990 which temporarily suspended
13 accepting building permit and site review applications that would result in adding residential
14 floor area to those areas zoned BMS that are located in the general area described as the
15 University Hill Business District until March 18, 2015 at 8:00 a.m.

16 **Section 7.** The immediate passage of this ordinance is necessary for the preservation of
17 the public peace, health, or property. The council declares this to be an emergency measure due
18 to the need to prevent inappropriate development and to adopt zoning regulations prior to the
19 expiration of Ordinance No. 7990 that ensure implementation of and development consistent
20 with the Boulder Valley Comprehensive Plan and other polices of the City. Therefore, this
21 ordinance is hereby declared to be an emergency measure, and as such shall be in full force and
22 effect upon its passage.

23 **Section 8.** This ordinance is necessary to protect the public health, safety, and welfare of
24 the residents of the city, and covers matters of local concern.
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Section 9. 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 17th day of February, 2015.

Mayor

Attest:

City Clerk

READ ON SECOND READING, PASSED, AND ADOPTED AS AN EMERGENCY MEASURE BY TWO-THIRDS COUNCIL MEMBERS PRESENT, AND ORDERED PUBLISHED BY TITLE ONLY this 3rd day of March, 2015.

Mayor

Attest:

City Clerk

The findings of the University Hill Commercial District Moratorium Project are that:

1. **The proximity of the University provides significant economic, intellectual and cultural benefits** and has influenced the Hill's unique, student-centric and bohemian character. While it is neither desired nor necessary to change the student-focus of the Hill, **diversifying the users and uses will make it more lively year-round and attractive to the community at large--** a more comfortable and attractive place to shop, work, visit and live.
2. **There is already an over-concentration of housing in this small commercial district and adding more units will limit opportunities for non-residential uses that would attract more diverse users to the Hill.** There are 103 dwelling units within the Hill Commercial District. This compares with approximately 130 units Downtown, yet the Hill is only 11.5 acres in size whereas the Downtown encompasses approximately 108 acres. While the presence of housing close to or within any commercial district adds vitality and built-in shoppers, the Hill commercial area has an abundance of high density residences on three sides already and residences account for a higher share of square footage than is traditionally expected in a commercial district. Furthermore, the recent economic analysis done by EPS concludes that the demand for residences located in the hill commercial area "is almost completely for student oriented housing." More student rentals clustered in this small area could create a party-like atmosphere that conflicts with the Hill vision as *an attractive place to shop, work, visit, and live*. Moreover, unlike commercial spaces that adapt easily to a variety of uses over time, once residential spaces are built, they are unlikely to convert to other uses, thus reducing options for diversifying uses and attracting other users to the Hill.
3. **There are very few offices on the Hill, yet office uses could potentially play a crucial role in adding a year-round diversity of ages and professions, and benefit from the proximity to the University.** There are only 10 office uses housed in only 3% of the total building square footage on the hill, and few more in the immediate neighborhood. Although the EPS report indicates a strong market for office uses in the core area of the city, few offices have located on the Hill in recent years, despite its proximity to CU and Downtown and its location in one of the most transit-rich locations in the region.
4. **Among the barriers to expanding the diversity of uses and users on the Hill are:**
 - a. **The current market favors student rental housing over all other uses allowed, making it difficult for other uses to compete.** Student housing outperforms other uses from a cash flow perspective, with current rates at more than \$1000/month per bedroom. Multi-bedroom units are the most attractive investments, because of the cost-savings of shared spaces such as kitchens and living rooms and because the zoning district requires one parking space per unit, irrespective of number of bedrooms.
 - b. **Insufficient public parking (or the perception of a lack of parking),** particularly for professional office uses and city-wide-serving retail uses;
 - c. **Lack of another attraction or anchor** that could change the current market perception of being just for students and change the market demand to attract a broader visitor mix;
 - d. **Lack of other office uses and office "comps" needed for financing,** making it

- difficult to attract other office uses; and
- e. **The built in student-centric market, which has resulted in a low retail vacancy rate and a somewhat run-down aesthetic in portions of the Hill,** because property upkeep is not essential to stay competitive and many properties have no debt, such that the buildings are sources of steady profit.

To: Ruth McHeyser, Planning Department

From: Jeff Dillon, Interim Director, Parks and Recreation
Yvette Bowden, Deputy Director, Parks and Recreation

Date: February 20, 2015

Subject: **Harbeck-Bergheim Property (1206 Euclid Avenue – Lots 1- 7, Block 13)**

The following is a summary of the information that was prepared in January 2014 for a proposed City Council Information Item on this topic. We will be discussing the future of the Harbeck-Bergheim House with the Parks and Recreation Advisory Board at the March 23, 2015 business meeting.

Purchase Intent and Property Description

- The Harbeck-Bergheim property was purchased in 1989 for \$82,500 using *Permanent Parks Funds*.
- The house was purchased to, "...provide a cultural center for encouragement of nature study and interpretation, conservation, gardening and related activities...: as well as "various recreation classes."
- A January 2005 appraisal valued the property at between \$3-3.2M. An updated appraisal was completed in 2013 valuing the house at \$2.6M. Approximately \$500,000 in maintenance and upkeep expenses for the property has been completed by the City of Boulder over the last several years.

Zoning and Landmark Designation

- In 1980, the Harbeck-Bergheim House was awarded a local landmark designation (Boulder Historic Places, State ID# 5BL620).
- The Harbeck-Bergheim property is zoned Residential – Low 1(RL-1), the current designation of the former Low Density Residential- Established (LR-E) zoning district. This zoning designation is primarily used for established detached residential development at low residential densities. As such, permitted uses in RL-1 zoning districts include:
 - Detached dwelling units;
 - Daycare, home;
 - Public elementary, junior, and senior high schools;
 - Public colleges and universities;
 - Religious assemblies;
 - Parks and recreation uses;
 - Crop production; and
 - Accessory buildings and uses.

Current Use

- In 1985, the Boulder Historical Society (the Society) entered into a five year \$0 annual lease with three extensions) agreement for the use of the site for the Boulder Museum (MOB). In December 2004, a lease renewal was approved.
- The lease required the Society to provide a classroom/meeting space to the department and also to provide some historically oriented recreation classes as a sub contractor to the department.
- The city has been contacted by local non-profit agencies regarding opportunities to lease the property when it is vacated by the Society.
- The current use of the Harbeck-Bergheim House as a museum is nonconforming. This status will expire if discontinued for a year without first receiving approval to extend the status (any extension required prior to the one year period).
 - Per Planning Department analysis, nonconforming uses are allowed to continue and may be substituted with other nonconforming uses subject to the provisions of 9-10-2 B.R.C. 1981(http://www.colocode.com/boulder2/chapter9-10.htm#section9_10_2). Changes or expansions to existing nonconforming uses may be possible through the Nonconforming Use Review process of 9-2-15 B.R.C. 1981(http://www.colocode.com/boulder2/chapter9-2.htm#section9_2_15).

Considerations and Next Steps

- Based on the City Charter (B.R.C. 161), any proceeds from the disposition of the property must be returned to the same fund and expenditures can only be made upon the favorable recommendation of the PRAB for appropriation by City Council.
- Per Permanent Parks Fund restrictions, potential sale of the Harbeck-Bergheim House (required at market value), could generate onetime revenue potentially used to partially fund capital project(s) consistent with the department's master plan such as, but not limited to:
 - implementation of Phase 2 of Valmont City Park,
 - development of undeveloped neighborhood parks,
 - making upgrades to aging park infrastructure at existing parks,
 - making improvements to existing athletic fields and implementing multiple ADA compliance upgrades throughout the city.
- Options regarding future use or disposition of the property will be discussed with PRAB during the March meeting of the Board.

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.

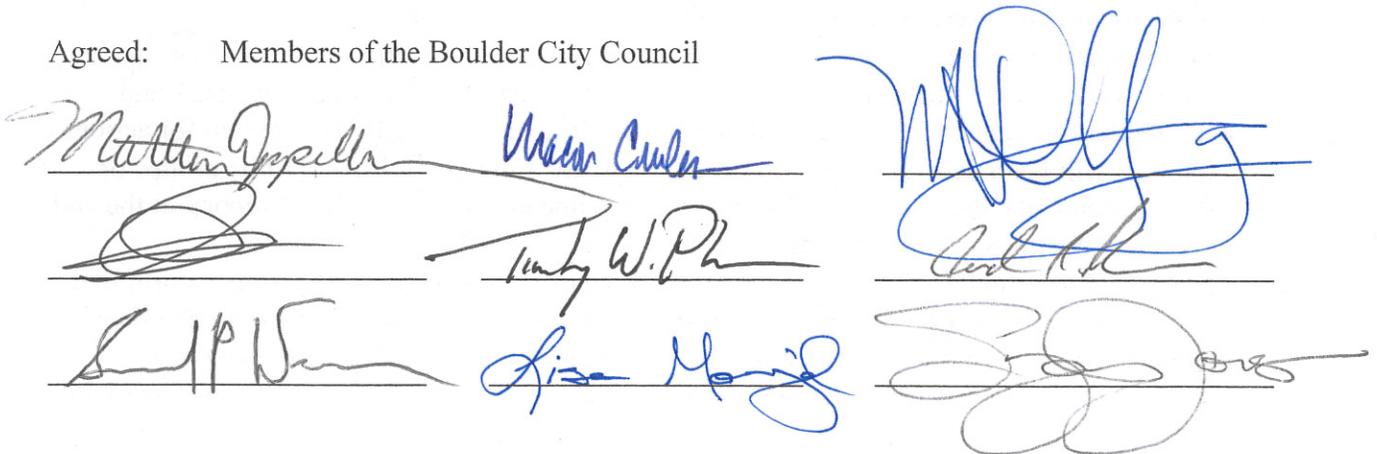
Council Committees:

- 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 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



The image shows nine handwritten signatures in blue ink, arranged in three rows and three columns. Each signature is written over a horizontal line. The signatures are: Row 1: Matthew Appella, Warren Cullen, [unclear]; Row 2: [unclear], Andy W. Ph..., [unclear]; Row 3: [unclear], Lisa M..., [unclear].

2014

2015

Project	Council or Staff?	2014				2015			
		1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
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 and 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									

HOUSING/LAND USE/PLANNING

		2014				2015				
Project	Council or Staff?	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
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 nneighborhood 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						

LIVABILITY

2014

2015

Project	Council or Staff?	2014				2015			
		1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
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							
	Staff Activities		SS - Hill Reinvestment Strategy	Update - Hill Reinvestment Strategy					
		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	Coordinate 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		

LIVABILITY

		2014				2015			
Project	Council or Staff?	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 Financial 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
Suzanne Jones	Mayor Pro Tem
Macon Cowles	Council Member
George Karakehian	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 Eichen	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	Executive Director of Energy Strategy and Electric Utility Development
Michael Calderazzo	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
Tracy Winfree	Acting 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
Mike Sweeney	Acting Transportation Director
Jeff Arthur	Utilities Director

2015 City Council Committee Assignments

INTERGOVERNMENTAL ORGANIZATIONS

Beyond the Fences Coalition	Morzel, Plass (Castillo – staff alternate)
Boulder County Consortium of Cities	Young, Morzel (alternate)
Colorado Municipal League (CML) – Policy Committee	Jones, Cowles (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 (1 st alternate), Castillo (2 nd 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	Jones

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	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/ 9 th and Canyon	Karakehian, Morzel, Young
Council Employees Salary Review	Cowles, Shoemaker
Council Retreat Committee	Jones, Morzel
Evaluation Committee	Morzel, Plass
Housing Strategy Process Sub-Committee	Morzel, Shoemaker, Young
Legislative Committee	Jones, Karakehian, Weaver
School Issues Committee	Morzel, Plass, Shoemaker

SISTER CITY REPRESENTATIVES

Jalapa, Nicaragua	Jones
Kisumu, Kenya	Morzel
Llaza, Tibet	Shoemaker
Dushanbe, Tajikistan	Weaver
Yamagata, Japan	Plass
Mante, Mexico	Young
Yateras, Cuba	Karakehian, Cowles (alternate)
Sister City Sub-Committee	Morzel, , Karakehian

2015 Study Session Calendar

	A	B	C	D	E	F	G	H	I	J
1	Date	Status	Topic		Location	Contacts	Materials Due	Draft Summary Due	Final Summary Due	Deadline Email Sent
11										
12	02/24/15	Approved	Briefing: Housing Boulder (televised)	5:00 - 6 PM	Chambers	Jay Sugnet/Melinda Melton	N/A	N/A	N/A	
13		Approved	TMP Implementation Follow Up	6-7:30 PM	Chambers	Kathleen Bracke/Rene Lopez	02/12/15	03/05/15	03/11/15	08/22/14
14		Approved	Envision East Arapahoe - Review Analysis and Transportation Options	7:30-8:30 PM	Chambers	Leslie Ellis/Melinda Melton	02/12/15	03/05/15	03/11/15	11/03/14
15			Planning Work Plan Update	8:30-9 PM	Chambers	David Driskell/Melinda Melton				
16										
17	03/05/15	Approved	Board and Commission Interviews (Thursday)	6-9 PM	1777 West	Alisa Lewis/Dianne Marshall	02/21/15	N/A	N/A	N/A
18	03/10/15	Approved	Board and Commission Interviews	6-9 PM	1777 West	Alisa Lewis/Dianne Marshall	02/21/15	N/A	N/A	N/A
19	03/12/15	Approved	Board and Commission Interviews (Thursday)	6-9 PM	1777 West	Alisa Lewis/Dianne Marshall	02/21/15	N/A	N/A	N/A
20										
21	03/31/15	Approved	Sister City Dinner	5-6:30 PM	Lobby	Alisa Lewis/Dianne Marshall	03/01/15	N/A	N/A	
22		Approved	Civic Area - Civic Area Master Plan and Parkland Site Plan Development Update	6:30-8 PM	Chambers	Joanna Crean, Melinda Melton	03/19/15	04/09/15	04/15/15	
23		Approved	Planning Items	8-9 PM	Chambers	Susan Richstone/Melinda Melton	03/19/15	04/09/15	04/15/15	
24										
25	04/14/15	Approved	Board and Commission Reception	5-6 PM	Lobby	Alisa Lewis/Dianne Marshall	04/06/15	N/A	N/A	N/A
26		Approved	Fire Department Operations, Deployment, Light Rescue Vehicle Response and Master Plan update	6-7:30 PM	Chambers	Michael Calderazzo/Laurie Ogden	04/02/15	04/23/15	04/29/15	
27		Approved	2014-2015 Financial Overview and Ballot Measures	7:30 - 9 PM	Chambers	Bob Eichen/Elena Lazarevska	04/02/15	N/A	N/A	
28										
29	04/28/15	Approved	Briefing: Housing Boulder	5-6 PM	Chambers	Jay Sugnet/Melinda Melton		05/07/15	05/13/15	01/15/15
30		Approved	Human Services Strategy	6-8 PM	Chambers	Wendy Schwartz/Linda Gelhaar	04/16/15	05/07/15	05/13/15	
31		Approved	Utility Rate Study: Key Questions and Guiding Principles	8-9 PM	Chambers	Eric Ameigh/Jeff Arthur/Rene Lopez	04/16/15	05/07/15	05/13/15	12/10/14
32										
33	05/12/15	Approved	Boulder's Energy Future	6-8 PM	Chambers	Heidi Joyce/Heather Bailey	04/30/15	05/21/15	05/27/15	10/19/14
34		Approved	Commercial and Industrial Energy Efficiency Ordinance Options	8-9 PM	Chambers	Kendra Tupper/Melinda Melton	04/30/15	05/21/15	05/27/15	02/10/15
35										
36	05/26/15	Approved	Briefing: Community Culture Plan	5:30-6 PM	Chambers	Matt Chasansky/Carrie Mills	N/A	N/A	N/A	
37		Approved	Hill Reinvestment Strategy Update and Policy Direction	6-7:30 PM	Chambers	Molly Winter/Ruth Weiss	05/14/15	06/04/15	06/10/15	12/15/14
38		Approved	AMPS Update	7:30-9 PM	Chambers	Molly Winter/Ruth Weiss	05/14/15	06/04/15	06/10/15	12/15/14
39										
40	06/09/15	Approved	Housing Boulder	6-7:30 PM	Chambers	Jay Sugnet/Melinda Melton	05/28/15	06/18/15	06/24/15	01/15/15
41		Approved	BVCP/Resilience	7:30-9 PM	Chambers	Lesli Ellis/Melinda Melton				
42										
43	06/23/15	Council Recess June 17-July 12								
44	06/30/15	Council Recess June 17-July 12								
45										
46	07/14/15	Approved	Community Cultural Plan	6-7:30 PM	Chambers	Matt Chasansky/Carrie Mills	07/02/15	07/23/15	07/29/15	12/04/14
47		Approved	Ballot Measures	7:30-9 PM	Chambers	Elena Lazarevska/Bob Eichen	07/02/15	07/23/15	07/29/15	
48										
49		OPEN	Briefing:	5:30-6 PM	Chambers		N/A	N/A	N/A	

2015 Study Session Calendar

	A	B	C	D	E	F	G	H	I	J
1	Date	Status	Topic		Location	Contacts	Materials Due	Draft Summary Due	Final Summary Due	Deadline Email Sent
50	07/28/15	Approved	Climate Commitment Goal and Strategy Proposal	6-7:30 PM	Chambers	Brett KenCairn/Melinda Melton	07/16/15	08/06/15	08/12/15	01/21/15
51		OPEN		7:30-9 PM						
52										
53	08/11/15	Approved	2016 CIP Study Session	6-7:30 PM	Chambers	Elena Lazarevska/Bob Eichem	07/30/15	08/20/15	08/26/15	12/22/14
54		OPEN		7:30-9 PM	Chambers					
55										
56		OPEN	Briefing:	5:30-6 PM	Chambers		N/A	N/A	N/A	
57	08/25/15	Approved	TMP Implementation Follow Up (pending first check-in on 2/24)	6-7:30 PM	Chambers	Randall Rutsch/Rene Lopez	08/13/15	09/03/15	09/09/15	02/03/15
58		Approved	Envision East Arapahoe Transportation Analysis and Medical Office Use	7:30-9 PM	Chambers	Randall Rutsch/Rene Lopez	08/13/15	09/03/15	09/09/15	
59										
60	09/08/15	Approved	2016 Budget Study Session	6-7:30 PM	Chambers	Elena Lazarevska/Bob Eichem	08/27/15	09/17/15	09/23/15	12/22/14
61		Approved	Emerald Ash Borer	7:30-9 PM	Chambers	Kathleen Alexander/Sally Dieterich	08/27/15	09/17/15	09/23/15	01/29/15
62										
63		OPEN	Briefing:	5:30-6 PM	Chambers		N/A	N/A	N/A	
64	09/22/15	Approved	2016 Budget Study Session	6-7:30 PM	Chambers	Elena Lazarevska/Bob Eichem	09/10/15	10/01/15	10/07/15	12/22/14
65		OPEN		7:30-9 PM	Chambers		09/10/15	10/01/15	10/07/15	
66										
67	09/29/15	OPEN		6-7:30 PM	Chambers		09/17/15	10/08/15	10/14/15	
68		OPEN		7:30-9 PM	Chambers					
69										
70	10/13/15	OPEN		6-7:30 PM	Chambers		10/01/15	10/22/15	10/28/15	
71		OPEN		7:30-9 PM	Chambers					
72										
73		OPEN	Briefing:	5:30-6 PM	Chambers		N/A	N/A	N/A	
74	10/27/15	OPEN		6-7:30 PM	Chambers		10/15/15	11/05/15	11/11/15	
75		OPEN		7:30-9 PM	Chambers					
76										
77	11/10/15	Approved	AMPS Update	6-7 PM	Chambers	Molly Winter/Ruth Weiss	10/29/15	11/19/15	11/25/15	12/19/14
78		OPEN		7-9 PM	Chambers					
79										
80	11/24/15	Thanksgiving Holiday Week								
81										
82	12/08/15	Approved	Utility Rate Study: Preliminary Findings	6-7:30 PM	Chambers	Eric Ameigh/Jeff Arthur/Rene Lopez	11/25/15	12/17/15	12/23/15	12/10/14
83		OPEN		7:30-9 PM	Chambers					
84										
85	12/22/15	Christmas Holiday Week								
86	12/29/15	New Years Holiday Week								

March 17, 2015 Start Time: 6:00 PM Business Meeting Location: Council Chambers, 1777 Broadway				CAO to Prepare Ord.?	Power Point	Contact Preliminary: 3/5 :: Final 3/11
Agenda Section	Item Name	Time	Minutes			
SPECIAL PRESENTATIONS			Minutes			
OPEN COMMENT		45	Minutes			
CONSENT	Study Session Summary for 2/24 Envision East Arapahoe Plan	15	Minutes			Lesli Ellis/Melinda Melton
	Study Session Summary for 2/24 Planning Work Plan Update					David Driskell/Melinda Melton
	Study Session Summary for 2/24 TMP Implementation Follow Up					Kathleen Bracke/Rene Lopez
	1st reading of an ordinance for the annexation of Old Tale Road neighborhood			yes		Beverly Johnson/Melinda Melton
	1st reading Landmark Designation Ordinance for 977 7th Street			no		James Hewat/Melinda Melton
	1st reading Landmark Designation Ordinance for 1029 Broadway					James Hewat/Melinda Melton
	3rd reading and public hearing of an ordinance to change certain BMS zoning district standards and uses as part of the University Hill Moratorium project					Karl Guiler/Melinda Melton
	2nd reading Emergency Ordinance extending flood recovery fee waivers and extending the time to resume nonconforming uses and restore flood damaged structures			yes		Chris Meschuk/Melinda Melton
	1st Reading Cottage Foods Ordinance (moved from 4/7)			yes	no	Tom Carr/Heather Hayward
PUBLIC HEARINGS	Proposed Appropriations to Meet Additional Workload Levels	30	Minutes	no	no	Bob Eichem/Elena Lazarevska
	2nd reading Affordable Housing Linkage Fee	90	Minutes	yes	yes	Susan Richstone/Melinda Melton
MATTERS FROM CITY MANAGER			Minutes			
MATTERS FROM CITY ATTORNEY			Minutes			
MATTERS FROM MEMBERS OF COUNCIL	Board and Commission Appointments	60	Minutes			Alisa Lewis/Dianne Marshall
CALL-UPS			Minutes			
Total Estimated Meeting Time (Hours:Minutes)		4:00				

April 7, 2015 Start Time: 6:00 PM Business Meeting Location: Council Chambers, 1777 Broadway				CAO to Prepare Ord.?	Power Point	Contact Preliminary: 3/26 :: Final 4/1
Agenda Section	Item Name	Time	Minutes			
SPECIAL PRESENTATIONS			Minutes			
OPEN COMMENT		45	Minutes			
CONSENT	Proposed Appropriations for Ballot Item 2A Capital Projects and Appropriations for Recreational Marijuana	15	Minutes			Bob Eichem/Elena Lazarevska
	1st reading to consider amendments to Title 9 for Medical Office			no		Jeff Hirt/Melinda Melton
	Energy Future: 1st Reading Open Access Transmission Tariff (moved from 3/17)			yes	no	Heather Bailey/Heidi Joyce
PUBLIC HEARINGS	2nd Reading of Ordinance to Approve Cable Franchise Agreement with Comcast	60	Minutes		No	Carl Castillo/Dianne Marshall
	2nd Reading Cottage Foods Ordinance	60	Minutes	yes	yes	Tom Carr/Heather Hayward
			Minutes			
MATTERS FROM CITY MANAGER	Consideration of a Motion to Revise the City of Boulder's 2015 State and Federal Legislative Agenda	30	Minutes	no	no	Carl Castillo/Dianne Marshall
MATTERS FROM CITY ATTORNEY			Minutes			
MATTERS FROM MEMBERS OF COUNCIL			Minutes			
CALL-UPS			Minutes			
Total Estimated Meeting Time (Hours:Minutes)		3:30				

April 21, 2015 Start Time: 6:00 PM Business Meeting Location: Council Chambers, 1777 Broadway				CAO to Prepare Ord.?	Power Point	Contact Preliminary: 4/9 :: Final 4/15
Agenda Section	Item Name	Time	Minutes			
SPECIAL PRESENTATIONS			Minutes			
OPEN COMMENT		45	Minutes			
CONSENT	Study Session Summary 3/31: Boulder Civic Area direction for Civic Area Master Plan and Parkland Site Plan	15	Minutes			Joanna Crean/Melinda Melton
	Proposed Appropriations for Ballot Item 2A Capital Projects and Appropriations for Recreational Marijuana Revenue					Bob Eichem/Elena Lazarevska
PUBLIC HEARINGS	2nd reading Ordinance for Annexation of Old Tale Road Neighborhood	90	Minutes	yes	yes	Beverly Johnson/Melinda Melton
	2nd Reading Open Access Transmission Tariff (tentative)	60	Minutes			Heather Bailey/Heidi Joyce
	2nd reading Landmark Designation Ordinance for 977 7th Street	15	Minutes		yes	James Hewat/Melinda Melton
	2nd reading Landmark Designation Ordinance for 1029 Broadway	15	Minutes		yes	James Hewat/Melinda Melton
MATTERS FROM CITY MANAGER						
MATTERS FROM CITY ATTORNEY			Minutes			
MATTERS FROM MEMBERS OF COUNCIL			Minutes			
CALL-UPS			Minutes			
Total Estimated Meeting Time (Hours:Minutes)		4:00				

May 5, 2015 Start Time: 6:00 PM Business Meeting Location: Council Chambers, 1777 Broadway				CAO to Prepare Ord.?	Power Point	Contact Preliminary: 4/23 :: Final 4/29
Agenda Section	Item Name	Time	Minutes			
SPECIAL PRESENTATIONS			Minutes			
OPEN COMMENT		45	Minutes			
CONSENT	First Adjustment to Base - First Reading	15	Minutes	No	No	Elena Lazarevska/Bob Eichem
PUBLIC HEARINGS	2nd Reading and Consideration of Approval of Amendments to Title 9 for Medical Office	60	Minutes	no	yes	Jeff Hirt/Melinda Melton
			Minutes			
MATTERS FROM CITY MANAGER	Motion to accept the Boulder County Age Well Plan Update	30	Minutes	no	yes	Betty Kilsdonk/Linda Gelhaar
MATTERS FROM CITY ATTORNEY			Minutes			
MATTERS FROM MEMBERS OF COUNCIL			Minutes			
CALL-UPS			Minutes			
		Total Estimated Meeting Time (Hours:Minutes)		2:30		

May 19, 2015 Start Time: 6:00 PM Business Meeting Location: Council Chambers, 1777 Broadway				CAO to Prepare Ord.?	Power Point	Contact Preliminary: 5/7 :: Final 5/13
Agenda Section	Item Name	Time	Minutes			
SPECIAL PRESENTATIONS			Minutes			
OPEN COMMENT		45	Minutes			
CONSENT	First Adjustment to Base - Second Reading	15	Minutes			Elena Lazarevska/Bob Eichem
PUBLIC HEARINGS			Minutes			
			Minutes			
MATTERS FROM CITY MANAGER			Minutes			
MATTERS FROM CITY ATTORNEY			Minutes			
MATTERS FROM MEMBERS OF COUNCIL			Minutes			
CALL-UPS			Minutes			
		Total Estimated Meeting Time (Hours:Minutes)		1:00		



TO: Members of Council
FROM: Mary Moline, City Clerk's Office
DATE: March 3, 2015
SUBJECT: Information Packet

1. CALL UPS

- A. Concept Plan Review 96 Arapahoe (LUR2014-00100)
- B. Vacation of a 79 square foot portion of a utility easement that is located at the southeast corner of the property at 2248 Nicholl Street (ADR2015-00006)

2. INFORMATION ITEMS

- A. North Trail Study Area Plan

External Report

- B. Boulder History Museum Report

3. BOARDS AND COMMISSIONS

- A. Boulder Design Advisory Board – January 14, 2015
- B. Human Relations Commission – February 23, 2015
- C. Open Space Board of Trustees – February 18, 2015

4. DECLARATIONS

- A. Nepal Day – April 19, 2015



**INFORMATION PACKET
MEMORANDUM**

To: Members of City Council

From: Jane S. Brautigam, City Manager
David Driskell, Executive Director of Community Planning + Sustainability
Susan Richstone, Deputy Director of Community Planning + Sustainability
Charles Ferro, Development Review Manager
Elaine McLaughlin, Senior Planner

Date: Feb. 24, 2015

Subject: Call-Up Item: Concept Plan Review 96 Arapahoe (LUR2014-00100)

EXECUTIVE SUMMARY

On Feb. 5, 2015 the Planning Board reviewed and commented on the above-referenced application. City Council may vote to call-up the Concept Plan to review and discuss within 30 days of the Planning Board hearing. The call up period concludes on March 9, 2014, because the end of date of the thirty-days falls on a Saturday, the thirty day call up period concludes on the following Monday. There is one City Council meeting within this time period for call-up consideration on March 3, 2015. The staff memorandum to Planning Board, minutes, meeting audio, and other related background materials are available on the city website for Planning Board, follow the links: www.bouldercolorado.gov → A to Z → Planning Board → search for past meeting materials planning board → 2015 → 2.5.2015 PB Packet. The draft minutes from the Planning Board hearing are provided in Attachment A and the Concept Plan submittal is provided in Attachment B.

At the Planning Board Hearing, there were no neighborhood comments and no comments had been received on the application. The Planning Board recommended some site plan changes with regard to preservation of the existing historic resources of the duplex, the barn and the retaining walls, and suggested that more density could be considered through annexation if there were smaller and more affordable units provided on site.

Consistent with recently amended land use code section 9-2-13(a)(2), B.R.C. 1981 City Council shall vote to call up the application to review and comment on the concept plan within a 30-day call up period which expires on March 9, 2015.

ATTACHMENT

- A. Draft Feb. 5, 2015 Planning Board Minutes
- B. Concept Plan Submittal

**CITY OF BOULDER
PLANNING BOARD ACTION MINUTES
February 5, 2015
1777 Broadway, Council Chambers**

A permanent set of these minutes and a tape recording (maintained for a period of seven years) are retained in Central Records (telephone: 303-441-3043). Minutes and streaming audio are also available on the web at: <http://www.bouldercolorado.gov/>

PLANNING BOARD MEMBERS PRESENT:

Aaron Brockett, Chair
Bryan Bowen
Crystal Gray
John Gerstle
Leonard May
Liz Payton
John Putnam

PLANNING BOARD MEMBERS ABSENT:

STAFF PRESENT:

David Driskell, Director of CP&S
Susan Richstone, Deputy Director of CP&S
Charles Ferro, Development Review Manager for CP&S
Hella Pannewig, Assistant City Attorney
Susan Meissner, Administrative Assistant III
Sloane Wlabert, Planner I
David Thompson, Civil Engineer II- Transportation
Lesli Ellis, Director of Comprehensive Planning
Beth Roberts, Housing Planner

5. PUBLIC HEARING ITEM 5A

- A. CONCEPT PLAN REVIEW AND COMMENT: Request for citizen, staff and Planning Board comment on a proposal to annex and redevelop the property located at 96 Arapahoe Ave. with a combination of single family, duplex and attached dwelling units. A total of nine dwelling units are proposed, consisting of six market rate units and three affordable units that would be developed upon annexation and establishment of an initial zoning of Residential Medium – 3 (RM-3), consistent with the Boulder Valley Comprehensive Plan (BVCP) land use designation of Medium Density Residential. Under Concept Plan review, no decision will be made by the Planning Board for approval or denial, rather the intent is to provide the applicant with feedback on the proposal.**

Staff Presentation:

E. McLaughlin presented the item to the board.

Board Questions:

E. McLaughlin, D. Thompson and **B. Roberts** answered questions from the board.

Applicant Presentation:

Jonathan Warner, the applicant, presented to the board.

Public Hearing:

No one from the public spoke.

Board Comments:

- Board members agreed that the design is generally consistent with the BVCP and land use policies but still needs some work with relation to the historic elements, the amount of proposed impervious area related to circulation and parking and affordable housing.
- Members agreed with the request for a solar exemption; it has virtually no impact.
- Most members were comfortable with obscuring the view of the existing duplex. **A. Brockett** liked the views of the duplex and would prefer that the views, if obscured, be by trees as opposed to buildings.
- Most members agreed that the architectural style could be contemporary. **L. Payton** would prefer that be a bit more rustic and modest to fit with its neighbors and context at the edge of the city. **C. Gray** requested that the architect avoid reflective surfaces when selecting building materials.
- Preserve the historical features of the site as much as possible, namely the retention walls per preservation guidelines and the current location of the barn. Most members agreed that the barn could be moved slightly, but would prefer that it stay close to its current location.
- The board encouraged the applicant to use the existing road or to work with the adjacent property to share a driveway and access point. It would allow the barn location to be preserved and would greatly reduce the amount of paving on the site.
- Members generally thought that the amount of impervious surface area was excessive. Look for other means to accommodate vehicular access and parking. There is generally too much parking on the site.
- Board members encouraged the applicant to remove the hammerhead parking area and to find another location for fire trucks to turn around.

- **J. Gerstle** suggested that the applicant consider contributing the area above the blue line to Open Space.
- **J. Putnam** cited some potential Open Space issues. He felt that a conservation, not just scenic, easement would be appropriate given the habitat conservation area behind it. Add a condition to the easement to make it difficult for residents to access the Open Space from that area.
- This will be a wildlife corridor. Consider thoughtful wildlife management and vegetation so as to avoid creating problem bears and to comply with the defensible space recommendations.
- Board members agreed that the site plan currently lacks useable open space. Consider opportunities for common green space in the current hammerhead location.
- **B. Bowen** recommended revising the site plan to move the larger units toward the back of the property, possibly attach the units and aggregate the parking in the third of the site closest to the road or adjacent to the buildings. This would provide space for a common green, maintain the same amount of development potential, preserve the historical buildings, eliminate a lot of hardscape, connect better with natural scene above, and create more community connections. It would be important to find a different way to calculate height if the board encouraged attached units.
- Members agreed that the board would look for more community benefit. It would depend on the size and scope of the project.
- **J. Putnam** recommended that that applicant strive to achieve energy savings and near net-zero energy opportunities as this is an annexation.
- Improve the affordable housing options. There are currently large market-rate units and small affordable units. Make the sizes more commensurate between affordable and market rate units.
- The board recommended that the applicant build more and smaller units. Affordability is of primary importance.

*Note: Due to the size of the plan set, Attachment B was too large to include in the memo.
Therefore, a complete set of plans is available in the City Council office of the
City Manager's Office.*



INFORMATION PACKET MEMORANDUM

To: Members of City Council

From: Jane S. Brautigam, City Manager
David Driskell, Executive Director of Community Planning & Sustainability
Charles Ferro, Development Review Manager
Jonathan Woodward, Associate Planner

Date: February 10, 2015

Subject: Call-Up Item: Vacation of a 79 square foot portion of a utility easement that is located at the southeast corner of the property at 2248 Nicholl Street. (ADR2015-00006).

EXECUTIVE SUMMARY:

The applicant requests vacation of a 79 square foot portion of an existing utility easement at 2248 Nicholl Street (refer to **Attachment D** for exact location) in order to construct a new shed. The easement was dedicated to the City of Boulder on the final plat of the Second Addition to Edgewood and recorded with the Boulder County Clerk and Recorder on October 4, 1955, Reception number 563936. Utilities are not present at this location and will not be needed in the future. All requisite utility companies have approved the request.

The proposed vacation was approved by staff on February 10, 2015. There is one scheduled City Council meeting on March 3, 2015 which is within the 30 day call-up period.

CODE REQUIREMENTS:

Pursuant to the procedures for easement vacations set forth in subsection 8-6-10(b), B.R.C. 1981, the city manager has approved the vacation of a 79 square foot portion of the existing utility easement. The date of final staff approval of the easement vacation was February 10, 2015 (refer to **Attachment E, Notice of Disposition**). This vacation does not require approval through ordinance based on the following criteria:

- It has never been open to the public; and
- It has never carried regular vehicular or pedestrian traffic.

The vacation will be effective 30 days later, on March 12, 2015, unless the approval is called up by City Council.

FISCAL IMPACTS:

None identified.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS:

- Economic: No economic impact is anticipated.
- Environmental: No impacts are anticipated through this utility easement vacation.
- Social: None identified.

BACKGROUND:

The subject property is a 10,520 square foot lot located in a Residential – Low 1 (RL-1) zone district (refer to **Attachment A**, *Vicinity Map*). The property is encumbered by a five-foot utility easement on the east side of the property and a portion that juts out along the southeast corner (refer to **Attachment B**, *Site Plan*). The applicant would like to construct a shed in the portion area but is currently precluded from doing so by this existing easement. The applicant requests a vacation only of the 79 square foot portion of the easement. The easement unnecessarily limits the building envelope for the garage.

The portion of easement to be vacated was originally dedicated for utility purposes in 1955 to be used for guy wires. While there is an electric pole in the primary easement, there are no public or private utilities or structural encroachments located in the easement to be vacated.

Given that there is no public need for the portion of easement for which it was intended, failure to vacate the requested portion of easement would cause hardship to the property owner. It would also limit the development potential of the property.

ANALYSIS:

Staff finds the proposed vacation of a 79 square foot portion of an existing utility easement consistent with the standard set forth in subsection (b) of section 8-6-10, “*Vacation of Public Easements*”, B.R.C. 1981. Specifically, staff has determined that no public need exists for the portion of easement to be vacated because all public utilities are located in public right-of-way or other easements.

No vacation of a public easement shall be approved unless the approving agency finds that:

- X 1. Change is not contrary to the public interest.
- X 2. All agencies having a conceivable interest have indicated that no need exists, either in the present or conceivable future, for its original purpose or other public purpose.
- X 3. Consistent with the Comprehensive Plan and Land Use Regulations.
- X a. Failure to vacate the easement would cause a substantial hardship to the use of the property consistent with the Comprehensive Plan and Land Use Regulations; or
- N/A b. Would provide a greater public benefit than retaining the property in its present status.

PUBLIC COMMENT AND PROCESS:

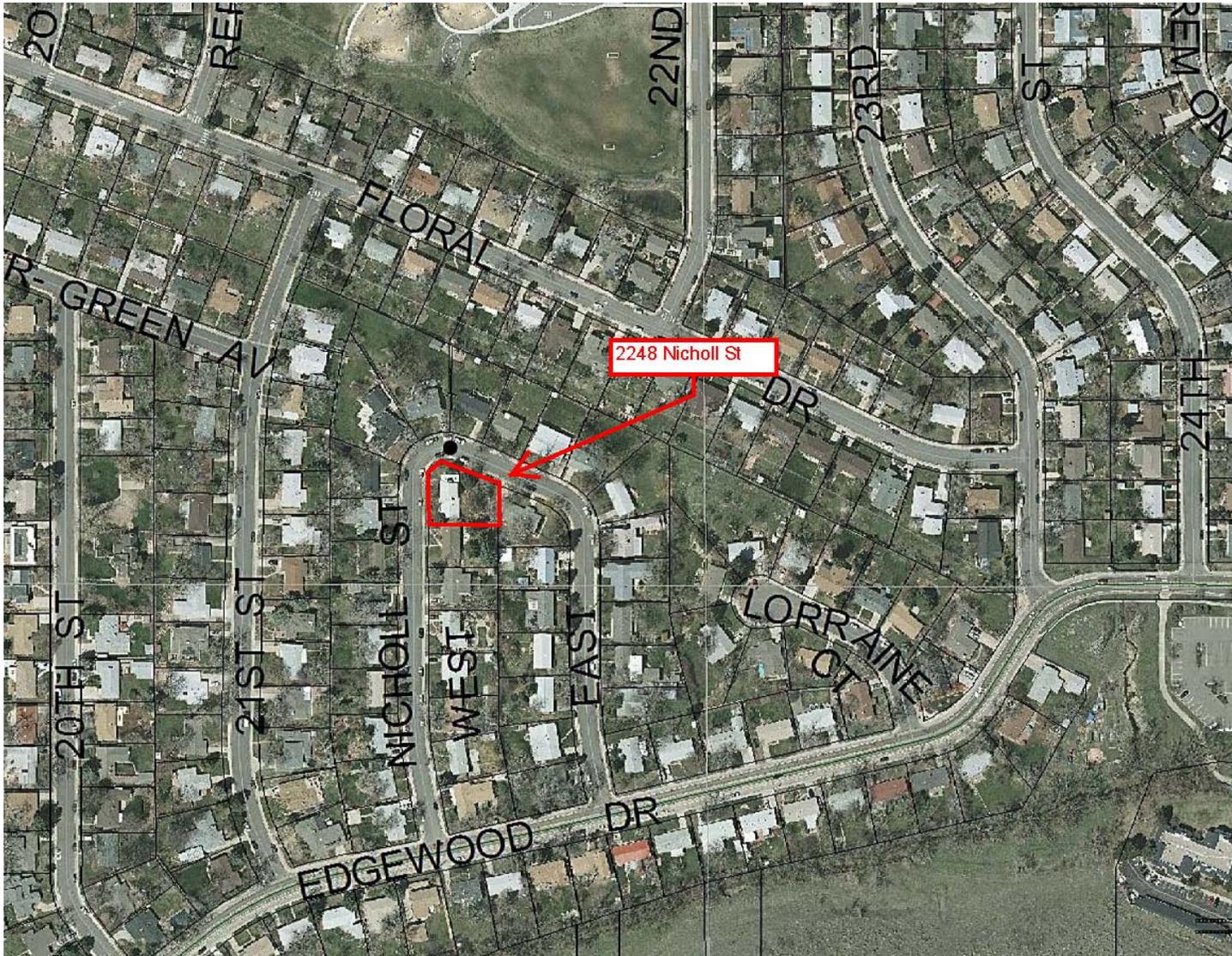
Notice of the vacation will be advertised in the Daily Camera within the 30 day call up period. Staff has received no written or verbal comments adverse to the vacation.

NEXT STEPS:

If the requested vacation is not called up by City Council then the Deed of Vacation (**Attachment C**) will be recorded. If the requested vacation is called up, and subsequently denied, the applicant will be limited to development on the property outside of the easement area.

ATTACHMENTS:

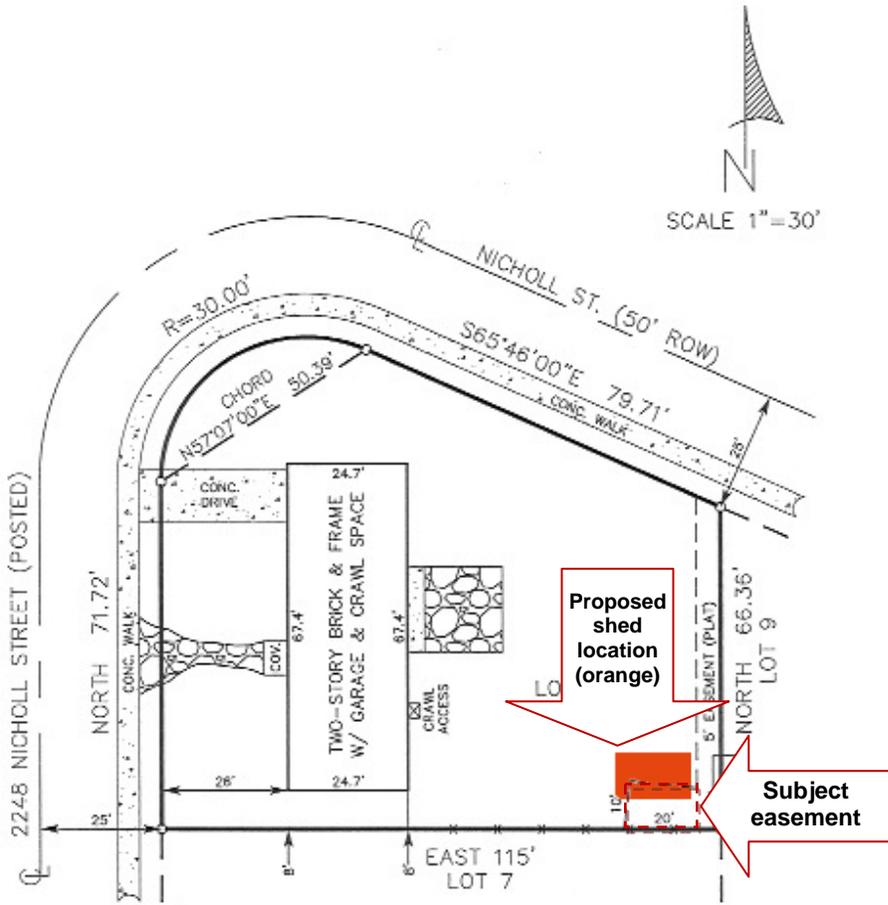
Attachment A: Vicinity Map
Attachment B: Site Plan
Attachment C: Deed of Vacation
Attachment D: Exhibit A
Attachment E: Notice of Disposition



Site Development Plan
2248 Nicholl St W.
Owners - Clark Rider & Vanessa Mazal

LEGAL DESCRIPTION
(provided by CLIENT)

LOT 8,
BLOCK 7,
SECOND ADDITION TO EDGEWOOD,
COUNTY OF BOULDER,
STATE OF COLORADO.



For Administrative Purposes Only
Address: 2248 Nicholl Street
Case No. ADR2015-00006

DEED OF VACATION

The City of Boulder, Colorado does hereby vacate and release to the present owners of the subservient land, in a manner prescribed by Section 8-6-10(b), B.R.C. 1981, the following portion of a utility easement previously dedicated to the City of Boulder and recorded in the records of the Boulder County Clerk & Recorder on the Second Addition to Edgewood, City of Boulder, County of Boulder, State of Colorado on the 4th day of October, 1955 at Reception No. 563936 (Recorded Plat Book 6, Page 50), which is located at 2248 Nicholl Street, Boulder, CO and more particularly described as follows:

See Exhibit A attached hereto and incorporated herein by reference

The within easement vacation and release of said easement shall extend only to the portion and the type of easement specifically vacated. The within vacation is not to be construed as vacating any rights-of-way or easements or cross-easements lying within the description of the vacated portion of the easement.

Executed this _____ day of _____, 2015, by the City Manager after having received authorization from the City Council of the City of Boulder, Colorado.

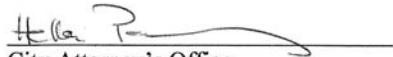
CITY OF BOULDER, COLORADO

By: _____
Jane S. Brautigam,
City Manager

Attest:

City Clerk

Approved as to form:



City Attorney's Office

2-9-2015

Date

EXHIBIT "A"

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 19, 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 UTILITY EASEMENT OVER AND ACROSS A PORTION OF LOT 8, BLOCK 7,
SECOND ADDITION TO EDGEWOOD, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 19,
TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF
BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

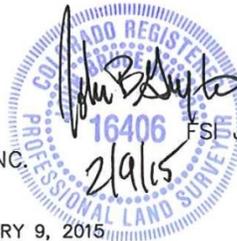
CONSIDERING THE EAST LINE OF SAID LOT 8 TO BEAR NORTH, A DISTANCE OF 66.36 FEET
ACCORDING TO THE RECORDED PLAT THEREOF, WITH ALL BEARINGS CONTAINED HEREIN
RELATIVE THERETO.

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 8; THENCE ALONG THE EAST LINE
OF SAID LOT 8, SOUTH, A DISTANCE OF 66.36 FEET; THENCE DEPARTING SAID EAST LINE
WEST, A DISTANCE OF 5.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 8, SAID POINT
ALSO BEING THE POINT OF BEGINNING; THENCE ALONG THE SOUTH LINE OF SAID LOT 8,
WEST, A DISTANCE OF 10.47 FEET, MORE OR LESS, TO A POINT ON THE WESTERLY LINE OF
THE UTILITY EASEMENT AS SHOWN ON THE PLAT OF THE SECOND ADDITION TO EDGEWOOD;
THENCE DEPARTING SAID SOUTH LINE AND ALONG THE WESTERLY LINE OF SAID UTILITY
EASEMENT, NORTH 12°16'35" EAST, A DISTANCE OF 9.35 FEET, MORE OR LESS, TO THE
APPROXIMATE NORTHWEST CORNER OF SAID EASEMENT; THENCE ALONG THE APPROXIMATE
NORTHERLY LINE OF SAID EASEMENT SOUTH 77°43'25" EAST, A DISTANCE OF 8.68 FEET,
MORE OR LESS, TO A POINT ON THE WEST LINE OF A 5 FOOT WIDE UTILITY EASEMENT AS
SHOWN ON THE PLAT OF THE SECOND ADDITION TO EDGEWOOD; THENCE ALONG THE WEST
LINE OF SAID EASEMENT EXTENDED SOUTH, A DISTANCE OF 7.29 FEET TO THE POINT OF
BEGINNING.

SAID PARCEL CONTAINING 79 SQ.FT. OR 0.001 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
CHAIRMAN/CEO, FLATIRONS, INC.



FSE JOB NO. 14-64,894

JOB NUMBER: 14-64,894
DRAWN BY: B. SWIFT
DATE: JANUARY 5, 2015 REV: FEBRUARY 9, 2015

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



3825 IRIS AVE, STE 395
 BOULDER, CO 80301
 PH: (303) 443-7001
 FAX: (303) 443-9830
www.FlatironsInc.com

BY:BSWIFT FILE:64894_ESMT VAC.DWG DATE:2/9/2015 3:52 PM

EXHIBIT "A"

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 19, TOWNSHIP 1 NORTH,
RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN,
COUNTY OF BOULDER, STATE OF COLORADO

SHEET 2 OF 2

NOTE: THE LOCATION OF THE UTILITY EASEMENT SHOWN HEREON WAS SCALED FROM THE RECORDED PLAT OF SECOND ADDITION TO EDGEWOOD, SAID PLAT GRAPHICALLY DEPICTS THE LOCATION OF THE EASEMENT WITHOUT BEARING AND DISTANCE TIES.

LOT 8,
BLOCK 7

LOT 9,
BLOCK 7

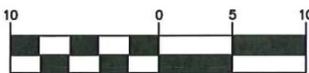
BASIS OF BEARINGS
NORTH 66.36'

5' UTILITY EASEMENT (PLAT)

PORTION OF UTILITY ESMT. TO BE VACATED



GRAPHIC SCALE



(IN FEET)
1 inch = 10 ft.

JOB NUMBER: 14-64,894
DRAWN BY: B. SWIFT
DATE: JANUARY 5, 2015 REV: FEBRUARY 9, 2015

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CITY OF BOULDER
Community Planning and Sustainability

1739 Broadway, Third Floor • P.O. Box 791, Boulder, CO 80306-0791
phone 303-441-1880 • fax 303-441-3241 • web www.bouldercolorado.gov

ADMINISTRATIVE REVIEW
NOTICE OF DISPOSITION

You are hereby advised that the following action was taken by the Planning Department:

DECISION: Approved
DATE: February 10, 2015
REQUEST TYPE: Vacation Easement
ADDRESS: 2248 Nicholl Street
APPLICANT: Clark Rider
CASE #: ADR2015-00006
LEGAL DESCRIPTION: Lot 8, Block 7, Second Addition to Edgewood, City of Boulder, County of Boulder, State of Colorado
DESCRIPTION: EASEMENT VACATION of a portion of a utility easement that is located at the southeast corner of the property at 2248 Nicholl Street.

FINAL DECISION STANDARDS:

Approved as submitted. This application is approved per the criteria for Vacation of Public Easements as set forth in section 8-6-10, B.R.C. 1981. This approval does not constitute building permit approval.

This approval is limited to the vacation of a 79 square foot portion (dimensions: 8.68 feet x 7.29 feet x 10.47 feet x 9.35 feet), of an existing utility easement, previously dedicated to the City of Boulder and recorded in the records of the Boulder County Clerk and Recorder on the final plat of the Second Addition to Edgewood, City of Boulder, County of Boulder, State of Colorado on October 4, 1955, Reception number 563936 and as described in Exhibit A.

INFORMATIONAL COMMENTS:

Pursuant to section 8-6-10(b), B.R.C. 1981, approval of an easement vacation, "is not effective until thirty days after the date of its approval. Promptly after approving the vacation, the manager will forward to the city council a written report, including a legal description of vacated portion of the easement and the reasons for approval. The manager will publish notice of the proposed vacation once in a newspaper of general circulation in the City within thirty days after the vacation is approved. Upon receiving such report and at any time before the effective date of the vacation, the council may rescind the manager's approval and call up the vacation request for its consideration at a public hearing, which constitutes a revocation of the vacation."

This decision is final and may not be appealed. A new request may be considered only as a new application.

Approved By:

Jonathan Woodward, Planning Department



INFORMATION PACKET MEMORANDUM

To: Members of City Council

From: Jane S. Brautigam, City Manager
Tracy Winfree, Interim Director, Open Space and Mountain Parks
Mark Gershman, Environmental Planning Supervisor
Steve Armstead, Environmental Planner

Date: March 3, 2015

Subject: Information Item: North Trail Study Area Plan

EXECUTIVE SUMMARY

The purpose of this memo is to provide council with an update on the North Trail Study Area Plan and the Feb.18 Open Space Board of Trustees (OSBT) study session discussing the plan's scope, approach to community engagement and the role of the board.

This memo includes:

- Background information on the North Trail Study Area (TSA) Plan;
- The proposed scope of the plan including goal, objectives, phased approach to developing the plan, timeline and deliverables;
- Details on the proposed outreach and engagement strategies for community participation in the plan; and
- Information on the role of the OSBT in the development of the plan.

The OSBT was very supportive of the proposed process framework and community outreach and engagement approach suggested by staff. The discussion at the study session centered around fine-tuning the overall approach of the plan in the areas of outreach and decision making. The board recognized that the proposed timeline is ambitious. Board members advised staff to both manage community expectations so the plan can be accomplished promptly and take the time needed for a process that allows for meaningful community involvement. The board expressed an interest in the plan being done well rather than quickly.

OSBT FEEDBACK

The OSBT provided staff with suggestions on proposed plan deliverables, community outreach and engagement priorities, topics for expert panel discussion workshops, and the proposal by staff that the OSBT host the process.

Deliverables

There was a recommendation regarding the plan deliverables that maps are important for the planning process and that including a greater number of maps may be more useful than fewer and more complex maps which can be more difficult to interpret. There was support for staff making Google map layers available so community members could overlay and compare information to generate ideas that could be shared as part of the process.

Community Engagement

The OSBT emphasized the importance of having a process that reaches out to community members who do not typically engage in planning. They also expressed a preference for interactions that allowed for an exchange of ideas over position statements. The OSBT favored engaging community members using online tools such as Inspire Boulder and through a series of in-person workshops. There was also strong support for on-site trail and local store front outreach to encourage a broad base of participation and input. Other suggestions included:

- Seek input from families, youth and seniors;
- Market messages about why participation in the process is important;
- Schedule events to encourage attendance by a broader cross-section of the community;
- Connect North TSA outreach to existing interpretive hikes; and
- Provide online resources such as information on sustainable trail design and resource and habitat conservation information.

The OSBT also shared topics for workshops and expert panel discussions. There was a preference by the board for topics related to “improving visitor experience” which could include trail design, managing visitor conflict, and trail sustainability. Other suggestions included trail connectivity, undesignated trails and special or unique natural resources and their management requirements.

The last topic discussed was the suggestion that the OSBT host the North TSA planning process. After discussion about how the board could do this, the board endorsed this suggestion. Staff will be following up with board members to further develop this idea.

PUBLIC FEEDBACK

The OSBT and staff received several public comments during discussions of the North TSA process (Attachment A). A common concern expressed was that reasonable or legitimate input from stakeholder groups should be treated and valued equitably. Additionally, there were common threads that the planning process should encourage people to be constructive, and share ideas of what they like, and what works well. Several comments were received expressing a desire that the process not put individuals or groups in situations that favor confrontational rhetoric. The process as proposed by staff, and improved by the OSBT, is designed to help address these concerns. A separate set of comments was received suggesting that the visitor experience be better integrated into trail design.

Specific to the Joder property, there was a comment suggesting the property be afforded a special public input session, workshop and discussion. In the proposed North TSA process, the Joder property will be part of the assessment of visitor access opportunities along the North Foothills subarea of the TSA which encompasses both the Joder property and adjacent lands. Staff feels that a broader scale consideration of options is more aligned with the direction contained in the Visitor Master Plan and the benefit of the TSA process. The innovation of using subareas within TSAs is thought to be a good way to assess opportunities to improve visitor experience in the context of the surrounding landscape.

BACKGROUND

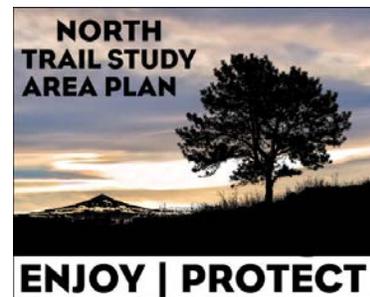
Trail Study Area Plans

In 2005, the Boulder City Council approved the Open Space and Mountain Parks (OSMP) Visitor Master Plan (VMP). The VMP created a framework for the department to manage for high-quality visitor experiences while ensuring that the lands are protected and preserved for future generations.

An integral feature of the VMP was the creation of TSA Plans, which established visitor access and recreation resource management priorities and projects for specific areas of Boulder's public lands. So far, three TSA Plans have been completed and are being implemented: the Marshall Mesa / Southern Grasslands TSA, the Eldorado Mountain / Doudy Draw TSA and the West TSA. Three TSA plans remain - the North, East and South TSAs.

North TSA

The North TSA includes lands north of the Diagonal Highway on the east and lands north of Linden Avenue on the west (Attachment B). The North TSA Plan will include management recommendations for 7,600 acres that OSMP owns and manages. The North TSA area also includes 1,945 acres of land with some level of city open space ownership, but where OSMP does not provide or manage public access (conservation easements: 1,031 acres lands jointly owned with and managed by Boulder County: 914 acres).



The North TSA landscape is varied and includes foothills topped with ponderosa pine woodlands, and grassy slopes with occasional shrub thickets leading up to the ridges. Hillsides and mesa sides are dissected by drainages and dotted with springs that support riparian and wetland habitats. The bulk of the TSA is comprised of grasslands, much of which is used by Boulder County farmers and ranchers. Existing visitor amenities include a network of 20 miles of trails as well as 14 trailheads and access points that provide access to popular destinations such as Wonderland Lake, the North Foothills, and Boulder Valley Ranch.

ANALYSIS

North TSA Plan Goals and Objectives

North TSA Plan Goal

The goal of the North TSA Plan is **to provide management direction and implementation actions to maintain and improve the visitor experience, protect natural, cultural, and agricultural resources, and provide a physically and environmentally sustainable trail system in the North TSA.**

TSA plans focus on the designated and undesignated trails, trailheads, access points and recreational activities. TSA plans describe how existing trailheads, access points, infrastructure and trails can be modified to improve visitor access and experiences compatible with natural, cultural and agricultural resource conservation.

North TSA Plan Objectives

1. Enhance recreational opportunities where a high-quality experience can be provided and the activity is compatible with resource conservation.
2. Minimize conflict among visitor activities.
3. Ensure that new or rerouted trails and trail connections result in physically sustainable trails that conserve natural, agricultural and cultural resources, provide a high-quality visitor experience, and encourage visitors to stay on-trail.
4. Retrofit, reroute and improve the existing trail system to make it more physically sustainable and compatible with ecological and agricultural management objectives.
5. Recommend that undesignated trails either be formally designated or closed and restored. Designating previously undesignated trails may also involve re-routing to improve sustainability.
6. Provide an appropriate balance of resource protection and visitor access matched to the specific natural and recreational qualities of different management area designations. *The Visitor Master Plan provides general guidance in balancing resource protection and visitor access opportunities for four management area designations; Passive Recreation Areas, Natural Areas, Agricultural Areas, and Habitat Conservation Areas.*
7. Provide recommendations for adjustments in management area designations and for designating management areas on properties that do not have designations.

North TSA Planning Process, Deliverables, Timeline and Sideboards

Process

The proposed planning process has four phases (Figure 1). The first phase is focused on collecting and compiling information about the TSA that will help inform the development of scenarios which in turn will be refined into the draft plan's recommendations. The primary deliverable for the first phase is an inventory/assessment report to be completed in the second quarter of 2015.

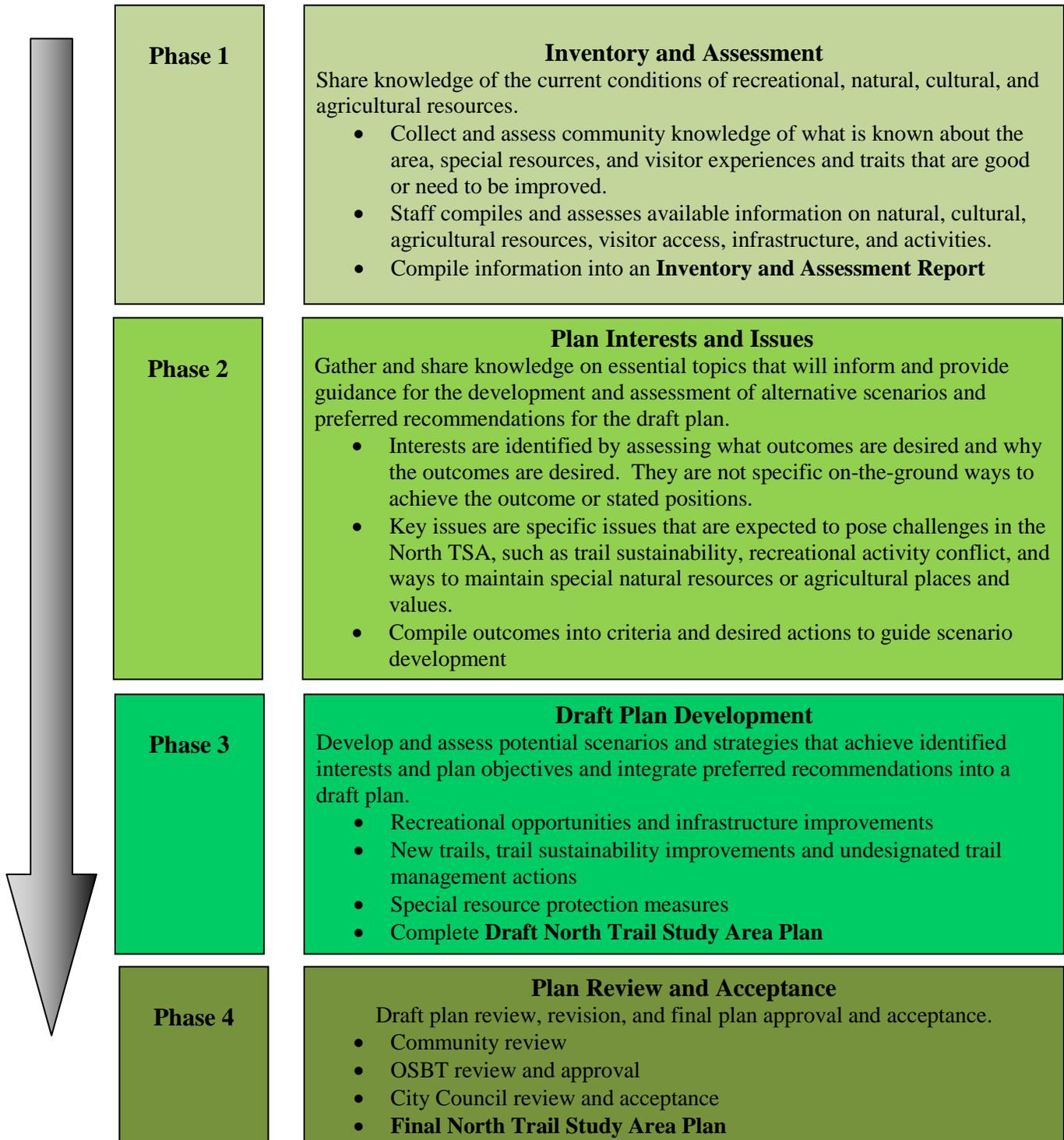
The second phase identifies key interests and issues that will further inform and guide the development of scenarios and recommendations. This phase will result in a list of criteria and desired actions from the community to help direct the development of scenarios and will be completed by the third quarter.

During the third phase, staff, the community, and the OSBT will generate and assess potential scenarios that achieve planning objectives and community interests. This part of the planning

process will begin in the third quarter and conclude with the completion of a draft plan at the end of the fourth quarter of 2015.

The fourth and final phase begins in the first quarter of 2016 and includes the review of the draft plan by the community, the OSBT and recommendation and acceptance of the plan by City Council.

Figure 1. The Four Phases of the North TSA Planning Process



Deliverables and Timeline

The proposed timeframe for the North TSA Plan is based upon having a draft plan available for review at the end of 2015. Review and acceptance of the draft plan would then potentially begin during the first quarter of 2016. The North TSA Plan is a high priority for OSMP. A list of potential plan milestones is provided in Table 1. Preliminary project timelines for the overall project and just for 2015 are available in Attachment C.

Table 1. Possible North TSA Plan Milestones for 2015

1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr
<ul style="list-style-type: none"> • OSBT Study Session (SS) plan scope and public process • City Council information packet 	<ul style="list-style-type: none"> • OSBT SS assessment • OSBT SS interests • Begin community engagement • Open invite community workshop assessment • Workshop key interests • Workshops/Expert Panels key issues • Inventory/assessment report • City Council information packet 	<ul style="list-style-type: none"> • Workshops/Expert Panels key issues • Workshop(s) TSA-wide and subarea scenarios • City Council information packet 	<ul style="list-style-type: none"> • Workshops TSA-wide and subarea scenarios • OSBT SS Alternative scenarios • OSBT SS Preferred scenarios • Draft plan • City Council information packet

Plan Sideboards

The North TSA sideboards will define the decision space for the North TSA planning process. Sideboards clarify what is “on the table” for discussion, and what is beyond the scope of consideration. Sideboards provide critical guidance that allows the public engagement process to answer questions such as: 1) What constraints must the plan account for? 2) What considerations are essential for the plan to be supported as a viable set of recommendations? The plan may include recommendations for minor changes to existing agreements, city regulations or code if such changes are desirable, feasible and necessary to meet plan objectives. However, recommendations for changes to agreements or regulations/code will be subject to the necessary processes and subsequent outcomes.

An initial set of sideboards will be developed by staff and the OSBT by the beginning of the second quarter. Refinement and additions to the sideboards can occur after the inventory and assessment phase based on what is learned from this phase.

Community Engagement

Community Engagement Objectives

Consultation and collaboration among interested community members is fundamental to identifying community-supported actions to recommend in the plan. The following are staff's proposed objectives for the community engagement process:

- Keep people informed, allow for sharing, learning, and understanding among the department, the OSBT, and the community.
- Encourage public interaction, and the sharing of ideas and feedback through both internet-based tools and in-person workshops.
- Support the development of a plan through an inclusive and transparent process that adds clarity to the decision making and rationale for plan outcomes.
- Build relationships, trust, capacity, and commitment for the North TSA Plan.
- Foster collaboration among the public, the OSBT and staff to develop common understanding, share perspectives, generate ideas, and ultimately create a plan that benefits from the knowledge and values of the community, OSBT and staff.
- Engage a broad cross section of the community.

Staff recommends that the North TSA community engagement process include outreach tools that notify and inform community members of the planning process and participation opportunities and a variety of tools that foster the sharing of perspectives and ideas and offer ongoing involvement in the development of the plan. In order for public participation to be most effective, people will engage directly with one another, OSBT and staff. OSMP is proposing using a variety of venues including interactive internet-based input tools and specially-designed community workshops to learn, share ideas, and problem-solve challenging issues.

Community Engagement Approaches

Staff reviewed the public participation steps from previously completed TSA plans, ideas offered by board members, other public land planning processes other city departments' planning efforts and a professional facilitator with experience working with the city and a wide range of public land and resource managers. A summary of the public participation tools used in past TSAs is available in Attachment D.

After considering the available options and integrating the experiences learned from previous TSA processes, staff is recommending the community engagement strategy outlined in Attachment E as a starting point for discussions with the board. Selected elements of the proposed strategy are further discussed below.

The strategy includes a very robust level of community engagement and numerous strategies for outreach and participation. The proposed timeframe (Attachment C) for the North TSA Plan is based upon the goal of completing the draft plan by the end of 2015. Staff believes this is feasible, yet challenging, and recognizes that achieving this goal is dependent on the number and type of community engagement opportunities. It may not be possible to complete the plan on this schedule if the planning process includes the full range of community engagement options.

Community Outreach and Notification

Informing

A critical component of the public engagement process is the strategies and tools to share information with the community about the planning process, opportunities to participate, and progress on the planning process. Staff proposes to employ a variety of communication tools to share information with the community. Tools successfully used with the West TSA and the recent implementation of the revised Voice and Sight Tag Program help shape the components staff recommends for a successful communication and outreach campaign. Examples of the tools proposed include:

- Project website
- Social media (Interact Boulder)
- Emails and newsletters
- Neighborhood mailings
- Natural Selection hikes
- Trailhead kiosk signs

Updating

Another important element for public engagement is outreach to community members who may not usually participate in TSA planning. Using mailings to both city and county neighborhoods adjacent to the North TSA, utility bill notices, and outreach to neighborhood HOAs and organizations are ways to make neighbors aware of the process and potential involvement opportunities. The use of social media (Twitter, Facebook) and internet-based input and feedback tools (Inspire Boulder) will also give convenient access to information. Based upon the experience of other city departments, this approach should encourage involvement by individuals who have not typically attended OSBT meetings that use more traditional meeting-oriented engagement processes. Trail-based and store-front outreach and participatory strategies may also reach new community audiences.

Public Engagement Opportunities

Staff is proposing to use a mix of engagement strategies and tools to encourage participation in the North TSA planning process. Two important strategies that will be used in all phases are the city's internet-based participatory platform called [Inspire Boulder](#) and a planned series of open-invite community workshops. Inspire Boulder is a digital town hall and community engagement platform that has been successfully used by the city in the development of numerous planning efforts and allows feedback through a variety of input tools including questions, polls, surveys, issue prioritization, budgeting, and simple map-based feedback.

Staff is also proposing a series of workshops to gather community knowledge about the North TSA, issues, and key interests along with workshops to refine alternative TSA-wide and subarea scenarios (Table 2.). A series of one to four workshops focused on specific "key issues" will include expert panel presentations followed by community discussion and idea sharing.

Table 2. Possible Community Workshops

Workshop Topic	Workshop Purpose	Workshop Deliverable
<p style="text-align: center;">Assessment</p>	<p>Learn about the community’s knowledge of conditions in the North TSA. Answer the question: “Where are there problems in the TSA and where is there something great to be maintained?”</p>	<p>Community information on the condition of recreational, natural, cultural, and agricultural resources. Identified areas of concern and areas of importance. This assessment information will supplement and be integrated with staff’s inventory information.</p>
<p style="text-align: center;">Interests</p>	<p>Answer the question: “What outcomes for the North TSA Plan are most important and why?”</p>	<p>Plan outcomes that are most important and are priorities for the plan to address to improve conditions in the North TSA. Identifying ways to achieve the outcomes occurs later in the process.</p>
<p style="text-align: center;">Key Issues</p> <p>One or more workshops on challenging issues. Potential topics:</p> <ul style="list-style-type: none"> • <i>Improving Visitor Experience</i> • <i>Trail Sustainability</i> • <i>Significant and Special Natural Resources</i> 	<p>Learn about ways experts have addressed specific issues that are likely to pose challenges in the North TSA. Answer the question: “What was learned from the experts and which idea(s) would be good to implement and why?”</p>	<p>The main outcome from this step is a list of desired actions for staff and the OSBT to consider in the development of alternative scenarios and preferred recommendations.</p>
<p style="text-align: center;">TSA and Subarea Scenarios</p>	<p>Staff will use information from the previous steps to develop alternative scenarios for managing the TSA and challenging issues that the community can comment on, suggest modifications, and rank preferences. Answer the question: “What scenarios are preferred for the North TSA?”</p>	<p>The desired outcome from this step is feedback on the scenarios for staff and the OSBT to consider in selecting preferred recommendations for the draft plan.</p>

Considering the proposed timeframe (Attachment C) for the North TSA Plan, staff recognizes that it may not be possible to complete the plan on this schedule if the planning process includes the full range of community engagement opportunities. Some options to consider for scaling back outreach and engagement could include:

- Reducing or eliminating on-trail and/or store front outreach/comment stations for all or some of the steps in the plan.
- Including only online review and feedback of the inventory/assessment information.
- Reducing the number of expert panels or consolidating several expert panels into a single workshop.
- Reducing the number of workshops and rely on other sources of community participation such as on-line feedback or on-trail/store front.
- Reducing the number of times feedback is requested using Inspire Boulder and simplifying the types of feedback requested to the tools most suitable for Inspire Boulder.

A summary of proposed outreach approaches along with engagement options for the first three phases of the plan is included in Attachment F.

OSBT Hosting of the Process

Staff would like to involve OSBT in the development of the North TSA plan from the beginning and proposes that OSBT consider itself as “host” of the North TSA plan. The intent is to make it clear that OSBT is the recommending body to the city council and to support staff in engaging the community. As host, the community and the City Council can clearly see the board’s involvement. Staff is hoping this approach would raise the board’s visibility in different types of community forums, not just during the two- or three-minute per public comment hearings before the board. The intent is to have more inclusive and informal dialogue and to connect with the community in different and more meaningful ways. Staff has heard from community and board members alike that these short formal “testimonies” were less than optimal opportunities for input.

Actions that the OSBT could take to support the role of hosting the plan include:

- Providing a statement of invite and welcome to the community to participate and share in the development of the North TSA Plan.
- Writing a board-supported guest editorial explaining the process, goals and inviting participation.
- Having board member representation at each community workshop/meeting, offering a welcome to participants, observing and listening to the process, and later helping share insights and perspectives about workshop outcomes to the full board.
- Discussing with staff during board meetings and at study sessions the information provided by the community and staff and assisting in revising and integrating milestone content into the development of plan recommendations.
- Reviewing information updates, presentations and materials that go to City Council.
- Providing a recommendation to City Council based on what is heard and learned throughout the process and working with staff through each phase of the process.

NEXT STEPS

Staff will continue to collect, assess and compile information relevant for the TSA inventory and engage in steps necessary to proceed with implementing the community engagement strategy. These steps include planning out logistics for the engagement strategy, identifying staffing needs and roles, hiring needed consultant services, and beginning preparations for the first outreach and

engagement opportunities. A [North TSA project website](#) has been set up and will be updated with information as it becomes available on the planning process, community engagement opportunities, and supplemental TSA information. Staff will provide an update to OSBT on progress at the March meeting and upcoming plans to begin public engagement.

Progress Updates for City Council:

Staff will provide regular updates to City Council in the form of information at the completion of each phase of the process, and more frequently if needed or requested. After the completion of a draft plan, staff recommends that City Council and the OSBT meet in a joint study session to discuss the plan recommendations. After the study session, the OSBT can host a public hearing and make a recommendation to council for its consideration and acceptance of a final plan.

ATTACHMENTS:

A: Compendium of Public Comments

B: North TSA Map

C: North TSA Timelines

D: Comparison of TSA Plans' Public Engagement Opportunities

E: North Trail Study Area Plan Draft Community Engagement Strategy

F: North TSA 2015 Plan Phases and Community Outreach and Engagement Options

Compendium of Public Comments

Date: February 17, 2015 at 2:17:36 PM MST

Subject: FIDOS' Participation in the North TSA Plan

Dear Open Space Board of Trustees,

FIDOS would first like to thank you for your involvement in the facilitation of the North TSA plan. We hope that the North TSA process can be collaborative and minimally contentious, particularly in comparison to the West TSA.

In the North TSA, FIDOS hopes to see a public process where public input is valued, considered, and fairly incorporated. Concerns have been expressed previously that public input was solicited, but then either disregarded or very selectively considered. We ask that the reasonable interests of all user groups are treated equitably and without bias toward any specific user group.

In the past, OSMP staff has often taken the approach of seeking input as to where there are problems or conflict in Open Space. We ask that the public be invited to share what they like and what works well with North TSA trails. FIDOS asks to be part of any small group sessions that are part of the North TSA process and that we be kept informed of all North TSA proceedings so that we can then forward this information to our membership base.

Finally, since the Joder property is a new addition to the North TSA, we feel that it deserves special public input sessions, workshops, and discussion. There has already been a great deal of discussion on the Joder property and its appropriate land designation. Providing special sessions on the Joder property will allow this property the additional attention that it deserves. Also, it would be an opportunity to demonstrate to the public the openness of the process that underlies management considerations for Open Space.

Thank you for your consideration of our requests.

Best regards,
The FIDOS Board

Jim Illg – President
Lori Fuller
Tony Gannaway
Eileen Monyok
Aldona Siczek
Dan Suple

Date: February 18, 2015 at 10:17:59 AM MST

Subject: N-TSA

Dear OSBT,

I had been planning to attend Wednesday's study session but was called out of town on business at the last minute. But let me urge you to come up with a process that values legitimate input from all stakeholder groups but doesn't pit one user group against others, is constructive, and -- most important -- gets the job done by the end of 2015 as has repeatedly been promised.

I live in north Boulder, and border the open space just south of Lee Hill Road, and am very much looking forward to this.

Thanks!
Joe Glynn
President, BATCO

From: Dan Brillon
Date: February 19, 2015 at 3:34:47 AM MST
Subject: NTSA Comments

Dear OSBT and Acting OSMP Director,

Again, I just want to say how great it is that your meetings are now televised, as it makes it possible for those of us who just can't make it to the meetings in person to be kept abreast on what is happening with Open Space.

Regarding last night's meeting, Kevin I just want to say thank you for bringing the concept of User Experience into the discussion around the NTSA process. I'm pretty sure this is the first time that concept has been mentioned in the context of OSMP trail design. I'm also pleased to hear based on Tracy's comment about the staff presentation earlier in the day that trail design standards do in fact exist, because we've been trying to get these from staff for years. **Can these please be made available to the public?** Based on what I've heard, it seems as though the OSMP trail design standard is completely focused on sustainability as being the key attribute of good trail design. This is where the problem effectively starts because sustainability alone is not enough to make a good trail.

As I've shared before, there are four basic tenants to comprehensive trail design: **1) User Safety, 2) User Experience, 3) Resource Impact and 4) Regulation Compliance.** As a community we really need to have a conversation around trail design standards. Until we do so, we are going to continue to have potentially dangerous situations, with low user satisfaction, high user conflict and low compliance with regulations.

Again, I point to OSMP's most recent newly designed trail Lion's Liar on the Wittermyer property as an example of this problem. While this trail meets a subset of tenant 4 above (sustainability), it fails in the following key ways:

1. **User Safety** - allows a novice hiker to go up Lions Lair and all of a sudden be presented with a very technical descent down the Sanitas south or east ridge. This is the equivalent of a ski area having a green run (easy) drop the user at a triple black diamond run (most difficult).
2. **User Experience** - users of Sanitas are looking for a technical hiking experience. Lions Lair is anything but that resulting in comments as you heard at your last meeting of it being too easy and boring. Additionally, from a dog user point of view it creates a very poor experience because of the fact that both Sanitas and Sunshine Canyon are open to dogs, but the connection between them is now not.
3. **Resource Impact** - the mountain bike flow design (this is the basic standard OSMP appears to have adopted because of its sustainability qualities) uses a much larger area of land than an equally sustainable trail designed exclusively for foot traffic, thus impacting more wildlife and sensitive land features.
4. **Regulation Compliance** - as noted above, the no dog policy on Lions Lair presents the dog user with two bad decision points at the end of Sunshine Canyon trail and the top of Sanitas to break the rules and continue the logical connection between these two trails.

So again, I ask that there be a public conversation around comprehensive trail design standards. Only by doing this will we truly address the user issues associated with our trails.

Sincerely,
Dan

From: Dan Brillon
Sent: Saturday, February 21, 2015 12:16 PM
To: OSBT-Web; Winfree, Tracy; Reeder, Jim
Subject: Re: NTSA Comments

Okay, thanks to a very helpful board member I now have the actual OSMP trail design standards. And if you can bear with me for one more email, I want to show you what I believe to be one of the critical changes which if made for the NTSA process would significantly improve the public view of both OSMP and result in better trails for users.

I'm assuming as Board members you've all seen this, but if not the trail design standards are here: <https://www-static.bouldercolorado.gov/docs/trail-design-standards-1-201308051352.pdf>

OSMP is using what's referred to as a "ground based" view of trail design - basically design a trail to the highest level of development that the land allows based on a set of characteristics the land manager has decided desirable (usually focused on maintenance and sustainability considerations). This ground based view is the general approach that land managers adopted back in the 70's as they started to become aware that trails actually needed to be maintained. It's also a time when the primary user group of trails were simply "hikers." It was a good approach to trail management for the time, but in today's world of hikers, mountain bikers, runners, horseback riders, etc., the situation is a lot more complicated and thus the approach to trail design needs to evolve as well.

There are three critical steps when assessing the development of a trail:

1. Where should the trail go?
2. Who should be allowed to use the trail?
3. What should the trail look like based on the intended use?

The current TSA process addresses steps 1 and 2, but there is literally no public conversation around step 3. Step 3 - what the trail looks like - is ultimately what most directly affects a user's experience of a trail. While steps 1 and 2 will always be controversial, step 3 is what creates the ongoing user perception of a land area and the land manager's effectiveness.

In today's world of multiple user groups sharing the same trail, the best practice land management technique is to use a "user based" approach to trail design. This allows the actual design of the trail to factor in the desired attributes of the different user groups. Below is an overly simplified matrix of some attributes which hikers, runners and mountain bikers might have:

User Group	Experience Level	Max Grade	Speed	Surface Attribute	Length
Hiker	Novice	Flat	Slow	Smooth	Short
Hiker	Intermediate	Intermediate	Slow	Mixed	Medium
Hiker	Advanced	Steep	Slow	Technical	Long
Runner	Novice	Flat	Slow	Smooth	Medium
Runner	Intermediate	Intermediate	Medium	Mixed	Long
Runner	Advanced	Steep	Medium	Technical	Long
Biker	Novice	Flat	Medium	Smooth	Medium
Biker	Intermediate	Intermediate	Fast	Mixed	Long
Biker	Advanced	Intermediate	Fast	Technical	Long

Using the example of the Lions Lair trail on the Wittermyer property, OSMP saw the opportunity based on the land conditions to build what I believe is a Fully Developed Class 5 trail, a primary characteristic of which is a max grade of 8%. But if you were to approach the design of this trail from the attributes of the user groups who are going to use it, you would end up building a trail that would look very different. The primary user of this trail is likely an Intermediate to Advanced Hiker and as such they would be looking for a fairly technical trail with some quite steep sections and of medium to long distance as this user wants a vigorous experience - this is why they are on Sanitas and not the Wonderland Lake trail. So in this case OSMP delivered half of what this user group is looking for (distance) but missed on creating the technical attributes this type of user desires (challenging Sanitas like conditions). And again a trail like this can be built in a manner that is as sustainable as a Class 5 trail - it just requires a different approach to trail building.

The real value of a user based approach to design comes when you have more than one user group sharing a trail. In this instance you identify the "primary" user group and begin with their attributes as the default design position, then look for overlap in the secondary user groups

attributes and emphasize those features in the design. Where attributes conflict, you do what we label "designing out conflict". A good example of this is where hikers and mountain bikers share a trail. One of the biggest conflicts between the two groups' attributes is that of speed - hikers are slow while riders are fast. To design out this conflict you create long lines of sight so mountain bikers have time to slow down before encountering a hiker, and the hiker has plenty of time to see them coming. Where line of sight isn't possible, you then use corners or technical terrain to slow the bikes down. There are a lot of techniques like this for each set of user groups - this really is the key to managing user group conflict.

Let me give you a slightly absurd analogy to try and emphasize this point. Let's pretend OSMP was tasked with the responsibility of delivering music to Boulder residences. As a result OSMP builds a recording studio, brings in the best artists it can find, and sets up transmission stations to deliver crystal clear signals to every home in Boulder. They now would expect that the community would be very happy to have music, and in that respect they would have accomplished their mission. But what if the artists OSMP was able to attract were mainly classical? How would the music lovers who want rock or country music feel about the experience? This is effectively what is happening with our trails - we are getting trails, but they aren't meeting the requirements of the different user groups and thus we have low user satisfaction, high conflict and low regulation compliance. OSMP's Class 5 trail, which I assume is their most desirable as all the newly developed trails seem to be being built to this standard, is effectively a mountain bike "Flow" trail design and as such is the classical music equivalent in the above analogy - great for mountain bikers (although these trails aren't open to bikes), but not so satisfying for the other users.

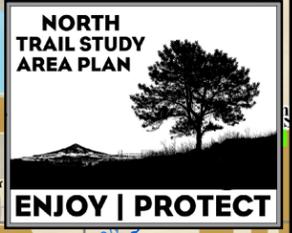
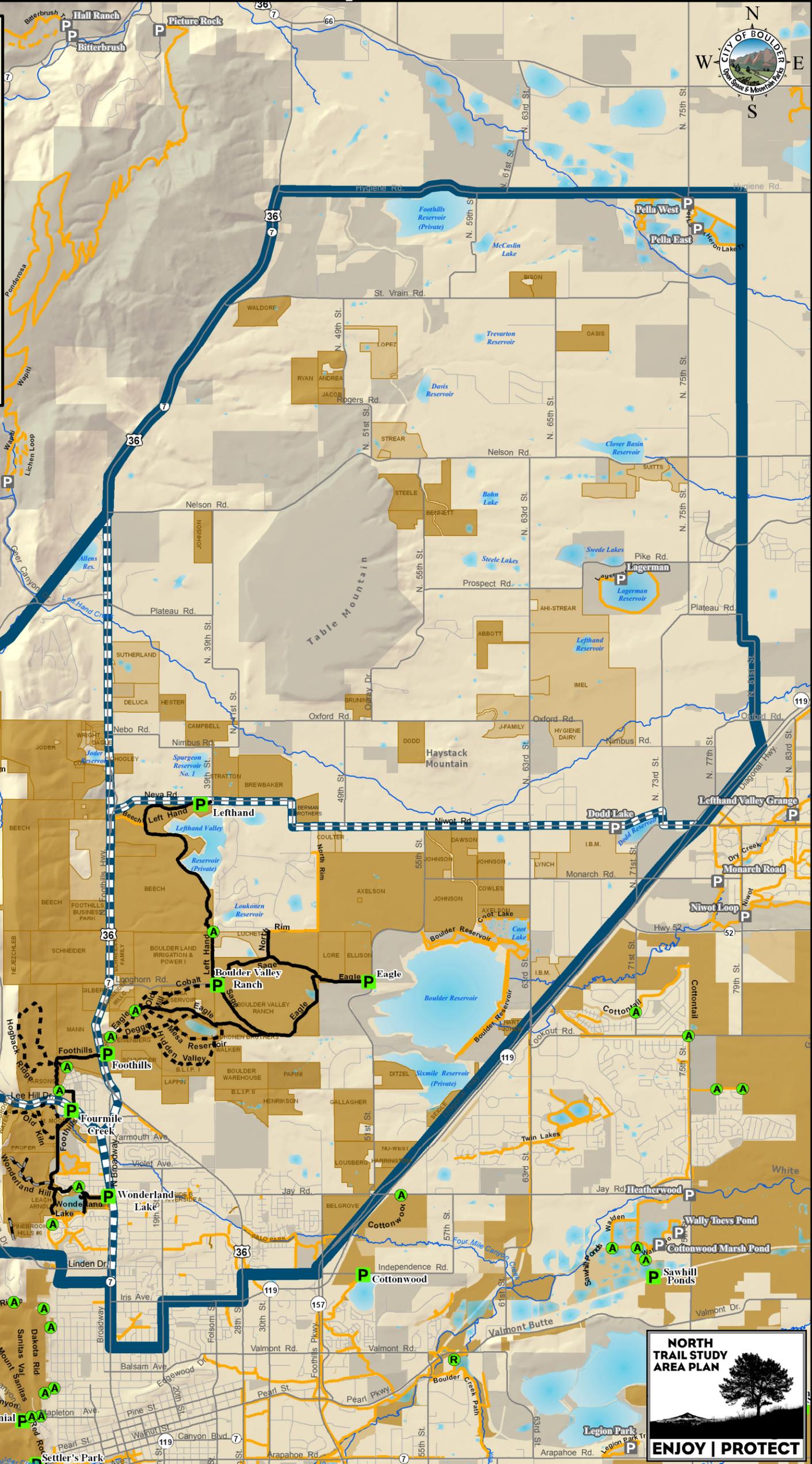
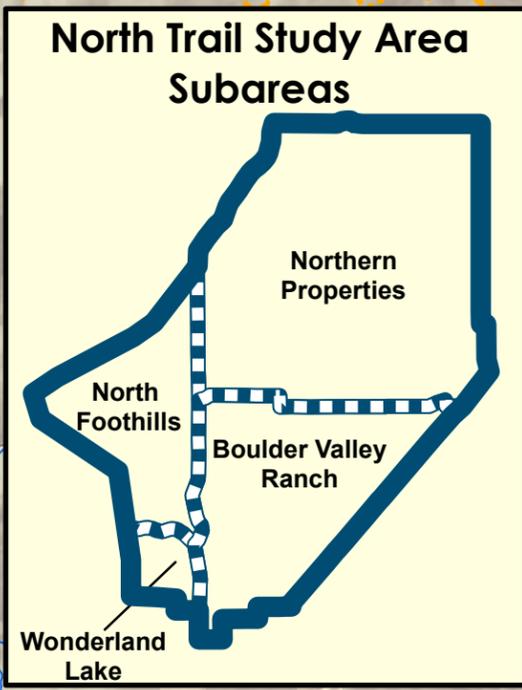
When a land agency switches from a ground based to user based approach to trail design, something magical happens - the user feels like it is "their" trail. It has the attributes they desire (even though the user may not explicitly realize what these are) and as a result they feel really good every time they use it. They'll say that was a "good" trail. As the Federal land managers have seen over the last decade or so, when this happens user satisfaction goes way up, user conflict goes down, and compliance becomes much less of an issue. This results in the agencies saving money as they don't have to spend anywhere near as much on Rangers to enforce regulations and deal with conflict, and it also results in much lower maintenance costs as the users themselves are more likely to volunteer to do the upkeep on "their" trail.

So I am more than happy to work you and staff to whatever degree desired if you want to pull in this critical Step 3 of what the trail should look like to the NTSA process. Just the acknowledgement and documentation of specific user group trail attributes would go a long way towards starting to pull the public into the "ownership" role of "their" trail system vs. the current experience of it being "OSMP's trail system." I've seen time and time again how this simple shift dramatically changes the entire feel of a trail system and the public perception of the land agency. As such I am willing to do whatever necessary to help OSMP embrace this approach so that this TSA can finally be viewed as a success in terms of the kinds of trail experiences it produces for users on the ground.

Sincerely,
Dan

City of Boulder Open Space and Mountain Parks North Trail Study Area

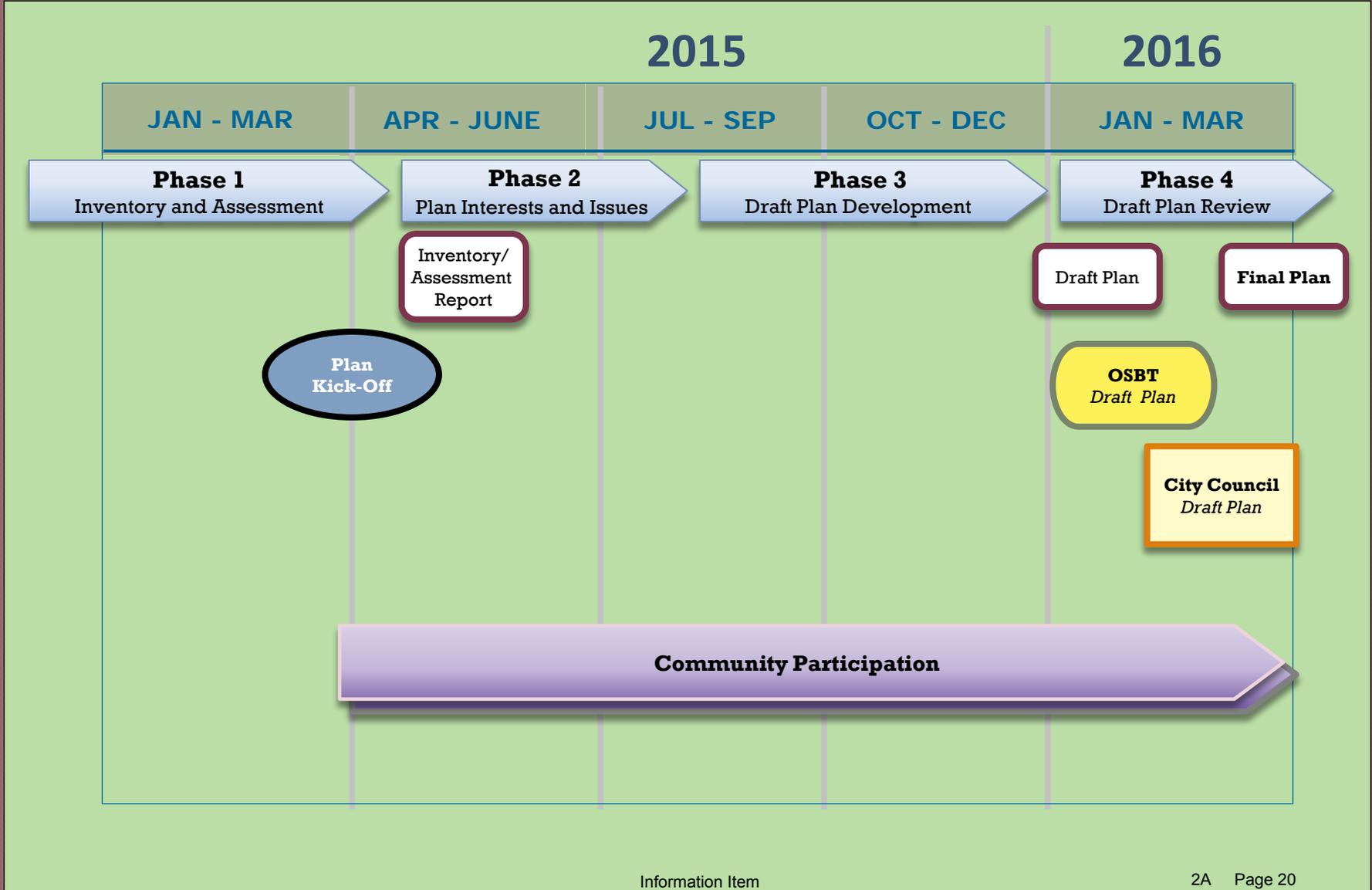
Date: 2/24/2015



- OSMP Trailhead
- OSMP Hiking/Equestrian Trail
- NTSA Boundary
- OSMP Access Point
- OSMP Multi-Use Trail
- NTSA Subarea
- OSMP Recreational Feature Access
- Gliding Access
- OSMP Fee and Managed Property
- Other OSMP Property
- Other Protected Land
- Boulder County Trailhead
- Other Hiking Trail
- Other Multi-Use Trail

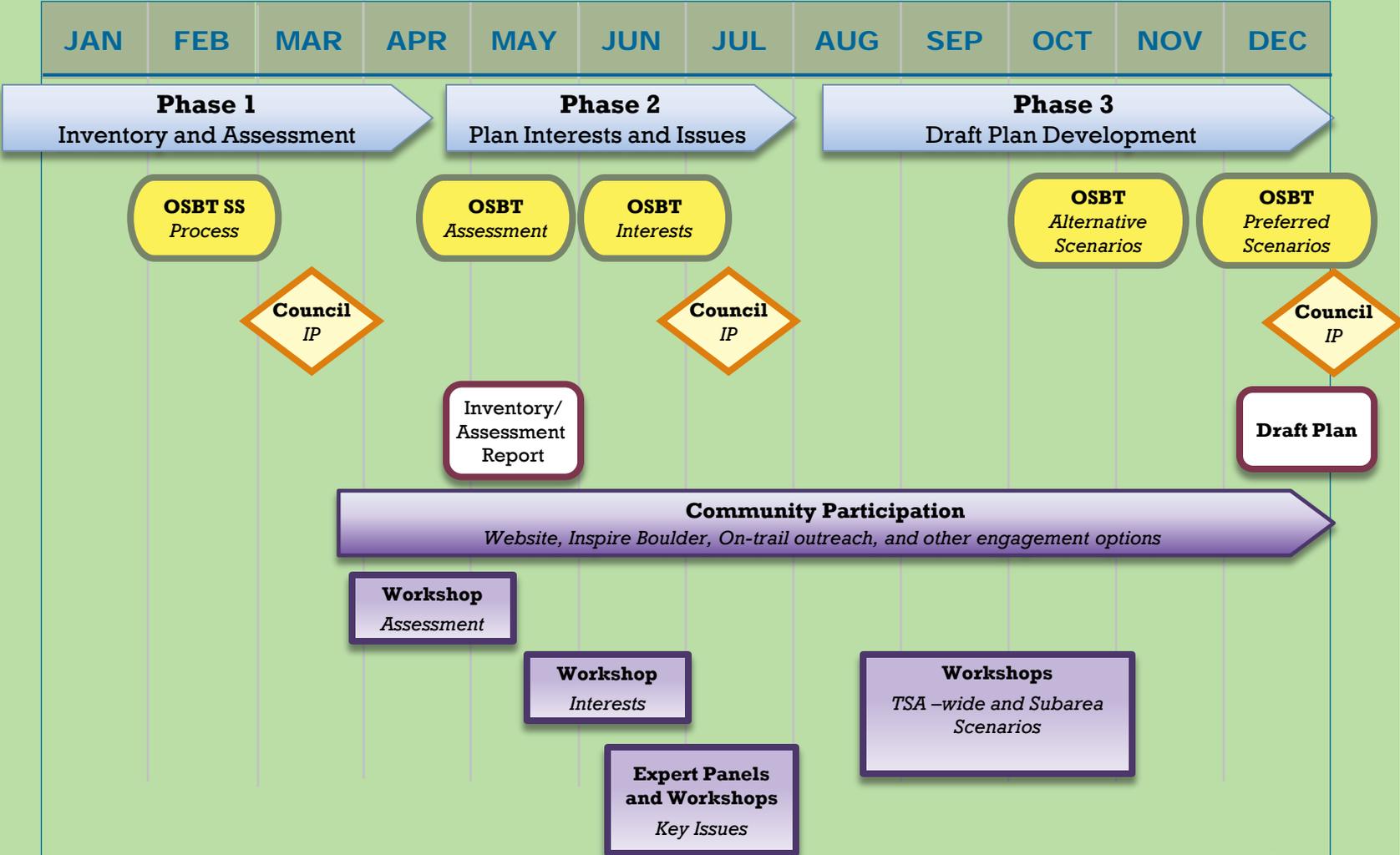
User: csekj1 Date: 2/24/2015 Path: E:\MapFiles\TSA\NorthTSA\NorthTSA_Basemap.mxd

Potential North TSA Timeline



Potential North TSA Timeline

2015



Comparison of TSA Plans’ Public Engagement Opportunities

Items in red text indicate approaches not used in other TSAs

TSA Plan	Plan Kick-Off and Inventory	Draft Plan Development	Draft Plan Review and Approval
Marshall Mesa / Southern Grassland	Outreach <ul style="list-style-type: none"> E-mails Project website Press releases 	Outreach <ul style="list-style-type: none"> E-mails Project website Press releases 	Outreach <ul style="list-style-type: none"> E-mails Project website Press releases
	Input/Feedback <ul style="list-style-type: none"> Community questionnaire Community workshop to review inventory report and create trail scenarios (<i>open invitation</i>) 	Input/Feedback <ul style="list-style-type: none"> Community workshop to review trail scenario alternatives (<i>open invitation</i>) Open House to review alternative trail scenarios 	Input/Feedback <ul style="list-style-type: none"> Community workshop to review draft plan Open House to review draft plan
			Public Hearing <ul style="list-style-type: none"> Public hearing at OSBT meeting
Eldorado Mountain / Doudy Draw	Outreach <ul style="list-style-type: none"> E-mails Project website Press releases Signs & flyers Post cards to area residents 	Outreach <ul style="list-style-type: none"> E-mails Project website Press releases Signs & flyers 	Outreach <ul style="list-style-type: none"> E-mails Project website Press releases
	Input/Feedback <ul style="list-style-type: none"> Listening sessions with stakeholders 	Input/Feedback <ul style="list-style-type: none"> Two open houses to review alternatives Listening sessions/discussions with stakeholders Community field trips Community feedback requested on seasonal grassland nesting bird closures (<i>plan-specific issue</i>) 	Input/Feedback <ul style="list-style-type: none"> Two community open houses to review draft plan Post planning process questionnaire
			Public Hearing <ul style="list-style-type: none"> Public hearing at OSBT meeting

TSA Plan	Plan Kick-Off and Inventory	Draft Plan Development	Draft Plan Review and Approval
West	Outreach <ul style="list-style-type: none"> E-mails Project website Press releases Signs & flyers 	Outreach <ul style="list-style-type: none"> E-mails Project website Press releases Community collaborative group outreach to constituents 	Outreach <ul style="list-style-type: none"> E-mails Project website Press releases
	Input/Feedback <ul style="list-style-type: none"> Community open house on process and public involvement Feedback requested on inventory report Community open house on inventory report 	Input/Feedback <ul style="list-style-type: none"> Community meeting to select collaborative community group Collaborative community process (Community Collaborative Group) Bi-monthly Community Collaborative Group (CCG) meetings have public comment opportunity Community meeting by the collaborative group on mountain biking opportunities (<i>plan-specific issue</i>) Community meetings or open houses hosted by staff for trail projects not included in the TSA planning process. (Goat Trail, Green Mountain West Ridge) (<i>plan-specific issue</i>) 	Input/Feedback <ul style="list-style-type: none"> Community meeting on collaborative group recommendations
			Public Hearings <ul style="list-style-type: none"> Public hearing at OSBT meeting for CCG recommendations Public hearing at OSBT meeting for draft plan Public hearing at City Council meeting

North Trail Study Area Plan

Community Engagement Strategy

Phase 1: Inventory and Assessment

Step 1: Participation in the Assessment

The goal of this step is to get the community engaged from the beginning by inviting their participation in the documentation of the current conditions in the North Trail Study Area (TSA). This step involves getting members of the public to identify where they have seen problems in the North TSA and where there is something great they want to maintain. They will basically help catalogue the current conditions of the area.

This step would occur through several types of engagement to reach a broad segment of the community, beyond those who attend Open Space Board of Trustees (OSBT) meetings and typical open houses:

- An open public workshop during which participants identify specific areas of concern or of high value on maps
- Optional meetings with targeted invitations to specific experts and/or stakeholders to discuss the current conditions on a specific topic (e.g., songbirds, raptors, trail sustainability, etc.)
- On-trail outreach with staff providing questionnaires or maps at trailheads
- Store front/coffee shop outreach with staff hosting a map-based station at local shops
- Web-based questionnaires and possibly web-based maps to allow for similar input through the Inspire Boulder website

Results:

- The primary output from this step would be a series of identified areas of concern and areas of importance to be integrated into work on the inventory/assessment.
- Outcomes from this step include early community engagement, increased community role in and hopefully acceptance of baseline data, and increased trust in the process.

Additional resources needed:

- Venue costs
- Facilitation for the open public meeting; possibly for the optional meetings with targeted groups
- Public Relations and Community Outreach staff not currently budgeted/integrated into the project
- Cost, if any, for “setting up shop” in stores and coffee shops
- Printing for maps and information sheets/handouts

Step 2: Review and Comment on the Inventory and Assessment

The public will be invited to provide comment on the inventory and assessment. The assessment will be posted online for the public’s review and comment. Optionally, the OSBT and staff could also host a public meeting to unveil the assessment, have staff answer questions, and encourage

small group discussions on what members think about the assessment. If OSBT and staff opt to host a meeting, additional costs include meeting facilitation and small group facilitators (see below for more details on small group facilitators).

Phase 2: Plan Interests and Issues

Step 1: Identification of Interests in the North TSA

The goal of this step is to get community involvement in the identification of the interests in the North TSA. Rather than invite a list of positions or “wants” in the North TSA, this conversation focuses on why people want what they want. For example, if someone suggests moving a particular trail from location A to location B, the interest that underlies that might be improved views or a trail alignment that avoids commonly wet and muddy areas.

This step would occur through the following steps:

- An open public workshop for small group discussion to answer two questions: “What would you like to see in the North TSA?” and “Why?” Non-staff small group facilitators would assist in managing the small group discussions.
- On-trail outreach with staff asking users to share their responses to the same questions
- Store front/coffee shop outreach with staff hosting a station to get responses to the same questions
- Web-based questionnaires to get responses to the same questions

Results:

- The primary output from this step is a list of interests in the North TSA, which can be integrated and balanced to be approved or revised by the OSBT and staff, and once finalized, could be used as a set of criteria for a good area plan (i.e., a good plan is one that meets most or all of the identified interests).
- Outcomes from this step include ongoing community engagement to help set priorities for the planning process and increased trust in the process.

Additional resources needed:

- Venue costs
- Facilitation for the open public workshop
- Small group facilitators (conflict resolution students can likely be used to get skilled facilitation for a reasonable cost)
- PR/Outreach staff not currently budgeted/integrated into the project
- Cost, if any, for “setting up shop” in stores/coffee shops

Step 2: Education and Discussion of Key Issues and Options

The first goal of this step is to help the community, OSBT and staff learn about different ways experts have addressed specific issues that may pose challenges in the North TSA, such as maintaining a high quality of visitor experience while also improving trail physical and environmental sustainability and minimizing recreational activity (user) conflicts. Additional topics could include unique natural, cultural, and agricultural resources and ways to conserve

them. The second goal of the step is to encourage community dialogue about what was learned from the experts and which idea(s) the community would like to see implemented in the North TSA and why.

The primary way this step will be implemented is through expert panels on the topics identified above. Community members will be invited to attend these panels to learn from the experts; then they will discuss what they have learned in small groups. The primary discussion question for the small groups will be “Which of the ideas on [topic] resonates with you as a good approach for the North TSA?” Small group facilitators will be helpful in keeping participants focused on the questions.

The panel discussions will be video recorded for community members who do not attend the meetings in person and posted online along with any summary or reference documents. Additionally, an online dialogue can be created on the Inspire Boulder site to give these virtual participants a similar opportunity for discussion as that available for in-person participants.

Results:

- The primary output from this step is a list of desired actions from the community for the North TSA for staff to consider in the development of the draft plan.
- Outcomes from this step include increased knowledge among community members about issues and options for the North TSA, ongoing community engagement to help frame potential recommendations, and increased trust in the process.

Additional resources needed:

- Venue costs
- Speaking fees and/or travel costs for experts
- Facilitation for the panel discussion meetings
- Small group facilitators (conflict resolution students can likely be used to get skilled facilitation for a reasonable cost)
- Recording costs (for Channel 8 or another recording company)

Plan Phase 3: Draft Plan Development

Step 1: Discussion of Proposed Scenarios for Issues and Areas

Based on the ideas that emerge from the above steps, staff will develop scenarios for ways to manage the North TSA and/or ways to address challenging issues. Once these scenarios are available, the community will be invited to respond to them, providing comments and suggestions and/or ranking them based on preference (if staff develops multiple scenarios for a single subarea or issue). This can be done during an open public workshop, as well as online using the Inspire Boulder website. Additional opportunities for comment on the scenarios could also be provided at trailheads and in store/coffee shops.

Results:

- The primary output from this step is feedback on the scenarios for the OSBT and staff to consider as the draft plan is developed; staff could select a preferred scenario based on

feedback and/or integrate components from different scenarios into a hybrid scenario. The list of interests developed in Step 3 can also serve as a guide in determining which scenarios go into the draft plan.

- Outcomes from this step include ongoing community engagement to help revise scenarios and identify preferred scenarios for inclusion in the draft plan and increased trust in the process.

Additional resources needed:

- Venue costs
- Facilitation for the open public meeting
- Small group facilitators (conflict resolution students can likely be used to get skilled facilitation for a reasonable cost)
- Printing costs for handouts (if needed)
- Cost, if any, for “setting up shop” in stores/coffee shops

North TSA Plan Phase 4: Plan Review and Acceptance

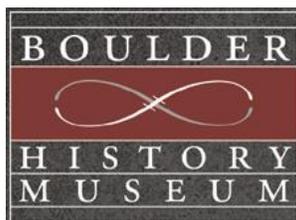
Step 1: Comment on the Draft Plan

The public will be invited to provide comment on the draft plan that results from the above steps. The draft plan will be posted online for the public’s review and comment. Optionally, OSBT and staff could also host a final public meeting to unveil the draft plan, have staff answer questions, and encourage small group discussions on what members of the community like and would like to see changed before the plan is finalized. If OSBT and staff decide to host this final public meeting, additional costs include meeting facilitation and small group facilitators.

Step 2: Public Hearings on the Draft Plan

Prior to final review of the draft plan by the OSBT and City Council, a joint study session discussing the draft plan may be beneficial. After the study session, the public can provide comment on the draft plan during the OSBT public hearing scheduled for when the OSBT approves the draft plan and has a recommendation to City Council. An additional public hearing would be scheduled during City Council’s consideration and acceptance of the plan.

Community Outreach and Engagement	Phase 1	Phase 2	Phase 3
	Inventory and Assessment	Plan Interests and Issues	Draft Plan Development
<p>Inform/Outreach</p> <p><i>Providing information to assist in understanding the process, opportunities for input, issues to resolve, and progress on developing the plan.</i></p>	<ul style="list-style-type: none"> • Social media (Facebook, Twitter) • Project website • Emails and project newsletters sent to interested individuals and stakeholders • Media releases • Neighborhood mailings • Inside Boulder/Channel 8 information • Natural Selection hikes, programs, walking tours • Utility bill notices or inserts • Fact Sheets • Trailhead signs and kiosks 	<ul style="list-style-type: none"> • Social media (Facebook, Twitter) • Project website • Emails and project newsletter • Media releases • Neighborhood mailing • Inside Boulder/Channel 8 information • Natural Selection hikes, programs, walking tours • HOA notifications, newsletters, websites • Online mapping resources —Inventory data layers available for Google Earth mapping 	<ul style="list-style-type: none"> • Social media (Facebook, Twitter) • Project website • Emails and project newsletter • Media releases • Neighborhood mailing • Inside Boulder/Channel 8 information • Utility bill notices or inserts
<p>Engage/Involve</p> <p><i>Providing input on specific topics and issues and feedback on alternatives, scenarios, and preferred recommendations.</i></p>	<ul style="list-style-type: none"> • Inspire Boulder (MindMixer)-Digital town hall • Website and comment form • Open-invite workshop on current conditions in the TSA (assessment) • On-trail outreach and questionnaires provided by staff or maps for providing comments placed at trailheads • Store front/coffee shop outreach and map-based station for comments 	<ul style="list-style-type: none"> • Inspire Boulder (MindMixer)-Digital town hall • Website/comment form • Open-invite workshops on interests in the TSA and on issues and likely challenges in the TSA • On-trail outreach and questionnaires provided by staff • Store front/coffee shop outreach and comment station for commenting on questions 	<ul style="list-style-type: none"> • Inspire Boulder (MindMixer)-Digital town hall • Website/comment form • Open-invite workshop(s) on staff-proposed scenarios for TSA-wide and subarea management actions
Additional Options			
	<ul style="list-style-type: none"> • Optional meetings with specific experts and/or stakeholders • Community open house to review Inventory and Assessment information 	<ul style="list-style-type: none"> • Listen and learn sessions with stakeholders 	<ul style="list-style-type: none"> • On-trail and store/coffee shop outreach and comment opportunity on scenarios • Listen and learn sessions with stakeholders



February 24, 2015

Jane Brautigam, City Manager
City of Boulder
1775 Broadway
Boulder, CO 80302

Dear Jane,

The Board and staff of the Boulder History Museum greatly appreciate the City of Boulder's \$23,609 annual contribution to the Museum. With your help, we are able to provide high quality, unique experiences for people to explore the continuing history of Boulder. Below is a summary of the great work we were able to accomplish in 2014.

Museum Exhibits

Throughout 2014, the Boulder History Museum continued to draw visitors to the Harbeck House on University Hill through our permanent exhibit on Boulder's early history, *Storymakers: A Boulder History*, located on our second floor. The year began with the traveling exhibit *Alert Today, Alive Tomorrow: Living with the Atomic Bomb, 1945-65*. We then continued the year with three exhibits in our rotating first floor gallery: *Boulder County Ditches: Then & Now*; *Evolution of Activewear: Fibers, Function & Fashion*; and *Chief Niwot ~ Legend & Legacy*. The interest in the ditches exhibit was great as it not only presented the history of Boulder County ditches, but also showed how they had changed or were affected by the 2013 floods. Following on this exhibit, we presented *Evolution of Activewear: Fibers, Function & Fashion*, which focused on not just the science and technology behind different fibers, but on the role Boulder has played in the evolution of design and technology of sportswear.

In recognition of the 150th Anniversary of the Sand Creek Massacre, we reintroduced our award-winning exhibit *Chief Niwot ~ Legend & Legacy* in August. The newer version of this very popular exhibit includes new content that focuses on Boulder's role in the massacre. This new content includes an interactive diary that visitors can page through, along with other digital information that highlights the events leading up to the massacre. We continue to experience high interest in the exhibit and our associated adult and youth educational programs related to the exhibit.

In 2014, we experimented with a new trend beyond the museum walls: a pop up exhibit! In recognition of the one-year anniversary of the flood in Boulder County, we presented the exhibit *Flood Reflections... One Year Later* over a period of two weeks at our new downtown location at Broadway and Pine. The exhibit was unique in nature as it was designed as an interactive, community gathering space to collaboratively discuss and share recollections of the flood. Museum staff helped provide half the curation of this exhibit by collecting items associated with the flood and showing digital recordings of flood reporting. The public then provided the other half of the exhibit by bringing in their own objects and contributing their own memories on notecards. The exhibit provided the Museum with a great glimpse of what we will be able to do with the future space at the Museum of Boulder.

Museum Programs

In 2014, the Museum expanded our programs and offered a wide variety of very successful talks, walks, tours and activities for Boulder residents. We began the year with a series of lectures on Boulder's water history on Fridays at noon. These talks resonated with Boulder residents' heightened interest in waterways after the September 2013 floods. Our featured guest at our Second Annual Women's History Month Tea was University of Colorado Assistant Professor Polly McLean, speaking about the first black woman graduate of CU, Lucile Berkeley Buchanan. In celebration of Preservation Month in May, we hosted a tour of our Collections Storage Facility along with the program *Collecting the Flood* and held a lecture at the Museum of Boulder about black historic homes. The Museum also participated in the annual Historic Preservation Awards by the Boulder Heritage Roundtable at the Chautauqua Community House.

Part of the appeal of local history is that we can go and see right where historic events happened. Our second snowshoe history tour at Eldora Mountain Resort was great fun, and a *History Hike into Western Water Law* was a unique chance to see the headgates of the Left Hand Ditch. Walking tours of University Hill were conducted for Walk & Bike Month, the Hill Boulder business group, CU Family Days and CU classes. The one-year anniversary of Boulder's historic flood was marked with four informative presentations presented to 200 participants.

The significant and historic 150th anniversary of the tragic Sand Creek Massacre was an opportunity to offer education about Native American history in Boulder and in our state. The Museum was represented at meetings of Governor Hickenlooper's Sand Creek Massacre Commemoration Commission and we were able to help spread awareness of the importance of the Commission's work. We offered the Boulder public a variety of opportunities to learn about the Sand Creek Massacre. Nearly 400 people participated in these programs, which included a bus trip to the Sand Creek Massacre National Historic Site. We garnered many new members and important new connections and partners.

The Second Annual Chief Niwot Forum was a special remembrance of the 150th Anniversary of the Sand Creek Massacre. Co-Sponsored by the Native American Rights Fund, the event was a sellout with 175 attendees. Senator Ben Nighthorse Campbell and Congressman David Skaggs were our distinguished speakers, discussing the history of the massacre and the creation of the Sand Creek Massacre National Historic Site. We are looking forward to the Third Annual Chief Niwot Forum in November 2015, as Ernest House, Jr., Executive Director of the Colorado Commission of Indian Affairs, has agreed to be our featured speaker.

The two-year run of the Museum's local history book club wrapped up in December of 2014. We read a total of 20 books, had seven guest speakers, took one guided hike, listened to an author podcast, had an author Skype interview and screened a film.

For the sixth season, the Museum's *Boulder Conversations with Extraordinary People* programs continued to be very successful. In 2014, the series hosted a remarkable slate of speakers including a pioneering school lunch reform chef, a technology investing superstar, an innovative restaurateur, a natural foods guru, a downtown Boulder legend, a Lost Girl of Sudan and an East German escapee who became a Boulder City attorney and CU Regent.

Partnerships

Our first *History on Screen* partnership with The Boedecker Theater at the Dairy Center for the Arts was a great success. Four engaging experts followed by four thoughtfully selected relevant films brought full houses to The Boedecker, including a sellout showing of the newly remixed, re-mastered “A Hard Day’s Night.”

We co-sponsored a series of four programs called *Architecture Matters* with the City of Boulder, Historic Boulder and the Carnegie Branch Library for Local History. A nearly a full house of more than 700 people enjoyed an exclusive screening of *Climb to Glory: The Legacy of the 10th Mountain Division Troops* at the Boulder Theater, a first time partnership with Vail’s Colorado Ski & Snowboard Museum. We partnered with Historic Boulder on a talk to coincide with their biennial *Meet the Spirits* event at Columbia Cemetery. A lecture with the Colorado Music Festival allowed us to mark an important event at the start of WWI with the talk, *The Christmas Truce of 1914: Myths and Reality*. Memberships to the Museum increased by nearly 29% in 2014, a testament to the success of Museum activities during the year.

Youth Programs

The Boulder History Museum’s educational resources reached more schools than ever before in 2014 and hosted many repeat visits from classes. The Youth Education Department reached 6,705 students, teachers and parents with education programs and outreach materials.

A particularly special treat was a performance for elementary school students hosted at the Museum of Boulder of *Yesterado: Stories of Colorado when it was Young*. We welcomed 419 students and teachers into our future space to enjoy the comedic gem written and performed by Buntport Theater that brings real headlines from 1897 to life, including scenes of con man Soapy Smith, socialite Margaret Brown and cyclist Dora Rinehart.

Over the summer, we launched children’s Play Dates in the Discovery Room. Each week there was a new activity for kids of any age to get creative or muck about, which brought in a new crowd to the Discovery Room and the Museum.

After the first semester, the Museum has already reached 85% of nearby BVSD elementary schools this school year. Five schools took advantage of three or more separate visits with Museum staff and resources in a single semester, which makes our impact much greater than a single visit.

The popular Chief Niwot exhibit proved a great resource for kids and our Native American programs including *The Buffalo*, *The Trading Game*, *History Detectives*, *The Faces of Sand Creek* and the *Plains Indians Outreach Trunk* have driven participation in our school programs.

We continue offering camps for children on school days off and this year offered our first week-long camp, *Week at the Museum*, which got rave reviews from parents, including one who said, “Our kids do a lot of camps, and this one was exceptional.”

Our school and youth programming in 2014 allowed us to expand our reach and showcase the concepts we will embrace with our rebranding as the Museum of Boulder.

Collections

Behind the scenes, our staff is busy organizing, cataloguing, and preserving our historic collection of more than 41,000 historic artifacts. In 2014, we received donations from 49 individuals for a total of 427 new artifacts in the collection. 3,600 artifacts were photographed and updated in the extensive database. The collection is an important historic resource that is available for display, to loan to other museums and for research. This extensive collection is the only collection of historic artifacts that focus specifically on the history of the Boulder region.

The Museum of Boulder

The Museum's Capital Campaign Committee continues to be very active raising money for the new Museum of Boulder. We are grateful to the City of Boulder for the innovative initiative to create a temporary tax to support culture and safety initiatives in the City. We were thrilled with the community support of this initiative, with nearly 64% of Boulder citizens voting in favor of Ballot Measure 2A. This .3% temporary sales tax will contribute four million dollars to the campaign for the new Museum of Boulder and will be matched with funds raised by the Museum. The successful November ballot initiative was followed by the receipt of a \$500,000 Challenge Grant from the National Endowment for the Humanities to support the purchase of the Masonic Lodge Building and convert it into the Museum of Boulder. These two boosts to our campaign were followed by several significant individual contributions. We ended a very successful 2014 with pledges and gifts totaling \$5,646,500, nearly 71% of our \$8,000,000 goal.

As you can see, 2014 was a productive year for the Museum. We look forward to continuing our great programs and outreach to the community in 2015 in addition to progressing on our campaign and planning for the new Museum of Boulder. As always, we welcome your comments and questions on our programs and plans.

Sincerely,



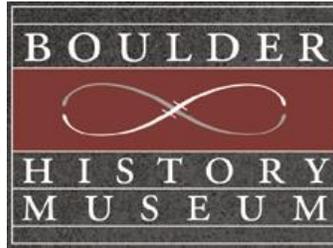
Nancy Geyer
Executive Director & CEO
Boulder History Museum
Museum of Boulder

Encl.:

2014 Activities

Boulder History Museum Dec. 2014 Balance Sheet

Boulder History Museum Dec. 2014 Financials



2014 ACTIVITIES

EXHIBITS

Exhibits at the Harbeck House (1206 Euclid Avenue)

Storymakers: A Boulder History
Alert Today, Alive Tomorrow: Living with the Atomic Bomb, 1945-65
Boulder County Ditches: Then & Now
Evolution of Activewear: Fibers, Function & Fashion
Chief Niwot~Legend & Legacy
Milestones of Boulder County (Hallway Exhibit)
Opening Doors, Opening Eyes to Boulder County's Diversity (Hallway Exhibit)
The Great Flood of 1894 (Hallway Exhibit)
Boulder at War (Hallway Exhibit)
Celebrating 100 Years of Starr's Clothing Company (Hallway Exhibit)
Emphasis on Education: Preserving Boulder's Oldest Schools (Hallway Exhibit)
Corden Pharma Discovery Room

Exhibits at the Museum of Boulder (2205 Broadway)

Flood Reflections...One Year Later

Community Exhibits

Boulder's Sister Cities (Hotel Boulderado teaser display)
Highlights from the Collection (Hotel Boulderado teaser display)

SPEAKER SERIES & PROGRAMS

Harbeck House

Members Only: Monthly Boulder History Book Club – 88 attendees at 9 meetings
University Hill Walking Tours (June, August, September) – 80 attendees

Museum of Boulder

Boulder Conversations with Extraordinary People Lecture Series:

Ann Cooper – 57 attendees
Brad Feld – 75 attendees
Frank Day – 69 attendees
Mark Retzliff – 39 attendees
Virginia Patterson – 110 attendees
Micklina Kenyi – 55 attendees
Peter Dietze – 70 attendees

Ditches Then & Now Program Series:

Our Riches of Ditches, Boulder's Constructed Landscape – 165 attendees
Waterways of Boulder County: Survival on the Dry Side of the Mountains – 125 attendees
Frederick Law Olmsted, Jr. and Boulder Creek: The Road Not Taken -110 attendees
Women's History Month Tea: Lucile Berkeley Buchanan – 74 attendees

If These Walls Could Talk...Homes of Early Black Boulder Citizens – 75 attendees

Flood Reflections Program Series:

Boulder's 2013 Floods: The What & Why of Forecasting a Record Flood Event – 64 attendees

One Year after the Flood: Open Space & Mountain Parks – 70 attendees

A Historical Context of the 2013 Colorado Flood – 30 attendees

Boulder's Waterworks: Past & Present - 38 attendees

The Future of Sand Creek: National Park Service Presentation – 73 attendees

Celebrando la Historia: Over 100 Years of Latino Contributions – 130 attendees

Cryptic Tombstones: Secret Societies & Cemetery Symbolism – 43 attendees

Boulder Historical Society's 70th Anniversary Celebration– 70 attendees

Scientific and Cultural Facilities District (SCFD) Check Ceremony – 85 attendees

Day of the Dead Celebration – 220 attendees

A Misplaced Massacre: Struggling Over the Memory of Sand Creek with Dr. Ari Kelman – 103

First Annual Chief Niwot Forum - Congress Meets Sand Creek: Senator Ben Nighthorse Campbell's

Fight for a National Historic Site – 175 attendees

The Christmas Truce of 1914: Myths and Reality– 70 attendees

Community Programs

Snowshoe History Trail Tour – Eldora Mountain Resort Nordic Center, 18 attendees

Climb to Glory: The Legacy of the 10th Mtn Division Troops – Boulder Theater, 711 attendees

No God, No Master, April History on Screen – Boedecker Theater, Dairy Center for the Arts, 65

Columbia Cemetery Tour with Mary Reilly-McNellan – Columbia Cemetery, 33 attendees

Preserving the Flood Collection: Behind the Scenes Tour – 16 attendees, BHM Collection Storage

Historic Preservation Month: Architecture Matters – Boulder Public Library, 'Boulder's Modern

Architecture' 50 attendees, 'The Greenest Building' 30 attendees, 'Landmarks of the Future' 50

attendees, 'Sleeper' 40 attendees

History Hike into Western Water Law – 17 attendees

Los Seis and The Company You Keep, June History on Screen – Boedecker Theater, Dairy Center, 60

A Hard Day's Night, August History on Screen – Boedecker Theater, Dairy Center for the Arts, 75

Bus Trip to Sand Creek Massacre National Historic Site – 46 attendees

Little Big Man, November History on Screen– Boedecker Theater, Dairy Center for the Arts, 97

SPECIAL EVENTS

Harbeck House

Boulder County Ditches: Then & Now Exhibit Opening – 90 attendees

Evolution of Activewear Exhibit Opening – 60 attendees

Chief Niwot~Legend & Legacy Exhibit Opening – 110 attendees

Smithsonian Museum Day – 12 attendees

Members/Volunteers Holiday Party – 120 attendees

2014 First Free Sundays – 469 attendees

2014 Boulder Remembers Sand Creek Massacre Free Day – 53 attendees

Rental – 65 attendees

Museum of Boulder

Annual Membership Meeting - 55 attendees

7th Annual History Mystery Challenge: 'Mapleton Hill' Edition - 110 attendees

City of Boulder's 2013 Flood Anniversary Science Panel – 100 attendees

City of Boulder's Boulder Flood Tribute: Community Stories in Action – 90 attendees

Museum of Boulder informational tours – 120 participants

Colorado Music Festival Stir it Up event – 65 attendees

Rentals – 811 attendees

EDUCATION AND OUTREACH

Museum K-12 School Tours – 1,640 attendees
Youth Summit Program in January – 45 attendees
Point of View: Documentary Filmmaking Program:
 Centennial Middle School – 78 attendees
 Casey Middle School – 260 attendees
Outreach Programs and History Trunks – 5,030
Enrichment Programs:
 Scouts, Pre-K series, Summer & School Day Off Camps – 78 participants
 Squiggle Bots Boulder Arts Week: 12 participants
 Play dates: 43 participants
 Yesterado, History Theater: 419 attendees
 Costume rental: 375 participants
Adult Tours – 63 participants
Adult Outreach PowerPoint Presentations – 368 participants
 Only in Boulder Outreach (August) – 23 attendees
Community Outreach Events:
 Boulder County Fair, Longmont - 35 attendees

COLLECTIONS

New donations in 2014: 49 new donations for a total of 427 items
Found in Collection items: we added 64 of these; these were at Storage but not in the database
Added about 3600 photos to database, as well as 27 multimedia items, total roughly 12,300 photos
Currently 41,017 catalog entries in the database, lower than previously due to removal of duplicates

VISITORS

Total Served – 18,553
11,647 - Visitors to the Boulder History Museum at the Harbeck House and at the MOB
6,906 - Participants in programs off-site

Members: 437

Volunteers: 40 **Volunteer Hours for 2014:** 3236

Boulder History Museum
Summary Balance Sheet
As of December 31, 2014

	<u>Dec 31, 14</u>
ASSETS	
Current Assets	
Checking/Savings	424,783.61
Accounts Receivable	237.50
Other Current Assets	<u>111,617.32</u>
Total Current Assets	536,638.43
Fixed Assets	3,664,283.69
Other Assets	<u>6,599,485.15</u>
TOTAL ASSETS	<u><u>10,800,407.27</u></u>
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	3,668.93
Credit Cards	2,679.84
Other Current Liabilities	<u>35,807.56</u>
Total Current Liabilities	42,156.33
Long Term Liabilities	<u>2,551,685.29</u>
Total Liabilities	2,593,841.62
Equity	<u>8,206,565.65</u>
TOTAL LIABILITIES & EQUITY	<u><u>10,800,407.27</u></u>

Boulder History Museum - Museum of Boulder
2014 End of Year Financials

Boulder History Museum - Museum of Boulder 2014 Year End Financials

	<u>Jan - Dec 2014</u>	<u>Budget</u>	<u>% of Budget</u>
Earned Income			
Admission Fees	15,082	17,275	87%
Adult Programs	12,949	15,300	85%
Grants	27,063	24,500	110%
Investment income	214	40	535%
Special Event Income	14,367	11,700	123%
Youth & Family Programs	6,182	6,580	94%
Carnegie photos	1,253	1,500	84%
City of Boulder	23,609	23,609	100%
Contributions	18,371	13,300	138%
Bookstore	7,390	6,000	123%
Membership Fees	16,370	12,500	131%
Misc. Income	209	0	100%
Museum rental	560	1,000	56%
Rental Income O'Dell Place	55,653	51,237	109%
Sponsorships	6,500	7,000	93%
Total Earned Income	205,772	191,541	107%
Cost of Sales	-607		
Gross Profit	206,378	191,541	108%
Operating Expense			
Accounting	23,780	23,900	99%
Adult Program Expenses	14,931	11,300	132%
Advertising/Promotion	29,182	31,000	94%
Building Maintenance	9,382	4,800	195%
Odell Place Rental Expenses	30,902	31,398	98%
Collections	8,165	11,920	68%
Collections Building Expenses	18,137	19,027	95%
Equipment and Furnishings	1,634	8,700	19%
Exhibit Costs	29,675	25,643	116%
Financial Mgmt Expense	1,602	1,200	134%
Insurance Expense	15,328	15,004	102%
Membership Expenses	3,112	2,850	109%
Museum Operations	28,295	27,000	105%
Personnel Costs	316,164	339,541	93%
Resource development	2,157	2,500	86%
Special Events	4,101	1,700	241%
Youth & Family Program Expense	1,652	5,550	30%
Board Expenses	87	275	32%
Professional Development	2,053	6,000	34%
Museum Library	241	250	96%
Book Store	4,242	3,500	121%
Volunteer - Staff Training & Appreciation	636	700	91%
Total Operating Expense	545,460	573,758	95%

Boulder History Museum - Museum of Boulder
2014 End of Year Financials

Other Income/Expense

Other Income

Fidelity Investment	133
Endowment Income	8,370
IIT Investment	1,124
Christensen Trust - JP Morgan	144,874
In-kind Contributions	91,134

Total Other Income **245,636**

New Museum

New Museum Income

Building Rental Income	4,933
Capital Campaign	307,044

Total New Museum **311,977**

Other Expense

New Museum Expenses

	Jan - Dec 2014	Budget	% of Budget
Yes on 2A	11,500	0	
Small Equipment	1,674	2,500	67%
Insurance	5,376	5,422	99%
Supplies	171	800	21%
Capital Improvements	0	2,000	0%
Maintenance	11,691	8,000	146%
Campaign Events	336	800	42%
Campaign Coord/Exec Asst	24,876	33,201	75%
New Museum Misc.	-996	1,000	-100%
Campaign Travel & Mileage	0	8,000	0%
Campaign Print, Mail, Supplies	5,039	2,000	252%
Loan Interest	96,545	96,240	100%
Property Taxes	199	700	28%
Utilities	13,724	11,100	124%
Exhibit Design	0	20,000	0%
New Museum Expenses	170,134	191,763	89%

Depreciation	22,337
Rental Depreciation	11,608
Total In-kind Contribution	91,134

Total Other Expense **295,213**

Net Other Income **262,399**

Net Income* **-76,682**

*This deficit was covered by a distribution from the Museum's investment account

CITY OF BOULDER
BOULDER DESIGN ADVISORY BOARD MINUTES
January 14, 2015
1739 Broadway, 401 Conference Room

A permanent set of these minutes and a tape recording (maintained for a period of seven years) are retained in Central Records (telephone: 303-441-3043). Minutes and streaming audio are also available on the web at: <http://www.bouldercolorado.gov/>

BDAB MEMBERS PRESENT:

David Biek
Jamison Brown
Fenno Hoffman, Chair
Jeff Dawson
Michelle Lee

BDAB MEMBERS ABSENT:

PLANNING BOARD EX-OFFICIO MEMBER PRESENT:

Bryan Bowen

STAFF PRESENT:

Sam Assefa, Senior Urban Designer
Lesli Ellis, Comprehensive Planning Manager
Melinda Melton, Admin
Susan Meissner, Admin

BOARD DISCUSSION:

1. Approval of Minutes

BDAB approved the December 17, 2014 BDAB minutes.

2. Lumos Solar

BDAB members unanimously agreed that the Lumos Solar application met the Design Guidelines and the following review criteria:

- 2.2 Consider the Alignment of Architectural Features and Established Patterns with Neighboring Buildings
- 2.5 Maintain a Human Building Scale, Rather than Monolithic or Monumental Scale
- 2.8 Shade Storefront Glass by Appropriate Means
- 5.1 Signs should be Designed as an Integral Part of The Overall Building Design

3. Envision East Arapahoe

L. Ellis presented the item

Board Comments

- **F. Hoffman** suggested choosing colors that would be easier to see in the Sketch Up model. He also suggested extending the model area to include the surrounding areas.

- **B. Bowen** pointed out that some of the eastern portion of the city, like Recycle Row, is not in the model. There was a lot of focus on Recycle Row in the Western Annexation and it should be pictured.

Project feedback:

- BDAB members agreed that the plan needs more vision in order to help East Arapahoe become something different and better than what it currently is. The three scenarios seemed diluted and provided little inspiration. Planners need to think generationally and look forward into the next 50 to 100 years.
- **J. Brown** noted that the goal is not about creating more density but about creating quality of place and determining what can be supported in the area. If the city prohibits any sort of urbanism in other areas of Boulder, the downtown area and its existing character will not be protected.
- Mixed use development around the medical center is desired.
- **D. Biek** suggested that planners use metrics where they support density rather than the other way around. Boulder Junction is where density makes sense.
- **F. Hoffman** noted that a superblock scale structure makes good urbanism very difficult to achieve. Smaller blocks will improve the quality of this area. Model transportation along Arapahoe using the different land use scenarios to determine at what point real effects are perceivable.
- **D. Biek** commented that well-designed neighborhood centers may increase traffic in micro-areas, but reduce the aggregate traffic throughout the city, thereby decreasing vehicle miles traveled per capita. Those decisions should be based on what is good for the region and the planet.
- If the BRT makes local stops it won't need a dedicated lane. BRT slows down in urban areas and then becomes a BRT when it leaves town.

Public engagement:

- The board agreed that there needs to be a change in the public engagement process and that it has to be done smartly.
- Model different densities and land use patterns. Present the public with options on both ends and in the middle of the spectrum.
- **F. Hoffman** noted that the community surveys showed a clear consensus to make transportation-related improvements to Arapahoe; change it into more of a boulevard. Feedback regarding land use changes and development patterns were split and inconclusive. There were many comments requesting that new developments not look like Boulder Junction.
- **J. Dawson** recommended finding case studies of other municipalities around the country where they have taken on the remodeling of a suburban streetscape with goals of increased density and improved sense of place. People can get hung up on the familiarity of their city. Instead, show people what has been successful in other places with similar environments to demonstrate what is possible and that it can be done well.

- **J. Brown** commented that people fight for what they know. If using visual preferences, do not use examples from Boulder. Show big picture planning related visuals.
- **M. Lee** suggested asking people what kind of lifestyle they want instead of what kind of product they want when they get older. The city needs the right people facilitating public meetings.
- **F. Hoffman** felt that FAR numbers are overwhelming. It is a bad idea to start the dialogue with the public with those numbers.

Recommendations:

- BDAB recommended that city staff put the Envision East Arapahoe project on hold given the lack of public support, move forward with areas of consensus including redeveloping the hospital site and transportation improvements, and uncouple land use and transportation at this juncture.
- **D. Biek** recommended that staff consider addressing 55th and Arapahoe if the expansion went well at the hospital site.

4. Board Matters

F. Hoffman and **D. Biek** will be leaving the board in March. BDAB members discussed options for a farewell celebration.

APPROVED BY:



 Board Chair



 DATE

City of Boulder
BOARDS AND COMMISSIONS MEETING SUMMARY FORM

NAME OF BOARD/COMMISSION: Human Relations Commission
DATE OF MEETING: Feb. 23, 2015
NAME/TELEPHONE OF PERSON PREPARING SUMMARY: Robin Pennington 303-441-1912
NAMES OF MEMBERS, STAFF AND INVITED GUESTS PRESENT: Commissioners – Amy Zuckerman, Shirly White, Nikhil Mankekar, José Beteta Staff – Carmen Atilano, Robin Pennington, Karen Rahn, Kim Pearson Commissioners absent - Emilia Pollauf
WHAT TYPE OF MEETING (CIRCLE ONE) [REGULAR] [SPECIAL] [QUASI-JUDICIAL]
AGENDA ITEM 1 - CALL TO ORDER – The Feb. 23, 2015 HRC meeting was called to order at 6:01 p.m. by A. Zuckerman .
AGENDA ITEM 2 – AGENDA ADJUSTMENTS – None.
AGENDA ITEM 3 – APPROVAL OF MINUTES – N. Mankekar moved to approve the Jan. 26, 2015 minutes with corrections. S. White seconded. Motion carries 4-0.
AGENDA ITEM 4 – COMMUNITY PARTICIPATION (non-agenda action items) –None.
AGENDA ITEM 5 – ACTION ITEMS A. 2015 HRC Work Plan The HRC discussed and approved its 2015 Work Plan. Community members Cynthia Beard, Darren O’Connor, Jen Watson and Lexi Delgado addressed the commission regarding the need for community dialog on race relations. N. Mankekar moved to accept the 2015 HRC Work Plan as amended. J. Beteta seconded. Motion carries 4-0.
AGENDA ITEM 6 – DISCUSSION/INFORMATIONAL ITEMS A. Event Reports – A. Zuckerman and N. Mankekar attended the Boulder Coalition and Alliance on Race meeting the week of Feb. 16. J. Beteta made an announcement about the Feb. 25 meeting on Immigration Reform hosted by the YMCA. N. Mankekar attended the Boulder County roundtable discussion of police-community relations on Feb. 21. C. Atilano gave an update on the upcoming Boulder County Circles Poverty Simulation. B. Follow Up Tasks – Submit the amended Jan. 26, 2015 minutes, include Living Wage as an on-going agenda item for HRC monthly meetings, update the 2015 HRC Work Plan, invite Chief Testa to the March, 16 HRC meeting to provide information on community policing, and include the HRC event funding RFPs and CIF application in the March packet.
AGENDA ITEM 7 – IMMEDIATE ACTION ITEMS – None.
AGENDA ITEM 8 – Adjournment – N. Mankekar moved to adjourn the Feb. 23, 2015 meeting. S. White seconded the motion. Motion carries 4-0. The meeting was adjourned at 8:29 p.m.
TIME AND LOCATION OF ANY FUTURE MEETINGS, COMMITTEES OR SPECIAL HEARINGS: The next regular meeting of the HRC will be March 16, 2015 at 6 p.m. in Council Chambers, Municipal Building, 1777 Broadway St.



CITY OF BOULDER
Boards and Commissions Minutes

NAME OF COMMISSION: Open Space Board of Trustees			
DATE OF MEETING: February, 18, 2015			
NAME/EXTENSION OF PERSON PREPARING SUMMARY: Alyssa Frideres x3440			
NAMES OF MEMBERS, STAFF AND INVITED GUESTS PRESENT: MEMBERS: Tom Isaacson, Shelley Dunbar, Molly Davis, Frances Hartogh, Kevin Bracy Knight STAFF: Tracy Winfree, Jim Reeder, Steve Armstead, Mark Gershman, Don D'Amico, Phil Yates, Kelly Wasserbach, Greg Seabloom, Lynn Riedel, Leah Case, Alyssa Frideres, Mike Orosel GUESTS: Scott McCarey, Boulder County Transportation/Planning			
TYPE OF MEETING:	<u>REGULAR</u>	CONTINUATION	SPECIAL
SUMMATION: AGENDA ITEM 1- Approval of the Minutes Shelley Dunbar moved to approve the minutes from Dec. 10, 2014. Kevin Bracy Knight seconded. This motion passed unanimously. Frances Hartogh moved to approve the minutes from Jan. 14, 2015 as amended. Shelley Dunbar seconded. This motion passed unanimously. AGENDA ITEM 2- Public Participation Suzanne Webel, speaking on behalf of the Boulder County Horse Association, summarized a letter written by Brian Joder and shared comments from Bob and Dan Joder regarding opening the Joder property to the public. Mike Barrow, speaking on behalf of the Boulder Mountain Bike Alliance, said he likes the approach staff is taking for the North Trail Study Area (TSA). Brady Robinson, speaking on behalf of Open Boulder, thanked staff for proposing a less contentious and more collaborative public process. He felt that the West TSA process was an embarrassment and he is asking staff to do it right this time. Brady added that since the Joder property is a new addition, Open Space should have special sessions to work on it outside of the North TSA process. He also suggested re-evaluating the			

Habitat Conservation Area (HCA) designation. He said he is in support of OSMP finishing the North TSA in 2015.

Mark McIntyre, Boulder, said he was excited to see improving visitor experience was added to the Work Plan. He suggested eliminating the unnecessary gates and fences from the future plan. He supports the expansion of the dog waste program.

AGENDA ITEM 3- Director's Updates

Tracy Winfree, Open Space and Mountain Parks, Interim Director, gave an update on the Voice and Sight Tag Program.

Jim Reeder, Land and Visitor Services Division Manager, gave an update on Joder Ranch interim trail work.

AGENDA ITEM 4- Matters from the Board

Frances Hartogh said she would like to have a discussion dedicated to HCA designations. It would be helpful to understand the necessary criteria, and how this designation gets made when a property has had prior use, or has a house on site.

AGENDA ITEM 5 – Recommendation to dispose of an interest in Open Space lands pursuant to Boulder City Charter Section 177 through the grant of an easement to Public Service Company of Colorado for three power pole support beams on Stanger Open Space property that were required to be relocated by the construction of the Boulder County/Colorado Department of Transportation road improvements on State Highway 93.

Jim Schmidt, Property Agent, gave a presentation to the Board on a possible disposal.

This item spurred one motion:

Shelley Dunbar moved the Open Space Board of Trustees to approve the disposal of an interest in Open Space lands pursuant to Boulder City Charter Section 177 through the grant of an easement to Public Service Company of Colorado for three power pole support beams on the Stanger Open Space property that were required to be relocated by the construction of the Boulder County/CDOT road improvements on SH 93. Frances Hartogh seconded. This motion passed unanimously.

AGENDA ITEM 6 – Consideration of a motion to recommend that City Council authorize an Intergovernmental Agreement with Boulder County for design and construction of the extension of the Boulder Creek Bike Path.

Jim Reeder discussed the Intergovernmental Agreement (IGA) plan with the Board.

This spurred one motion:

Kevin Bracy Knight moved the Open Space Board of Trustees recommend City Council authorize the attached Intergovernmental Agreement with Boulder County for design and construction of the extension of the Boulder Creek Bike Path. Molly Davis seconded. This motion passed unanimously.

ADJOURNMENT: The meeting adjourned at 8:45 p.m.

ATTACH BRIEF DETAILS OF ANY PUBLIC COMMENTS:

Several members from the public addressed the lack of parking for horse trailers within the Open Space system.

TIME AND LOCATION OF ANY FUTURE MEETINGS, COMMITTEES OR SPECIAL HEARINGS:
The next OSBT meeting will be at 1777 Broadway in the Council Chambers

NEPAL DAY
April 19, 2015

WHEREAS, diversity of peoples and cultures is integral to the development and advancement of a community; and

WHEREAS, local Nepali community members contribute greatly to bringing diversity of life and culture to Boulder; and

WHEREAS, Boulder welcomes more and more Nepali people each year, thereby increasing the local Nepali community and its contributions to Boulder; and

WHEREAS, Nepal and Boulder share similar topography, thereby attracting numerous climbers, hikers and bikers to visit Nepal from Boulder each year; and

WHEREAS, the Boulder community has been very active in providing help in health and education to Nepal and her people; and

WHEREAS, Helping Hands Health Education, has brought medical and educational help to Nepal's people since 1988 and has initiated a celebration, known as Nepal Day; and

WHEREAS, Nepal Day is designed to celebrate the pride of being a Nepali in the United States of America

NOW, THEREFORE, BE IT DECLARED by City Council of the city of Boulder, that April 19, 2015 is designated as:

Nepal Day

and calls upon the people of Boulder to join the celebration on this day to strengthen our community by supporting diversity in our culture.

Matthew Appelbaum

Matthew Appelbaum, Mayor