BOULDER CITY COUNCIL
MAYOR: Susan Osborne
DEPUTY MAYOR: Ken Wilson

COUNCIL MEMBERS:

Suzy Ageton
Matt Appelbaum
KC Becker
Macon Cowles
Crystal Gray
George Karakehian
Lisa Morzel

City Manager:	**Jane S. Brautigam**
City Attorney:	**Tom Carr**
Municipal Judge:	**Linda P. Cooke**
Deputy City Manager:	**Paul J. Fetherston**
DIRECTORS:	
City Clerk/ Support Services:	**Alisa D. Lewis**
Executive Director of Community Planning & Sustainability	**David Driskell**
Downtown, University Hill Management & Parking Services:	**Molly Winter**
Chief Financial Officer:	**Bob Eichem**
Fire Chief:	**Larry Donner**
Housing and Human Services:	**Karen Rahn**
Human Resources:	**Eileen Gomez**
Information Technology:	**Don Ingle**
Library Director (Acting):	**Jennifer Miles**
Municipal Court Administrator:	**Lynne C. Reynolds**
Open Space and Mountain Parks:	**Michael Patton**
Parks and Recreation:	**Kirk Kincannon**
Police Chief:	**Mark R. Beckner**
Public Works, Executive Director:	**Maureen Rait**
Public Works, Transportation:	**Tracy Winfree**
Public Works, Utilities:	**Ned Williams**

Economic Vitality Team:
Molly Winter - Downtown and University Hill
David Driskell - Community Planning & Sustainability
Liz Hanson - Business Liaison
Patrick von Keyserling -Communication Manager
Jennifer Miles - Arts and Culture

Updated: 1/5/2011

BOULDER CITY COUNCIL MEETING
MUNICIPAL BUILDING, 1777 BROADWAY
Tuesday, June 7, 2011
6:00 p.m.

AGENDA

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

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

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

   A. Consideration of a motion to approve the **April 26**, 2011 City Council **meeting minutes.**

   B. Consideration of a motion to approve the **May 3,** 2011 City Council **meeting minutes.**

   C. Consideration of a **motion calling a special meeting at 6:00 p.m. on Thursday, June 16**, 2011 for consideration of the purchase of the Schnell property (Chapman Drive).

   D. Consideration of a **motion to accept the summary of the April 12,** 2011 **Study Session on Chautauqua.**

   E. Consideration of a **motion to accept the summary of the May 10,** 2011 **Study Session on Boulder's Energy Future.**

   F. Consideration of a **motion to accept the 2011 Greenways Master Plan Update.**

   G. Consideration of a motion to approve an **intergovernmental agreement between the City** of Boulder **and Boulder County concerning the funding of energy efficiency programs.**

   H. Consideration of a motion granting the City Manager authority to approve an **intergovernmental agreement** following the guiding principles approved by Council **between the city** of Boulder **and RTD to conduct site planning** and construction details **for** the 3.2 acre RTD-owned site in **Boulder Junction** known as the "Boulder Transit Village."

I. Second reading and consideration of a motion to adopt **Ordinance No. 7793** amending Chapter 13-1, "Elections" B.R.C., 1981, **establishing the definition of "Ballot Measure" and** to establish **the date that the title of a proposed ballot measure is fixed for purposes of the Fair Campaign Practices Act,** and setting forth related details.

J. Introduction, **first reading** and consideration of a motion to order published by title only an **Emergency Ordinance concerning** Chapter 2-7, "Code of Conduct," B.R.C. 1981 amending section 2-7-15 regarding the definition of "conflict of interest," and amending subsections (j), (k), (l) and (m) of Chapter 8-4-10, and "Advisory Committees" regarding the application of **the Code of Conduct to general improvement districts**, and setting forth related details.

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

ORDER OF BUSINESS

5. **PUBLIC HEARINGS**:

A. Second reading and consideration of **Ordinance No. 7794 designating** the building and property at **1921 Pine Street**, to be known as **the Bell-Bass House**, **as an individual landmark** under the city's Historic Preservation Code. The hearing on this item will be held under the Quasi Judicial hearing procedures of the Boulder Revised Code. Owner/Applicant: Wayne Rogers.

B. Public hearing and consideration of a **motion to approve proposed policy, text and map changes, as part of the 2010 Major Update to the Boulder Valley Comprehensive Plan (BVCP).** The public hearing on this item was held on May 24. On June 7, there will be a limited public hearing for members of the public to address the Planning Board's action on May 24.

C. Introduction, **first reading** and consideration of an **ordinance** calling a special coordinated municipal election to be held on Tuesday, the 1st day of November, 2011, in the city of Boulder, Colorado, and **providing for the submission to the electors** entitled to vote thereon **of the question of a franchise** by the city of Boulder, Colorado, **being granted to the Public Service Company of Colorado**, its successors and assigns, to furnish, sell, and distribute gas and electricity to the city and to all persons, businesses, and industries within the city and the right to acquire, construct, install, locate, maintain, operate, and extend into, within, and threw said city all facilities reasonably necessary to furnish, sell, and distribute gas and electricity within the city and the right to make reasonable use of all streets, public easements and other city property as herein defined as may be necessary; fixing the terms and conditions thereof; and setting forth related details

6. **MATTERS FROM THE CITY MANAGER:**

A. **Longs Gardens Policy Discussion**

7. **MATTERS FROM THE CITY ATTORNEY:**

A. Consideration of a motion to authorize the **disposal of** approximately **one-third acre of Rice Sisters' open space land** located at Kneale Road and Eldorado Springs Drive.

8. **MATTERS FROM MAYOR AND MEMBERS OF COUNCIL:**

None.

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. **ADJOURNMENT**

This agenda and the meetings can be viewed at www.bouldercolorado.gov / City Council. Meetings are aired live on Municipal Channel 8 and the city's Web site and are re-cablecast at 6 p.m. Wednesdays and 11a.m. Fridays in the 2 weeks following a regular council meeting. DVDs may be checked out from the Main Boulder Public Library. Anyone requiring special packet preparation such as Braille, large print, or tape recorded versions may contact the City Clerk's office at (303) 441- 3002, 8am – 5pm Monday through Friday. ***48 hours 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 3 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 días antes de la junta.* Electronic presentations to the city council must be pre-loaded by staff at the time of sign up and will NOT be accepted after 5:30pm at regularly scheduled meetings. Electronic media must come on a prepared UBS jump (flash/thumb drive) and no technical support is provided by staff.

CONSENT ITEM – 3A

CITY COUNCIL PROCEEDINGS

Tuesday, April 26, 2011

8:00 p.m.

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

Mayor Osborne called the special April 26, 2011 City Council meeting to order at 8:00 p.m. in Council Chambers.

Those present were: Mayor Osborne, Deputy Mayor Wilson and Council Members Appelbaum, Becker, Gray, Karakehian, and Morzel.

Council Members Ageton, and Cowles were absent.

2. **OPEN COMMENT and COUNCIL/STAFF RESPONSE – 8:01 p.m.**

1. Yazan Fattaleh expressed concern that municipalization would not successfully create renewable energy that could compete with the cost from Xcel. He was concerned that his tuition would go up as the costs for energy at the University increase.

Staff and Council Response:
Council Member Gray clarified that the city did not have a franchise currently and suggested the Mr. Fattaleh look at Palo Alto municipalization. Stanford University would be a good resource as well.

3. **CONSENT AGENDA: - 8:05 p.m.**

A. **CONSIDERATION OF A MOTION TO APPROVE THE MARCH 30, 2011 CITY COUNCIL MEETING MINUTES.**

The minutes had amendments from Council Members Gray and Morzel.

B. **SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7790 AUTHORIZING THE GRANTING OF A REVOCABLE LICENSE AGREEMENT TO ALLOW FOR BOULDER BIKE SHARING LOCATIONS IN THE PUBLIC RIGHT OF WAY, ON CITY-OWNED PARCELS INCLUDING PARKS PROPERTY.**

C. **CONSIDERATION OF A MOTION TO APPROVE SHIPMENT OF FRESH WATER TO JAPAN.**

Deputy Mayor Wilson explained the item as a request that had come to him for the City's support of shipping bottled water to Japan. In order to obtain free shipping, Naropa University (facilitator of the effort) required sponsorship from a governmental entity. Since Boulder's Sister City of Yamagata is only 40 miles from the impact zone this was presented as an opportunity to reach out and assist Japan in a meaningful way at no cost to the city. A benefit concert was taking place to raise funds for bottled water.

Council Member Appelbaum moved, seconded by Wilson, to approve Consent Agenda items 3A through 3C with 3A as amended. The motion carried unanimously; 7:0, with Council Members Ageton and Cowles absent. Vote was taken at 8:11 p.m.

4. **POTENTIAL CALL- UP CHECK IN: - 8:12 p.m.**

No interest was expressed in the two potential call-up items listed under agenda item 8A.

ORDER OF BUSINESS

5. **PUBLIC HEARINGS: - 8:13 p.m.**

A. **SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7787 THAT PROPOSES AMENDMENTS TO TITLE 4, "LICENSES AND PERMITS," B.R.C. 1981, SPECIFICALLY RELATED TO SECTION 4-18-2, "PUBLIC PROPERTY USE PERMITS," B.R.C. 1981, REGARDING MOBILE FOOD VEHICLE SALES; ADDING A NEW SECTION 4-20-65, "MOBILE FOOD VEHICLE SALES," B.R.C. 1981; AND TITLE 9, "LAND USE CODE," B.R.C. 1981, AMENDING SECTION 9-6-5, "TEMPORARY LODGING, DINING, ENTERTAINMENT, AND CULTURAL USES," B.R.C. 1981. - 8:13 P.M.**

The presentation on the item was provided by Molly Winter, Downtown and University Hill and Parking Services Management Director. She noted this was a national trend and asset for communities. The goals of the project were to support Boulder's food culture, create a legal framework for operation, respond in a timely manner, balance interests, address operational impacts and preserve the "Main Street" pedestrian character of the commercial district. Meetings had been held with existing and potential vendors and research had been done to determine how other communities addressed mobile vending issues. She clarified that many communities who allow mobile vending actually have limitations in certain areas and with certain restrictions.

Ms. Winter noted that working with the Boulder County Health Department for approval, Compliance (pedestrian, bike, vehicle access regulations), Operations between 7 a.m. and 9 p.m., and appropriate disposal of waste were all incorporated in the ordinance that staff was proposing. Prohibitions included serving alcohol, amplified music and tables and chairs. Staff was proposing a distance of 100 feet from brick and mortar restaurants, 150 from residential zones and 200 feet from another food vehicle when they can operate in the public right-of-way. Areas of operation proposed included operation on Private Property (industrial, business, Downtown and Mixed Use zones) and on Public Property in Industrial zones and at Special events (no distance requirements).

Ms. Winter then noted that positive Board feedback was received from the Downtown Management Commission, University Hill Commercial Area Management Commission, Planning Board, Downtown Boulder Business

Improvement District and Downtown Boulder Inc. Additionally, staff had completed a survey of downtown restaurants. She noted that staff was not proposing including operation in Parks in the current ordinance. This issue would be forthcoming after future conversations with the Parks and Recreation department and Parks Board.

Council Member Karakehian asked how CU handled this issue. Staff responded that no discussion had occurred with CU about allowing this on University property.

Council Member Morzel asked if private parties were allowed to have a vendor on private property at a home in a residential area. Staff responded that this was allowable under the catering provisions if they followed the parking regulations. Ms. Morzel asked what category ice cream trucks fell under. Staff indicated those were considered mobile food vending vehicles and Planning would need to modify the ordinance to allow ice cream trucks. Charles Ferro responded that ice cream trucks technically were not permitted but staff operates on a complaint basis. This ordinance would regulate them like food trucks but agreed staff could research this and perhaps modify the ordinance.

Council Member Gray asked whether the Parks department was committed to reviewing mobile food vending uses in Parks in its 2011 work plan. Ms. Winter responded this would be in the Parks work plan in 2012 and Parks would need to look at where this use would be appropriate. Excelerating the review by Parks could be considered at the June 16th Study Session regarding the work program.

Council Member Becker clarified that some contracts for vendors in Parks were exclusive and some were not. City Manager Brautigam noted this was a new intersection between Parks and food vendors as it has been typical in the past to contract with a single vendor.

The Public hearing was opened at 8:36 p.m.

1) John Campbell spoke in support of having food trucks and thanked Council for considering the issue.
2) Rayme Rossello former owner of six restaurants and current owner of El Comida, voiced support for allowing mobile vending. Regarding threat to Downtown, there would be very little threat as there is virtually next to no public right-of-way near the Downtown area.
3) Ashlie Beckham, Walnut café and food truck owner spoke to the impacts to other food service owners but noted they represented a very small minority voice when there are over 100,000 residents plus workers in Boulder. She supported mobile vending.
4) Adrian Julian owner of Top of the Hill West. Has a mobile vending service on the outskirts of town but would like a location established for service that would be available after closing hours of restaurants downtown.

5) David Adams with Downtown Boulder spoke in support of the ordinance as written with restrictions on locations. Boulder has a hyper competitive situation with restaurants in Boulder and most of them are suffering.
6) Shannan Aten owner of the Pastry Truck spoke in support of changing the distance requirement to 100 feet from an open business. She did not see any difference in the hours of operation as 9:00 – 10:00 or 11:00 would all create a competition. Access to parks would also be important.
7) Terry Jones a restaurant owner downtown spoke to the expense of brick and mortar and suggested it would create an unfair advantage. Equity was a real issue. It created a slippery slope…food trucks today, what tomorrow? Mobile bike repair etc.
8) Sean Maher, Downtown BID and DBI unanimously supported the ordinance as drafted as it provided equity for all parties. It did not ban trucks from downtown but limited appropriate locations.
9) Kim Boos and Brian Wood, owners of Tea & Cakes commented they actually considered opening a mobile food truck a few years ago. They didn't want to prevent the food trucks but couldn't support it if it created an uneven playing field. They pay premium rates for their location and it just didn't seem fair to allow trucks to pull up less than a block away then take off when they're done.
10) Tim Shaughnessy from the Lazy Dog agreed with the comments from the previous speakers. He also spoke to the suggestion of a 100 foot limitation and expressed that would really omit any chance of a level playing field.
11) Daniel Shaffer owner of Pazza Calore which also has a second location in Denver, noted the food trucks were not allowed on the 16th Street Mall in Denver. It provided an unfair advantage and should be limited to locations at a reasonable distance. Given the lack of overhead, trucks have the advantage and ability to undercut costs.
12) David Cohen with Two Spoons and Spruce Confections. Liked food trucks but felt they needed to have rules and limitations like brick an Mortar such as ADA accommodations. Are they expecting existing restaurants to provide restrooms? Permits and processes, awnings for the front of buildings cost over $10,000. The sign code eliminates the ability for him to put a sidewalk placard outside listing soups of the day. It would have brought him a $2,000 fine.
13) Nicole Larsen, friend of a local business downtown, also spoke to the beginnings of food trucks which were to provide food to construction sights where they would have a captured audience. She did not hear any justification for a need for food trucks downtown. She thought they were a great fit for industrial parks thus creating new revenue instead of taking from others. They should be required to handle waste and leave behind a clean location.

There being no further speakers the public hearing was closed at 9:30 p.m..

Deputy Mayor Wilson clarified with Ms. Winter that mobile food trucks in the commercial zones such as downtown would **not** be allowed in the public right-of-way, but would be allowed on private property with the permission from the property owner.

Council Member Becker asked about the possibility of the proliferation of other types of mobile vending. Ms. Winter noted she had not heard of any other businesses and the ordinance did not prohibited, nor allow those.

Council Members Gray and Becker clarified with the City Attorney that mobile food vendors could obtain permits to operate with the appropriate approved organized event or street closure permit as outlined in section 4-18-2 on page 16 of the memo.

Council Member Morzel asked if there were a proposed number of potential mobile vending vehicles. Staff responded to date there were 45 interested parties who had contacted the City.

Council Member Appelbaum clarified that, to date, none of the mobile food vending done in the City was done legally. Enforcement was primarily on a complaint basis.

City Attorney Carr clarified that multiple trucks could be allowed in the Daily Camera parking lot per the current provisions but the 100 foot rule would apply.

Council Member Karakehian moved, seconded by Appelbaum, to adopt Ordinance No. 7787 amending Title 4, "Licensing and Permits," B.R.C. 1981, section 4-18-2, "Public Property Use Permits," B.R.C. 1981; adding a new section 4-20-65, " Mobile Food Vehicle Sales," B.R.C. 1981; and amending Title 9, "Land Use Code," "B.R.C. 1981, section 9-6-5, " Temporary Lodging, Dining, Entertainment, and Cultural Uses, B.R.C. 1981.

Council Member Wilson offered a friendly amendment to replace the language on page 17, Section 9-6-5(d)(3)(L) as follows: fail to provide at least three separate and clearly marked receptacles for trash, recycling and compost and properly separate and dispose of all trash, refuse, compost, recycling and garbage that is generated by the use. The friendly amendment was accepted by the maker and seconder of the motion.

Vote was taken on the main motion as amended. The motion carried, 7:0. Ageton and Cowles absent.

This item would come back for third reading on May 17, 2011.

Council Member Morzel moved, seconded by Appelbaum to suspend the rules and continue the meeting at 10:30 p.m. The motion carried 6:1; Karakehian opposed, Ageton and Cowles absent.

B. **SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7786 THAT PROPOSES AMENDMENTS TO TITLE 8, "PARKS, OPEN SPACE, STREETS, AND PUBLIC WAYS" B.R.C. 1981 BY ALLOWING TEMPORARY STREET FURNITURE (A.K.A. CAFÉ SEATING) TO BE PLACED IN THE PUBLIC RIGHT OF WAY SUBJECT TO CONDITIONS AND SETTING FORTH RELATED DETAILS. - 10:30 P.M.**

The presentation on the item was provided by Molly Winter. She described the purpose of the ordinance was to promote safety and vibrancy along the Downtown and University Hill areas. This ordinance did NOT impact the Pearl Street Mall which had its own regulations.

There being no speakers, the public hearing was closed.

Council Member Morzel moved, seconded by Karaehian, to adopt Ordinance No. 7786 amending Title 8, "Parks, Open Space, Streets, and Public Ways" B.R.C.1981, sections 8-6-4, "Removal of Public Nuisances," B.R.C. 1981, 8-6-8 "Exempt Encroachments," B.R.C. 1981, and adding appendix 8-A and appendix 8-B. The motion carried, 7:0, Council Members Ageton and Cowles absent at 10;35 p.m.

6. **MATTERS FROM THE CITY MANAGER**:

A. **CONSIDERATION OF A MOTION DIRECTING THE CITY MANAGER TO PROCEED WITH NEXT STEPS IN EVALUATING REDEVELOPMENT OF THE DIAGONAL PLAZA SHOPPING CENTER AND AREA, INCLUDING CONTINUED COMMUNICATIONS AND DATA GATHERING WITH PROPERTY OWNERS; SOLICITING FEEDBACK FROM POTENTIALLY INTERESTED DEVELOPERS AND TENANTS; AND A BLIGHT STUDY. – 10:36 P.M.**

The presentation on this item was provided by Liz Hanson and David Driskell. She spoke to the staff recommendation for next steps to continue with work plan items and initiate a blight study.

Deputy Mayor Wilson moved, seconded by Morzel to direct the city manager to proceed with next steps in evaluating redevelopment of the Diagonal Plaza shopping center and area, including continued communications and data gathering with property owners; soliciting feedback from potentially interested developers and tenants; and a blight study.

Mayor Osborne clarified the blight study would be good for seven years.

Council Member Becker asked what information a blight study would give a developer that they wouldn't have already. Ms. Hanson indicated the state statute of 'finding of blight' would be a

tool that could be utilized in the future.

Council Member Becker asked David Driskell to speak to the potential neighborhood plan and timeline given limited resources. Mr. Driskell commented there were numerous work plan items ahead of this one and private developer interests would certainly move it forward more quickly. Ms. Becker indicated she thought the obvious next step was determining the vision as she did not know if it was time to do a blight study just yet.

Council Member Appelbaum noted any consultant would likely find the area blighted due to the way the regulations were written and questioned what message it would send to do a blight study right away.

Council Member Becker offered a substitute motion to direct the city manager to proceed with next steps in evaluating redevelopment of the Diagonal Plaza shopping center and area, including continued communications and data gathering with property owners; and soliciting feedback from potentially interested developers and tenants. (removing the blight study recommendation).

Council Member Appelbaum moved, seconded by Morzel to suspend the rules and continue the meeting at 11:00 p.m. The motion carried 6:1; Karakehian opposed, Ageton and Cowles absent.

7. **MATTERS FROM THE CITY ATTORNEY:** - None.

8. **MATTERS FROM MAYOR AND MEMBERS OF COUNCIL:**

A. **POTENTIAL CALL-UPS:**

1) POTENTIAL CALL-UP OF A VACATION OF EASEMENT AT 1655 YARMOUTH. LAST OPPORTUNITY FOR CALL-UP: 04/26/2011, I.P. DATE: 04/20/2011, AND VOTE/ACTION: STAFF LEVEL APPROVAL

No action was taken on this matter.

2) LANDMARK ALTERATION CERTIFICATE FOR THE CONSTRUCTION OF A 917 SQ. FT., ONE AND ONE HALF-STORY, TWO-CAR GARAGE AT 809 PINE STREET, PER SECTION 9-11-18 OF THE BOULDER REVISED CODE 1981 (HIS2011-00003). LAST OPPORTUNITY FOR CALL-UP: 05/03/2011, I.P. DATE: 04/20/2011, AND VOTE/ACTION: CONDITIONALLY APPROVED/ 5-0.

No action was taken on this matter.

9. **PUBLIC COMMENT ON MATTERS:**

1. Ben Binder commented the only reason to move forward with a blight study would be to create an urban renewal district with the power to condemn and supplement with tax incremental financing. Don't waste $15,000 during these hard economic times.

2. Lynn Segal reminded council of the huge study on Crossroads and agreed that council should forgo a blight study at this time.

10. **FINAL DECISIONS ON MATTERS:**

Vote was taken on whether to vote on the substitute motion directing the city manager to proceed with next steps in evaluating redevelopment of the Diagonal Plaza shopping center and area, including continued communications and data gathering with property owners; soliciting feedback from potentially interested developers and tenants (removing the blight study recommendation).

. The motion carried 5:2; Karakehian and Wilson opposed, Ageton and Cowles absent.

Vote was taken on the substitute motion to direct the city manager to proceed with next steps in evaluating redevelopment of the Diagonal Plaza shopping center and area, including continued communications and data gathering with property owners; and soliciting feedback from potentially interested developers and tenants. (removing the blight study recommendation). The motion carried 5:2, Ageton and Cowles absent at 11:14 p.m.

11. **ADJOURNMENT**

There being no further business to come before Council at this time, BY MOTION REGULARLY ADOPTED, THE MEETING WAS ADJOURNED AT 11:20 P.M.

APPROVED BY:

_____

Susan Osborne,
Mayor

ATTEST:

_____

Alisa D. Lewis,
City Clerk

CONSENT ITEM – 3B

CITY COUNCIL PROCEEDINGS

Tuesday, May 3, 2011

6:00 p.m.

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

Mayor Osborne called the regular May 3, 2011 City Council meeting to order at 6:00 p.m. in Council Chambers.

Those present were: Mayor Osborne, Deputy Mayor Wilson and Council Members Ageton, Appelbaum, Becker, Cowles, Gray, Karakehian, and Morzel.

A. **Historic Preservation Month Declaration.**

Mayor Osborne read a declaration honoring Historic Preservation Month in May.

2. **OPEN COMMENT and COUNCIL/STAFF RESPONSE – 6:05 p.m.**

1. Kate Bailey spoke in support of legislation to reduce the use of plastic bags. She suggested assessing a fee for disposable bag use.
2. Jane Monson urged Council to call-up the 855 Juniper item as she did not feel the Planning Board had adequate justification for approving it. The structure blocked views, was not compatible with the neighborhood character and property values would suffer. This was not an acceptable reason for a height exception
3. Tom DeMers spoke to the homeless camping issue and suggested Council was being cruel.
4. Sadie Witt representing the NetZero club supported a ban on disposable bag use.
5. David Diamond representing the Fairview NetZero club also requested that a ban on single use disposable bags be added to the Waste Reduction Master Plan.
6. Maddy Searchinger also representing the NetZero club urged council to ban single use disposable plastic bags.
7. Carolyn Bninski spoke to the homeless camping issue.
8. Michael Fitzgerald also spoke to the homeless camping issue indicating that he needed to sleep outdoors until he qualified for housing and it should not be illegal.
9. Bill Mattiace thanked Boulder and Boulder Tomorrow for inviting him to share his Las Cruces story on municipalization. He urged Council to keep track of how much general fund money is spent each week. If the bond doesn't improve the safety, welfare and quality of life issues, the reconsider the action. If lower rates and reliability are possible, then take the action.
10. John Gerstle requested that Council call-up the 855 Juniper item noting that the height variance would impact neighbors and was not needed to accomplish the needed functionality of the structure.
11. Elizabeth Allen urged Council not to approve a hotel in Boulder.
12. Leigh Cushing with EcoCycle noted that Boulder County residents want to see a fee on single use disposable bags and other cities are passing this kind of legislation.
13. Tim Nichols pooling time with Richa Poudyal urged Council to pursue environmental legislation to minimize Boulder's reliance on disposable items.
14. Morning Glory Farr also spoke about single use disposable bags and urged Council to take up legislation.

15. Sara Close joined a group who did the world's first study on plastic in the ocean and she supported the plastic bag legislation as a small step in ridding the world of plastics waste. She distributed a press release.
16. Rob Smoke spoke to a Boulder Energy Future flyer and suggested it seemed to push for residents' support. He indicated it didn't seem rational to support projects like that which cost millions when people are being criminalized for sleeping outdoors and that issue can't be resolved.
17. Mary Louise Chavers spoke in opposition to pesticide spraying (naphthalene), a cancer causing agent, near uptown Broadway. She felt the use of the chemical was a hate crime against her.
18. Jerry Allen, a strong supporter of the Valmont City Bike Park expressed concern that the P.A. system across the street from 300 families in Vista Village was obnoxiously loud, all day long.
19. Terry Sternberg spoke in opposition to the homeless camping ordinance and specifically noted people needed to be able to sleep somewhere in town so they were close to employment.
20. Robert Sharpe spoke to principles of community decision making noting that all the pros and cons should be included rather than staff suggesting or pushing for a specific course of action.
21. Diane Merker with Greenlands, an environmental group from the Newlands area, saw the film "Bag It" at the International Film Festival and urged Council to ban the use of disposable plastic bags.
22. Seth Brigham protested the 2 minute speaking limit and internet sign up as a way of usurping the speakers that are normally here and critical of council. He urged Council to pass a Resolution to get out of Afghanistan. He criticized Council for not addressing the homeless camping issue.
23. Aidan O'Donovan with New Era Colorado spoke in support of banning single use bags. A few weeks ago he brought forward approximately 500 signatures and brought another 527 signatures in support of his cause.
24. Christopher Foreman the owner of 855 Juniper noted that the site review process was intended to allow flexibility and encourage innovation. He requested Council uphold the Planning Board's approval.
25. Cathy Conery also supported a ban on disposable plastic bag use.
26. Mark Denehy with the Home Group compared the city's homeless issue to segregation and urged Council to repeal its camping ordinance as it singled out a minority group. Council should focus on addressing the drinking, littering and other associated issues.
27. Dave Mattison commented that he had a proposed solution to give homeless jobs, support renewable energy and increase tourism.
28. Joshua Brown spoke to the homeless issue noting that Colorado had the 5th highest ranking in brutality towards the homeless. He urged Council to pursue any opportunity to resolve this issue.

City Manager Response: - 7:15 p.m.
City Manager Brautigam noted that New Era came to council a couple weeks ago and staff had begun looking at the issue and would report back via an information packet memo toward the end of June. This matter could be considered on June 16 when the work plan was discussed.

Ms. Brautigam then reported that a report for the May 10 study session on Boulder's Energy Future would be couriered to Council and posted to the website on Thursday.

City Council Response:
Council Member Karakehian indicated he met with Chris Mitchell with BOHO and would be bringing some ideas forward to address some of the community's homeless issues.

Council Member Gray suggested staff ask the Shelter what the costs would be to keep the shelter open over the summer months. Regarding the Valmont Bike Park P.A. system she asked if it was slated to be on all the time or how often.

Council Member Morzel also requested more information on the Valmont Bike Park P.A. system.

3. **CONSENT AGENDA: - 7:19 p.m.**

A. **CONSIDERATION OF A MOTION TO ACCEPT THE SUMMARY OF THE MARCH 29 STUDY SESSION ON THE BOULDER VALLEY COMPREHENSIVE PLAN.**

B. **CONSIDERATION OF A MOTION TO APPROVE THE CONVEYANCE OF APPROXIMATELY 0.62 ACRES OF RIGHT-OF-WAY IN FEE, THREE PERMANENT EASEMENTS TOTALING 0.05 ACRES AND ONE 0.084 ACRE TEMPORARY CONSTRUCTION EASEMENT TO THE COLORADO DEPARTMENT OF TRANSPORTATION FOR THE PURPOSES OF ROAD IMPROVEMENTS ASSOCIATED WITH COLORADO STATE HIGHWAY 7 IN FRONT OF 6400 ARAPAHOE ROAD. CDOT WILL PAY $331,000 TO THE CITY AS COMPENSATION FOR THESE PROPERTY INTERESTS AND DAMAGES.**

C. **SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7785 GRANTING A TWO YEAR FRANCHISE EXTENSION TO COMCAST OF COLORADO IV, LLC TO USE PUBLIC RIGHTS OF WAY TO PROVIDE CABLE TELEVISION SERVICES AND TO AUTHORIZE THE CITY MANAGER TO EXECUTE THE CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN THE CITY OF BOULDER AND COMCAST OF COLORADO IV, LLC.**

Council Member Cowles indicated he would oppose this item.

D. **SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7789 AMENDING THE INTERGOVERNMENTAL AGREEMENT, "INTERGOVERNMENTAL AGREEMENT FOR IMPLEMENTATION OF THE KEEP IT CLEAN PLAN," A REGIONAL STORMWATER MANAGEMENT PROGRAM SERVING THE COMMUNITIES OF BOULDER, LONGMONT, LAFAYETTE, LOUISVILLE, ERIE, SUPERIOR AND BOULDER COUNTY.**

E. **SECOND READING AND CONSIDERATION OF EMERGENCY ORDINANCE NO. 7791 ADOPTING SUPPLEMENT NO. 108 WHICH CODIFIES PREVIOUSLY ADOPTED ORDINANCE NOS. 7712, 7713, 7777, 7778, 7779, 7780, 7783, AND THE COUNCIL PROCEDURE AND INCLUDES OTHER MISCELLANEOUS CORRECTIONS AND AMENDMENTS TO THE BOULDER REVISED CODE, 1981.**

F. **INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY AN ORDINANCE APPROVING SUPPLEMENTAL APPROPRIATIONS TO THE 2011 BUDGET.**

This item was pulled from the consent agenda by Council Member Appelbaum for discussion later in the meeting after the Mapleton EET item was discussed.

Deputy Mayor Wilson moved, seconded by Morzel to approve consent agenda items 3A through 3E, with item 3F pulled for later discussion. The motion carried 9:0, Cowles opposed to item 3C.

Council Member Cowles commented that he thought Comcast was taking a lot of wealth out of the community for its services. He thought the City should let the franchise lapse and open the community up to more competition. He would not be voting for item 3C.

Council Member Appelbaum indicated he would forward some hotline questions relating to the budget supplemental. He noted the Mapleton EET item was included in the supplemental and recommended pulling the item and considering it after the Mapleton Item was discussed.

4. **CALL- UP CHECK IN: - 7:27 p.m.**

Council Member Gray expressed an interest in calling up the 855 Juniper item.

ORDER OF BUSINESS

5. **PUBLIC HEARINGS: - 7:27 p.m.**

A. **CONSIDERATION OF A MOTION TO AUTHORIZE THE CITY MANAGER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT FOR THE RENOVATION OF THE MAPLETON SCHOOL FOR USE AS AN EARLY CHILDHOOD EDUCATION CENTER, INCLUDING THE TRANSFER OF $3.5 MILLION IN EDUCATION EXCISE TAX FUNDS TO THE BOULDER VALLEY SCHOOL DISTRICT. THE APPROVAL IS CONDITIONED ON SUBSEQUENT APPROPRIATION OF THE FUNDS.**

Carl Castillo, Policy Advisor, provided an introduction on the item. He introduced Leslie Smith, Helayne Jones, Don Orr, Glen Segrue, Joe Sleeper, Karen Daley and others from the Boulder Valley School District.

Leslie Smith with the Boulder Valley School District commented that the request for the Mapleton EET funds was consistent with the education excise tax use guidelines. The

School District desired to focus on supporting the community's most needy children. She noted that the options were to either offer centralized services at Mapleton or offer services at two separate facilities at Crestview and Eisenhower. Offering services at Mapleton would also support the preservation of the historic school.

Helayne Jones with the Boulder Valley School District spoke to the contentious closing of neighborhood schools right before she was appointed to the Board. Her goal was to repurpose and create a viable educational opportunity for the closed school. She noted that early childhood education for Boulder's neediest families was an appropriate use for the Mapleton property and indicated BVSD wanted to partner with the City to see this goal achieved.

Karen Rahn, Director of Housing and Human Services, then spoke to the needs for early childhood education in the Boulder community. Reliable data and research indicated that early childhood education was successful in bridging the achievement gap. The Boulder Valley School District proposal would meet an identified need in Boulder and was consistent with the EET guidelines.

Carl Castillo then noted several key elements of the plan which would require the City to transfer $3.5 million in Education Excise Tax revenue to Boulder Valley School District by July 31, 2011. BVSD would renovate Mapleton School and have it ready for the 2012/2013 school year. There was a requirement in the IGA that BVSD would keep the Mapleton facility open for early childhood education purposes for 20 years, otherwise an amortized portion of the funds with interest would be returned to the City. Lastly, the BVSD agrees to utilize its design advisory team process to address the many issues associated with the property, specifically historic preservation, parking, traffic and the concern about maintaining green space.

Deputy Mayor Wilson asked whether the proposed program for the school was adequate to justify the large capital cost. Helayne Jones responded that even with the Mapleton building, the School District still would not meet the demands within the community.

Council Member Ageton asked how children would be selected for the 120 slots. BVSD responded that parents could opt in via an open enrollment process, sliding scale tuition (low-income) would be a focus, as well as scholarships and children who have disabilities would be provided services without cost to the parents.

Council Member Becker clarified that extended care would not be available. She raised concern that the need for extended care be provided within the school district.

Council Member Gray clarified that the Whittier attendance area would be served by the Mapleton proposal as Whittier had no more room to expand and no room for a preschool. Did BVSD expect kids from other areas to take advantage of reduced tuition? BVSD clarified that the focus was definitely to meet the needs of lower income families.

Council Member Becker noted that the Boulder County Early Childhood Council had not taken a vote on Mapleton. Ms. Rahn commented they had not voted on Mapleton specifically but had voted on the Wilderness place project and were in support of a similar proposal at that location.

Joe Sleeper commented that BVSD had been in the preschool business for 30 years and was looking to expand successes and offer a menu of options in the community. It was not looking to compete with other providers. BVSD was confident that a program with educational emphasis would prepare students for kindergarten.

Council Member Morzel noted that the IGA didn't require BVSD to comply with the city's landmark preservation ordinance. The value in compliance was the ability to obtain additional funds through the State. She needed a better understanding of why this exemption existed in the IGA. Staff clarified the IGA didn't preclude, but didn't lock BVSD in either. Don Orr commented the decision would have to be made by the Board of Education, not staff. He noted during the project at Whittier staff submitted landmarks alteration certificates twice and had developed a solid working relationship with staff. They take to heart comments made by the landmarks board and incorporate where possible. The City had not recommended conditions that BVSD hadn't applied to their designs.

The Public Hearing was opened: - 8:06 p.m.

1. Matt Dubofsky spoke in support of the Mapleton School proposal and was a prior attendee at that school. He hoped the school would be put back to a productive use. They thought it was a wonderful idea.
2. Ruth Blackmore spoke on behalf of PLAN Boulder County in support of the staff recommendation for renovating Mapleton School for use as an early childhood education center. Children would be transported no matter where the programs took place.
3. Bill, Chelsea and Quincy Flaggs who live in the Mapleton Neighborhood supported the staff recommendation.
4. Abby Daniels on behalf of Historic Boulder noted they supported this recommendation and the revitalization of a historic building. This was the fourth school built in Boulder and she urged a robust design process to ensure community input.
5. Lou Huntington spoke to stoplights at 30th & Baseline and asked staff to be creative. He also spoke to the need for jobs for the handicapped in the Boulder community.
6. Matt Eldred, Executive Director for the Acorn School and involved with the Mapleton Coalition, supported the Mapleton recommendation.
7. Lynn Segal compared this issue to Washington School project and urged Council to hold off on voting until there was a very firm agreement to switch the site back to a full elementary school. She did not want to see anything open ended.

There being no further speakers the public hearing was closed. 8:22 p.m.

Council Member Becker asked what would happen if the school district fell short on funds. Joe Sleeper commented that the project scope would be defined within the budget.

<u>Council Member Gray moved, seconded by Morzel to authorize the City Manager to enter into an Intergovernmental Agreement for the renovation of the Mapleton School for use as an early childhood education center, including the transfer of $.5 million in education excise tax funds to the Boulder Valley School District. The motion carried 6:3, Appelbaum, Ageton, Karakehian opposed.</u>

B. **CONSIDERATION OF A MOTION TO AUTHORIZE THE CITY MANAGER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH BOULDER COUNTY AND JEFFERSON COUNTY WHEREIN $2,000,000 OF OPEN SPACE FUNDS WOULD BE PLACED INTO AN ESCROW ACCOUNT FOR THE CONTEMPLATED JOINT PURCHASE OF 640 ACRES OF LAND AND MINERAL RIGHTS LOCATED IN JEFFERSON COUNTY KNOWN AS SECTION 16 FROM THE COLORADO STATE LAND BOARD, AND FOR THE CITY TO DROP ITS OPPOSITION TO CONSTRUCTION OF THE JEFFERSON PARKWAY. – 8:57 P.M.**

Carl Castillo, Policy Advisor, introduced the item providing background and highlights of the IGA. He introduced Jefferson County Commissioners and Boulder County Commissioners attending the meeting. He commented that the IGA did not require support for the Jefferson Parkway nor was it conditioned upon its success.

Jim Schmidt then spoke to the justification for preserving the Section 16 property and introduced Dr. Buckner, Plant Ecologist, to speak to the variety of plant species on the Section 16 property. Dr. Buckner, plant ecologist, spoke to the variety of plant species on the section 16 property. Dr. Buckner described many unique plant and geological features of the property.

Jim Schmidt then spoke to the Open Space Charter purposes for acquiring open space and noted that the department recognized this property as unique, preserved wildlife habitat and would assist in limiting urban sprawl and growth.

Carl Castillo then provided a brief summary of the details of the Intergovernmental Agreement.

Will Toor on behalf of the Boulder County Commissioners indicated the Commissioners had voted unanimously to support the item. It was not an easy decision for the Board. He spoke to the history of working on issues with the City along that entire corridor. The County had concerns about land use impacts and the issue of building a road instead of a multi-modal approach to transportation needs. This was a unique opportunity to resolve decades long regional conflicts.

Fay Griffin, Jefferson County Commissioner, noted that they appreciated the opportunity for cooperation with the City of Boulder and Boulder County and thanked those involved.
Commissioner Don Rosier also appreciated the collaboration with the City and County. He noticed elk in the Woman Creek area and wanted to preserve this. He also noted that a tremendous amount of time and effort had gone into this. He thanked Council for allowing that to happen.

Council Member Gray asked about the funding outlined on page 10. Mr. Castillo responded that $200,000 would come from the Department of Natural Resources for Prebles habitat preservation. Staff would be pursuing any and all funding options. It was clarified that GOCO funds could not be used for property that would eventually be transferred to the Federal Government.

The public hearing was opened – 9:48 p.m.

1. Harvey Nichols, professor of Biology at CU, made sure Council knew the section of Road west of Indiana where the proposed toll road would go, was the most plutonium contaminated area of the Rocky Flats Refuge. He asked whether Council had weighed the health consequences on the road workers and surrounding communities. Please delay until each member is fully aware of all scientific data in that area.
2. Lisa Skumatz, Town of Superior Trustee, expressed concerns about the Fish and Wildlife transfer of property rights and possible plutonium particles being dug up. She hoped the roadway could still be relocated to avoid disturbing the ground contaminates. Superior remained concerned about impacts on their town and the tradeoff wasn't good enough.
3. Ruth Blackmore on behalf of PLAN Boulder County noted that it generally opposed the creation of the Jefferson Parkway due to its potential impacts on the health and safety of workers and residents. However, PLAN Boulder County would support the item subject to the conditions they submitted to Council in December. The currently proposed IGA met their criteria but they would still like to see an environmental impact study done along the proposed Jefferson Parkway area and have it fully remediated.
4. Sandy Pennington, Town of Superior Trustee spoke in opposition to the Jefferson Parkway noting that it promoted urban sprawl, did not complete the beltway, and was a major public health threat. Is an uncertain future open space deal worth the potential impact? Is a small section of road worth fostering urban sprawl? Superior wants a foothills community that prizes health and quality of life.

There being no further speakers the public hearing was closed. 10:06 p.m.

Council Member Morzel moved, seconded by Cowles to authorize the city manager to 1) Enter into an Intergovernmental Agreement with Boulder County and Jefferson County to purchase and conserve "Section 16" a 640 acre parcel of land adjacent to the Rocky Flats National Wildlife Refuge, and for the city to drop opposition to the construction of the Jefferson Parkway, and 2) Execute such documents as may be necessary to facilitate the implementation of the IGA, including creation and execution of an escrow account. The motion carried 7:2; Appelbaum and Karakehian opposed.

Council Member Morzel moved, seconded by Gray to authorize the supplemental appropriation of $2 million from the Open Space Fund balance to be placed into the Real Estate Acquisition CIP within the Open Space Fund and eventually into an escrow account for the joint acquisition of Section 16. The motion carried 7:2; Appelbaum and Karakehian opposed.

Council Member Morzel moved, seconded by Ageton to suspend the rules and continue the meeting at 10:37 p.m. The motion carried 8:1, Karakehian opposed.

C. **CONSIDERATION OF THE FOLLOWING THREE ITEMS RELATING TO DESIGN REVIEW AND THE DOWNTOWN: - 10:40 P.M.**

1. **SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7788 AMENDING THE REQUIREMENTS RELATED TO URBAN AND ARCHITECTURAL DESIGN STANDARDS AND PROCESSES, INCLUDING SECTION 2-3-18, "DOWNTOWN DESIGN ADVISORY BOARD," B.R.C. 1981; STANDARDS RELATED TO THE USE OF PLANS AND GUIDELINES IN SECTION 9-2-15, "USE REVIEW," B.R.C. 1981; AND FORM, BULK, AND FLOOR AREA STANDARDS FOR THE DOWNTOWN ZONINGDISTRICTS.**

2. **PROPOSED REVISIONS TO THE *DOWNTOWN URBAN DESIGN GUIDELINES* INCLUDING A 65-FOOT SETBACK ALONG CANYON BOULEVARD, THE ADDITION OF AN INTERFACE AREA SOUTH OF CANYON, AND THE PROCESS FOR AMENDING THE GUIDELINES.**

3. **FEEDBACK ON POSSIBLE DT-5 ZONE CHANGES**

Louise Grauer and David Driskell provided the presentation on the item. Changes to the requirements related to Urban and architectural design standards and processes were outlined, along with proposed revisions to the Downtown Urban Design Guidelines and feedback was sought on possible DT-5 zone changes. Code changes would allow upper story setbacks of 20 feet setbacks for third story and above and heights would increase to 38 feet. This would be a staff level site review for 3 stories up to 28 feet with call-up by Planning Board. Additionally it was suggested the Downtown Design Advisory Board be renamed the Design Advisory Board to expand their review thresholds to projects that are visible from the public realm, projects in site review or with a value of $25,000 or more. The revisions to the Downtown Urban Design Guidelines would be used to review downtown projects in the site review, in the Downtown Historic District (by the Landmarks Board), and advisory only for building permit projects.

Possible changes for the DT-5 zone included a housing linkage fee for nonresidential floor area (implementing recommendations from the Tischler Bise study) and possibly cultural or artistic floor area or publicly accessible open space.

<u>Council member Morzel moved, seconded by Ageton to suspend the rules and continue the meeting at 11:06 p.m.; The motion carried 8:1; Karakehian opposed.</u>

Council Member Gray clarified that there would not be any changes to the size of bars and restaurants in the downtown area. She suggested there should be a way to review this. She also asked whether the mechanical systems on the roofs of buildings could be embedded like at Mike's Camera at 15th and Pearl Street. Also, could there be an incentive to allow people to go up to 38 or 41 feet in height.

The public hearing was opened:

1. Elizabeth Allen asked Council to leave the by-right 35 feet and let developers come before Council if it additional height was really warranted. She did not agree with expanding the role of the Downtown Design Advisory Board.
2. Adrian Sopher on behalf of Jack Stoakes noted that a connections plan was

important to this discussion. Four private property owners were impacted by the changes and would need to undergo site review. How did this all work together as an urban design plan? There was a wide range of what could happen with setbacks in relation to the by-right property situation.

3. Ed Byrne speaking on his own behalf thought it was okay to allow on street-short term parking to allow for the visual appearance of safety. The current market called for more office space. Offsite work force housing and class A commercial should be included. The Tischler study should not be the final word.

There being no further speakers the public hearing was closed at 11:26 p.m.

Council Member Appelbaum questioned the community benefit, were there other options? Would the amount discourage people from doing it. Council needed to consider the unintended consequences.

Council Member Karakehian commented he had wanted this for quite a while. He like Sean Maher's e-mail in relation to what has changed downtown. He wanted to make sure the City didn't do away with the option for residential. Community benefit was a gray area for him – not sure what this is (a bench, art in front etc…). He suggested staff find a way to put this in writing. The linkage fee didn't bother him if someone could build commercial space. He asked whether any dollars created would stay downtown and buy into a larger community benefit or perhaps be invested in the pad site or some of the work that might get done in the Farmers Market area. He would hope funds generated would stay downtown and accumulate for a bigger idea.

Council Member Becker stated she was interested in keeping same FAR and adding a choice of additional community benefit. It was an important time to be looking at adding community benefit ideas.

Council Member Cowles would like to see the FAR remain at 2.7 and a density bonus should remain for housing. The current housing was too big and probably not occupied year round. He suggested ensuring smaller units had full time residents or full time tenants. He would like to see the addition of an average size for residential units.

Council Member Ageton liked the proposal brought forward. She thought the market would drive what happened. She would like to see more class A office space downtown and thought that encouraging more residential downtown might create more problems due to nightlife. She was struggling with the competing interests and would rather see more flexibility.

Council Member Appelbaum thought it was better for Downtown not to force residential as he did not see the benefit. He favored the option of allowing office space.

Mayor Osborne was interested in looking at other bonuses eventually and allowing someone to buy out of residential bonus through some sort of commercial linkage program (hopefully this would come forward in the short term, not long term).

Council Member Morzel wanted to make sure housing was still a viable option. She liked the idea of reducing the size of the units.

Council Member Becker moved, seconded by Appelbaum to adopt Ordinance No. 7788 amending the requirements related to urban and architectural design standards and processes, including section 2-3-18, "Downtown Design Advisory Board," B.R.C. 1981; standard related to the use of plans and guidelines in section 9-2-15, "Use Review," B.R.C. 1981; and form, bulk and floor area standards for the downtown zoning districts. The motion carried 7:0; Karakehian recused, Wilson absent.

Council Member Appelbaum moved, seconded by Becker to adopt the recommended revisions to the *Downtown Urban Design Guidelines* including direction to staff to bring back an ordinance that puts a 65-foot setback along Canyon Boulevard, the addition of an Interface Area south of Canyon, and a process for amending the *Guidelines.* The motion carried 7:0; Karakehian recused, Wilson absent.

Council Member Cowles offered a friendly amendment to direct staff to draft an ordinance that puts the 65 foot setback in the Boulder Revised Code. The friendly amendment was accepted

6. **MATTERS FROM THE CITY MANAGER: - 12:02 a.m.**

A. CITY COMMENTS ON UNIVERSITY OF COLORADO DRAFT CAMPUS MASTER PLAN.

Council agreed with staff's comments on the University of Colorado Draft Campus Master Plan and thought they addressed the appropriate issues.

7. **MATTERS FROM THE CITY ATTORNEY:**

None.

8. **MATTERS FROM MAYOR AND MEMBERS OF COUNCIL: - 10:05 a.m.**

A. POTENTIAL CALL-UPS:

1. HEIGHT MODIFICATION TO PERMIT AN ACCESSORY STRUCTURE AT 23 FEET WHERE 20 FEET IS THE MAXIMUM HEIGHT FOR ACCESSORY STRUCTURES AT 855 JUNIPER. IP DATE: 04/27/11. LAST OPPORTUNITY FOR CALL-UP IS MAY 3, 2011. PLANNING BOARD APPROVAL 5:2.

Council Member Gray moved, seconded by Cowles to call-up the Planning Board approval for the 855 Juniper height modification.

9. **PUBLIC COMMENT ON MATTERS: - 12:10 p.m.**

1. Jane Monson asked if the 855 Juniper item would be decided this evening or at a later time. Council clarified it would be considered during a public hearing within the next 30 days. She highly recommended that Council Members listen to the minutes of the Planning Board meeting to really get a sense of how the decision was made.

10. **FINAL DECISIONS ON MATTERS: - 12:12 a.m.**

Council Member Gray moved, seconded by Cowles to call-up the 855 Juniper height modification. The motion carried 5:2; Ageton and Becker opposed; Karakehian and Wilson absent.

Council Member Gray moved, seconded by Osborne to introduce and order published by title only Ordinance No. 7792 approving supplemental appropriations to the 2011 budget. The motion carried 7:0; Karakehian and Wilson absent.

11. **ADJOURNMENT**

There being no further business to come before Council at this time, BY MOTION REGULARLY ADOPTED, THE MEETING WAS ADJOURNED AT 12:14 A.M.

APPROVED BY:

_____

Susan Osborne,
Mayor

ATTEST:

_____

Alisa D. Lewis,
City Clerk

CONSENT ITEM – 3D

CITY OF BOULDER
CITY COUNCIL AGENDA ITEM

MEETING DATE: June 7, 2011

AGENDA TITLE: Consideration of a motion to accept the summary of the April 12, 2011 Study Session on Chautauqua.

PRESENTERS:
Jane Brautigam, City Manager
Paul Fetherston, Deputy City Manager

City Attorney's Office
Tom Carr, City Attorney
David Gehr, Deputy City Attorney
Sandra Llanes, Assistant City Attorney

Community Planning and Sustainability
David Driskell, Executive Director
Susan Richstone, Comprehensive Planning Manager
Louise Grauer, Senior Planner
James Hewat, Historic Preservation Planner
Molly Winter, Director, DUHMD/Parking Services

Open Space and Mountain Parks Department
Mike Patton, Director
Dean Paschall, Communications and Public Process Manager

Parks and Recreation
Kirk Kincannon, Director
Lisa Martin, Urban Parks Manager

Public Works
Maureen Rait, Executive Director
Bill Cowern, Traffic Operations Engineer

EXECUTIVE SUMMARY:

This agenda item provides a summary of the April 12, 2011 City Council Study Session on Chautauqua. The study session provided background on the history of Chautauqua, the relationship between the Colorado Chautauqua Association (CCA) and the City of Boulder, and a summary of key issues related to the Chautauqua area's use and management. The intent of the study session was to provide and analyze options for the next steps to respond to CCA's Chautauqua Strategic Plan 2020 for council consideration and feedback.

The study session was a joint effort between multiple city departments: the City Attorney's Office, Community Planning and Sustainability (CP&S), Open Space and Mountain Parks (OSMP), Parks and Recreation and Public Works. A summary of the Study Session is included with this agenda item as **Attachment A**.

STAFF RECOMMENDATION:

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

Suggested Motion Language:

Motion to accept the summary of the April 12, 2011 Study Session on Chautauqua.

NEXT STEPS:

At the June 16, 2011 meeting on the staff work program, staff will provide Council with a revised option to address CCA's proposal. Council will have an opportunity at that time to discuss and determine the next steps to respond to CCA's proposal for Chautauqua.

ATTACHMENTS:

Attachment A: April 12, 2011 Study Session Summary

ATTACHMENT A

April 12, 2011
City Council Study Session Summary
Chautauqua

PRESENT:

City Council: Suzy Ageton, Matt Appelbaum, KC Becker, Macon Cowles, Crystal Gray, George Karakehian, Lisa Morzel, Susan Osborne, Mayor, Ken Wilson, Deputy Mayor

Staff: Jane Brautigam, City Manager; Paul Fetherston, Deputy City Manager; David Driskell, Executive Director of Community Planning & Sustainability; Susan Richstone, Manager Comprehensive Planning; Louise Grauer, Senior Planner; James Hewat, Historic Preservation Planner; Molly Winter, Director, DUHMD/ Parking Services; Tom Carr, City Attorney; David Gehr, Deputy City Attorney; Sandra Llanes, Assistant City Attorney; Mike Patton, Director of Open Space and Mountain Parks; Dean Paschall, Communications and Public Process Manager, OSMP; Maureen Rait, Executive Director of Public Works; Bill Cowern, Traffic Operations Engineer; Kirk Kincannon, Director of Parks and Recreation; Lisa Martin, Urban Parks Manager.

PURPOSE:

In response to the Colorado Chautauqua Association's (CCA) 2020 Strategic Plan proposed for the leasehold area, the purpose of the study session was to provide council background on the history of Chautauqua, the Chautauqua area today, feedback from other boards on CCA's proposal, goals and objectives for Chautauqua, and several options for moving forward to address CCA's proposal for the future of Chautauqua.

OVERVIEW OF THE PRESENTATION:

Council was given short (overview) presentations on each of the above topics. The presentation included five questions for council:

Does council have feedback or questions on:

1. Whether the city should step back and create a community-wide vision and plan for the Chautauqua area first or move forward to address CCA's 2020 Strategic Plan for the leasehold area?
2. The proposed goal and objectives?
3. The parking and access issues?
4. The regulatory process?
5. The options?

COUNCIL RESPONSE TO STUDY SESSION QUESTIONS

Summary of Council feedback:

1. **Whether to step back and create a community-wide vision and plan for Chautauqua or move forward to address CCA's proposal to relocate the picnic shelter and construct a new building at the current location of the picnic shelter?**
    a. Important to keep the neighbors, broader public and cottagers engaged in whatever process is selected.
    b. A master plan is too big an undertaking and not necessary to review the CCA proposal.
    c. Should look at the bigger picture—what is the city's vision for Chautauqua's future?
    d. Move forward to address CCA's proposal; current processes provide plenty of opportunity for review and input.
    e. A master plan is too much process and is not needed.
    f. Should step back, maybe could design a more streamlined approach.

2. **Parking and Access Management**
    a. General support for developing a comprehensive parking and access management plan..
    b. Utilize parking downtown.
    c. Concern that the lease allows CCA to control auto access from Baseline Road.

2. **General concerns**
    a. How to keep the neighbors, cottagers, and general public informed about the process? Develop a one-stop web site.
    b. Concerns about wildfires at Chautauqua.
    c. The process should not take too long;
    d. The letter from the Department of the Interior on relocating buildings and constructing new buildings in a National Historic Landmark District is significant

3. **Which option to pursue?**

    a. **Summary points:**
        i. Do not need a master plan; need a shorter, clearer process.
        ii. Parking and access management plan is the top priority to address
        iii. Look at a modified Option 4 – perhaps something between Option 1 and 4.
        iv. Need to recognize that it is city-owned land, and council needs to be looped in and doesn't just process through Landmarks and Planning Board.
        v. Some council members felt current design guidelines were adequate and others felt that they need to be revised.

    b. **Option 1** (2 council members were in support of this option) **:**
        i. Need agreement on what we want the future of Chautauqua to be

ii. Should not start from scratch, but start with the Cultural Landscape Assessment Plan.
iii. Chautauqua is constrained, option 1 is too big an undertaking.
iv. Concern about developing a shared community vision.
v. Development review processes / design guidelines do not have adequate criteria to review the proposal. Need to look at the big picture.
vi. Could modify option 1 to be more streamlined.
vii. Alternative solutions to meet CCA needs should be pursued and analyzed—need option 1.

c. **Option 2**:
   i. Focus on the proposal.
   ii. New building does not require a master plan.
   iii. Current review process provides for plenty of review and input – there is a lot to guide us: Cultural Landscape Assessment, design guidelines

d. Option 3:
   i. Perhaps some combination of Option 4 and 3 (one council member)

e. Option 4 presented by CCA:
   i. Several council members indicated support for some "flavor" of a modified Option 4 – potentially something between Options 1 and 4.
   ii. Need to loop council in – can't just process through landmarks and planning board.
   iii. There were a range of opinions as to whether or not the current design guidelines needed to be revised.

NEXT STEPS

For the June 16, 2011 meeting on the staff work program, staff will provide Council with a revised option to address CCA's proposal. Council will have an opportunity to discuss and determine the next steps to respond to CCA's proposal for Chautauqua.

CONSENT ITEM – 3E

CITY OF BOULDER
CITY COUNCIL AGENDA ITEM
MEETING DATE: June 7, 2011

AGENDA TITLE: Consideration of a motion to accept the summary of the May 10, 2011, Study Session on Boulder's Energy Future.

PRESENTERS:
Jane S. Brautigam, City Manager
Paul J. Fetherston, Deputy City Manager
Thomas Carr, City Attorney
Bob Eichem, Chief Financial Officer
David Driskell, Executive Director of Community Planning and Sustainability
Maureen Rait, Executive Director of Public Works
Patrick Von Keyserling, Communications Manager
David Gehr, Deputy City Attorney
Deb Kalish, Assistant City Attorney
Mary Ann Weideman, Deputy Director of Operations for Community Planning and Sustainability
Jonathan Koehn, Regional Sustainability Coordinator
Kara Mertz, Local Environmental Action Manager
Yael Gichon, Residential Sustainability Coordinator
Sarah Huntley, Media Relations/Communications Coordinator

EXECUTIVE SUMMARY:
This agenda item provides a summary of the May 10, 2011, City Council Study Session on Boulder's Energy Future. The objective of the study session was to present and discuss preliminary findings related to the baseline energy analysis, localization opportunities, and Boulder's supply-side energy options. Council was also asked to discuss the potential of adding a first reading "placeholder" ballot item for an Xcel Energy (Xcel) franchise at the June 7, 2011, council meeting.

Attachment A is a summary of council's discussion of the issues and questions that were presented at the study session.

STAFF RECOMMENDATION:

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

Motion to accept the summary (Attachment A) of the May 10, 2011, Study Session on Boulder's Energy Future.

NEXT STEPS:

Pursuant to council discussion, staff will proceed with the following next steps:

- Continue to receive and review consultant work
- Refine evaluation tool
- Continue to work with Xcel on potential proposals
- Complete the utility business plan framework
- Continue community outreach and engagement
- Hold formal public process and conduct community survey

June 7 Franchise Placeholder
A straw poll indicated an interest in a first reading "placeholder" ballot item for an Xcel franchise. Staff will bring the item to the June 7 council meeting for first reading.

ATTACHMENT

A: Summary of May 10, 2011, Study Session on Boulder's Energy Future

Attachment A

Study Session Summary
May 10, 2011 - Boulder's Energy Future

PRESENT:

City Council: Suzy Ageton, Matthew Appelbaum, KC Becker, Macon Cowles, Crystal Gray, George Karakehian, Lisa Morzel, Mayor Susan Osborne, Deputy Mayor Ken Wilson

Staff Presenters: Jane S. Brautigam, City Manager; Thomas Carr, City Attorney; David Driskell, Executive Director of Community Planning and Sustainability; David Gehr, Deputy City Attorney; Yael Gichon, Residential Sustainability Coordinator; Jonathan Koehn, Regional Sustainability Coordinator

Other Speakers: Paul Fenn, Local Power Inc.; Ted Weaver, First Tracks Consulting

PURPOSE:
The purpose of this study session was to present, discuss and receive council feedback on preliminary findings related to Boulder's energy goals and supply-side energy options. The staff and consultant teams have been collecting and analyzing data to aid in the decisions to be made by the council and community regarding alternative paths for the future of the city's energy supply.

In this study session, the staff and consultants provided council with preliminary information related to Boulder's energy supply, including:

- A description of Boulder's current energy system;
- A localization framework;
- The regulatory and governance contexts within which decisions can be made;
- A set of evaluation criteria for decision-making; and
- The three primary options to date:
  - A continued relationship with Xcel Energy (Xcel) under a traditional franchise agreement with the possibility of a proposed framework for a new relationship that meets the community's goals;
  - A proposed business plan framework for creation of a local utility; and
  - A continuation of the status quo -- no franchise agreement and continued collection of the utility occupation tax.

The overall work plan for Boulder's Energy Future includes four main categories: Understanding Boulder's Current System; Localization Strategy; Supply-Side Energy Options; and Community Engagement. All work plan efforts are guided by the purpose, framework, goals and objectives adopted by council. Staff continues to work with a team of consultants to prepare and analyze information necessary to inform council and community decision-making.

The preliminary key findings were summarized in the study session memo and its attachments. The information presented in the study session was preliminary, and provided an opportunity for council and the community to begin understanding critical data as well as initial key findings.

OVERVIEW OF THE PRESENTATION:
J. Brautigam presented the purpose and objectives for the study session, desired meeting outcomes and areas for specific council feedback.

D. Driskell presented the background and context of the Energy Future effort. He provided a brief overview of the impetus of the project, factors defining its timeline, and key steps to date.

D. Driskell also discussed the framework of the project: democratizing energy decision making, decentralizing energy generation and management, and decarbonizing the energy supply. He articulated six key goal areas that were created through community involvement.

1. Stable, safe and reliable energy supply
2. Ensure competitive rates
3. Significantly reduce emissions
4. Greater say about our supply
5. Promote local economic vitality
6. Promote social and environmental justice

All work plan efforts are guided by the framework and goals adopted by council.

J. Koehn presented preliminary findings related to Boulder's current energy system. He said the information is documented in the Baseline Energy Analysis, which is an inventory of the city's past, present and future energy use, associated costs and comparisons to other service providers.

J. Koehn discussed the key findings from the five areas of analysis:

1. Electric revenues, rates, and utility bills
2. Electric costs and profitability
3. Generation, transmission, and distribution systems
4. Current sustainable energy programs
5. Reliability

The findings were preliminary, and will be further analyzed and refined in association with the Business Plan and Localization Report prior to the June 14 Study Session.

D. Driskell presented the Energy Future "Motion Graphic" intended to encourage the public to visit the website to learn more about the project. He discussed the concept of localization as a strategic framework for Boulder's energy options analysis. The basis for localization is to consider "what's possible" with more local control and to provide for greater customer choice. D. Driskell provided some of the preliminary findings:

1. Substantial localization opportunities exist within Boulder and a 10-mile radius
2. Potential waste-to-energy/waste-to-heat
3. Potential plug-in vehicle applications
4. Potential district heating/cooling in higher density areas
5. Customer-tailored efficiency and reliability solutions

D. Driskell concluded by stating that the draft Localization Report will be completed later this month; with the final prepared before the June 14 Study Session.

Y. Gichon presented Boulder's three supply-side options:

1. Maintain the current status quo,
2. Form a new partnership with Xcel Energy, or
3. Create a locally run utility (municipalization).

Y. Gichon described each option. The status quo option would allow Boulder to continue its current relationship with Xcel without a franchise. As stated, under the Code of Colorado Regulations, "A utility maintains the right and obligation to serve a municipality within its service territory after the expiration of any franchise agreement." However, Y. Gichon commented that voters would need to consider options to the Climate Action Plan Tax which is authorized until April 2013, and the Utility Occupation Tax authorized until December 2015.

Y. Gichon stated that the city remains committed to partnering with Xcel on options to meet community goals. Xcel has indicated that their options are challenged by the current regulatory framework and the company is not sure they can provide new options in the current timeframe. Xcel has also indicated they would likely request any partnership option be accompanied by a standard 20-year Franchise Agreement. Xcel has requested that a placeholder for the 2010 negotiated franchise agreement on the 2011 November ballot be considered at council's June 7, 2011, meeting, in accordance with the requirements of the City Charter.

Y. Gichon then described potential ballot options associated with the creation of a local utility including governance structure and bonding authority.

Y. Gichon continued her presentation with the framework of a local utility business plan. The main components are legal, technical and financial. She described the preliminary key findings in each of these areas. First, Boulder has the legal authority to create a local utility. Second, it is technically feasible to create a local utility for Boulder's energy demand.

Third, Y. Gichon discussed the cost model and how it will inform the financial feasibility of municipalization. The cost model includes both one-time costs and recurring costs. Initial, one-time costs and the representative percentages for each include: acquisition (50-70%), potential stranded costs (0-25%) and those costs associated with start up (25-30%). Recurring costs include power supply (50-60%), operational expenses (10-15%)

and debt service related to the bonding to cover initial one-time costs (25-40%). Y. Gichon noted that all of the one time costs are included in the debt service.

J. Brautigam concluded the presentation by discussing the ongoing community outreach and next steps of the project. Over the past month, the community outreach efforts have focused on visibility and awareness using non-traditional approaches to reach a broad audience. Staff has also been attending regular meetings with the Daily Camera editorial board. The next two months will focus on communicating key findings and providing additional opportunities for the community to provide input.

J. Brautigam outlined the next steps of the project:

- Continue to receive and review consultant work
- Refine evaluation tool
- Continue to work with Xcel on potential proposals
- Complete the utility business plan framework
- Continue community outreach and engagement
- Hold formal public process and conduct community survey

COUNCIL RESPONSES TO STUDY SESSION QUESTIONS:

The study session memo proposed five questions for City Council consideration.

1. ***Does council have specific feedback on the preliminary information provided on Boulder's current system, the localization framework, or the evaluation criteria?***

Council comments included:

Baseline Energy Analysis

- The Nexant preliminary report requires further editing by the consultant. It should include the names of any authors and sources.
- Summarize what data has been received from Xcel, what has not, and what will be received by June 14.
- Separate data by what is needed to make a decision vs. what is nice to know.
- The preliminary report is dense and overwhelming. There are too many bar graphs. The indicators are not well defined as on pg. 106. The document needs to be completed in a way that is easy for the public to understand. Define terms and acronyms. Delineate actual data from estimated data through color coding.
- Provide information on whether the preliminary report takes into account Xcel's RES and Clean Air/Clean Jobs Act information. It seems the pie charts do not and the bar charts do.
- Discuss reliability in terms of infrastructure vs. management of infrastructure.
- In the absence of Xcel data, concern was expressed about having sufficient data to make a decision. Provide information on the margin of error and whether building a model using Fort Collins data is sufficient. Please describe what data may be available to the city after the voters may choose to municipalize.

- Provide information on whether Colorado utilities have cheaper rates. Boulder's local utility should meet or exceed Xcel's and other Colorado utility rates.
- Provide information on the type of equipment Xcel invested in as presented on pg. 165.
- Address what is in the $18M profit number. Provide information on how property taxes, etc. were addressed.
- Council members may provide further detailed comments via e-mail.

Localization Report

- Describe more thoroughly the wind source in Nederland; including the capacity, what happens when the wind blows too hard, permit regulations (height) and intermittency issues.

2. Does council have feedback on the preliminary business plan framework for a local utility? Does the framework address all of the key issues to evaluate feasibility?

Council comments included:

Supply-Side Options

<u>Xcel</u>

- The city needs a commitment from Xcel for data and a proposal. The city has been generous trying to accommodate Xcel. It is hard to partner when the partner won't cooperate.

<u>Feasibility Plan</u>

- Provide information on who would operate a local utility.
- Provide information on transmission capacity, especially what it means. Transmission capacity is referred to in the Nexant report as an issue. Explain how this issue may apply to the future.
- Describe the process for annexed properties.
- Provide information about the current quality of the city's utilities.
- Address transmission tariffs, especially if purchasing from a wind farm and a gas turbine simultaneously. Provide information on whether the city would have to pay double tariffs.
- Describe what NERC's position may be on renewables in regard to the transmission grid.
- Provide information on whether there is a special charge for balancing load authority.
- Provide the governing rules/principles in the Charter language.
- Provide information about potential litigation and what the city should anticipate in order to avoid or diminish the impact.

3. Does council have feedback on the factors and assumptions that inform the preliminary local utility cost model?

Council comments included:

- Provide information on the value of property that may be purchased.
- Provide information on the types of reserves (emergency, operational) that will be in the cost model.
- Provide information on how energy efficiency programs will be addressed.
- Provide information on the city's debt and how it may be the same or different from Xcel's.
- Describe the physical boundaries for municipalization and how it may affect the cost model.
- Address the financial gap between a potential vote and becoming operational.
- Describe the stranded cost components and provide information on how the Smart Grid may factor into stranded costs.
- Provide more information on bond costs and the process to bond.
- Provide cost/rate comparisons of the city's current utilities with other municipalities.
- Concern was expressed about the acquisition costs, especially being between book value and replacement cost.

4. What additional information does council need to make an informed decision?

Council comments included:

Evaluation Criteria

- Broaden the concept of local investment to local residents who may want to purchase the city's bonds.
- Access to local decision makers should be reflected in the goals/objectives.
- Categorize the components differently.

Public Process

- Please describe how the public will have the opportunity to interact with staff and ask questions.
- Remind council of the focus questions 24 hours in advance.
- Provide more of a role for the consultants in the next study session.

Transitional Issues

- Describe how the transition will work. Provide information on how the legacy system information would be handled. Describe what information is required to run a reliable system.
- Please provide a transition outline and timeline.

Solar Rewards

- Provide information on how Solar Rewards will be addressed.

5. ***Given the Charter-required time line for a franchise ballot item, should staff present a first reading "placeholder" ballot item for an Xcel Franchise at the June 7, 2011 council meeting?***

    - A straw poll indicated an interest in a first reading "placeholder" ballot item for an Xcel franchise.

CONSENT ITEM – 3F

CITY OF BOULDER
CITY COUNCIL AGENDA ITEM

MEETING DATE: June 7, 2011

AGENDA TITLE
Consideration of a motion to accept the 2011 Greenways Master Plan Update

PRESENTERS
Jane S. Brautigam, City Manager
Paul J. Fetherston, Deputy City Manager
Maureen Rait, Executive Director of Public Works
Ned Williams, Director of Public Works for Utilities
Annie Noble, Greenways Coordinator
Kurt Bauer, Engineering Project Manager

EXECUTIVE SUMMARY
The purpose of the Greenways Program is to extend the stewardship of the City of Boulder to the important riparian areas along Boulder Creek and its tributaries. The Greenways Master Plan, first adopted in 1989, provides a framework to implement the program by coordinating the planning, construction, maintenance activities and funding sources of multiple city departments and outside agencies.

The Greenways Master Plan was last updated in 2001 and included Boulder Creek and seven major tributaries. This 2011 update of the Greenways Master Plan includes all remaining tributaries to Boulder Creek (for a total of 14) and incorporates plans, ordinances and policies that affect the Greenways Program that have been approved and adopted since 2001. Greenways improvement projects that have been completed since 2001 are also captured in the revised document.

The Greenways Advisory Committee (GAC) has reviewed the proposed update to the plan and unanimously voted to recommend City Council acceptance with the addition of a few minor text changes. City Council acceptance of the 2011 Greenways Master Plan will provide an up-to-

date framework to implement the program that expands the scope to include all 14 tributaries to Boulder Creek.

STAFF RECOMMENDATION

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

Motion to accept the 2011 Greenways Master Plan Update.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – Greenways Program projects often include flood mitigation, which reduces potential economic impacts from storm events within the city. Greenways projects also increase the liveability of the city and therefore the ability to attract and retain businesses.
- Environmental – Greenways programs often include the construction of alternative transportation routes or trails for pedestrian and bicycle use, which helps reduce greenhouse gas emissions. Objectives of the Greenways Program also include protection and restoration of riparian, floodplain and wetland habitat and enhancement of water quality.
- Social – The Greenways Program works to mitigate flooding (enhance safety), provide alternative transportation routes or trails for pedestrians and bicycles (enhance travel options) and provide recreation opportunities (enhance healthy living) while protecting cultural resources. All of this helps to enhance the community's overall livability for all residents.

OTHER IMPACTS

- Fiscal – The Greenways Program is opportunistic and works to leverage Greenways funds, Transportation funds and Flood capital improvement funds with other funding sources including federal and state grants.
- Staff time – Staff time to implement projects identified in the Greenways Master Plan is included in the city's annual work plans.

BOARD AND COMMISSION FEEDBACK

The 2011 update to the Greenways Master Plan was reviewed by the internal city master plan review group in February 2011 and presented to the Greenways Advisory Committee (GAC) on January 26, 2011 and May 2, 2011. The GAC is comprised of a representative from the following boards:

- Environmental Advisory Board
- Open Space Board of Trustees
- Parks and Recreation Advisory Board
- Planning Board
- Transportation Advisory Board
- Water Resources Advisory Board.

The members of the GAC act as the representative and liaison for their respective board on Greenways issues and interests. They are responsible for making a recommendation on the Greenways Master Plan and the annual budget and Capital Improvement Program. The GAC provides a single point of contact for the public to bring comments and allows an opportunity for discussion where all of the Greenways Program objectives are represented.

Each of the boards that are represented on the GAC was provided a memorandum in March 2011 requesting comments on the Greenways Master Plan update and board members were requested to submit comments to their respective GAC member. The GAC presented comments from their respective boards at a public hearing held on May 2, 2011.

The GAC voted unanimously on May 2, 2011 to recommend that City Council accept the 2011Greenways Master Plan with the following changes:

- Include the update of the Transportation Master Plan from 2003 to 2008 (pg 2-6).
- Include date (2006) of Parks and Recreation Master Plan (pg 2-6).
- Include Water Quality Goal 1 *Preserve and enhance areas with high habitat value* that was inadvertently deleted (pg 3-3).
- Include reference to the 2010 Open Space and Mountain Parks Grassland Ecosystem Management Plan (pg 2-8).
- Include reference to stream improvement recommendations in Section 3.3 Environmental Opportunities.

These changes have been included in the proposed 2011 Greenways Master Plan Update.

PUBLIC FEEDBACK
No public comments were received.

BACKGROUND
The purpose of the Greenways Program is to extend the stewardship of the City of Boulder to the important riparian areas along Boulder Creek and its tributaries. The Greenways Program manages these areas based on the following six objectives:

1. Protect and restore riparian, floodplain and wetland habitat
2. Enhance water quality
3. Facilitate storm drainage and mitigate floods
4. Provide alternative transportation routes or trails for pedestrians and bicyclists
5. Provide recreation opportunities
6. Protect cultural resources

The Greenways Master Plan provides a framework to implement the program through coordinating the planning, construction, maintenance activities and funding sources of multiple city departments and outside agencies.

The Greenways Master Plan was first adopted in 1989 and last updated in 2001. The 2001 update included Boulder Creek and seven major tributaries. This 2011 update includes all remaining tributaries to Boulder Creek (for a total of 14) and incorporates plans, ordinances and policies that affect the Greenways Program that have been approved and adopted since 2001.

Greenways improvement projects that have been completed since 2001 are also captured in the revised document.

While the 2001 version provided information in nine chapters, the 2011 format of the document has changed and is based on the city's updated master planning format. The document now presents information in the following four sections:

1. Background
2. Key Policies / Issues
3. Implementation
4. Maintenance and Funding

Attachment A presents a summary of plan sections and major updates. The full 2011 Greenways Master Plan is located on the city's website at www.bouldercolorado.gov > City A-Z > G > Greenways Program > Greenways Master Plan, and a bound copy of the complete plan is available for review in the City Council office.

ANALYSIS

City Council acceptance of the 2011 Greenways Master Plan will provide an up-to-date framework to implement the program across the city by expanding the scope to include all 14 tributaries to Boulder Creek. The plan presents proposed projects from formally accepted master plans along all Greenways streams and presents a ranking of opportunities by program objectives. Projects are not categorized into the city's financial plan models typical of master plans because each of the projects is prioritized in their respective master plans. The Greenways Program receives equal funding of $150,000 from the Transportation Fund, Flood Utilities Fund and the Colorado Lottery Fund for a total of $450,000 per year. This limited funding is used in an opportunistic way to leverage funds from other departments and outside agencies in order to move forward projects that meet more than one objective of the Greenways Program but may not be the highest priority when evaluating any one particular objective. All projects implemented through the Greenways Program are required to have a Community and Environmental Assessment Process (CEAP) prepared. The CEAP is reviewed by the Greenways Advisory Committee (GAC) and available for call up by City Council.

For example, the Wonderland Creek Greenways Improvement Project from Foothills Parkway to 30th Street recently went through a CEAP. This project includes flood mitigation, a multi-use path connection, habitat restoration and water quality enhancement features. The flood improvements along this reach were ranked a high priority in the Fourmile Canyon Creek and Wonderland Creek Flood Mitigation Study accepted by City Council in 2009 and are being funded by the flood utility. Transportation improvements, based on the Transportation Master Plan, are being funded by Federal Transportation Improvement Program (TIP) funds. Greenways Program funds are being used to fund the habitat restoration and water quality components of the project. The Greenways Master Plan was used as a tool to integrate all of the Greenways' multiple objectives into this project.

ATTACHMENTS

Attachment A: Summary of plan sections and major updates

ATTACHMENT A: SUMMARY OF PLAN SECTIONS AND MAJOR UPDATES

Section 1 Background
This section presents an overview of the Greenways Program, history of the Program, a chronology of projects and summary of existing conditions. The following presents major changes to this section:

- Information for the seven new tributaries has been added to this section.
- Chronology of projects has been updated.
- Existing conditions have been updated and presented in summary tables.

Section 2 Key Policies / Issues
This section presents key policies, plans and codes that affect implementation of the Greenways Program. This section has been updated to reflect formally adopted changes in the updated Boulder Valley Comprehensive Plan, Comprehensive Flood and Stormwater Utility Master Plan, flood mitigation plans, Transportation Master Plan, Water Quality Strategic Plan, Parks and Recreation Master Plan and the Open Space and Mountain Parks Grassland Ecosystem Management Plan The city's revised wetlands ordinance and updated Community Environmental Assessment Process (CEAP) has also been incorporated into this section.

Section 3 Implementation
This section presents the goals for each of the Greenways Program objectives and the project and program opportunities based on approved master plans. This section references the Greenways Reach Inventory (Appendix III) which has been updated to incorporate existing conditions and proposed projects shown in existing master plans along the seven additional tributaries. Section 3 also describes the process required to implement Greenways projects. The major change to this section is an update of a table presenting a ranking of Greenways objectives by tributary reach (Table 3-3, pg 3-9). The table now includes the new tributaries and some of the rankings have been revised based on either changes in priorities from other master plan updates or changed conditions caused by completed improvements. The updated ranking is based on ranking criteria presented in Table 3-2, pg 3-8, which has not changed. Tables 3-4 and 3-5 present proposed Greenways improvements by creek and by reach. These tables have been updated to incorporate the additional tributaries and the projects that have been completed since 2001.

Section 4 Maintenance and Funding
This section presents how the Greenways Program is maintained and funded. A description of the habitat maintenance program, which was a recommendation of the 2001 master plan, has been added to this section along with recommendations from an assessment of the program in 2007 by Biohabitats. Table 4-1, pg 4-6 summarizes current maintenance practices and has been updated. The maintenance map (pocket) has also been updated to include all tributaries and reflect current maintenance responsibilities.

Appendices
The appendices include documentation on the Community and Environmental Assessment Process (CEAP), a summary of cultural resources, reach inventories, guidelines for coordinating with OSMP and Parks, a summary of changes to transportation rankings in Table 3-3 and rankings of habitat reaches on public properties for possible habitat restoration projects. A Greenways map and Maintenance map are also included.

CONSENT ITEM – 3G

CITY OF BOULDER
CITY COUNCIL AGENDA ITEM

MEETING DATE: June 7, 2011

AGENDA TITLE: Consideration of a motion to approve an intergovernmental agreement between the City of Boulder and Boulder County concerning the funding of energy efficiency programs.

PRESENTERS
Jane S. Brautigam, City Manager
Paul J. Fetherston, Deputy City Manager
Tom Carr, City Attorney
Debra Kalish, Deputy City Attorney
David Driskell, Executive Director of Community Planning and Sustainability
Kara Mertz, Local Environmental Action Manager
Kelle Boumansour, Contracts and Data Manager

EXECUTIVE SUMMARY
The City of Boulder and Boulder County have been cooperating on the development and implementation of energy efficiency programs for residential and commercial customers in Boulder. The efficiency programs covered by the attached Intergovernmental Agreement (IGA) cover services that aim to improve the energy efficiency of existing buildings and a social mobilization strategy to educate and empower a broad cross-section of Boulder's residents, employees and employers. Beginning in 2009, the city designed services that would appeal to a maximum number of participants; provide a subsidized audit and "energy concierge" service; and pre-certify contractors to perform insulation, air sealing and quick installation of efficiency equipment. Prior to securing funding for countywide implementation, the county contributed approximately 20 percent of the costs for this initial design -- in case countywide funding were to become available--to ensure it could be expanded to a countywide audience.

In the third quarter of 2009, the city collaborated with Boulder County, the City of Longmont, the City and County of Denver and Garfield County to apply for a Department of Energy (DOE) grant from the federal Energy Efficiency and Conservation Block Grant (EECBG) competitive funding pool. In November of 2009, the communities were notified of award of this grant, totaling $25 million for all the jurisdictions. Of the $25 million grant award, $12 million is allocated to residential and commercial *EnergySmart* services throughout Boulder County. As the fiscal agent of the multi-

jurisdictional grant, Boulder County is entering into IGAs with each partnering governmental agency.

In addition to the EECBG competitive grant funds, the city received an allocated portion of the EECBG funds (from a separate, non-competitive pool). The city also has Climate Action Plan (CAP) Tax funds that are dedicated to portions of the *EnergySmart* services within the City of Boulder and funding from the Colorado Governor's Energy Office (GEO).

From the inception of this grant, city and county staff have worked very closely together to manage the competitive grant-funded contractors to refine the design and delivery of *EnergySmart* services.

The draft IGA included with this memo (**Attachment A**) will govern the ways in which the city and county will cooperate on the *EnergySmart* services for the remaining 2.25 years of the 3-year grant period. The IGA has taken five months to negotiate with the county in order to ensure it meets each agency's needs as well as the DOE's EECBG tracking, reporting and contracting requirements.

In the past, there have been some issues with countywide programs and funding and questions regarding whether they provide equitable services to all Boulder County communities. Conversely, there have been issues when city funding is used to the benefit of other communities whose taxpayers have not contributed to the funding pool. The IGA balances the benefits of addressing environmental programs on a regional basis with the need to be fiscally responsible and faithful to the sources of funds.

STAFF RECOMMENDATION

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

Motion to authorize the City Manager to enter into the Intergovernmental Agreement between Boulder County and City of Boulder concerning the funding of energy efficiency programs.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – The IGA is crafted to create efficiencies and to leverage intergovernmental resources in a way that serves the Boulder community, its residents and businesses.

  The IGA provides for a way to deliver energy efficiency services to the business community of Boulder by allowing Boulder property owners (both residential properties and commercial) to access the EECBG funding. The commercial and residential energy efficiency services have been designed with the input of City of Boulder property owners.

- Environmental – The primary purpose of this IGA is to promote environmental sustainability in a way that leverages regional resources.

- Social – Within Boulder County, many people work in one community and live in another. By expanding the reach of the City of Boulder's efficiency services in a way that serves the Boulder County community, we are able to provide a consistency of services and messages that minimizes confusion and costs -- no matter where a participant lives or works. This helps serve the traditionally underserved populations.

  Intrinsic to the design of the *EnergySmart* services is a social mobilization strategy to reach populations that are traditionally underserved. Additionally, the "energy advisor" service delivery model is designed to cut through cultural and educational barriers to facilitate action.

  The City of Boulder alone has goals to reach 3,000 homes and 1,000 businesses per year with its new energy efficiency programs. The only way to meet this aggressive goal is to fully engage all parts of Boulder's diverse community, including English and non-English speakers; elementary, middle and high school students; homeowners and renters; those with environmental awareness and those without; and those with disposable income and those without.

OTHER IMPACTS
The IGA outlines the fiscal impacts to the City of Boulder. All of these items are included within existing CAP Tax and EECBG-allocated grant funds. The staff to manage the competitive grant exists within the staff resources of the Local Environmental Action Division (LEAD).

BOARD AND COMMISSION FEEDBACK

The Environmental Advisory Board reviewed and supported this IGA.

BACKGROUND
In 2009, the City of Boulder restructured and redesigned its Climate Action Plan energy efficiency programs to provide residents and businesses with one-stop-shop programs that deliver information, services and financing in a manner that overcomes the barriers typically associated with energy conservation and waste reduction. Initially, the newly designed residential program was referred to as "Two Techs and a Truck" and the one-stop-shop business programs were named "Energy Smart at Work."

For the City of Boulder, collaborating with the county on the application for EECBG competitive grant funds provides significant additional financial and administrative support for the city's CAP services and increases the effectiveness of the services by broadening the city's one-stop-shop approach to a countywide service territory. **Attachment B** includes a summary of the results of the *EnergySmart* services to date.

ANALYSIS
Council members are asked to review the attached IGA as it addresses high-level guiding principles and specific working agreements as they relate to the competitive grant and the various funding sources for *EnergySmart* services in Boulder.

Guiding principles
Contextually, the grant, as managed by the county, is providing the basic infrastructure for *EnergySmart* including:

1. the energy advisor and call center,
2. quick installation of basic energy efficiency upgrades,
3. auditors,
4. commercial building and equipment tune-up services,
5. business district door-to-door quick install services and
6. the framework for social mobilization, marketing and financing.

The city is tailoring the services for Boulder residents and businesses, making them more robust within the City of Boulder and driving participation for the services to meet the city's CAP and Zero Waste goals. To do this, city staff and its contractors are building on the county foundation to:

1. Add waste reduction, transportation and water conservation components to the residential *EnergySmart* visits;
2. Leverage the energy advisor and direct install components of the countywide program to tailor a SmartRegs compliance pathway where the auditor is specifically trained to complete the SmartRegs prescriptive checklist for the rental property owner;
3. Assess the county and state financial offerings to ensure Boulder property owners' needs are being adequately addressed;
4. Pay for the energy advisor and audit services in affordable housing;
5. Subsidize the energy advisor and audit services in low-income properties; and
6. Create a more robust social mobilization strategy in Boulder to drive participation to the countywide programs and to ensure city residents and businesses participate fully.

These strategies will help to reach both agencies' goals by increasing participation in the countywide services while offering additional services within the City of Boulder.

Specific working agreements
The IGA defines the city and county contributions to *EnergySmart* services, assuring that countywide grant funds will be used to pay all of the administrative costs for the residential energy efficiency services, including: the energy advisor, contractor employee salaries, benefits and training, office rent, development and maintenance of a customer management system, and development of a Web-based energy portal for reporting program successes. The most recent estimate of the total administrative costs for residential *EnergySmart* amounts to approximately $372,000 for all three years of the grant, or approximately $28 per participating household.

For any services or rebates addressed in this agreement that have both city and county funding, there is a hierarchy defined by the IGA language to reflect the requirements of the various funding agencies. Specifically,

1. Funding from GEO needs to be spent first, as it expires in 2011. Deliverables associated with these GEO funds are specific to City of Boulder residents and businesses.
2. EECBG-allocated funds are to be spent second, as the DOE would like the allocated funds to be drawn upon in 2011 as well.
3. City of Boulder CAP and Trash Tax funds are to be drawn upon only after the city's annual EECBG allocated funds and the county's annual EECBG competitive funds are expended. This assures that the City of Boulder tax dollars are spent specifically to "sweeten the deal" for Boulder ratepayers and not to indirectly support parts of the county that do not have their own funding streams. In addition, all City of Boulder funds are earmarked and associated with specific deliverables within the City of Boulder.

Results to date

A more complete description of the *EnergySmart* service and results to date are included in **Attachment B** to this memo.

Residential

The city's goal is for 10,000 homes to participate in some *EnergySmart* services over the life of this grant. Since its kickoff, 1,375 residents have participated in *EnergySmart* services countywide; of these, 1,180 participants have been City of Boulder homes. Of these Boulder homes, SmartRegs compliance has driven participation for approximately 966 units (82 percent).

Commercial

On the commercial side, the city's goal is to reach 3,000 businesses over the life of the EECBG grant (ends June 2013). To date:

- √ 324 Boulder businesses have participated in the *EnergySmart* Assessments (398 countywide).
- √ The county is contracting for 970 additional business assessments in 2011.
- √ Included in this are *EnergySmart* assessments focused on Pearl Street Mall businesses scheduled for May 2011.

Additionally, as part of the 2010 Small Building Tune-up Pilot program:

- √ 10 City of Boulder businesses received heating and cooling equipment optimization services.
- √ An additional 75 businesses (throughout Boulder County) are scheduled for this service, now called Heating and Cooling Optimization, to be funded by the competitive grant.

Based on the energy savings and the resulting cost-effectiveness of this service, the city may also dedicate CAP funds to provide optimization services to more Boulder building owners in 2011.

As an additional component of *EnergySmart* services targeting the commercial sector, Boulder County is contracting for pilot refrigeration and air compressor optimization services, the results of which will inform full-scale programs for targeted businesses with large refrigeration units and air compressor equipment.

In addition, 90 businesses (54 in Boulder) have changed out heating and cooling equipment for more efficient equipment as a result of the *EnergySmart* services to date.

NEXT STEPS

The *EnergySmart* services will continue to be offered throughout Boulder County; the city will expand its social mobilization strategies to reach increasing numbers of residential and business customers to drive participation; and the city will assess the most cost-effective strategies for:

- Driving participation in the *EnergySmart* services;
- Decreasing the time from audit to action;
- Minimizing the publicly-funded rebates required to drive action;
- Creating lasting green jobs in the community;
- Maximizing energy savings community-wide;
- Minimizing greenhouse gas emissions; and
- Maximizing peer-to-peer engagement and sustainable behavior change.

Administratively, once this IGA is executed, the city can sub-award its EECBG-allocated funding to Boulder County. This will allow the city to begin reporting to the DOE on expended EECBG grant funds, which is very important to the funding agency. Staff will continue working with the county to execute the social mobilization and business networking to increase participation in *EnergySmart* services. Council will continue to receive quarterly updates with participation, energy savings, greenhouse gas reductions and other program metrics such as: percent of participants acting on the audit and advisor services to upgrade their buildings, types of upgrades and job creation.

ATTACHMENTS

A: Draft Intergovernmental Agreement between Boulder County and City of Boulder concerning the funding of energy efficiency programs

B: Update on Climate Action Plan *EnergySmart* Services

Intergovernmental Agreement
Between Boulder County and City of Boulder
Concerning the Funding of Energy Efficiency Programs

This Intergovernmental Agreement (this "Agreement") is entered into by the County of Boulder, a body corporate and politic of the State of Colorado ("Boulder County" or "County"), and the City of Boulder, a Colorado home-rule municipality (the "City"). The County and the City may hereinafter be referred to individually as a "Party" or collectively as the "Parties."

RECITALS

A. The Colorado Constitution Article XIV, Section 18(2)(a), provides that political subdivisions of the State may contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating units.

B. Boulder County (working with the City and the City of Longmont), the City and County of Denver, the Denver Regional Council of Governments, the Governor's Energy Office ("GEO"), and Garfield County developed the Colorado Retrofit Ramp-up Project (the "Project") and applied for a $75 million grant from the U.S. Department of Energy (the "DOE") under the competitive round of its Energy Efficiency Conservation Block Grant (EECBG) program.

C. In June 2010, the DOE awarded a $25 million competitive grant, Award No. DE-EE0003554 (the "Competitive Grant Funds"), to Boulder County, which will act as the fiscal agent to the DOE for expenditures related to the Competitive Grant. Of the $25 million awarded, $12 million is earmarked to be spent in communities within Boulder County. The tasks included in the grant application approved by DOE, for which these funds are available, include EnergySmart services such as Energy Advisor services and contractor certification, social mobilization, job creation, whole neighborhood retrofits, the creation of a debt service reserve fund, microloans, and rebates.

D. The County will use the monies awarded to it in the Competitive Grant for the purposes outlined in the Competitive Grant to benefit all residents of Boulder County on a first-come, first-served basis.

E. The City has also received federal EECBG monies. In December 2009, the City was awarded an Allocated EECBG from DOE in the amount of $1,017,800 (the "City Allocated Grant Funds"). Of this amount, $133,020 was designated for residential sector energy efficiency retrofits and $198,000 was specified for commercial sector energy efficiency retrofits.

F. The City has additional funding sources for energy efficiency programs, including a Climate Action Plan Excise Tax that generates a total of approximately $1,600,000 in annual revenues (the "CAP Tax Funds"). Also, in 2009, GEO awarded $72,600 to the City for commercial lighting and other energy efficiency rebates for businesses within the City during 2009-2011 (the "GEO Funds"). The CAP Tax Funds, GEO Funds and Allocated Granted Funds may hereinafter be referred to collectively as "City Funds." Collectively, the County's Competitive Grant Funds and the City Funds may hereinafter be referred to as the "Program Funds."

G. The City and the County recognize the benefits of partnering to create a single point of contact for residents and businesses interested in applying to participate in energy efficiency programs. The City and the County further recognize that this partnership also permits the Parties to manage the delivery of these services county-wide and increases economies of scale as well as the Parties' ability to locally leverage federal funds.

H. The purpose of this Agreement is to provide a framework for the City/County partnership; describe which programs will be administered through the partnership; and determine the rights and responsibilities of each Party.

AGREEMENT

In consideration of the covenants set forth herein and the mutual benefits to be derived by the Parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. <u>Subaward of GEO Award and City Allocated Grant to County.</u>

A. The City hereby assigns $72,600 of its 2011 GEO Funds to the County for EnergySmart Commercial Rebates for the exclusive benefit of City Applicants pursuant to the terms and conditions of this Agreement. Such funds shall be distributed to the County directly from the Colorado Governor's Energy Office and shall not pass through the City.

B. The City intends to subaward the City's remaining City Allocated Grant Funds, $331,020, to the County for use in the Programs as provided in this Agreement. The City will subaward a portion of the Allocated Grant Funds to the County as the City pays for work invoiced pursuant to Section 4.E., below.

C. The City reserves to right to continue to direct the use of the GEO Funds and the City Allocated Grant Funds pursuant to the terms of this Agreement.

D. Except as otherwise provided in this Agreement, for each year this Agreement is in effect, Program Funds allocated for a specific program in a specific year shall be expended until exhausted in the following order: GEO Funds, Competitive Grant Funds, City Allocated Grant Funds, CAP Tax Funds. The City may, in its sole discretion, but with written notice to the County, direct that the Allocated Grant Funds, GEO Funds and CAP Tax Funds currently designated for a particular year may be used in any other year during the time this Agreement is in effect.

2. <u>Programs Subject to this Agreement</u>. This Agreement concerns the following energy efficiency programs (the "Programs"):

A. The Residential "EnergySmart" program (the "Residential Program"), which includes:

1. Energy advisor services ("Energy Advisor Services");

2. Quick installations of energy efficiency measures ("Quick Install Measures");

3. Completion of an EnergySmart audit with an accompanying EnergySmart Recommendations Report;

4. Contractor pre-certification, technical assistance, contractor advice, and information about the relative cost-effectiveness of energy efficiency measures included in the EnergySmart Recommendations Report; and

5. Assistance with rebate and loan applications.

B. The Commercial "EnergySmart" program (the "Commercial Program"), which includes:

1. Energy Sweeps: walk-through energy assessments and Quick Install Measures (the "Energy Sweeps");

2. Referral to contractors to complete refrigeration, air compressor, and whole-building tune-up services; and

3. Technical implementation and assistance for equipment change-out ("Commercial Technical Assistance").

C. Residential rebates, including:

1. EnergySmart program rebates that provide for up to $1000 rebate per home for energy efficiency measures listed in the EnergySmart Recommendations Report, paid for with Boulder County Competitive Grant Funds ("EnergySmart Residential Rebates");

2. EnergySmart Pilot Affordable Housing Subsidy that provide for up to $150 rebate toward the cost of receiving an energy audit, paid for with City Funds for Boulder affordable housing properties, ("Affordable Housing Subsidy"; and

3. SmartRegs rebates ("SmartRegs Rebates") that provide for a rebate of:

   a. Up to $200 for single family rental properties for implementing energy efficiency measures (paid for with City Funds); or

   b. Up to $100 rebate for each multi-family unit for implementing energy efficiency measures included in the EnergySmart Recommendations Report (paid for with City Funds).

D. EnergySmart Commercial rebates (the "EnergySmart Commercial Rebates"), including:

1. Round 1: Up to $5,000 for energy efficiency lighting rebate (from 11/1/2010 through the earlier of 3/31/2011 or the depletion of funds for this program); amount of the rebate is based on deemed energy savings.

2. Round 2: Energy efficiency lighting and other energy efficiency appliances (from 3/1/2011 until the earlier of the end of the Competitive Grant or the depletion of funds for this program); amount of the rebate is based on deemed energy savings.

3. <u>County Administration of Programs</u>. The County shall administer the Project in compliance with the terms and conditions of the Competitive Grant and shall administer the Programs pursuant to this Agreement. Additionally, the County shall:

A. Advise City residents and businesses who contact the County regarding programs available under the Competitive Grant or any other Program ("City Applicants") that they are eligible to participate in the Programs;

B. Provide administrative and coordination support for the Programs in which City Applicants desire to participate;

C. Assign an Energy Advisor to each residential City Applicant;

D. Develop residential and commercial electronic customer management systems that can interface with each other and produce reports on agreed-upon metrics for gauging success ("Customer Management Systems");

E. Develop a sustainability information management system (SIMS) that will take information on deemed and actual savings from Customer Management Systems and will be able to report out to the community on energy, cost, and greenhouse gas savings for peer comparisons and program success reporting.

4. <u>Program Funding</u>.

A. Through the Programs, Competitive Grant Fund monies will be expended directly to or for the benefit of residents and businesses located in Boulder County on a first come, first-served basis. No Competitive Grant Fund monies will be awarded directly to the City. City Applicants will have access to the Programs, rebates, and loans being funded by the Competitive Grant, whether or not separate City funding may be available to provide additional services, rebates, or loans to residents and businesses within the City. This will be the case even if the City has requirements that encourage participation in the Programs that go beyond any County requirements. The City has elected to contribute some portion of its CAP Tax Funds to the Programs. Such contributions shall be subject to the annual appropriate by the Boulder City Council.

B. The Program Funds shall be allocated to the Programs as follows:

1. **Affordable Housing Quick Install Measures:** In 2011, the City shall contribute $5,000 of CAP Tax Funds to the Residential Program for Quick Install Measures in Boulder Housing Partners' properties.

2. **The Affordable Housing Subsidy:** In 2011, the City agrees to contribute $10,000 of City Allocated Grant Funds to the Residential Program for affordable housing subsidies for multi-family rental property participation in the EnergySmart pilot program pursuant to City-approved guidelines.

3. **Social Mobilization Strategy Design:** In 2011, the City agrees to contribute $40,000 of CAP Tax Funds to the Residential Program for EnergySmart marketing and social mobilization design aimed at increasing City rental property owner participation in the Programs.

4. **The Residential Program:**

a. In 2011, the City agrees to contribute $60,000 of CAP Tax Funds to the Residential Program for Energy Advisor Services and Quick Install Measures for the purpose assisting compliance with the City's SmartRegs rental property regulations by the owners of rental property in the City, exclusively for the benefit of City Applicants; provided, however, that this 2011 contribution shall only be available if the County has first expended $215,254.76 of the Competitive Grant Funds on the Residential Program in 2012, whether expended on City Applicants or otherwise.

b. In 2012, the City agrees to contribute $60,000 of CAP Tax Funds to the Residential Program for Energy Advisor Services and Quick Install Measures for the purpose assisting compliance with the City's SmartRegs rental property regulations by the owners of rental property in the City, exclusively for the benefit of City Applicants ; provided, however, that this 2012 contribution shall only be available if the County has first expended $1,215,254.76 of the Competitive Grant on the Residential Program in 2012 whether expended on City Applicants or otherwise.

c. In 2013, the City agrees to contribute $30,000 of CAP Tax Funds to the Residential Program for Energy Advisor Services and Quick Install Measures for the purpose assisting compliance with the City's SmartRegs rental property regulations by the owners of rental property in the City, exclusively for the benefit of City Applicants; provided, however, that this 2013 contribution shall only be available if the county has first expended $437,753.06 of the Competitive Grant on the Residential Program in 2013 whether expended on City Applicants or otherwise.

5. **Residential Rebates**

a. The SmartRegs Rebates.

1. The County may deduct from the City Allocated Grant Funds an administrative fee of $6 per SmartReg Rebate issued to a City Applicant pursuant to this Agreement.

2. In 2011, the County may use $38,020 of the City Allocated Grant Funds and the City agrees to contribute $60,000 of CAP Tax Funds to the Residential Program for SmartRegs Rebates for the purpose assisting compliance with the City's SmartRegs rental property regulations by the owners of rental property in the City, exclusively for the benefit of City Applicants.

3. In 2012, the City agrees to contribute $60,000 of CAP Tax Funds to the Residential Program for SmartRegs Rebates f for the purpose assisting compliance with the City's SmartRegs rental property regulations by the owners of rental property in the City, exclusively for the benefit of City Applicants.

4 In 2013, the City agrees to contribute $30,000 of CAP Tax Funds to the Residential Program for SmartRegs Rebates for the purpose assisting compliance with the City's SmartRegs rental property regulations by the owners of rental property in the City, exclusively for the benefit of City Applicants.

b. EnergySmart Residential Rebates. In 2011, the County may use $85,000 of the City Allocated Grant Funds for EnergySmart Residential Rebates for the exclusive benefit of City Applicants. These funds shall be expended in 2011 regardless of whether the Competitive Grant Funds identified for the EnergySmart Residential Rebates for 2011 have been expended.

6. **The EnergySmart Commercial Rebates.**

a. In 2011, the County may use $72,600 of the GEO Funds and $120,000 of the City Allocated Grant Funds for EnergySmart Commercial Rebates for the exclusive benefit of City Applicants; provided, however, that these 2011 funds shall only be available if $350,000 of the Competitive Grant has first been expended on the EnergySmart Commercial Rebates in 2011, whether expended on City Applicants or otherwise.

b. Any City Allocated Grant Funds identified for EnergySmart Commercial Rebates in 2011 that are not used in that year shall be used by the County in 2012 regardless of whether the Competitive Grant funds identified for the EnergySmart Commercial Rebates have been completely used first.

7. **The Commercial Program.**

a. In 2011, the County may use $33,500 of City Allocated Grant Funds for Energy Sweeps for City Applicants through the Commercial Program

and $19,500 of City Allocated Grant Funds for Commercial Technical Assistance through the Commercial Program.

b. In 2012, the County may use $25,000 of the City Allocated Grant Funds for measurement and verification of the installation of energy efficiency improvements by City Applicants.

C. The City Funds shall be used only for the benefit of City Applicants that are over and above the benefits funded by the Competitive Grant ("Additional Benefits"). These Additional Benefits are only available to City Applicants and shall not exceed the amounts set forth in this Agreement, as amended from time to time, and shall be administered pursuant to City-approved guidelines.

D. Consistent with the Competitive Grant, and subject to available funding, the County will use Competitive Grant monies for the following:

1. All personnel and administrative costs for the Programs;

2. The cost of assigning an energy advisor to each City Applicant;

3. The cost of developing residential and commercial Management Systems;

4. The cost associated with developing the SIMS.

E. Each month, the County will submit invoices to the City for the Additional Benefits it has provided to City Applicants. The invoices shall be accompanied by a detailed reporting of funds expended in order to receive payment from the City. (See subsection 5.A.1., Reporting and Data Requirements, below, for details regarding the required monthly report.) The amount available to supplement the Programs each year this Agreement is in effect is reflected in this Agreement. Payment shall generally be due within 30 days of receipt of the invoice.

F. If the Competitive Grant monies available in a particular year have been expended prior to the end of that year, then pursuant to subsection 4.A.1 of this Agreement, the City and County staff will work cooperatively to form County staff's recommendations to the Board of County Commissioners regarding any re-appropriation of Competitive Grant monies. The County may also request that the City identify any additional City monies that may be available to offer additional services to City Applicants in accordance with this Section. As a last resort, the City and County staff may make a recommendation to cease offering certain Programs or loans to Program applicants, including City Applicants.

G. The Programs will be funded by the City as provided in this Section, provided the following criteria are met:

1. The City and the County have identified and agreed upon specific deliverables attributable to that contribution that provide benefits to City residents and businesses;

2. To the maximum extent possible without diluting messages, each event, print material, or item associated with these deliverables will credit the City with its contribution; and

3. To the maximum extent possible, without diluting messages, the overall joint project bears the City name or source of funding when used within the City limits. The City shall identify certain of the City's proprietary trademarks that the County may use for this purpose.

G. The allocation of City Funds described in this Section may be amended from time to time, at the City's sole discretion, provided, however, that the City must provide the County with adequate notice to allow the County to reasonably avoid expenditure of any City Funds on the Programs in reliance on this Agreement, before such funds are eliminated by the City's unilateral amendment pursuant to this subsection. The availability of the City Funds described in this Section is subject to the annual appropriation by the Boulder City Council.

5. <u>City Personnel Support</u>.

A. To support the Project, City staff will work cooperatively with County staff to:

1. Make recommendations to the Board of County Commissioners regarding the proper expenditure of the Competitive Grant funds;

2. Draft necessary requests for proposals, review proposals, and recommend contractors for selection;

3. Recommend how Competitive Grant funds will be distributed among the programs included in the Project;

4. Provide oversight of Project contractors;

5. Make recommendations to the Board of County Commissioners regarding contractors' design and/or implementation of the Programs;

6. Develop a comprehensive communications plan for the Programs.

B. City staff will participate in meetings to coordinate and collaborate with Boulder County Public Health, the City of Longmont, and Boulder County staff to guide and direct the activities and service described in subsection A, above.

C. City staff will endeavor to support and advise County staff in other mutually agreed upon areas that are necessary to support the implementation of the Programs.

6. <u>Reporting and Data Requirements</u>.

A. The County will provide the City with monthly reports, including:

1. A detailed reporting of funds expended on the Programs for City Applicants and County applicants; and

2. Program accomplishments, challenges, and budgets.

B. The County shall comply with the flow down requirements set out in the DOE Financial Assistance Regulations (**Appendix A** to this Agreement) to ensure proper invoice and reporting procedures for the City Allocated Grant funds.

C. City staff will have access to both the commercial and residential Customer Management Systems to run reports on program metrics, including but not limited to:

1. EnergySmart program participation in the City and County-wide;

2. Energy efficiency measures implemented in the City and County-wide; and

3. Greenhouse gas emission reductions and deemed energy savings in the City and County-wide.

D. The County shall provide the City with customized reports to capture the Program metrics identified in subsection 5.C., above.

7. <u>Outreach and Marketing</u>.

A. County staff will be present at social and business network meetings, events, and other outreach opportunities to educate and market the commercial and residential programs to the community.

B. The County will coordinate with the City for outreach and marketing within Boulder city limits.

C. City staff may be present at social and business network meetings, events, and other outreach opportunities when they are held within city limits of Boulder to educate and market the commercial and residential programs to the Boulder community. Nothing herein shall prevent the City from also providing its staff or contractors to market the Project or the City Programs to additional social and business networks within the City limits.

D. The County and the City will both be credited for their partnership in any and all public communications regarding the success and effectiveness of the residential and commercial programming and the Competitive Grant.

8. Grant Compliance.

A. The County shall be responsible for complying with all requirements of the Competitive Grant and the City shall be responsible for complying with all requirements of the City Allocated Grant. The Parties will cooperate with each other to ensure compliance with the requirements of each grant, including, but not limited to, compliance with the terms and conditions in the American Recovery and Reinvestment Act of 2009, all reporting requirements, and Davis-Bacon Act requirements.

B. The City further acknowledges that the County, as the fiscal agent of the Competitive Grant, has certain reporting and compliance obligations. Accordingly, the City pledges its full cooperation with the County in connection with the distribution, disbursement, and accounting for the Competitive Grant Funds. The City shall provide Boulder County with whatever information or reports the City has in its possession that the County deems necessary to meet its obligations under the Competitive Grant.

C. The County further acknowledges that the City, as the grantee of the Allocated Grant Fund, has certain reporting and compliance obligations. As the subawardee of the Allocated Grant Fund, the County pledges its full cooperation with the City in connection with the distribution, disbursement, and accounting for the Allocated Grant Funds. The County shall provide the City with whatever information the County has in its possession that the City deems necessary to meet its obligations under the Allocated Grant.

9. Not Agent or Representative. Neither Party is an agent or representative of the other Party and shall have no authority under this Agreement or otherwise to make representations or commitments, verbal or written, on behalf of the other Party without that Party's express prior consent.

10. Modification. This Agreement may be altered, amended, or repealed only on the mutual agreement of the County and the City by a duly executed written instrument. The City Manager for the City is authorized to execute agreements modifying this Agreement on behalf of the City. The financial obligations contained in this Agreement may be adjusted from time to time, subject to annual appropriations of the governing Party.

11. Assignment. This Agreement shall not be assigned or subcontracted by either Party without the express prior written consent of the other Party.

12. Successors and Assigns. This Agreement shall be binding upon the successors and assigns of the Parties.

13. Choice of Laws. The laws of the State of Colorado shall govern the interpretation and enforcement of this Agreement. Any litigation that may arise between the Parties involving the interpretation or enforcement of the terms of this Agreement shall be initiated and pursued by the Parties in the Boulder Courts of the 20th Judicial District of the State of Colorado and the applicable Colorado Appellate Courts.

14. Waiver of Breach. Any waiver of a breach of this Agreement shall not be held to be a waiver of any other or subsequent breach of this Agreement. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.

15. Integration. This Agreement cancels and terminates, as of its effective date, all prior agreements between the Parties relating to the services covered by this Agreement, whether written, oral, or partly written and partly oral.

16. Indemnification. Neither Party indemnifies the other Party. The County and the City each assume responsibility for the actions and omissions of its own agents and employees in the performance or failure to perform work under this Agreement. It is agreed that such liability for actions or omissions of their own agents and employees is not intended to increase the amounts set forth in the Colorado Governmental Immunity Act, now existing, or as the same may be later amended. By agreeing to this provision, the Parties do not waive nor intend to waive the limitations on liability which are provided to the Parties under the Colorado Governmental Immunity Act § 24-10-101 et seq., C.R.S., as amended.

17. Severability. If any provision of this Agreement is found to be invalid, illegal, or unenforceable, the validity and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

18. No Third Party Beneficiaries. The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the County and the City, and nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other or third person. It is the express intent of the Parties to this Agreement that any person receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

19. Effective Date, Duration, and Withdrawal. This Agreement shall automatically renew on January 1 each year until May 10, 2013. This Agreement may be extended for future years provided the Parties appropriate estimated costs for the future years. Either party may withdraw from all or part of this Agreement, which withdrawal shall be effective ten (10) days after the Party mails by certified mail, return receipt requested, a written notice to the other Party of its intent to withdraw. The withdrawing Party will then be released from its obligations hereunder. No additional subawards of City Allocated Grant Funds shall be made by the City to the County if this Agreement is terminated by either Party.

20. No Multiple-Fiscal Year Obligation. 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 obligation of each Party under this Agreement is subject to annual appropriation by the governing body of such Party.

21. Counterparts. This Agreement may be executed by facsimile and in any number of counterparts, each of which shall be deemed an original instrument, but all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals this ____ day of _____, 2011.

BOULDER COUNTY

_____
Ben Pearlman, Chair
Board of Boulder County Commissioners

Attest: _____
Clerk to the Board

_____
Date

CITY OF BOULDER

_____
City Manager

ATTEST:

_____
City Clerk on behalf of the
Director of Finance and Record

APPROVED AS TO FORM:

_____
City Attorney's Office

Date: _____

APPENDIX A

DOE Financial Assistance Regulations

Update on Climate Action Plan *EnergySmart* Services

BACKGROUND

Boulder's climate action goal – to reduce local greenhouse gas emissions to 7 percent below 1990 levels by 2012 – was adopted in 2002. In 2006, Boulder's Climate Action Plan (CAP) was developed and accepted by council, defining a set of strategies to achieve the goal, and voters approved the CAP tax to fund these efforts. Boulder's greenhouse gas emissions decreased slightly in 2007, 2008 and 2009; however, by 2009 it became apparent that progress toward the goal needed to accelerate. Community evaluation of the city's CAP programs resulted in a new CAP strategy. In July 2009, council accepted this strategy and increased the CAP tax to its maximum voter-approved rate. To carry out this strategy, during the fall and winter of 2009-2010, a reorganized CAP staff team worked with community partners on new programs, which were designed to blanket the community with basic efficiency upgrades (primarily lighting, insulation and air sealing) and encourage deeper retrofits where possible (e.g., commercial heating and cooling equipment tune-ups, and equipment up-grades).

In May 2010, receipt of a $25 million federal grant in collaboration with Boulder County and others resulted in significant up-scaling of the program concept ($12 million of this $25 million grant is dedicated to energy efficiency in Boulder County jurisdictions). Beginning in fall of 2010, the new countywide programs were tested in a pre-launch, pilot phase. On January 25, 2011, the new *EnergySmart* suite of one-stop-shop building efficiency services launched countywide. The *EnergySmart* services provide efficiency solutions for residential and commercial businesses and property owners in Boulder. These efficiency services result in permanent improvements to Boulder's building stock and help reduce demand for electricity in Boulder.

EnergySmart services

The following section includes descriptions of the residential and commercial services offered in Boulder and countywide.

Residential *EnergySmart* services

- *EnergySmart* advisor and auditor team. The *EnergySmart* advisor accompanies an auditor that performs an assessment and creates an *EnergySmart* recommendations report. The *EnergySmart* advisor installs low-cost energy efficiency measures in the property ('quick installs') and is in contact with the property owner throughout the process to assist the property owner with next steps such as rebate and financing eligibility and paperwork, contractor bidding and selection, and quality assurance.
- Contractor bids. The *EnergySmart* advisor bids out all the jobs to pre-certified contractors for a given day, and within 48 hours, provides each property owner with three bids for the recommended efficiency upgrades. This service allows the competitive marketplace to keep prices low and quality high.

- SmartRegs. Residential rental property owners are assigned a SmartRegs licensed Class G inspector to complete the initial checklist audit and an *EnergySmart* advisor that is dedicated to, and specializes in SmartRegs requirements. The *EnergySmart* advisor completes the quick installs that will result in points towards SmartRegs compliance for the property. Based on the results of the assessment, the advisor helps guide the property owner to the most cost-effective investments for compliance with SmartRegs as well as provides information about the cost-effectiveness of any additional efficiency upgrades that a property owner may choose to install. These services offer the rental property owner with the same assistance any other property owner would receive by participating in *EnergySmart*. For example, the rental property owner also receives assistance with rebates, financing eligibility and paperwork, contractor bidding and selection and quality assurance. Additional rebates are available through the city of Boulder for SmartRegs compliance.

Commercial *EnergySmart* services: Commercial *EnergySmart* services are offered in three tiers to help many types of businesses and property owners make upgrades for energy efficiency while being cognizant of different business needs and tenant and landlord issues. .

1. "Discover." This is the first tier of services offered to businesses and commercial property owners to provide low and no-cost energy saving opportunities, which includes free energy assessments and quick installation of free energy saving measures. This tier of services is the easiest to accomplish with tenant-occupied properties.
2. "Optimize." This is the second tier of services offered to businesses and commercial property owners where contractors tune-up a building's existing mechanical, heating and cooling equipment. The following services are included in this building tune-up service:
    - Check cleanliness of coils.
    - Automatic scheduling of existing HVAC controls.
    - Install and schedule programmable thermostats.
    - Adjust economizers.
    - Repair economizer sensors.
    - Repair economizer damper actuators.
    - Install direct expansion (DX) outside air lockout controls.
    - Adjust minimum outside air fraction.
    - Adjust/tune up furnaces.
    - Adjust domestic hot water temperature

    In addition, refrigeration and air compressor equipment tune-up services are also available. ..
3. "Upgrade." This is the third tier of services offered where old or inefficient equipment can be replaced with new, efficient equipment using time limited rebates and tax incentives; and professional energy advising services.

ANALYSIS

The following section outlines results to date for various components of the *EnergySmart* services.

Marketing and outreach

Completion of the first quarter of *EnergySmart* services includes finalizing much of the marketing "collateral" that the county expects to receive from its marketing contractor. The *EnergySmart* logo was created for use on shirts and identification badges worn by the *EnergySmart* advisors and program staff; it is also used on the website, brochures and handouts for education about *EnergySmart.* Included in the deliverables from the county's marketing firm, was a social mobilization, marketing and implementation guide that presents a roadmap to drive participation in the *EnergySmart* services. Many of the social mobilization strategies outlined in this guide are innovative; city and county staff are in the process of assessing and prioritizing the strategies, adding to them, and finalizing a cohesive social mobilization strategy to ramp up participation in *EnergySmart* services throughout the summer and fall of this year. City and county staff are also working with another marketing team (Kickstand Communications and Sustineo Creative) to create outreach materials specific to each sector and level of service to help drive participation in *EnergySmart*. Additionally, the *EnergySmartYES.com* Website is available to provide residents, businesses and commercial property owners with information on the variety of services and the ability to sign up to receive *EnergySmart* services.

Results of EnergySmart Services to date

In the January 18, 2011 informational memo to council, city staff identified the following metrics for measuring success of the *EnergySmart* services:

1. **Participation**: Number of participants in each stage of the service
2. **Audit to Action**: Percent of *EnergySmart* assessment customers that invest in property upgrades
3. **Timeliness**: Average time between the initial *EnergySmart* visit and a property upgrade
4. **Changing the norms**: Effectiveness of social mobilization strategies to drive participation in *EnergySmart* services. This is measured by asking each *EnergySmart* participant how he or she heard about the services. In addition, a baseline awareness study was conducted by Boulder County at the end of 2009. This study looked at residents' and businesses' awareness of energy issues as well as awareness of the *EnergySmart* services. After one year of the community-wide roll-out, residents and businesses will be re-surveyed to gauge changes in awareness.
5. **Job creation**: Job creation is reported to the Department of Energy based on the actual number of hours worked on these programs. The city's reporting on jobs created will attempt to be broken into federally-funded jobs created (required as part of the federal grants reporting) and city-funded jobs created. The job creation calculation does not take into consideration jobs created by increased economic activity that may result from increased cash flow to a resident or businesses that saves money on utility bills.

6. **Energy saved**: Kilowatt hours and therms of deemed savings for quick installs and property upgrades.
7. **Private investment and energy cost savings**: The city will identify deemed and actual cost savings for participating residential and business customers that participate in *EnergySmart* services and other CAP programs.
8. **Greenhouse gas (GHG) emissions reduced**: Following the Climate Registry protocol standards, GHG emissions reduced will be calculated in tons of CO_2 avoided based on deemed energy savings and the eGRID[1] multipliers for the Western Rockies region that factor in the carbon intensity of the electricity and gas resources in the area.

In addition, the city is tracking the number and dollar amount of rebates and micro-loans issued to *EnergySmart* participants. While, on their own, rebates and micro-loans are not measures of success, they do help the city complete cost-benefit analyses of the services.

As of May 13, the program has yielded the following results:

<u>Residential Services</u>

1. **Participation:** Countywide 1,375 residents have participated; of this, 1,180 are Boulder property owners (86 percent)
2. **Audit to Action:** 21 percent (or 293) of the countywide participants have invested in property upgrades. Seventeen percent (205) of the Boulder property owners have invested in upgrades.
3. **Timeliness:** With single-family and multifamily upgrades combined, the average time between the first visit and the upgrades is 40 days.
4. **Changing the Norms:** Based on how participants report they heard about the program, it appears the most effective outreach to date has been outreach from the city of Boulder, including SmartRegs compliance requirements and outreach by Populus to its own customer base as well as cold calls to affordable housing property owners to offer the services. Taken together, these methods have driven 70 percent of the participants to the services. Figure 1 summarizes how each participant came into the program.
5. **Job Creation:** Based on the federal guidelines for calculating jobs created (520 hours/job per quarter equals 1 FTE), Countywide, 35.15 FTEs were created by both the residential and commercial services for fourth quarter 2010, and 40.07 FTEs were created by both the residential and commercial services for the first quarter of 2011. The city has not yet calculated the city-funded jobs created.
6. **Energy Saved:** Annual deemed savings as a result of *EnergySmart* services to date:

[1] The Emissions & Generation Resource Integrated Database (eGRID) is a comprehensive source of data on the environmental characteristics of almost all electric power generated in the United States. These environmental characteristics include air emissions for nitrogen oxides, sulfur dioxide, carbon dioxide, methane, and nitrous oxide; emissions rates; net generation; resource mix; and many other attributes.

http://www.epa.gov/cleanenergy/energy-resources/egrid/index.html

a. Countywide, 212,579 kilowatt-hours (kWh) of electricity use
   √ 141,850 kWh in Boulder (67 percent)
b. Countywide, 4,590,271.5 therms of natural gas use
   √ 3,124,886 therms in Boulder (68 percent)

7. **GHG emission reductions:** Countywide 388 metric tons CO_2e will be reduced annually as a result of the *EnergySmart* services completed to date; 260 metric tons CO_2e will be reduced annually in Boulder. Based on 2009 data, this represents only 0.35 percent of the residential building sector's contribution to the city's GHG reduction goal. This is much lower than the city would like to see for the comprehensive *EnergySmart* services, but tracks closely with anticipated results from the audit and install components of the service. During the summer months, the city and the county will work together to encourage customers to complete their upgrades and address the remaining barriers.

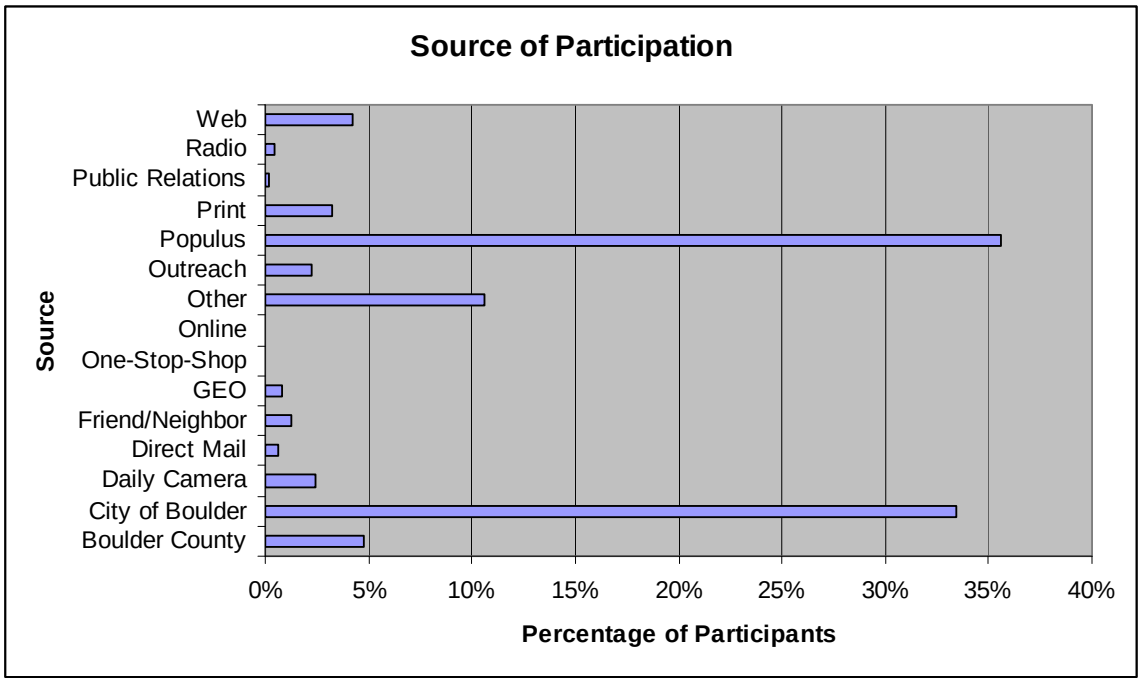


Figure 1. Changing the Norms: How did customers hear about the services?

<u>Residential Rebates and micro-loans</u> were issued for measures such as insulation and air sealing, energy efficient appliances, water heaters, furnaces, solar light tubes, and whole house fans.

- $11,212 in rebates issued countywide; of this, $8,225 in rebates were issued to Boulder residents (73 percent)
- Insulation and air sealing work accounts for 74 percent of all residential rebates issued to date.

- $12,633 in micro-loans was issued to four residential *EnergySmart* participants countywide; $5,140 in micro-loans was issued to Boulder residents.

Commercial Services

1. **Participation:**
    a. Countywide, 398 businesses and/or commercial property owners have participated in the "discover" tier of services
        √ 324 of these are in Boulder (81 percent)
    b. Countywide, 16 businesses and/or commercial property owners have participated in the "optimize" tier of services
        √ 10 of these are in Boulder (63 percent)
    c. Countywide, 90 businesses and/or commercial property owners have participated in the "upgrade" tier of services
        √ 54 of these are in Boulder (60 percent)
2. **Audit to Action:** To date, 3 percent (9 out of 324) of Boulder property owners have invested in upgrades. The utility of this metric is being assessed. Due to the fact that the commercial services are each designed to stand alone; a business can use the "discover" tier of services and not the "optimize" or "upgrade" service. The city and the county are currently assessing ways to measure the depth of the upgrades independently from the path a business takes to make the upgrade.
3. **Timeliness:** It took Boulder commercial property owners an average of 82 days (a range of 30 to 140 days) to implement an upgrade from the original assessment.
4. **Changing the Norms:** Based on how participants report they heard about the program, it appears the most effective outreach to date has been going door-to-door to offer businesses an on the spot energy assessment and quick installation. This method has driven 65 percent of the participants to the services. Figure 2 summarizes how each participant came into the program.
5. **Job Creation:** As was stated in the residential services results section above, based on the federal guidelines for calculating jobs created, countywide, 35.15 FTEs were created by both the residential and commercial services for fourth quarter 2010, and 40.07 FTEs were created by both the residential and commercial services for the first quarter of 2011.
6. **Energy Saved:** Annual deemed savings countywide as a result of commercial *EnergySmart* services:
    a. 350,761kWh of electricity use[2]
        √ 306,202 kWh in Boulder (87 percent)
    b. 26,942 therms of natural gas use[1]
        √ 25,982 therms in Boulder (96 percent)

[2] These results do not represent the entirety of the energy saved and GHG reductions attributable to commercial *EnergySmart* participation. This is a result of some performance issues that the county had with the contractor it hired to develop the commercial customer management and results tracking system; a new contractor has been hired to complete the tracking system. Once complete, *EnergySmart* staff will enter all of the participating business information in the tracking system, and the next report to council will include all energy savings and GHG reductions to date, as well as comparing the GHG reductions to the city's CAP goals.

7. **GHG emission reductions:** Countywide 444 metric tons CO_2e will be saved annually as a result of these initial *EnergySmart* service results, and 401 metric tons CO_2e will be saved annually in Boulder (90 percent).

Commercial Rebates were issued in the fourth quarter 2010 for lighting upgrades. Beginning in 2011, rebates have also been made available for building tune-up services and mechanical equipment upgrades.

- $184,812 in rebates issued countywide to 280 businesses and commercial property owners
- Of this, $62,358 rebates were issued to 43 businesses and commercial property owners in Boulder. This represents 33 percent of the rebates and 15 percent of the businesses. This relatively low participation from Boulder businesses is a result of the fact that Longmont Power and Communications was offering matching rebate dollars to incite business participation in Longmont.

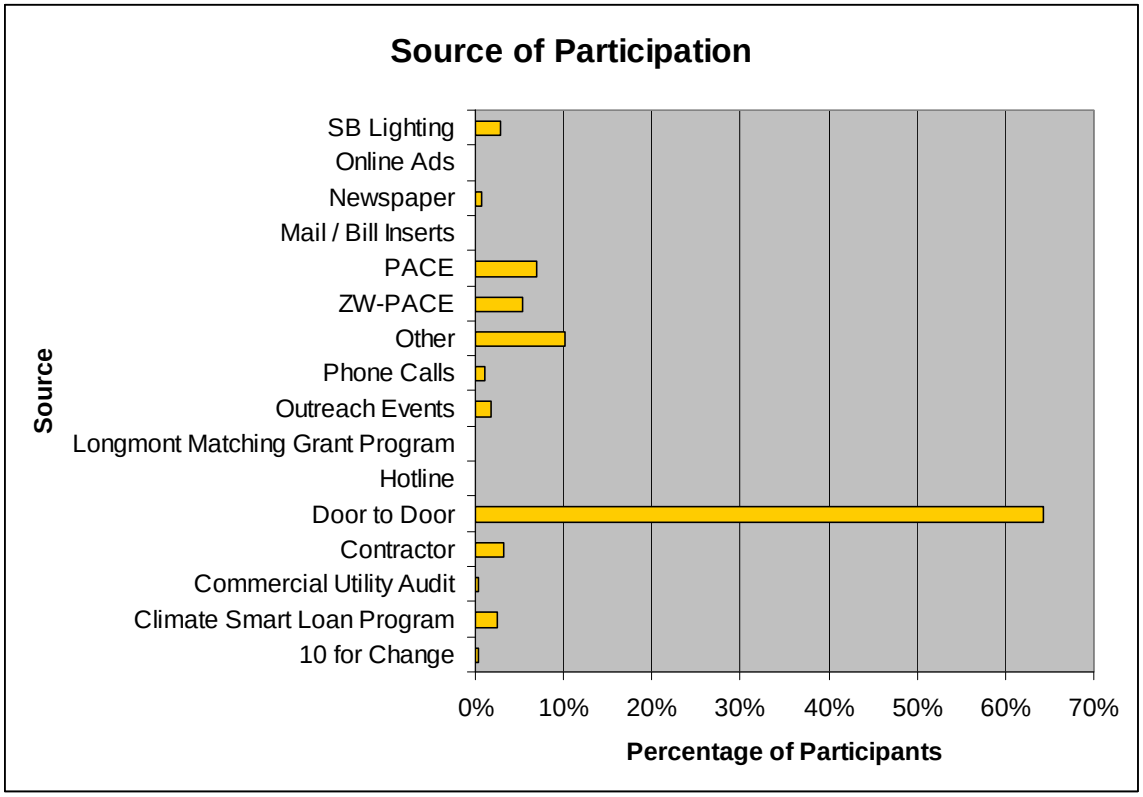


Figure 2. Changing the Norms: source that led participants into the commercial program.

Overall

Given the 10,000 home and 3,000 business and commercial property owner participation goals established for the *EnergySmart* services, participation is 14 percent of the way towards the residential goal and 13 percent of the way toward the commercial goal. This can be compared to the fact that this service is 17 percent of the way into the implementation phase of the grant period (January 2011 through June 2013); therefore, it is reasonable to anticipate that the city can reach its participation goals now that the

design of service components is complete and staff will be increasing the emphasis on driving participation through social mobilization.

While participation is one measure of success, the vast majority of *EnergySmart* participants have received the audit and quick installs, but have not yet acted upon the audit recommendations to complete property upgrades. Over the next quarter, the city will be working on its own and with Boulder County to help customers follow-through by addressing their barriers to action. As a means to maintain participation and incite customers to complete recommended efficiency upgrades, the following "lessons learned" will be taken into consideration as *EnergySmart* service enhancements are developed.

- Some residents would prefer that the energy advisor choose a contractor for them, as long as they can be assured that the chosen contractor offers a low price, high quality service. Other residents would prefer to speak with several contractors directly in order to feel comfortable choosing one.
- The skills necessary for a well-informed energy advisor are equal parts building science expert and customer service professional.
- There have been times where the program design and federal requirements (e.g., Davis Bacon federal wage determinations) are in conflict; and the service design has been adjusted. Beyond the life of this federal grant, if these services are continued, modifications may be made to streamline the service.
- Thus far, regulation seems to be the biggest driver for program participation in the residential sector.
- It is difficult for contractors to bid to jobs they do not see.
- Contractors are unwilling to provide standardized unit pricing for insulation and air sealing jobs, as they feel there are too many variables. Forcing standardized unit pricing would have resulted in pricing that was more expensive than market prices.
- It takes a business longer than a resident to make decisions to invest in energy efficiency upgrades.
- The city and the county need to expand marketing and mobilization for *EnergySmart* services; relying heavily on testimonials and peer-to-peer attestations from customers that have completed upgrades.
- Businesses need one-on-one assistance to navigate the many efficiency opportunities and rebates.
- It is critical to involve property owners and managers early on in the commercial *EnergySmart* service delivery.

NEXT STEPS:

May 2011 marks the kickoff of the focused Pearl Street Mall energy assessment ("discover" tier of services) where *EnergySmart* staff and the energy advisors will be going door-to-door on Pearl Street Mall to deliver energy assessments and quick installation of free energy efficiency measures. The goal of these assessments is for the advisors to identify deeper energy saving opportunities that could lead to optimization of existing equipment, or an upgrade or retrofit of old, inefficient equipment for the

building. In addition, city and county staff will be recognizing businesses that are taking advantage of the *EnergySmart* services through social media tools (e.g., Twitter and Facebook) and will follow-up on the assessments by organizing a "Carrot Mob"[3] at the end of the summer to create a business-to-business efficiency competition.

City and county staff are working to meet with and engage residents "where they are" to connect the *EnergySmart* service with their lifestyles. For example, staff will be attending Farmer's Markets, presenting at neighborhood and community meetings and meeting with local businesses and organizations. The goal is to collaborate with local social networks, groups, businesses and organizations to spread the word about *EnergySmart* in order to drive participation in the service.

The city is also coordinating outreach to the community around *EnergySmart* and the city's energy future efforts in order to minimize confusion and maximize message effectiveness.

Council will continue to receive quarterly reports on the results of *EnergySmart* services; the next report will be rolled up into an annual Climate Action Plan progress report, due out at the end of the summer.

[3] A "Carrot Mob" is a campaign where businesses compete against each other to devote a percentage of revenue from the Carrot Mob event to reducing their environmental impact, in this case improving their energy efficiency. The business that bids the highest percentage of revenue wins, and in exchange, the Carrot Mob drives the community to that business for the event to spend money. It's meant to be a "carrot" rather than a "stick."

CONSENT ITEM – 3H

CITY OF BOULDER
CITY COUNCIL AGENDA ITEM

MEETING DATE: June 7, 2011

AGENDA TITLE: Consideration and Motion granting the City Manager authority to approve an intergovernmental agreement following the guiding principles approved by Council between the city of Boulder and RTD to conduct site planning and construction details for the 3.2-acre RTD-owned site in Boulder Junction known as the "Boulder Transit Village."

PRESENTERS

Jane S. Brautigam, City Manager
Paul J. Fetherston, Deputy City Manager

City Attorney's Office
Tom Carr, City Attorney
Kathy Haddock, Senior Assistant City Attorney

Department of Public Works
Maureen Rait, Executive Director of Public Works
Tracy Winfree, Director of Public Works for Transportation
Mike Sweeney, Transportation Planning and Operations Coordinator
Martha Roskowski, GO Boulder Program Manager
Randall Rutsch, Senior Transportation Planner

Department of Housing and Human Services
Karen Rahn, Director
Andy Proctor, Housing Manager
Michelle Allen, Housing Planner

Department of Community Planning and Sustainability
David Driskell, Executive Director of Community Planning & Sustainability
Susan Richstone, Comprehensive Planning Manager
Sam Assefa, Senior Urban Designer

EXECUTIVE SUMMARY

Development of the Boulder Transit Village (BTV) site is currently governed by an intergovernmental agreement (IGA) approved by the city and the Regional Transit District (RTD) in July 2007. That IGA clarified the respective roles and responsibilities

between RTD and the City of Boulder during the Boulder Transit Village (BTV) site planning and construction process. The primary objective of that IGA was to ensure a coordinated and integrated approach to development of the city- and RTD-owned 11-acre site at 30th and Pearl streets over time. A prior IGA approved by both parties in 2001, governed the anticipated acquisition of the BTV property. With the purchase of the property, completion of concept planning and the change to a design/build development process, the IGA needs to be replaced to reflect the current process and change in roles.

An interdepartmental staff team has been working on the IGA since late March to ensure that it reflects the city's interests identified in previous IGAs that are not already fulfilled. It is critical to the city's interests that this IGA be in place before RTD signs a contract with the development team for BTV. Since RTD is currently in contract negotiations with the development team and could potentially sign a contract when council is on its recess. staff requests that council assign the authority to approve an IGA consistent with guiding principles to the city manager.

STAFF RECOMMENDATION

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

Motion to assign the city manager the authority to approve an IGA consistent with the guiding principles approved by Council as the *Boulder Transit Village Design And Construction Agreement Between City Of Boulder And The Regional Transportation District*.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS:

Economic: A new transit facility, affordable housing, hotel and supportive neighborhood commercial uses are proposed to be constructed on the BTV site. Many of the housing units will provide workforce housing for employees working in Boulder and the transit improvement will provide affordable transportation options for Boulder residents and employees. The redevelopment of this site is expected to be a catalyst for other improvements in the area.

Environmental: Increased transit ridership, expanded multimodal connections and increased alternative mode share support the city's goals of reducing dependency on single-occupant automobile use, congestion and emission reductions. The central location of the RTD Bus/BRT transit facility promotes long-term environmental sustainability throughout the city by encouraging transit use. Available housing and supportive commercial uses in close proximity to various modes of alternative transportation encourages residents to reduce vehicle miles traveled and reduce energy consumption. The proposed development will contain a variety of sustainable features and is expected to achieve Leadership in Energy and Environmental Design (LEED) certification.

Social: The BTV site will be a vibrant location with housing, employment, transit, shopping, grocery, recreation, and other amenities and services. This rich mix of uses provides an attractive location for existing and potential residents, particularly for people with disabilities and/or seniors. A new transit facility and associated transportation connections create new access options for all segments of the community.

OTHER IMPACTS

- Fiscal – As part of the change to a design/build process, RTD is assuming the contracting and project lead role. In the previous Concept Planning work, the city was the contracting and project lead. This may reduce the demands on city staff time for this portion of the project.
- Staff time - Staff support for continued cooperation and support of BTV project is included in existing work plans.

BACKGROUND

The BTV began as a City Council initiative in 2001 to partner with RTD to acquire the 11-acre property at 30th and Pearl streets, prior to the passage of RTDs FasTracks. Council approved the purchase of the site in September 2004 by the city Housing Division with the expressed purpose of designing and constructing a "transit-oriented development" that would be located near high-frequency transit bus service and provide a mix of housing types including a "significant level" of affordable housing. Of the approximately eight acres of land purchased by the Housing Division, 5.5 acres are leased to Pollard Motors until 2016. RTD owns the remaining 3.2 acres of the site.

RTD Federal Grant

In 2004, RTD, in partnership with the city, received a $7.8 million federal grant to complete a master plan the BTV 11-acre property and to design and construct the RTD bus/BRT transit facility. The intent of the federal grant is to ensure that the 11-acre site functions well for transit, and is integrated with and does not negatively impact the housing and transit-oriented development. RTD is required to follow federal transit administration rules on the grant funds, which must be used primarily for transit-related purposes. RTD's $7.8 million federal grant will fund:

- Master planning of the Boulder Transit Village 11-acre site (both RTD and Housing Division-owned land).
- Master planning level concepts for the Housing Division's eight-acre portion of the site.
- Detailed site planning of the RTD bus/BRT facilities and associated infrastructure engineering, design and construction of the first phase RTD regional bus/BRT facility.

This work effort, originally scheduled to begin in 2006, was postponed at the request of the city to allow the Transit Village Area Plan (TVAP) to be completed and provide the framework for the planning and development of the site. While TVAP was being

prepared, RTD received a "three strike" sanctions from the Denver Regional Council of Governments for delays in spending the grant. These sanctions required that RTD advertise for a design/build contract by September 30, 2010. The city and RTD worked together over the summer of 2010 to prepare a design/build request for proposals (RFP) for construction of the transit facility. The RFP also contained optional elements to include a transit oriented development (TOD) on the site and to include the historic depot in the development proposal. A joint RTD and city selection committee evaluated the responses received and selected a development team in February 2011.

Previous Planning and Construction IGA

The 2007 IGA outlines the agencies' roles at different stages in the BTV project, how the two agencies will work together and how the federal grand funds RTD received for the project will be expended. The draft IGA was structured as an "umbrella agreement," anticipating that there would be future amendments to the IGA after master and site planning are completed and before construction begins.

Given the shift in roles and responsibilities resulting from the design/build approach, this is the appropriate time to replace the previous IGA.

ANALYSIS

The 2007 Planning and Construction IGA that has guided work to date and through Concept planning included the following key areas:

1) The BTV master and site plans will be consistent with the TVAP and the goals of the original 2001 Boulder Transit Village Site Selection and land acquisition IGA.
2) The city will take the lead on the "Master Plan" of the 11-acre site and will work in partnership with RTD.
3) Upon completion of master planning the 11-acre site, RTD, working in partnership with the city, will take the lead on designing and site planning the RTD bus/BRT transit facility
4) After master planning is completed, property boundaries between RTD and the city within the 11-acre site may be reconciled and re-subdivided (if current property boundaries are changed). RTD will own the land area for its transit facility and the city's Housing Division will own the land area for the "village" portion of the property.
5) The BTV master and site plan will include a public process component such as public open houses and will provide opportunities for public input.
6) The RTD transit facility design will go through city concept and site review; however, RTD has expressed concern and included in the draft IGA that it does not want the review to "materially delay" the project to the extent that the federal grant funds would be at risk.
7) RTD will fund a share of the infrastructure costs consistent with standard city requirements of a property owner seeking to develop their property. RTD has identified in the IGA that it will use the federal grant funds only for this project.

8) RTD will select a contractor and manage the construction of the RTD transit facility. This will require an addendum to this IGA in the future to include information on RTDs responsibilities related to construction of the future transit facility.

Items 1, 2, and 5 have been substantially completed so the replacement IGA will focus on the revised roles of each agency, property reconciliation and infrastructure costs. City and RTD staff has been in discussion since the selection of the development team on the changes needed from the existing IGAs. RTD prepared the initial version of the IGA and a revised version has been returned to RTD that reflects substantial additions to that draft by city staff. The city and RTD have also met regarding property boundary adjustments required by the proposed development and the reconciliation of previous investments to property and infrastructure costs. The results of these discussions are reflected in the current draft IGA that is under review by RTD.

Guiding Principles

It is recommended that the city manager authority to approvae the new IGA be directed by the following guiding principles. These items are intended to protect the city's interests and reflect the major areas of agreement and responsibility in the draft:

1. The proposed IGA replaces the previous IGAs for property acquisition and master planning and construction; and incorporates any remaining performance requirements from those agreements into the new one.
2. RTD and the city will continue to cooperate to create a development that is efficient for transit, safe and attractive to all transportation modes, and consistent with all the planning documents prepared for the Boulder Junction area.
3. The development conforms to the requirements of the city contained in the TVAP Plan of 2007, the Public Arts Master Plan of December 2009, and the 2010 ordinances rezoning the Transit Village Area (now called "Boulder Junction") and creating the Boulder Junction Access General Improvements Districts, all referred to in the proposed IGA as the "planning documents."
4. As anticipated in the prior IGA, RTD will assume the lead role in site design and construction activities related to its portion of the site.
5. Obligations of the developer as reflected in its agreement with RTD will be consistent with the obligations of RTD as identified in the existing IGA for property reconciliation and to pay a proportionate share of infrastructure costs.
6. The entire project remains subject to the city's site review and development requirements and nothing in the agreement over rides or replaces those requirements.
7. The city will have a role in developing the design/build contract between the developer and RTD and the opportunity to comment on preliminary design documents.
8. RTD will dedicate up to $100,000 specifically to support public art in the development project.

9. RTD, through the federal grant, will pay the full cost of exclusive transit improvements and the proportionate costs of shared improvements. These are expected to include one-quarter of the traffic signal at Pearl Parkway and Junction Place, the cost of constructing Junction Place for the length needed by the RTD development, and the utilities needed to serve the RTD development. RTD's share of these investments will be adjusted to compensate the city for its larger share of the land costs.
10. Property boundaries will be adjusted and re-platted to reflect the approved site plan.

NEXT STEPS:

If council approves the proposed motion, the city will continue to work with RTD to finalize the proposed IGA and the city manager will approve the final IGA for design and construction of the BTV development in a manner consistent with the guiding principles.

CONSENT ITEM – 3I

CITY OF BOULDER
CITY COUNCIL AGENDA ITEM

MEETING DATE: June 7, 2011

AGENDA TITLE: Second reading and consideration of a motion to adopt Ordinance No. 7793 amending Chapter 13-1, "Elections," B.R.C., 1981, establishing the definition of "Ballot Measure," and establishing the date that the title of a proposed ballot measure is fixed for purposes of the Fair Campaign Practices Act, and setting forth related details.

PRESENTERS
Jane S. Brautigam, City Manager
Thomas A. Carr, City Attorney
Paul J. Fetherston, Deputy City Manager
Alisa D. Lewis, City Clerk/Director of Support Services, City Manager's Office
Kathy Haddock, Senior Assistant City Attorney

EXECUTIVE SUMMARY
The purpose of this item is to establish the definition of "Ballot Measure," and to establish the date that the title of a proposed ballot measure is fixed for purposes of the Fair Campaign Practices Act ("FCPA" or the "Act"). The issues to be balanced in setting this date are the city's interest in maximizing the opportunity for public input prior to a final vote on specific ballot title language, and compliance with the FCPA. The Act limits the dissemination of information and expenditures of local government entities with regard to support or opposition of ballot measures once the title is set, but does not clearly describe the point at which a proposed ballot measure morphs from a draft, to a final ballot measure (i.e. when the ballot measure title is fixed, or set.) Such lack of clarity creates uncertainty which is harmful to the public and the city. If the morphing happens early in the ballot drafting process, access to information by staff or consultants to the public and council is cut off prior to determination of all of the factors necessary to complete drafting of the ballot measure. Further, this lack of clarity may put the city in jeopardy for an unintentional violation of the FCPA when following its normal procedures prior to finalizing any ordinance. Providing clarity of the date on which the title is set will maximize the opportunity for open public debate without an unintentional violation of the Fair Campaign Practices Act.

There were no questions by council on 1st reading.

The proposed ordinance achieves the following: 1) clarifies the definition of a ballot measure to include both a ballot issue (something on the ballot that is NOT a TABOR event) and a ballot question (something on the ballot that IS a TABOR event); and 2) creates a new section (9) in Chapter 13-1 that specifies the date upon which a ballot title is set according to the provisions of Section 1-45-117 C.R.S.

OTHER IMPACTS

- Staff time - Part of the normal work plan.

STAFF RECOMMENDATION

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

Motion to adopt ordinance No. 7793 amending Chapter 13-1, "Elections," B.R.C. 1981, establishing the definition of "Ballot Measure" and establishing the date that the title of a proposed ballot measure is fixed for purposes of the Fair Campaign Practices Act.

BACKGROUND

Section 1-45-117 C.R.S. is a provision of the Fair Campaign Practices Act that limits the amount of money a government may spend on a ballot measure that is before the electorate represented by that government. The Act is written to cover all levels of state and local government, but because municipalities in general, and Boulder in particular, do not adopt laws in the same manner as other types of governments, the Act does not give clear guidance to the city. Most governments put measures on the ballot by resolution or motion, which do not require a public hearing, notice, or public input.

The city attempts to introduce proposed ballot measures a few months before the printing deadline in order to provide an opportunity for the staff to give council and the public information regarding issues related to the proposal; to allow public input on the final wording of the ballot measure; and to determine whether the measure should be submitted to the voters at all. Further, Boulder places matters on the ballot by ordinance, which requires a minimum of two readings and a public hearing, (except in the extraordinary circumstances when an ordinance may be adopted by emergency.) Because Boulder does not permit final passage of an ordinance at the same meeting at which there are amendments to the ordinance (except for an emergency ordinance), an ordinance can have more than two readings. It is unknown when the final vote will occur; each time an amendment is approved by the majority of council, the final vote of council is delayed until the next meeting.

Colorado courts and administrative law judges have made rulings identifying when a proposed ballot issue becomes subject to the FCPA. These rulings are based on the

particular fact circumstances of cases before the court. Such rulings do not provide clarity for Boulder, as the city's process lasts for several months between the beginning of discussion of a potential ballot issue, and the time the ballot language is finalized for submittal to the voters. If the city is limited from conducting research and providing information to council during this period, the city's ability to facilitate public participation and exchange of information is negated.

A conservative interpretation of the FCPA could say that no public funds could be spent once a *draft* of a ballot measure is presented to the council. However this interpretation means that the city may be restricted from researching issues which may affect amendments and revisions to the draft, or otherwise providing information to the council and the public. Such restriction may result in changes to the language of the ballot measure or whether the matter should be presented to the voters at all.

The city is left with balancing these various interests so that the subject before the voters is stated clearly enough that the voters know the consequences of a vote for or against the measure. This proposed ordinance makes clear that the fixing of the title and the date when the city is subject to the FCPA is the date of the meeting when council finally votes to approve the language to be placed before the electors.

ATTACHMENT:

A. Ordinance No. 7793

ORDINANCE NO. 7793

AN ORDINANCE AMENDING CHAPTER 13-1, "ELECTIONS," B.R.C. 1981, ESTABLISHING THE DEFINITION OF "BALLOT MEASURE," AND ESTABLISHING THE DATE THAT THE TITLE OF A PROPOSED BALLOT MEASURE IS FIXED FOR PURPOSES OF THE FAIR CAMPAIGN PRACTICES ACT, AND SETTING FORTH RELATED DETAILS.

A. The voters of the City of Boulder have adopted requirements regarding campaign finance issues that supersede the Fair Campaign Practices Act (FCPA), Chapter 1-45 of the Colorado Revised Statutes (C.R.S.), but the intent of the City has been to comply with the intent of campaign disclosure as stated in Section 13-2-1, "Legislative Intent," B.R.C. 1981.

B. One section of the FCPA purports to apply to local governments, and limits information that the city can provide, and action that the city or any of its officials may take, with respect to a ballot measure after the "title is set," to prevent public money from being spent on urging a vote for or against a particular ballot measure; however, the precise time a title is set for a ballot measure is not clear in the statute; and

C. In order to comply with the intent of the limitation of the FCPA regarding expenditure of public money, and the city's goal to provide information regarding matters that may be on the ballot, without limitation, in order to maximize opportunity for public input prior to finalization of proposed ballot measures, the date the "title is set" or finalization of the ballot measure should be the same date as the vote on final reading of the ordinance submitting ballot measures to the electors; and

D. Council finds that it is vital to the open and transparent values of the city that the public is able to participate in the formation of ballot measures, and obtain whatever information the city may have available, prior to finalization of ballot measures without concern that

providing such information and allowing input could be considered a violation of Section 1-45-117 C.R.S., to the extent it applies to the city; and

D. Council finds that the intent of Section 1-45-117 C.R.S. is not to restrict the provision of information compiled or available to the city, or the process in developing the language of a ballot measure that is submitted to the voters, but solely to limit the expenditure of public funds to encourage a vote for or against a ballot measure once it is officially before the voters of the city.

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

Section 1. Section 13-1-1, B.R.C. 1981, is amended by the addition of a new subsection (c) to read:

13-1-1 Legislative Intent.

(a) The purpose of this chapter is to establish procedures for regular and special elections of the home rule City of Boulder. Such procedures are intended to be consistent with the Uniform Election Code of 1992 as adopted by the State of Colorado, except as necessary to comply with provisions of the charter or to meet a specific need of the city as determined by the city council.

(b) The purpose of this chapter in adopting by reference sections 1-2-228, 1-4-913, part 2 of article 1-11, and article 13 of title 1, C.R.S., which form a part of the Uniform Election Code, is to make it clear that such provisions apply to city elections. Adoption does not create a separate municipal offense or municipal court proceeding. Proceedings under such statutes, including, without limitation, contests of municipal elections and criminal prosecutions, shall be brought and heard in the district court or county court as specified by state law, and control of the criminal prosecution of the enumerated election offenses shall remain with the district attorney or the attorney general of the state.

(c) The purpose of this chapter is to set the date upon which a proposed ballot measure is final for its submission to the voters for purposes of complying with the intent and spirit of section 1-45-117 C.R.S. Such date is the final vote by City Council on the final reading of the ordinance submitting the ballot measure to the voters. That date is set in order to allow for the distribution of information by the city and input by the public without limitation until the finalization and submission of the ballot measure for the ballot.

Section 2. Section 13-1-2, B.R.C. 1981 is amended by the addition of a new paragraph 13-1-2(b) (2), Section 1-1-104(2.6), "Definitions," by the addition of the following definition, and all subsequent paragraphs are renumbered:

13-1-2 Incorporation of Uniform Election Code of 1992, as Amended, With Modifications.

(b) The council finds that certain modifications to the Uniform Election Code of 1992, as amended, are in the best interest of the residents of the city and therefore adopts the following modifications:

…

(2) Section 1-1-104(2.6) Definitions.

"Ballot measure" means a ballot issue or a ballot question that has been approved by the City Council for submittal to the voters at an election.

Section 3. Chapter 13-1, "Elections," B.R.C.1981 is amended by the addition of a new section 13-1-9 to read:

13-1-9 Fixing of Ballot Title for Purposes of Section 1-45-117 C.R.S.

For purposes of Section 1-45-117 C.R.S., ballot titles for city ballot measures shall be considered fixed upon the final vote of council after final reading of a motion, resolution, or ordinance which officially submits a specific ballot measure in the form it is to appear on the ballot for a vote of the electors at the next election. The date the election is called for consideration of city ballot measures shall not change the date upon which the ballot title is fixed as provided in this section.

Section 4. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

Section 5. The City Council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY this 17th day of May, 2011.

_____
Mayor

Attest:

_____
City Clerk on behalf of the
Director of Finance and Record

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED PUBLISHED BY TITLE ONLY this 7th day of June, 2011.

_____
Mayor

Attest:

_____
City Clerk on behalf of the
Director of Finance and Record

CONSENT ITEM – 3J

CITY OF BOULDER
CITY COUNCIL AGENDA ITEM

MEETING DATE: June 7, 2011

AGENDA TITLE:
Introduction, first reading and consideration of a motion to order published by title only an emergency ordinance concerning chapter 2-7, "Code of Conduct," B.R.C. 1981 amending section 2-7-15 regarding the definition of "conflict of interest," and amending subsections (j), (k), (l) and (m) of chapter 8-4-10, "Advisory Committees" regarding the application of the Code of Conduct to general improvement districts, and setting forth related details.

PRESENTERS
Thomas A. Carr, City Attorney
Kathy Haddock, Senior Assistant City Attorney
Sandra Llanes, Assistant City Attorney

EXECUTIVE SUMMARY

If approved, the attached ordinance will amend the definition of "conflict of interest" in the code of conduct to accomplish two goals. First, the amendments to subsections (e) and (f) of the definition of "conflict of interest" allow members of the council and city boards and commissions to participate in deliberations involving transactions with organizations on whose boards they sit because of city code, rule or contract. Second, the amendments to subsections (j), (k), (l), and (m) make clear that the provisions in Section 8-4-10 regarding the Code of Conduct apply to the members of CAGID, UHGID, and BJAGID-TDM and BJAGID-Parking. The attached ordinance amends section 2-7-15, "Definitions," and subsections (j), (k), (l) and (m) of section 8-4-10 "Advisory Committees" of the Boulder Revised Code (B.R.C.) and sets forth the related details.

In order for this ordinance to become effective for the 2012 grant process, an emergency finding is required and was provided in the ordinance.

STAFF RECOMMENDATION

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

Motion to introduce and order published by title only an emergency ordinance concerning chapter 2-7, "Code of Conduct," B.R.C. 1981 amending section 2-7-15, regarding the definition of "conflict of interest," and amending subsections (j), (k), (l) and (m) of chapter 8-4-10, "Advisory Committees" regarding the application of the Code of Conduct to general improvement districts.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic: None.
- Environmental: None.
- Social: The proposed amendment will allow members of the council as well as members of the city's boards and commissions to participate in deliberations affecting outside boards when their service on those boards is in the city's interest as defined by code, rule or contract, and clarify that members of advisory committees of general improvement districts are not disqualified solely because of residence, employment or ownership of property within the district.

OTHER IMPACTS

- Staff Time: The staff time needed to complete the work is minimal.

ANALYSIS

This proposed ordinance addresses a problem that has existed for some time. Members of the City Council and various boards and commissions serve on outside boards in a city seat. Generally, the service is required because the city funds the organization and in return requires a seat on the organization's board. A problem arises when the organization comes to the council or board for funding. Under the current rules, the council member or board member most knowledgeable about the outside organization cannot contribute to the deliberations about the organization. In the case of the Arts Commission, three out of five members are required to serve on outside boards making it difficult and sometimes impossible to achieve a quorum. The proposed amendment would address this situation by allowing members whose service on outside boards is in the city's interest to participate in deliberations involving transactions with or affecting those organizations.

The proposed ordinance amends the definition of "conflict of interest" in subsections (e) and (f) of section 2-7-15. Subsection (e) addresses officers of organizations who have taken an official position on a matter. The amendment is necessary because an organization seeking funding will have taken an official position to seek the grant. In the event that the city representative is an

officer, he or she would be covered by this definition. Subsection (f) is the broader provision covering all board members of organizations substantially affected by a transaction with the city. Funding requests qualify as transactions substantially affecting the outside organization.

The Arts Commission is the commission most affected by this rule. Arts Commission members are required to serve on three outside boards, managing organizations to which the city grants funds. The Arts Commission is scheduled to consider grant applications at their meeting on Aug. 17, 2011. If this amendment is not passed by emergency at the July 19, 2011 council meeting, it will not go into effect until Aug. 18, 2011. Accordingly, there is an emergency clause in the proposed ordinance.

Conflicts of interest also arise regarding general improvement districts (GIDs). The Code of Conduct has a very general exemption for advisory committee members of GIDs (section 2-7-14), and chapter 8-4-10(g) and (i) have a specific exemption applicable to individuals serving on GID advisory commissions. However, the specific provisions for the Central Area (CAGID), University Hill (UHGID), and Boulder Junction Access (BJAGID-TDM and BJAGID-Parking) GIDs state that none of section 8-4-10 applies to the committees of CAGID, UHGID, BJAGID-TDM or BJAGID-Parking. Subsections (j), (k), (l) and (m) were intended to exempt those commissions from the subsections of 8-4-10 that apply to the committee as a whole, and not the subsections that apply to individual members of the advisory committee and the application of the Code of Conduct to advisory committee members.

To eliminate any potential conflict between 8-4-10 and the Code of Conduct, we recommend that the exemption in section 8-4-10 be amended to clarify that the individuals serving on the advisory committees of CAGID, UHGID, BJAGID-TDM and BJAGID-Parking are not exempt from the references to the Code of Conduct in that section.

ATTACHMENTS

A. Proposed ordinance

ATTACHMENT A

ORDINANCE NO. _____

AN EMERGENCY ORDINANCE CONCERNING CHAPTER 2-7, "CODE OF CONDUCT," B.R.C. 1981 AMENDING SECTION 2-7-15 REGARDING THE DEFINITION OF "CONFLICT OF INTEREST," AND AMENDING SUBSECTIONS (j), (k), (l) AND (m) OF CHAPTER 8-4-10, "ADVISORY COMMITTEES" REGARDING THE APPLICATION OF THE CODE OF CONDUCT TO GENERAL IMPROVEMENT DISTRICTS, AND SETTING FORTH RELATED DETAILS.

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

Section 1. Purpose and Findings.

The purpose of this ordinance is to amend the definition of conflict of interest in the Code of Conduct to allow members of the city council, boards and commissions to participate in deliberations (a) involving outside boards on which they are members when service on those boards is required by city code, rule or contract; or (b) when a member of the advisory committee of a general improvement district serves on the advisory committee because of residence, employment or ownership of property within the district.

Section 2. Section 2-7-15, B.R.C. 1981 is amended to read:

2-7-15 Definitions.

…

"Conflict of interest" shall mean any situation in which a city council member, an appointee to a city board, commission, task force or similar body, or a city employee:

(a) Has a substantial interest in any transaction with the city;

(b) Has a relative with a substantial interest in any transaction with the city;

(c) Has a substantial interest as an affiliate of a firm with a substantial interest in any transaction with the city;

(d) Has a substantial interest as an affiliate of a firm appearing on behalf of or employed by a person with a substantial interest in any transaction with the city;

(e) Is an officer of an organization that has taken an official position on any transaction with the city, unless service on the board of the organization is required by city code, rule or contract;

(f) Is on the board of directors of an organization that is substantially affected by a transaction with the city, unless service on the board of the organization is required by city code, rule or contract;

(g) Is affiliated with a law, accounting, planning, or other professional firm that has substantial interest in any transaction with the city; or

(h) Is required to receive official notice of a quasi-judicial action from the city.

…

Section 3. Amend Subsections (j), (k), (l) and (m) of Section 8-4-10 to read as follows:

8-4-10 Advisory Committee.

…

(j) None of the provisions of this section, except subsections (g) and (i), apply to the City of Boulder Central Area General Improvement District. The Downtown Management Commission established by section 2-3-5, "Downtown Management Commission," B.R.C. 1981, shall serve in lieu of an advisory committee for CAGID, and shall have the duties set forth in subsection (c) of this section in addition to and not by way of limitation on those duties, powers, and functions delegated to the Downtown Management Commission elsewhere in this code.

(k) None of the provisions of this section, except subsections (g) and (i), apply to the City of Boulder University Hill General Improvement District ("UHGID"). The University Hill Commercial Area Management Commission established by Section 2-3-20, "University Hill Commercial Area Management Commission," B.R.C. 1981, shall serve in lieu of an advisory committee for UHGID, and shall have the duties set forth in this section in addition to and not by way of limitation on those duties, powers, and functions delegated to the University Hill Commercial Area Management Commission elsewhere in this code.

(l) None of the provisions of this section, except subsections (g) and (i), apply to the Boulder Junction Access General Improvement District-Travel Demand Management ("BJAGID - TDM"). The Boulder Junction TDM Commission established by section 2-3-21, "Boulder Junction TDM Commission," B.R.C. 1981, shall serve in lieu of an advisory committee for BJAGID - TDM, and shall have the duties set forth in subsection (c) of this section in

addition to and not by way of limitation on those duties, powers, and functions delegated to the Boulder Junction TDM Commission elsewhere in this code.

(m) None of the provisions of this section, except subsections (g) and (i), apply to the Boulder Junction Access General Improvement District-Parking ("BJAGID - Parking"). The Boulder Junction Parking Commission established by section 2-3-22, "Boulder Junction Parking Commission," B.R.C. 1981, shall serve in lieu of an advisory committee for BJAGID - Parking, and shall have the duties set forth in subsection (c) of this section in addition to and not by way of limitation on those duties, powers, and functions delegated to the Boulder Junction Parking Commission elsewhere in this code.

Section 4. The City Council finds that this ordinance is necessary for the preservation of the public peace, health, or property. Immediate passage of this ordinance is necessary to allow board and commission members to participate in consideration of grants for the 2012 fiscal year. There is insufficient time for implementing this ordinance. Therefore the City Council orders that this ordinance be passed as an emergency measure and that the ordinance be effective immediately upon its final passage.

Section 5. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

Section 6. The City Council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY this 7th day of June 2011.

_____
Mayor

Attest:

_____
City Clerk on behalf of the
Director of Finance and Record

READ ON SECOND READING, PASSED, ADOPTED AS AN EMERGENCY MEASURE BY TWO-THIRDS COUNCILMEMBERS PRESENT, AND ORDERED PUBLISHED BY TITLE ONLY this 19th day of July 2011.

_____
Mayor

Attest:

_____
City Clerk on behalf of the
Director of Finance and Record

PUBLIC HEARING ITEM – 5A

CITY OF BOULDER
CITY COUNCIL AGENDA ITEM

MEETING DATE: June 7, 2011

AGENDA TITLE:
Second reading and consideration of Ordinance No. 7794 designating the building and the property at 1921 Pine Street, to be known also as the Bell-Bass House, as an individual landmark under the City's Historic Preservation Code. The hearing on this item will be held under the Quasi Judicial hearing procedures of the Boulder Revised Code.

Owner/Applicant: Wayne Rogers

PRESENTERS:
Jane S. Brautigam, City Manager
Paul Fetherston, Deputy City Manager
David Driskell, Executive Director of Community Planning & Sustainability
Susan Richstone, Comprehensive Planning Manager
James Hewat, Historic Preservation Planner
Jessica Vaughn, Historic Preservation Planner

EXECUTIVE SUMMARY:

The purpose of this item is to allow the City Council to determine whether the proposed individual landmark designation of the building and the property at 1921 Pine Street 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. The property owner is in support of the designation.

If approved, this ordinance (see **Attachment A**) would designate the building and the property as an individual landmark. Findings are included in the ordinance. The landmark designation application was submitted by the property owner in January of 2011, and was heard by the Landmarks Board on April 6, 2011. The board unanimously voted to forward the application to the City Council recommending designation. The second reading for this designation will be held under the quasi-judicial procedures of the Boulder Revised Code.

BACKGROUND:

Research indicates that the Bell-Bass House was constructed in the late 19th century and that it was occupied by a variety of middle class Boulder residents, including drivers, city employees, lab technicians and University of Colorado employees. The earliest resident was Canadian, James Washington Bell, with his wife, Delphine, in 1883. Bell was an acting Professor of Modern Languages at the University of Colorado. Bell was recognized for his teachings in political science, economics and history, becoming the first Professor of Political Economy and History at the University of Colorado in 1884. James died in 1890 and his family appears to have continued living in the house for several years after his death. In about 1900, Lawrence Bass and his wife Ida took up residence at 1921 Pine Street. L.P. Bass is significant in Boulder history for his photography and as Chief of Police in the city until his untimely death in 1920. Bass is well known for the many portraits he made and his extensive photo-documentation of the city during the great flood of 1894 (*for more information see Attachment B, Description and Significance Analysis)*.

Stylistically, the house is best described as vernacular masonry with neo-classical Italianate inspired design elements, including a steeply pitched front gable roof form, open colonnaded front porch, and large two-over-two, double hung wood windows. The house is simply but elegantly proportioned. The house also features elegant segmental arches and incised wood decorations above the windows on the first and second floors.

Façade, 1921 Pine Street, 2011

RECOMMENDATION:

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

Motion to adopt Ordinance No. 7794 designating the building and the property at 1921 Pine Street, to be known also as the Bell-Bass House, as an individual landmark under the City of Boulder Historic Preservation Code.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS:

Economic: Owners of locally designated landmarked properties are eligible for a variety of 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 add time and design expense to a project.

Environmental: 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 construction waste of building materials deposited in landfills. City staff can assist architects, contractors and homeowners with design and material selections and sources which are environmentally friendly.

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, both of whom 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 April 6, 2011 the Landmarks Board voted 5-0 to recommend to the City Council that the property at 1921 Pine Street be designated as a local historic landmark, finding that it meets the standards for individual landmark designations in 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.

PUBLIC FEEDBACK:

Abby Daniels, Executive Director of Historic Boulder, spoke in support of the designation at the Landmarks Board hearing.

ANALYSIS:

Code Criteria for Review
Section 9-11-6(b), B.R.C. 1981, specifies that during the review for an application for local landmark designation, the council must consider "whether the designation meets the purposes and standards in subsections 9-11-1(a) and section 9-11-2, "*City Council May Designate or Amend Landmarks and Historic Districts*," B.R.C. 1981, in balance with the goals and policies of the Boulder Valley Comprehensive Plan. According to that ordinance, the City Council shall approve by ordinance, modify and approve by ordinance, or disapprove the proposed designation.

Historic, Architectural, and Environmental Significance
Staff and the Landmarks Board find that the proposed designation of the building and the property at 1921 Pine Street "maintains 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" (section 9-11-1, B.R.C., 1981). Staff considers that the application meets the historic, architectural, and environmental criteria for individual landmarks as outlined below:

1921 Pine Street - Summary of Significance

Historic Significance: The building has historic significance under criteria 1, 2, 3 and 4.

1. **Date of Construction:** circa 1880
2. **Association with Persons or Events:** James Washington Bell, L.P. Bass and Elmer Warren
3. **Development of the Community:** Whittier Neighborhood
4. **Recognition by Authorities:** 1987 Boulder Survey of Historic Places as a "representative example of early Boulder's middle-class housing."

Architectural Significance: The building has architectural significance under criterion 1.

1. **Recognized Period or Style:** Vernacular masonry with neo-classical Italianate inspired design elements.
2. **Architect or Builder of Prominence:** None observed.
3. **Artistic Merit:** None observed.
4. **Example of the Uncommon:** None observed.

Environmental Significance: The building has environmental significance under criterion 5.

1. **Site Characteristics:** None observed.
2. **Compatibility with Site:** None observed.
3. **Geographic Importance:** None observed.
4. **Environmental Appropriateness:** None observed.
5. **Area Integrity:** 1921 Pine Street is within the potential Whittier Historic District.

For further analysis of the historic, architectural, and environmental significance criteria, see **Attachment B**.

OPTIONS:

The City Council may approve the 2nd reading ordinance, modify the ordinance as to the landmark boundaries or designated features, or not approve the 2nd reading ordinance.

ATTACHMENTS:

A: Ordinance No. 7794
B: Description and Significance analysis
C: Significance Criteria for individual landmarks
D: Sections 9-11-1 and 9-11-2, "*Purposes and Intent*," B.R.C., 1981

ATTACHMENT A

ORDINANCE NO. 7794

AN ORDINANCE DESIGNATING THE BUILDING AND THE PROPERTY AT 1921 PINE STREET, CITY OF BOULDER, COLORADO, ALSO KNOWN AS THE BELL-BASS HOUSE, 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 l. 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 January 18, 2011, property owner Wayne Rogers applied to the City of Boulder to designate the building and the property at said property as a landmark; 2) the Landmarks Board held a public hearing on the proposed designation on April 6, 2011; and 3) on April 6, 2011 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 June 7, 2011 and upon the basis of the presentations at that hearing finds that the building and the property at 1921 Pine Street does possess a special character and special historic, architectural, or aesthetic interest or value warranting its designation as a landmark.

Section 4. There is hereby created as a landmark the building and property located at 1921 Pine Street, also known as the Bell-Bass House, whose legal landmark boundary is as follows:

LOT 8, BLOCK 142, BOULDER EAST O T AS SHOWN IN THE LANDMARK BOUNDARY MAP IDENTIFIED AS EXHIBIT A.

Section 5. The characteristics of the subject property that justify its designation as a landmark are: 1) its historic significance for its date of construction circa 1880, its association with James Washington Bell, L.P. Bass and Elmer Warren, its significance as a representative example of early middle-class housing in Boulder, its identification as an important historic building during the 1987 survey of historic places in Boulder; and 2) its architectural significance as a good representative example of vernacular masonry with neo-classical Italianate inspired design elements; and 3) its environmental significance for the simple elegant, Italianate inspired building design and its contribution to the overall architectural diversity within the Whittier Neighborhood.

Section 6. The council further finds that the foregoing landmark designation is necessary to promote the public health, safety, and welfare of the residents of the city.

Section 7. The council directs that the department of Community Planning and Sustainability give prompt notice of this designation to the property owner and cause a copy of this ordinance to be recorded as described in Subsection 9-11-6(d), B.R.C. 1981.

Section 8. 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 17th day of May, 2011.

.

_____

Mayor

Attest:

_____
City Clerk on behalf of the
Director of Finance and Record

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED PUBLISHED

BY TITLE ONLY this 7th day of June, 2011.

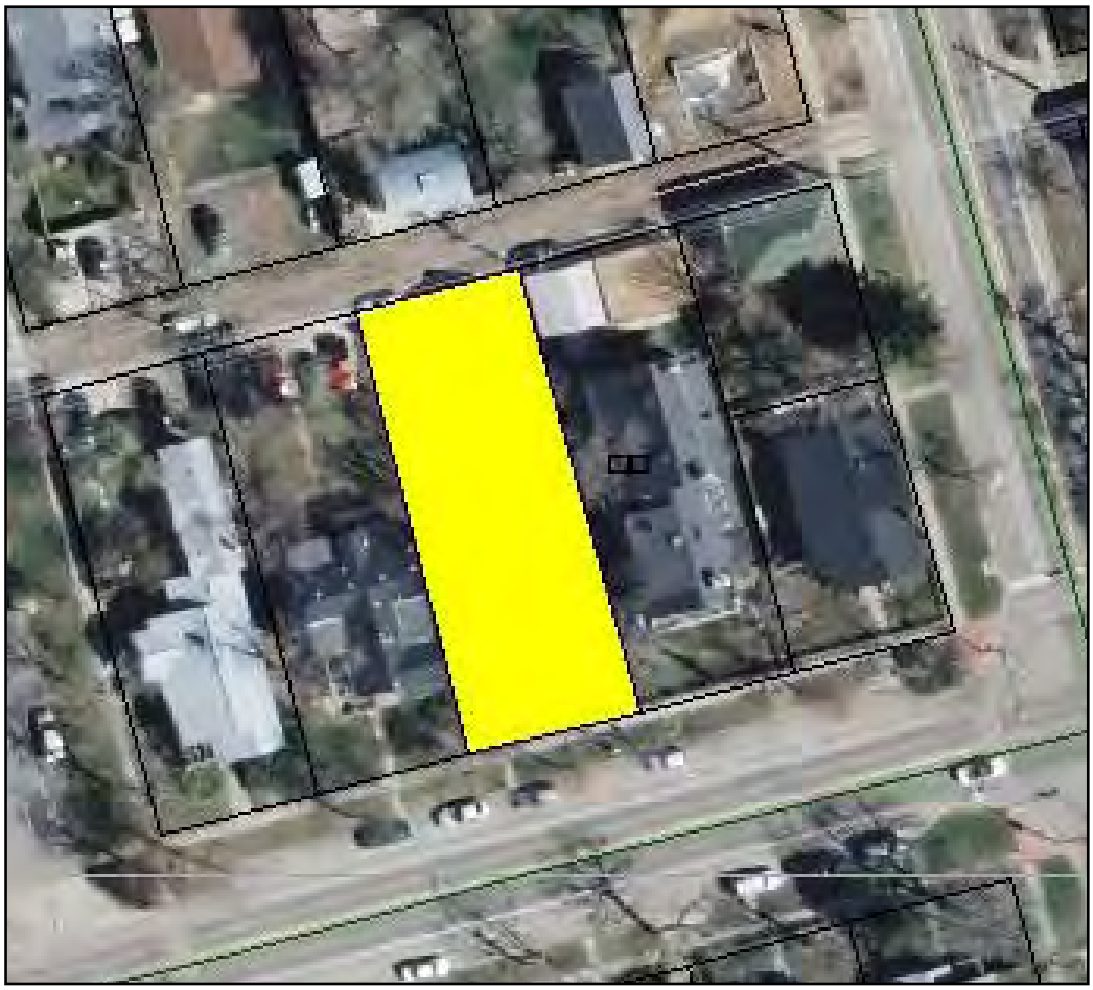
_____
Mayor

Attest:

_____
City Clerk on behalf of the
Director of Finance and Record

Exhibit A – Landmark Boundary Map for 1921 Pine Street.

Lot 8, Block 142, Boulder East O T



ATTACHMENT B

1921 Pine Street
Bell-Bass House
Description and Significance

Figure 1. Location Map with Potential Whittier Historic District in Green

Located in central Boulder, within the potential Whittier Historic District mid- block between 19th and 20th Streets, on Pine Street, the subject property is modestly sized at approximately 7,425 sq. ft. The brick and frame constructed one and one-half story, vernacular masonry house is relatively small in size at approximately 1,200 sq. ft. with a covered front porch, modest ornamentation, including incised wood decorations above the windows on both the first and second floors, segmental window arches, and transom lights above the front door.

Research indicates that the house was constructed in the late 19th century and that it was occupied by a variety of middle class Boulder residents, including drivers, city employees, lab technicians and University of Colorado employees. The earliest resident was Canadian, James Washington Bell, with his wife, Delphine in 1883. Bell was an acting Professor of Modern Languages at the University of Colorado. Bell was recognized for his teachings in political science, economics and history, becoming the first Professor of Political Economy and History at the University of Colorado in 1884. James died in 1890 and his family appears to have continued living in the house for several years after his death.

In about 1900, Lawrence Bass and his wife Ida took up residence at 1921 Pine Street. L.P. Bass is significant in Boulder history for his photography and as Chief of Police in the city

until his untimely death in 1920. Bass is well known for the many portraits he made and his extensive photo-documentation of the city during the great flood of 1894.

Figure 2. 1921 Pine Street, c.1890 Photograph, Joseph Sturdevant

Stylistically, the house is best described as vernacular masonry with neo-classical Italianate inspired design elements, including a steeply pitched front gable roof form, open colonnaded front porch, and large two-over-two, double hung wood windows. The house is simply, but elegantly proportioned with an emphasis on addressing Pine Street directly. In terms of fenestration, the house is simply designed but features elegant segmental arches and incised wood decorations above the windows on the first and second floors.

As documented in building permit records, in 1994, the front porch posts and railing were replaced; a relatively minor alteration. Later permits were issued for the construction of an 800 sq. ft. garage at the rear of the property (2003) and in 2009 for the second story, 260 sq. ft. addition. Today, the building remains intact and character defining features including the colonnaded porch, fine crafted brickwork, and windows on the house are well preserved. The property was surveyed in 1987 by Front Range Associates. *(See Attachment A: Architectural Inventory Form*).

Figure 3. 1921 Pine Street, Front (south) Elevation, Current Photo 2011

Figure 4. 1921 Pine Street, East Elevation, Current Photo 2011

Figure 5. 1921 Pine Street, Rear (north) Elevation, Current Photo 2011

Figure 6. 1921 Pine Street, Front Door Detail, Transom and Incised Wood Ornamentation

Figure 7. 1921 Pine Street, East Façade Bay Window Details

CRITERIA FOR THE BOARD'S DECISION:
Section 9-11-5(c), "*Public Hearing Before the Landmarks Board*," of the historic preservation ordinance specifies that in its review of an application for local landmark designation, "the landmarks board shall determine whether the proposed designation conforms with the purposes and standards in Sections 9-11-1, "*Legislative Intent*," and 9-11-2, "*City Council May Designate or Amend Landmarks and Historic Districts*," B.R.C. 1981 *(see Attachment B).*

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 C.* The board may approve, approve with modifications, or disapprove the application. Findings must be adopted within 30 days of the hearing date. Should the board disapprove the application, the board must notify City Council of that action within fourteen days of the hearing date. City Council may call-up a decision disapproving a designation. Should an application be disapproved, the same application may not be submitted for a period of one year.

If the board finds that the proposed designation conforms to Sections 9-11-1 and 9-11-2, B.R.C. 1981, it shall adopt specific findings and conclusions approving or modifying and approving the application. If the board approves the proposed designation, the application will be forwarded to City Council (within 100 days) for a public hearing.

ANALYSIS:
The following is an analysis of the application per Sections 9-11-1 and 9-11-2, B.R.C. 1981 and the Significance Criteria for Individual Landmark Designation, 1975.

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 provide significant examples of architectural styles of the past?

The staff finds that the proposed application will protect, enhance, and perpetuate a building and property in the city reminiscent of a past era, is associated with persons important in local history, and is a well preserved example of vernacular masonry architecture in Boulder. The staff considers that the application meets the historic and architectural criteria for individual landmark designation as outlined below:

HISTORIC SIGNIFICANCE:
Summary: The building located at 1921 Pine Street has historic significance under criteria 1, 2, 3, and 4.

1. **Date of Construction:** circa 1880
   Elaboration: The date of construction for this house can be estimated to be sometime around 1880. It appears on the 1887 Willits Map of the city and shows up as one of the first houses on this block. The first resident, James Washington Bell, was reported in 1883 by the Polk's City Directory. As part of Lot 8, Block 142 of the East Boulder Subdivision, 1921 Pine Street is also shown on the 1900 Sanborn Map. It is clearly one of the earlier houses in east Boulder.

1921 Pine Street is a representative example of Boulder's early middle class housing with its simple yet elegant Italianate inspired design and brick construction.

2. **Association with Persons or Events**: James Washington Bell, L.P. Bass, Elmer Warren
   Elaboration: James Washington Bell and his wife Delphine resided at 1921 Pine Street in 1883 until the early 1900's. Bell is a notable figure for his contributions to the history of learning as an Acting Professor of Modern Languages at the University of Colorado in 1883 and as the first Professor of Political Economy and History at the University of Colorado in 1884. James W. Bell was educated at the Universities of Toronto and Leipzig, and was the first professor at the University of Colorado to hold a Ph.D. He taught Constitutional History and Civil Policy from 1883 until his death at the age of 34.

   James and Delphine had four children. Their children: Geneva Bell was never married, William Bell married Ethel, Cleo Bell married Paul M. Dean, and Rosetta Bell married Charles A. Wolcott.

Figure 8. Bell Family Photo, Carnegie

The following words are on a plaque at Old Main on the University of Colorado at Boulder campus: "James Washington Bell**.** April 25, 1855-January 6, 1890. A distinguished scholar and professor who was, in September 1883, the first CU-Boulder faculty member appointed with an earned Ph.D.; he taught political economy, history, psychology, and Greek. The Board of Regents resolution of January 9, 1890, stated 'in his rare and varied scholarship, in his earnest labors for the promotion of sound learning and in his loveliness of character, we recognize elements whose influence can never die.'"

L.P. Bass (1870-1920) along with his wife Ida lived in the house from 1901 through the 1930's. Bass was a notable character as a local photographer and for his service

as city marshal. Lawrence Bass was a photographer in his early career, first with Hosier & Bass photography studio, and then in business for himself. Lawrence Bass was a notable and important photographer who took many of the photographs of the 1894 flood. Bass was not only notable for his photography, but also as a law enforcement agent, becoming one of Boulder's city marshals and in 1901 the town's first chief of police. Bass died in 1920 when his police car was hit by a speeding truck.

Figure 9. Lawrence Bass Portrait by Hosier & Bass, Carnegie

Following the Bass family, Elmer Warren, who was a miner, resided at 1921 Pine Street. Elmer Warren, related to J.M. Warren, was co-owner of the Boulder House, one of the city's more notorious hostelries located at 11th and Pearl Streets.

3. **Development of the Community:**
Elaboration: 1921 Pine Street is a typical lot size found throughout the Whittier neighborhood. The lot size, a commonality within this area, created the framework for the lotting pattern that established the historic grid development pattern in central Boulder.

The first residents of 1921 Pine Street also contributed to the development of Boulder as a community. James W. Bell is notable for his contributions to the University of Colorado and the history of learning. L.P. Bass is notable for his contributions in photography as the photographer of many early Boulder photos and for his service in law enforcement as city marshal and as chief of police.

4. **Recognition by Authorities:**
   Elaboration: In 1987, 1921 Pine Street was surveyed by Front Range Research Associates, Inc. and was determined to be in good condition and a contributing building within a potential district: "It is a representative example of early Boulder's middle-class housing. The well-constructed home contributes to the architectural diversity of Boulder's Whittier neighborhood. The house is notable for its steep front gable and symmetrical façade" (*see Attachment A: Architectural Inventory Record Form).*

ARCHITECTURAL SIGNIFICANCE:
Summary: The building at 1921 Pine Street has architectural significance under criterion 1.

3. **Recognized Period or Style:** Vernacular masonry with neo-classical Italianate inspired design elements
   Elaboration: 1921 Pine Street is recognized for its simplistic brick construction and as a representative example of middle class housing forms found throughout central Boulder constructed at the turn of the 19th century. Specifically, 1921 Pine Street is notable for its steeply pitched front gable roof form, open colonnaded front porch, and large two-over-two, double hung wood windows with segmental arches and incised wood decorations.

4. **Architect or Builder of Prominence:** None observed.

5. **Artistic Merit:** None observed.

6. **Example of the Uncommon:** None observed.

7. **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?

Staff finds the proposed application would maintain an appropriate setting and environment for the building and area and will likely enhance property values, stabilize the neighborhood, promote tourist trade and interest, and foster knowledge of the city's living heritage. Staff considers that the application meets the environmental significance criteria for individual landmarks as outlined below:

ENVIRONMENTAL SIGNIFICANCE:
Summary: The building at 1921 Pine Street has environmental significance under criterion 5.

1. **Site Characteristics:** None observed.

2. **Compatibility with Site:** None observed.

3. **Geographic Importance:** None observed.

4. **Environmental Appropriateness:** None observed.

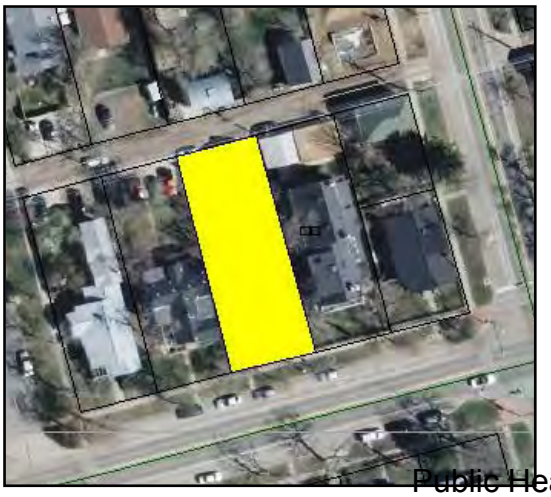
5. **Area Integrity:** 1921 Pine Street is within the designated potential Whittier Historic District. Taking into consideration the simplicity of alterations to the structure over the years and generally good condition of the building, it would be considered to be a contributing building.

   The house is notable for its simple yet elegant, Italianate inspired design with steep front gable roof, incised wood decorations above the windows on both the first and second floors as well as the segmental window arches. Overall, 1921 Pine Street is a representative example of middle class housing in early Boulder and contributes to the overall architectural diversity within the Whittier neighborhood.

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?

Staff finds 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 owner supports the designation.

Boundary Analysis:
The property proposed for designation including the entire parcel, identified as Lot 8, Block 142, Boulder East O T will maintain an appropriate setting for the building.



ATTACHMENT C

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.

Historical 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.

ATTACHMENT D

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 discontiguous 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.

PUBLIC HEARING ITEM – 5B

BOULDER CITY COUNCIL MEETING
MUNICIPAL BUILDING, 1777 BROADWAY
Tuesday, June 7, 2011

Item 5B

Public Hearing and consideration of a motion to approve policy, text and map changes as part of the 2010 Major Update to the Boulder Valley Comprehensive Plan.

The materials for this item are the binder for the May 24 joint public hearing and the attached memo, which includes a summary of the planning board action, draft May 24 meeting minutes, and answers to the questions asked by council members during the May 24 public hearing.

The attached memo is 3-hole punched, for inclusion in your May 24 Binder.

CITY OF BOULDER
CITY COUNCIL AGENDA ITEM

MEETING DATE: June 7, 2011

AGENDA TITLE:

Consideration of a motion to approve policy, text, and map changes as part of the 2010 Major Update to the Boulder Valley Comprehensive Plan. *The public hearing on this item was held on May 24. On June 7, there will be a limited public hearing for members of the public to address the Planning Board's action on May 24.*

PRESENTER/S
Jane S. Brautigam, City Manager
Paul J. Fetherston, Deputy City Manager
David Driskell, Executive Director, Community Planning and Sustainability
Susan Richstone, Comprehensive Planning Manager
Louise Grauer, Senior Planner
Chris Meschuk, Planner II
Jean Gatza, Sustainability Planner
Marie Zuzack, Planner I

EXECUTIVE SUMMARY:

The purpose of this item is for the City Council to take action on the proposed changes to the Boulder Valley Comprehensive Plan policies, text and maps. On May 24, the Planning Board and City Council held a joint public hearing on this item. Following the public hearing, the Planning Board deliberated and took action on the proposed changes. The May 24 memo and draft plan are the main meeting materials for this item. This memo includes information on the action taken by the Planning Board.

The Boulder Valley Comprehensive Plan is jointly adopted by the city and county. Following City Council action on this item, any changes approved by the City Council that differ from the Planning Board's action will return to Planning Board for consideration on July 7, 2011. Only those changes approved by both the Planning Board and City Council are forwarded to the county for consideration. Following city action, the proposed changes will then be forwarded to the county for action. The County Planning Commission will consider the changes in July, and then they will be scheduled for consideration by the County Commissioners.

STAFF RECOMMENDATION
Staff is recommending that City Council adopt changes to the Boulder Valley Comprehensive Plan as approved by the Planning Board on May 24, 2011.

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

1. Motion to approve the policy and text changes to the Boulder Valley Comprehensive Plan, excluding section VI 4. regarding the Area III-Planning Reserve and service area expansion process, as amended by Planning Board.

2. Motion to approve the proposed text changes to section VI 4. regarding the Area III-Planning Reserve and service area expansion process, as amended by Planning Board

3. Motion to approve the following Land Use Map, Area I, II, III Map and Trails Map changes to the Boulder Valley Comprehensive Plan as amended by the Planning Board, including:

a. Land Use Map Changes:

Site 1: 2455, 2473, 2475, 2503 Topaz Drive: Change to Very Low Density
Site 2: 2641 4th St: Change to Low Density Residential
Site 4: Transit Village Area Plan Phase 1 changes
Site 5: Goss Grove area: Change to Mixed Density residential (area revised by Planning Board)
Site 6: 1100 Block of Pine St: Change to Mixed Density Residential
Site 7: 3300 Airport: Change to Light Industrial
Site 8: University Hill Commercial District: Change to Mixed Use Business and High Density Residential
Site 9: Lakecentre Business Park: Change to Light Industrial
Site 10: Performance Industrial Properties: Change to Light Industrial
Other minor changes and corrections as listed in the May 24 binder.

b. Area I, II, III Map Changes:

Site 9: Lakecentre Business Park: Change to Area II
Other minor changes and corrections as listed in the May 24 binder.

c. Trails Map Changes.

PLANNING BOARD ACTION:

On May 24, the Planning Board approved the public hearing draft of changes to the Boulder Valley Comprehensive Plan policies, text and maps with the amendments listed below. A copy of the draft minutes from the meeting is included in **Attachment A.** Copies of the public hearing draft are available from the Department of Community Planning and Sustainability at 1739 Broadway or online at: www.bouldervalleycompplan.net.

Policies and Text
Page B-78: Amended Proposed Policy 9.03 to strike the word “might” from the second sentence.

Page B-73: Switch the order of proposed policies 8.06 and 8.07. The new policy on "Safety" is now numbered 8.06, and the new policy on "Physical Health" is numbered 8.07.

Page B-37: Keep the first paragraph of the introduction text that was proposed to be deleted, which states:
"The natural environment that characterizes the Boulder Valley is a critical asset that must be preserved and protected. It is the framework within which growth and development take place. The city and county recognize that the Boulder Valley is a complex ecological system and that there are inextricable links among our natural environment, the economy, the built environment and community livability. The Boulder Valley is an open system in that our natural and human systems are connected to the region as well as to the entire world. The city and county acknowledge that regional and global changes can have a profound effect on the local environment and that the local economy and built environment can have adverse impacts on natural systems beyond the Boulder Valley."

Page B-77: Add the word "resiliency" to the introduction text, proposed to now read:
"A strong local food system can positively impact the resiliency, health, economy and environment of the Boulder Valley…"

Area III-Planning Reserve
See **Attachment B** for a copy of the Area III-Planning reserve section showing all of Planning Board's amendments.

Pg. B-87 Subsection c(2)i. Unique and Significant Community Opportunity: Language revised to clarify the eligibility criteria are stated in section 4.b.

Page B-87 and B-88: Clarification to make all the statements about a "hearing" or "hearings" plural, to mean both Planning Board and City Council.

Page B-88: Clarify that the city must authorize a service area expansion plan for a unique and significant community opportunity "for the request to proceed."

Page B-88: Clarify that the criteria for a Service Area expansion approval are eligibility criteria, not approval criteria. The first sentence is now proposed to read: "To be eligible for a Service Area expansion plan approval and change from Area III-Planning Reserve to Area II…"

Map Changes

<u>Site #5: Goss Grove neighborhood</u>: Planning Board approved a land use change for an area smaller than the staff recommended boundary, as shown in **Attachment C**, with a request that staff come back with additional rationale to add other areas, e.g. the north side of Arapahoe, and some blocks of Goss St. The board felt that this reduced boundary represented a rational and defensible boundary that could be expanded later. **Attachment H** has an additional letter from a property owner received on June 1.

<u>Site #6: 1100 Block of Pine Street</u>: Planning Board approved a change to Mixed Density Residential, citing the desire to have the land use guide the desired density and not put the

onus on the historic preservation program. (The staff recommendation was no change from the current High Density Residential designation).

COUNCIL QUESTIONS

During the clarifying questions portion of the joint public hearing, council members asked the following questions:

Policies and Text

1. **What is the location, total size and relative percentages of Area IIA and IIB, and will removing the distinction allow leapfrog annexation to occur?**

Attached is a map of the BVCP Planning Areas (**Attachment D)**, showing the locations of Area IIA and IIB. There is a total of approximately 3,208 acres of land in Area II. Of that, 61% is located in Area IIA, and 39% is located in Area IIB.

Removal of the Area IIA & IIB distinction from the BVCP will not cause leapfrog annexations to occur, as the change does not impact any of the other annexation regulations in the Boulder Valley Comprehensive Plan, Boulder Revised Code, or Colorado Revised Statutes.

2. **Are there any properties in Area III that have city water or sewer?**

Attached is a map of the properties in Area III that have city water and/or sewer. Twelve properties have both city water and sewer, 26 properties have city water only and 65 properties have city sewer only.

3. **On proposed policies 4.21 and 4.22, why do they not call out both the city and county? Can we better coordinate our Area II and III floodplain regulations?**

The city followed up with County staff regarding this question, and they supported the following proposed changes:

~~4.21~~ 3.20 Flood Management
The city **and county** will protect the public and property from the ~~devastating~~ impacts of flooding in a timely and cost-effective manner while balancing community interests with public safety needs. The city **and county** will manage the potential for floods by implementing the following guiding principles: a) Preserve floodplains b) Be prepared for floods c) Help people protect themselves from flood hazards d) Prevent unwise uses and adverse impacts in the floodplain e) Seek to accommodate floods, not control them. The city **seeks to** ~~will~~ manage flood recovery by protecting critical facilities in the 500-year floodplain and implementing multi hazard mitigation and flood response and recovery plans.

~~4.22~~ 3.21 Non-Structural Approach
The city **and county** will seek to preserve the natural and beneficial functions of floodplains by emphasizing and balancing the use of non-structural measures with structural mitigation. Where drainageway improvements are proposed, a non-structural approach should be applied wherever possible to preserve the natural values of local waterways while balancing private property interests and associated cost to the city.

4. Proposed Policy 6.02 – Why have exact metrics when we removed the metrics from other policies? Is 1994 levels the actual goal, and are we meeting it?

"No long-term growth in vehicle traffic" was the marquee summary of the 1996 Transportation Master Plan update and has been a highly visible goal, influencing a range of policies, programs and land use decisions since it was adopted. It reflected the community's concern that increases in vehicle traffic were negatively impacting the environment and quality of life. Staff recommended leaving in key metrics such as this and the 10% permanently affordable housing goal (policy 7.02).

1994 was the base year used in the modeling for that update and the base case, business as usual, modeling for 2025 showed significant increases in vehicle traffic. So the challenging objective represented by this statement was to reverse the continued increase in vehicle traffic and then to bring it back down to 1994 levels as the other modal systems are completed. The 1994 modeled daily VMT was 2.44 million miles. Estimated VMT increased to a high point of 2.77 million in 2001 and then declined consistently to 2.46 in 2009. We estimate an increase to 2.5 million VMT in 2010 based on the growth of both internal and external traffic.

5. Was the Precautionary Principle considered for inclusion into the BVCP?

The Precautionary Principle was considered as a potential policy for the BVCP in the early phases of the 2005 major update to guide difficult decisions on new services and capital facilities; however, it was not supported by Planning Board and City Council. Several board and council members were concerned that adoption of a precautionary principle would be broadly applied and used to stall public projects.

The Precautionary Principle is a policy for guiding human activities and preventing harm to the environment and to human health called the "principle of precautionary action," or the "precautionary principle." The principle of precautionary action has four parts:

1. People have a duty to take anticipatory action to prevent harm.
2. The burden of proof of harmlessness of a new technology, process, activity or chemical lies with the proponents, not with the general public.
3. Before using a new technology, process or chemical, or starting a new activity, people have an obligation to examine "a full range of alternatives" including the alternative of doing nothing.
4. Decisions applying the precautionary principle must be "open, informed and democratic" and "must include affected parties."

The precautionary principle is a matter of law in some European countries. It is being incorporated into some international agreements and it has begun to work its way into U.S. policy and local government. At the heart of the discussion is the belief that the world faces enormously complex and serious problems (global warming, loss of biodiversity, increased toxins in the environment) and that science does not have all the answers. Advocates for the principle say that policymakers need to take a precautionary approach to environmental protection and acknowledge that uncertainty is inherent in

managing natural resources, recognize it is usually easier to prevent environmental damage than repair it later, and shift the burden of proof away from those advocating protection toward those proposing an action that may be harmful.

6. Can we see a map of the BMT property showing its location within the Planning Reserve, and perhaps showing the size of the parcels to the east and southeast of Dr. Villavicencio's property? What is the total acreage between Dr. Villavicencio's site and the Area I-Area II boundary?

Included in **Attachment F** is a map showing the parcels in the Area III-Planning Reserve, with the two initial requests highlighted with cross-hatching. The portion of property owned by Dr. Villavicencio which fronts on 28th Street is adjacent to the Area I boundary, and no acreage exists between Dr. Villavicencio's property and the Area I boundary.

Map Changes

Site #5: Goss-Grove

6. Can you provide a copy of the map showing the potential historic district boundary?

See the map in **Attachment G** for the potential historic district boundary (1987). Staff used the potential historic boundary as the starting point for the proposed land use change boundary. The staff-proposed land use boundary and the Planning Board-approved boundaries are in **Attachment C**. The historic character of the Goss-Grove neighborhood is still predominant even with the redevelopment, additions, and expansions that have occurred since 1987.

7. What is the potential for redevelopment in Goss Grove?

The Goss-Grove neighborhood has a traditional street grid and lot pattern and approximately half of the dwelling units are classified as single-family. While large apartment and condominium complexes do exist in Goss-Grove, they are not the dominant land use type. Although no recent redevelopment examples exist (except for 1802 Canyon described below) there is development potential for both single-family and multi-family development through: (1) the continued conversion of single-family residential to multi-family units; and (2) the assemblage of lots to meet the required minimum lot area per dwelling unit (3,200 square feet) for multi-family development. In the 1900 block of Goss Street there are four single family lots under single ownership which represents a future redevelopment potential.

Within the Goss-Grove neighborhood, 115 lots are classified as single-family residential. On these lots, eight meet the by-right lot area requirement of at least 6,400 square feet (3,200 square feet per unit), which would allow for multi-unit development to occur. In addition, there are approximately 62 single-family lots that could add units and increase their density through the Site Review and Planning Board approval process.

Overall, in Goss-Grove, including the multi-family apartment buildings along Canyon, the average density is 21 dwelling units per acre. Given the average density, it is unlikely that the existing multi-family developments within the Goss-Grove area would redevelop since most of them have maximized their development potential under RH-2. For

additional information regarding development potential in the Goss-Grove neighborhood area please refer to pages 26-27 and Exhibit D of the RH-2 Zone District Report. The report can be found here:
http://www.bouldercolorado.gov/files/PDS/boards/Planning%20Board/RH2_memo_11-12-09.pdf

Development potential in Goss-Grove today is not only impacted by satisfying the minimum lot area requirement, but also by the regulatory development requirements within the RH-2 zone. Within the RH-2 zone district, the maximum floor area per dwelling unit is 800 square feet, including new single family homes. It is the 800 square foot maximum unit floor area requirement in the RH-2 zone district that is the determining factor of floor area for new development. This limit represents a constraint for new single family residences.

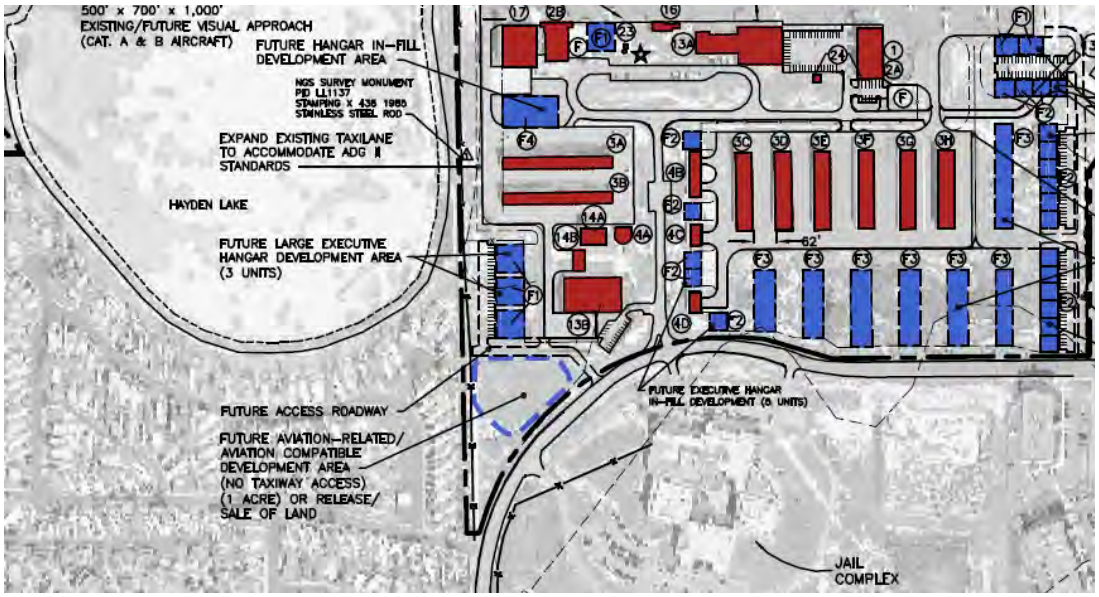
If the area of a proposed land use change is rezoned to RMX-1, the compatible development regulations would apply to principal and accessory buildings used as detached single-family units. For single-family units the RMX-1 zone district under compatible development would permit greater flexibility in floor area (3,795 square feet based on the average lot size of 6,900 square feet) than would be permitted under the RH-2 zone district (800 square feet).

8. Can there be OAU's/ADU's in Goss Grove?
Accessory dwelling units (ADUs) are not allowed in either zone district, RH-2 or RMX-1. Under the current zoning, RH-2, Owner's Accessory Units (OAU's) are not allowed. OAU's are allowed in RMX-1 zoning based on meeting a number of standards. Of the 115 units classified as single-family within the Goss-Grove area, 16 of them would meet the required minimum lot size of 6,000 square feet for an OAU.

9. Do we have any information on the rate of redevelopment in the neighborhood?
There has been only limited redevelopment in the Goss-Grove neighborhood within the last several decades with the exception of 1802 Canyon which was approved through the Site Review and Planning Board approval process in 2006. The required minimum lot area per dwelling unit was modified to allow for the maximum density potential; it was developed as singe-family detached units at a density of approximately 18 dwelling units per acre. There have been a number of renovations and expansions to single family houses, however.

Site #7: Airport

10. What is the infrastructure currently in place that would support development of this site?
Water, sewer, stormwater and telecommunications utility mains generally follow Airport Road and could be extended into this site. The map below shows the Airport Master Plan (2007) layout for current (red) and future (blue) airport facilities in the vicinity of Site #7. The area included in the proposed land use change is outlined in a blue dashed line.



ATTACHMENTS

A: Draft May 24, 2011 Joint Public Hearing and Planning Board action minutes
B: Area III-Planning Reserve text changes approved by Planning Board
C: Goss Grove Land Use change map
D. Area I, II, III Map
E: Area III properties with city water or sewer services
F: Area III-Planning Reserve ownership map
G: Goss Grove potential historic district map
H: Additional public comment on the Goss Grove Land Use change

PROCEEDINGS OF THE BOULDER CITY COUNCIL AND PLANNING BOARD SPECIAL MEETING

May 24, 2011

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

Mayor Osborne called the special May 24, 2011 City Council meeting to order at 6:20 p.m. in Council Chambers.

Those City Council Members present were: Mayor Osborne, Deputy Mayor Wilson and Council Members Ageton, Appelbaum, Cowles, Gray, Karakehian, and Morzel.

Council Member Becker was absent.

Those Planning Board Members present were: Chair Shoemaker, Vice-Chair Holicky and Planning Board Members Brockett, Johnson, Plass, Powell, Young.

STAFF PRESENT:
Jane Brautigam, City Manager
Tom Carr, City Attorney
David Driskell, Executive Director of Community Planning and Sustainability
David Gehr, Deputy City Attorney
Susan Richstone, Comprehensive Planning Manager
Pete Fogg, Boulder County Land Use
Chris Meschuk, Planner II
Marie Zuzack, Planner I
Jean Gatza, Sustainability Planner
Jessica Vaughn, Planner I
Debbie Fox, Administrative Specialist III

ORDER OF BUSINESS

2. **PUBLIC HEARINGS**:

A. **CITY COUNCIL AND PLANNING BOARD PUBLIC HEARING TO CONSIDER PROPOSED POLICY, TEXT AND MAP CHANGES, AS PART OF THE 2010 MAJOR UPDATE TO THE BOULDER VALLEY COMPREHENSIVE PLAN.**

Staff Presentation

S. Richstone and **C. Meschuk** presented the item to the board.

Public Hearing

A. POLICIES AND TEXT

1. **Carolyn Bninski, Rocky Mountain Peace and Justice Center, 3312 16th St.-** She asked the City Council to consider adding the precautionary principle into the BVCP so that products are safe before being introduced to the market and that

council reward businesses that support sustainability, are locally owned and provide living wage jobs. .

2. **Stuart Grogan, Boulder Housing Partners, 4800 Broadway** – He would like a community benefit standard, SIPOC-R goals and the affordable housing task force outcomes be included in the BVCP and considered with related code changes.

B. AREA III – PLANNING RESERVE

1. **Max Taffet, 2233 4th St., PLAN Boulder County** – He encouraged the CC/PB not go to 2-body decision making for the Planning Reserve and expressed support for the baseline urban services study.
2. **Dr. Allan Villavicencio, 1155 Alpine Ave, Ste 320** – He spoke to the need for the Boulder Multi-Sport Training Complex.

C. MAP CHANGES – SITE #1 (2475 TOPAZ DR & SURROUNDING PROPERTIES)

1. **Michael J. Shopnitz, 2503 Sumac Ave** – spoke in support of the staff recommendation.
2. **Peter Mazula, 2533 Sumac** Ave – spoke in support of the staff recommendation.
3. **Drew Simon, 2557 Sumac Ave –** spoke in support of the staff recommendation.
4. **Howard Bittman, 2582 Sumac Ave (PO Box 2211)** – spoke in support of the staff recommendation.

MAP CHANGES – SITE #3 (3003 VALMONT RD)

1. **John Nuttall, Orchard Grove Development Co, 2401 Ponderosa Dr, Loveland. -** spoke in support of the staff recommendation.

MAP CHANGES – SITE #5 (GOSS GROVE NEIGHBORHOOD)

1. **Jay Madtson, 1101 Aurora Ave.** – spoke in opposition to the staff recommendation.
2. **David Secunda, 1461 Zamia** - spoke in support of the staff recommendation.
3. **Florie Kane, pooled time with Hurley Kane and Roscoe Kane, 266 Hillside Lane, Telluride, CO -** spoke in opposition to the staff recommendation.
4. **Jay Pettipiece, 1723 Grove Street** – spoke in opposition to the staff recommendation.
5. **Mary Hey, pooled time with Maria Krenz, Jon Hurd, Jenie Hurd, 1919 Grove St.** – spoke in support of the staff recommendation.
6. **Jenny Devand, 1935 Grove St-** spoke in support of the staff recommendation.

There being no further speakers, the public hearing was closed. Mayor Osborne announced that the City Council would adjourn to allow the Planning Board to deliberate the matter and that the City Council would deliberate and take action at its regularly scheduled meeting on Tuesday, June 7, 2011.

3. **ADJOURNMENT**

There being no further business to come before Council at this time, BY MOTION REGULARLY ADOPTED, THE MEETING WAS ADJOURNED AT 9.05 P.M.

DRAFT

APPROVED BY: ATTEST:

_____ _____

Susan Osborne,
Mayor

Alisa D. Lewis,
City Clerk

4. PLANNING BOARD DELIBERATION AND MOTION

Planning Board Chair **A. Shoemaker** called the Planning Board meeting to order at 9:20 pm.

On a motion by **B. Holicky**, seconded by **T. Plass,** the board voted (7-0) to approve the policy and text changes to the Boulder Valley Comprehensive Plan, excluding section VI Amendment Procedures,including the Area III-Planning Reserve and service area expansion process, as shown in **Attachment B,** as amended.

Amendments:
1. Pg.B-78 strike the word "might";
2. Pg. B-73 switch policies 8.06 and 8.07;
3. Pg. B-37 add the first paragraph of the introduction language back in: "The natural environment that characterizes the Boulder Valley is a critical asset that must be preserved and protected. It is the framework within which growth and development take place. The city and county recognize that the Boulder Valley is a complex ecological system and that there are inextricable links among our natural environment, the economy, the built environment and community livability. The Boulder Valley is an open system in that our natural and human systems are connected to the region as well as to the entire world. The city and county acknowledge that regional and global changes can have a profound effect on the local environment and that the local economy and built environment can have adverse impacts on natural systems beyond the Boulder Valley.";
4. Pg. B-77 add the word "resiliency" to the introduction text.

On a motion by **W. Johnson**, seconded by **B. Holicky,** the board voted (5-2, **T. Plass** and **M. Young** opposed**)** to approve the text changes to the Boulder Valley Comprehensive Plan, in section VI. Amendment Procedures, including the Area III-Planning Reserve and service area expansion process, as shown in Attachment B, as amended.

DRAFT

T. Plass and **M. Young** voted against the motion only due to the fact the proposed language does not require four-body review for the service area expansion process.

Amendments:

1. Pg. B-87 Subsection c(2)i. Unique and Significant Community Opportunity: Language revised to clarify the eligibility criteria are stated in section 4.b, and clarification to make all the statements about a "hearing" or "hearings" on Pages B-87, and 88 plural, to mean both Planning Board and City Council.

Discussion

Two-Body Review - T. Plass doesn't like the two-body approval, as it doesn't allow balance in regards to a high threshold for the Planning Reserve. **M. Young** agreed. **D. Powell** supports the two-body because it is a filtering process with specific criteria that will keep the threshold high. **A. Brockett** agreed. **W. Johnson** shares **T. Plass** and **M. Young's** concerns, but can ultimately support a two-body review. **A. Shoemaker** also agrees with **D. Powell**.

Procedures for a Service Area Expansion - D. Powell expressed concerns about the currently written criteria for procedures for a Service Area Expansion. Staff worked to make changes to reflect her suggestions.

On a motion by **B. Holicky**, seconded by **A. Brockett,** the board voted (7-0**)** to approve the following Land Use Map, Area I, II, III Map and Trails Map changes to the Boulder Valley Comprehensive Plan as shown and described in **Attachments E** and **F**:

a. Land Use Map Changes:

Site 1: 2455, 2473, 2475, 2503 Topaz Drive: Change to Very Low Density

Site 2: 2641 4th St: Change to Low Density Residential

Site 4: Transit Village Area Plan Phase 1 changes

Site 8: University Hill Commercial District: Change to Mixed Use Business and High Density Residential

Site 10: Performance Industrial Properties: Change to Light Industrial

Other minor changes and corrections as listed in **Attachment E**.

b. Area I, II, III Map Changes:

Other minor changes and corrections as listed in **Attachment E**.

c. Trails Map Changes.

DRAFT

On a motion by **M. Young**, seconded by **T. Plass,** the board voted (2 -5, **T. Plass** and **M. Young** in favor**)** to change the land use designation at Site 3 - 3003 Valmont from medium density residential to manufactured housing, and amend the Land Use Map description for Manufactured Housing to reflect both existing or proposed mobile home parks. The motion failed.

Discussion

M. Young cited previous testimony from the April, 21, 2009 public hearing where the residents provided a wildlife study, history and vision of the area that offered compelling argument about how the property is essential to the Orchard Grove community, so she would like to support their request to change it to the manufactured housing designation. **T. Plass** agrees with **M. Young.** . **A. Brockett** won't support changing the land use designation since it could facilitate the loss of open space there. **W. Johnson stated that changing the land use may be counterintuitive to saving the mobile home park and** agreed with the staff recommendation.

On a motion by **B. Holicky**, seconded by **T. Plass,** the board voted (6-1, **D. Powell** opposed**)** to approve the following land use map change to Site 5 – Goss Grove Neighborhood, with a boundary smaller than recommended by staff, including the area between the alley north and south of Grove Street only, and a request that the other properties identified by staff and other adjacent parcels be analyzed further by staff for potential change at a later date.

D. Powell didn't support the idea of making sweeping changes at a meeting without knowledge of the area.

Discussion

B. Holicky was not in favor of the current drawing, especially preserving single family homes on Arapahoe. He would be in favor of a designation around Grove, drawn down the alleys, so that the plan reflects how it should be, not how it is. **D. Powell** agreed with **B. Holicky** in that the line seems arbitrary, but does not agree in making changes during the meeting and therefore would not support any changes. **A. Brockett** expressed concerns about the process and supports the concerns expressed by **B. Holicky** and **D. Powell**. **T. Plass** is in support of the staff recommendation to help the neighborhood get what it wants and would support more logical lines to get the process started. **W. Johnson** agreed with **T. Plass** and wants more logical lines. **A. Shoemaker** agreed with supporting moving forward on this, but wants the current line on Arapahoe due to the number of single family homes on it. He expressed concern about the add-ons by the community of 1903-2019 Goss, as well as the fact that the NE corner of Goss having a significant amount of non-single family

homes that are being included. **M. Young** supports making the boundary smaller, but would also keep the boundary on Arapahoe and she would support carving out 1903-2019 Goss.

On a motion by **T. Plass**, seconded by **W. Johnson,** the board voted (7-0**)** to approve Site 6 – 1100 Block of Pine, changing the land use designation to mixed density residential.

Discussion

T. Plass requested this item be changed because the land use puts redevelopment onus on the preservation program, rather than the land use and zoning being the density regulator, so this change will allow the area to solidify the historic designations while limiting development.

On a motion by **T. Plass**, seconded by **D. Powell**, the board voted (5-2, **M. Young** and **W. Johnson** opposed) to approve Site 7 – 3300 Airport Road changing to the land use designation to Light Industrial.

Discussion

W. Johnson and **M. Young** felt the site lacks a long term vision in terms of the airport and surrounding area use to support a change at this time.

On a motion by **B. Holicky**, seconded by **D. Powell,** the board voted (6-1, **T. Plass** opposed**)** to approve Site 9 – Lakecentre Parcels, including a minor amendment to the Service Area boundary and a land use designation of Light Industrial.

Discussion

T. Plass felt it didn't make sense to change the service area boundary since it seems logical as currently drawn.

On a motion by **W. Johnson**, seconded by **M. Young,** the board voted (7-0**)** to accept the staff recommendation for Site 5B (1511 Grove Street), changing to regional business (RB) land use designation.

5. ADJOURNMENT

There being no further business to come before Planning Board at this time, BY MOTION REGULARLY ADOPTED, THE MEETING WAS ADJOURNED AT 11:14 P.M.

APPROVED BY

DRAFT

_____

Board Chair

_____

DATE

DRAFT

4. Area III-Planning Reserve

a. Introduction and Intent:

The Area III-Planning Reserve is identified on the Area I, II, III map and includes approximately 500 acres of land outside the existing service area of the City of Boulder, and is not currently eligible for urban services or annexation. This area was established at the conclusion of a comprehensive analysis of Area III; when city and county decision-makers determined that only a small amount of Area III should be contemplated for future urban expansion, and then only if detailed planning for the area indicates community benefits exceed potential negative impacts. The area was chosen for its location and characteristics based upon the apparent lack of sensitive environmental areas, hazard areas and significant agricultural lands, the feasibility of efficient urban service extension, and contiguity to the existing Service Area, which maintains a compact community.

The Area III-Planning Reserve is that portion of Area III with rural land uses where the city intends to maintain the option of limited Service Area expansion for future urban development in response to unique significant community opportunities or priority community needs that cannot be met within the existing Service Area. The Area III-Planning Reserve classification maintains both rural preservation and urban development options until the city and county decide the ultimate land use.

While Service Area expansion into the Area III-Planning Reserve may occur over time in several separate actions, it is a significant action and must result in a logical expansion of the Service Area. This area is limited in size, and the needs of future generations should be considered any time a Service Area expansion of the Planning Reserve is contemplated.

b. Circumstances and Criteria for Expansion

The Service Area may be expanded for one of the following:

(1) Unique and significant community opportunity
To be eligible to be considered as a unique and significant community opportunity for a Service Area expansion, the city must determine that it:

i. Will have a lasting positive benefit for multiple generations of people within the Boulder Valley; and
ii. Furthers the overall policies of the Comprehensive Plan, with an emphasis on the environmental, social, and economic sustainability policies; and
iii. Provides a unique or desired use for the region; and
iv. Requires a large, contiguous location that cannot be accommodated through development or redevelopment in the existing service area.

A Service Area expansion for a unique and significant community opportunity may be considered at any time. Past examples of such community opportunities include the Chautauqua, Federal Labs (NOAA, NIST), NCAR, and the University of Colorado. The use could be public or private.

(2) Priority Community Needs
To be eligible for consideration **as** a priority community need, the city must determine that the need:

i. Is a priority for residents in the Boulder Valley; and
ii. Will address a long-term community value as articulated in the Comprehensive Plan; and
iii. Will significantly further the environmental, economic, and social sustainability policies of the Comprehensive Plan; and
iv. Cannot be met within the existing Service Area because there is not suitable existing or potential land/service capacity; and
v. Will benefit the existing residents, and will have a lasting benefit for future generations.

A Service Area expansion may be considered for a priority community need at the mid-term or major updates to the Comprehensive Plan.

c. Procedures for a Service Area Expansion

(1) Baseline Urban Services Study Required
A baseline urban services study of the Area III-Planning Reserve must be completed by the city prior to considering a service area expansion. The purpose of the study is to learn more about the feasibility and requirements to provide urban services to the area, and to understand potential phasing and logical areas of planning and potential expansion. The city may undertake preparing the baseline urban service study at any time, and should include, but is not limited to an analysis and inventory of the existing infrastructure and service capacity (such as needed upgrades to the water, wastewater, and stormwater facilities and distribution system, additional fire stations/ vehicles and police protection needs, transportation network connections, urban parks), inventory of existing uses in the Area III-Planning Reserve, and identification of logical Service Area expansions (areas and/or phasing). The completed study will be reviewed by the Planning Board and accepted by the City Council.

(2) Service Area expansion process

a. Service Area expansion consideration
The city may consider a service area expansion into the Area III-Planning Reserve following preparation of the baseline urban services study. A Service Area expansion may be considered for one of the following:

i. Unique and Significant Community Opportunity
The proponent of a unique significant community opportunity shall submit evidence that the use meets the eligibility criteria to city planning staff. The proponent is required to review the opportunity with city planning staff prior to submission. Staff shall review the proposal and determine whether to schedule public hearings with the Planning Board and City Council. If staff chooses not to schedule ~~a~~ public hearing**s**, a written report shall be submitted to the City Council with analysis on why ~~a~~ hearing**s** w**ere**~~as~~ not scheduled. Within 30 days of the delivery date of the report, a majority of City Council may request the proposal be scheduled for ~~a~~ hearing**s**. Prior to the hearing**s**, the request would be referred to the Planning Commission and Board of County Commissioners. The city must find that the request is a unique and significant community opportunity and authorize the preparation of a service area expansion plan **for the request to proceed**.

ii.Priority Community Need
Service Area expansion for a priority community need may occur at a mid-term or major update to the BVCP.

A. At the beginning of each BVCP update, the Planning Board and City Council shall hold a public hearing to determine if there is interest in considering a Service Area expansion as part of that update.
B. If the city is interested in considering a Service Area expansion, a planning effort to solicit and identify priority community needs will begin.
C. The city will hold public hearings and decide whether the identified needs are of sufficient priority based on the eligibility criteria in section 4.b.(2) to warrant preparation of a Service Area expansion plan. Prior to the public hearing**s** by the city, the identified needs shall be referred to the Planning Commission and Board of County Commissioners.

b. Service Area Expansion Plan
If the city authorizes preparation of a service area expansion plan, it shall include, but not be limited to the following information:

i. The location and amount of land area needed;
ii. What compatible uses are needed or desired based on the identified needs;
iii. Conceptual land use and infrastructure plans, to ensure adequate facilities and services can be provided;

iv. Key annexation requirements to ensure compliance with the comprehensive plan goals and policies, and to ensure compatibility with the existing development context and surrounding area;
v. Requirements and conditions for the city and the private sector for development, including on-site and off-site impact mitigation and offsets; and
vi. Anticipated development phasing

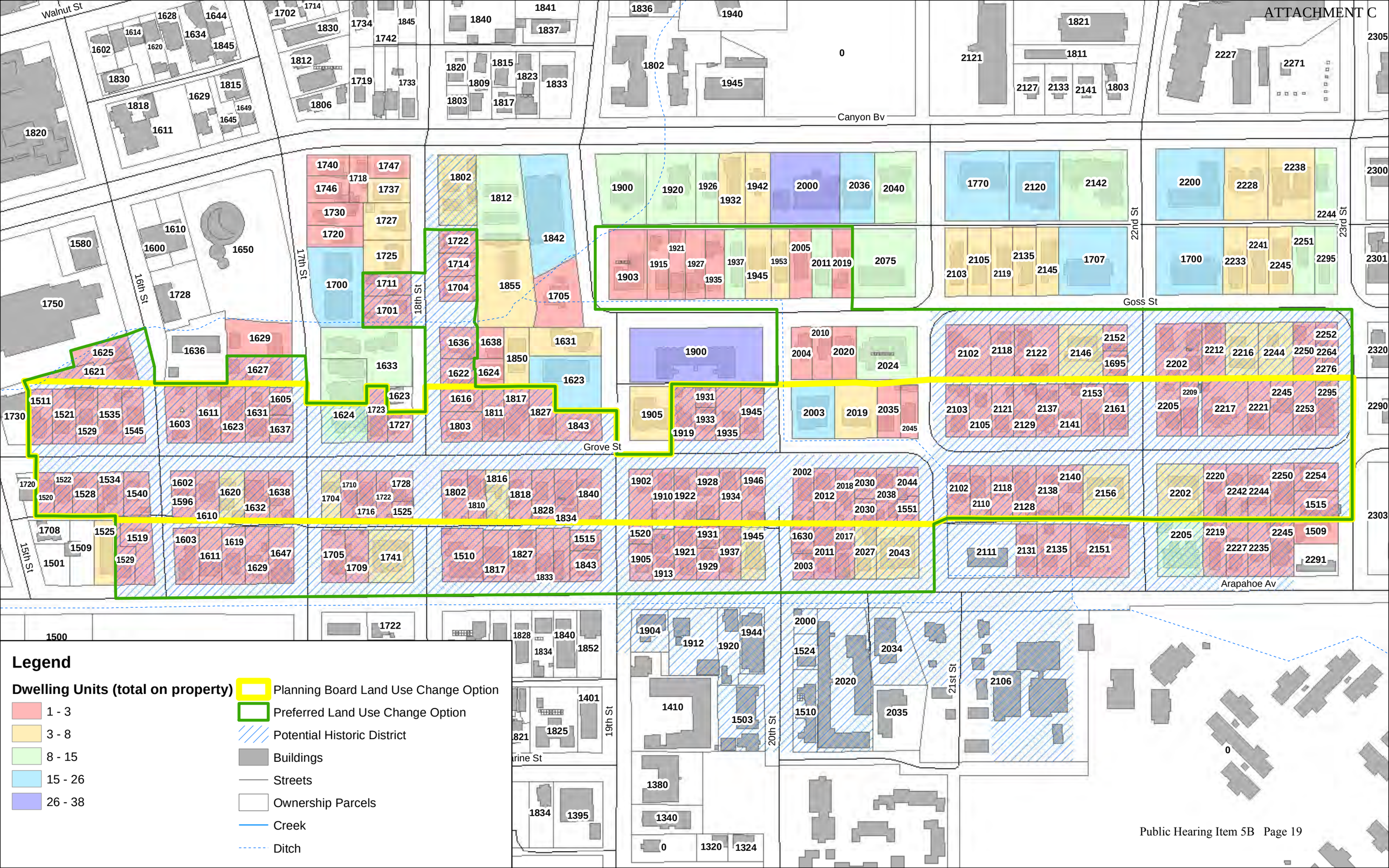
Preparation of an expansion plan for a significant community opportunity is anticipated to be similar to in scope to a Concept Plan as described in the Boulder Revised Code, with the majority of the study cost and work to be completed by the proponent, which must also demonstrate financial stability of the proposal. An expansion plan for priority community needs is anticipated to be similar in scope to an Area Plan, as described in the Comprehensive Plan.

c. Service Area expansion approval

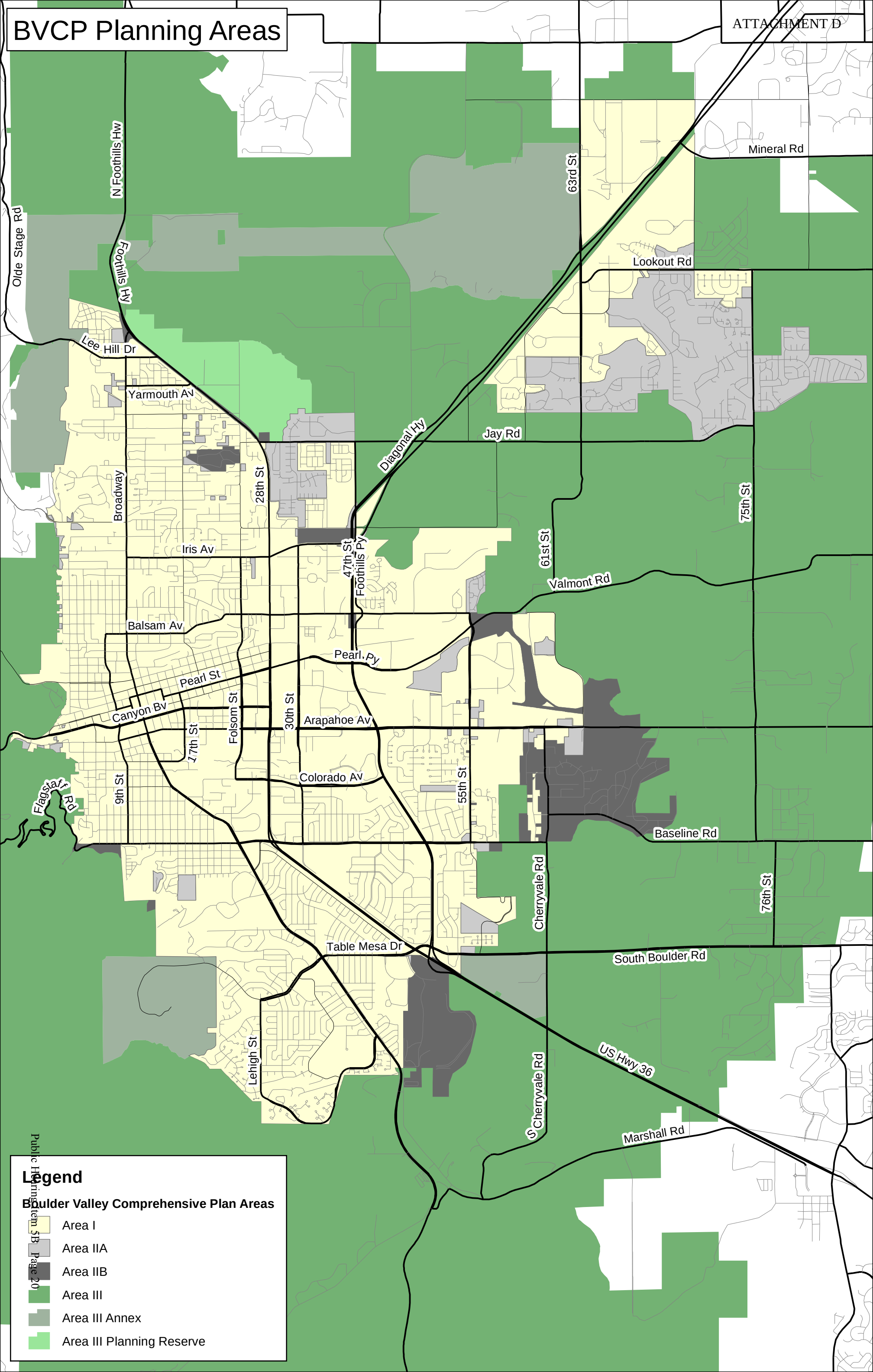
To ~~approve~~ **be eligible for** a service area expansion plan **approval** and change from Area III-Planning Reserve to Area II, the city shall find the change meets all the following criteria:

i. Consistency with thresholds for expansion: The plan must address a unique and significant community opportunity or desired community need consistent with the descriptions and eligibility criteria.
ii. Contiguity: The plan area must have contiguity with the existing service area.
iii. Logical extension of the service area: The plan area must be a logical boundary, which results in an efficient increment for extending urban services, a desirable community edge and neighborhood boundary; and a location that contributes to the desired compact urban form; and
iv. Compatibility with the surrounding area and comprehensive plan: The plan must be compatible with the surrounding area and the policies and overall intent of the comprehensive plan.
v. No major negative impacts: The plan must demonstrate that community benefits outweigh development costs and negative impacts from new development and that negative impacts are avoided or adequately mitigated.
vi. Appropriate timing for annexation and development: A reasonable time frame for annexation is projected within the planning period if the expansion is approved.

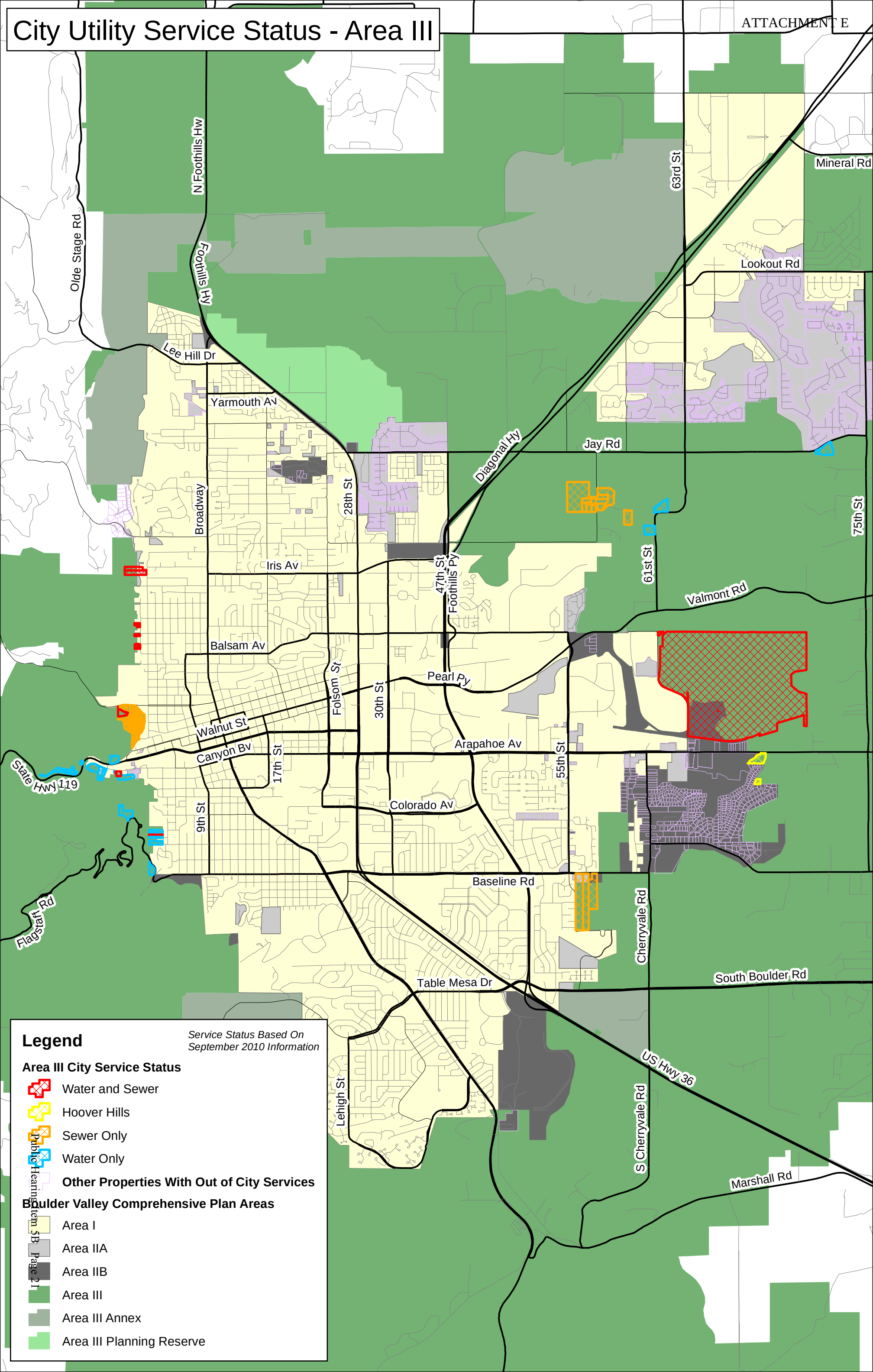
Prior to the public hearing**s**, the plan shall be referred to the Planning Commission and Board of County Commissioners.


Walnut St
Canyon Bv
Goss St
Grove St
Arapahoe Av
15th St
16th St
17th St
18th St
19th St
20th St
21st St
22nd St
23rd St
Legend
Dwelling Units (total on property)
1 - 3
3 - 8
8 - 15
15 - 26
26 - 38
Planning Board Land Use Change Option
Preferred Land Use Change Option
Potential Historic District
Buildings
Streets
Ownership Parcels
Creek
Ditch

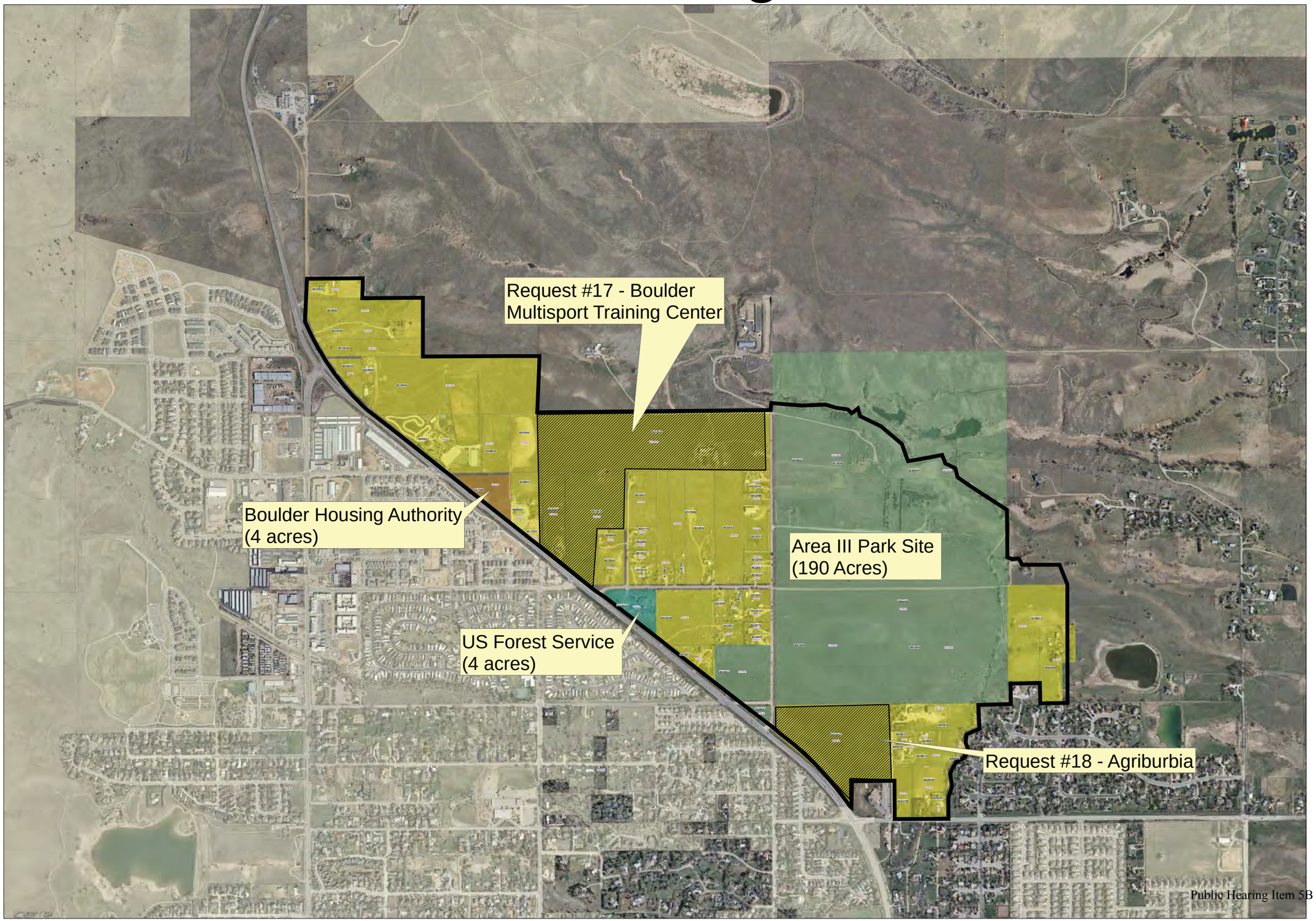
BVCP Planning Areas



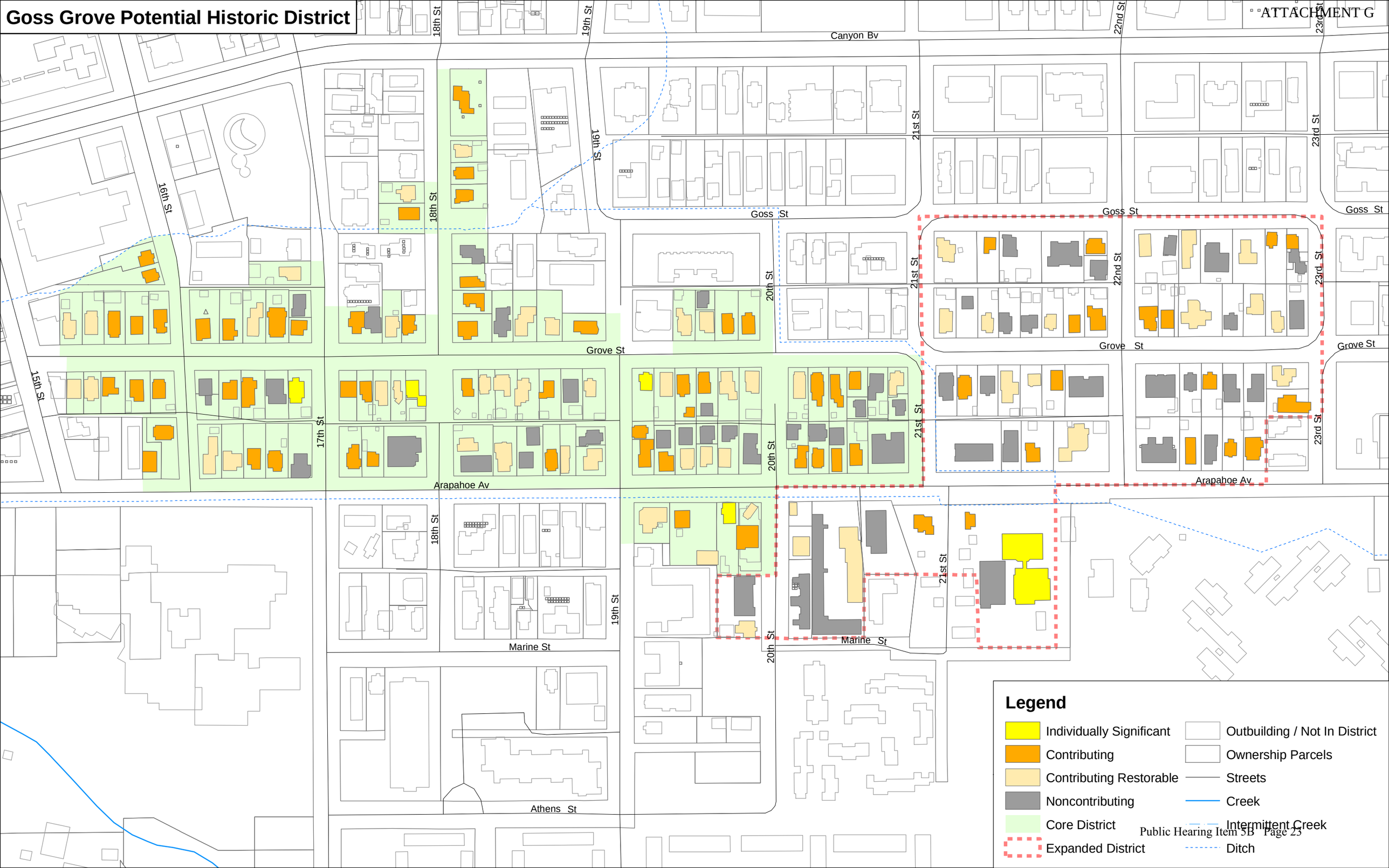
City Utility Service Status - Area III



Area III - Planning Reserve



Goss Grove Potential Historic District



June 1, 2011

Appeal to increase the density of the land use code Goss Grove area

It is in the best interest of the residents of Boulder to develop high density residential areas in the core of Boulder such as the Goss Grove area.

Given the short distance from Goss Grove to the University of Colorado, Naropa , Boulder High School, downtown and the bus station the Goss Grove residents will enjoy a green convenience that is better shared in higher numbers, more density.

As our Boulder city government endorses lower development costs making the development process more efficient for both the city and the developer the end product for the residents will be less expensive.

Sincerely,
Charlie Kane
266 Hillside Lane
Telluride CO 81435
Owner
1701 and 1711 18th St, Boulder 80302 Goss Grove

PUBLIC HEARING ITEM – 5C

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

MEETING DATE: June 7, 2011

AGENDA TITLE: Introduction, first reading and consideration of an ordinance calling a special coordinated municipal election to be held on Tuesday, the 1st day of November, 2011, in the City of Boulder, Colorado, and providing for the submission to the electors entitled to vote thereon of the question of a franchise by the City of Boulder, Colorado, being granted to the Public Service Company of Colorado, its successors and assigns, to furnish, sell, and distribute gas and electricity to the city and to all persons, businesses, and industries within the city and the right to acquire, construct, install, locate, maintain, operate, and extend into, within, and through said city all facilities reasonably necessary to furnish, sell, and distribute gas and electricity within the city and the right to make reasonable use of all streets, public easements and other city property as herein defined as may be necessary; fixing the terms and conditions thereof; and setting forth related details.

PRESENTERS:

Jane S. Brautigam, City Manager
Thomas A. Carr, City Attorney
David Driskell, Executive Director of Community Planning
Maureen Rait, Executive Director, Public Works
Robert W. Eichem, Chief Financial Officer

EXECUTIVE SUMMARY:

The purpose of this request is to seek authorization for placement on the November 1, 2011, municipal election ballot of an ordinance approving the grant of a franchise to Public Service Company of Colorado ("Xcel" or "Xcel Energy") for the use of city streets, public easements, and other city property for Xcel Energy's provision of electrical and gas services to residents of the City of Boulder.

No decision has been made regarding whether the franchise should be placed on the ballot in November 2011. The Charter requires that 60 days elapse between introduction and final passage of any franchise. Introducing the franchise at the June 7, 2011 meeting retains for

council the option of placing a franchise on the ballot. If council decides not to pass the franchise on first reading, it cannot go on the ballot in 2011. The purpose of placing this ordinance before the council is simply to keep all options open so that they may continue to consider matters related to the franchise during the 2011 ballot season. After first reading, the council may decide whether or not to put the franchise question on the ballot.

STAFF RECOMMENDATION:

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

Introduce, read on first reading, and publish by title only an ordinance calling a special coordinated municipal election to be held on Tuesday, the 1st day of November, 2011, in the City of Boulder, Colorado, and providing for the submission to the electors entitled to vote thereon of the question of a franchise by the City of Boulder, Colorado, being granted to the Public Service Company of Colorado, its successors and assigns, to furnish, sell, and distribute gas and electricity to the city and to all persons, businesses, and industries within the city and the right to acquire, construct, install, locate, maintain, operate, and extend into, within, and through said city all facilities reasonably necessary to furnish, sell, and distribute gas and electricity within the city and the right to make reasonable use of all streets, public easements and other city property as herein defined as may be necessary; fixing the terms and conditions thereof; and setting forth related details.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS:

- Economic: The franchise fee of 3% of all revenues from Boulder customers from electric and natural gas sales currently results in approximately $4.1 million to the general fund annually. Xcel Energy also sets aside 1% of the revenue that it receives from electricity sales to a fund that it uses to underground overhead utilities. The city also shares facilities with Xcel Energy in the public rights of way that would require the city to incur additional costs. At the November 2010 election, voters passed a utility occupation tax to replace the franchise fee. That tax is collected only from utilities that do not pay a franchise fee. The tax will expire December 31, 2015.
- Environmental: The franchise agreement provides that Xcel Energy will assist the city in meeting its Climate Action Plan. Through the franchise and any potential associated side agreements, the city will partner with Xcel Energy in an effort to foster and support the city's clean energy and emission reduction goals.
- Social: Regardless of the passage of a franchise agreement, Boulder customers will continue to have access to Xcel gas and electricity. The franchise fee, however, is remitted to the city's General Fund and is used to fund many core essential community services. Some residents and businesses could be adversely impacted if funding for these services is decreased. Until December 2015, funding is available through the utility occupation tax.

OTHER IMPACTS:

- Fiscal: No fiscal impact from election due to Xcel Energy paying the cost of the election. Franchise will result in approximately $4.1 million revenue to the city and a 1% undergrounding fund.
- Staff time: Passage of the franchise on first reading will have no appreciable effect on staff resources.

BACKGROUND:

The last franchise agreement between the city and Xcel was dated August 4, 1993. That agreement expired on August 3, 2010, with its terms extended by operation of a revocable permit through December 31, 2011. At the November 2, 2010 election, the people adopted a utility occupation tax for a period of five years. The utility occupation tax replaces the franchise fee.

The city and Xcel have been in negotiations on the terms of the new franchise proposal since 2008. The franchise was introduced for first reading on June 1, 2010. Council subsequently decided not to place the franchise on the November 2010 ballot.

Since October 2010, when council decided not to place the franchise on the November 2010 ballot, city staff has been engaged with Xcel in conversations about ways in which the company could meet the city's energy future goals. As a regulated utility, Xcel is constrained in what it can do to meet the goals of a single city in its service area. Notwithstanding these constraints, Xcel has endeavored to present creative alternatives to the city. Recently, Xcel presented to city staff the outline of a proposal that looks very promising.

Xcel has always insisted that any proposal be tied to a twenty-year franchise. Thus, if council decides not to pass the franchise on first reading, there will be no Xcel option to present to the voters in November 2011. Based on what staff has seen thus far, staff recommends that council pass this franchise on first reading to keep an Xcel option alive. Staff expects that either the full proposal will be ready for public scrutiny by the time council returns from its recess, or that Xcel will decide that it has nothing to present.

ANALYSIS:

1. Option to Keep the Door Open for Xcel.

The decision about whether to pass the franchise on first reading depends on whether council wishes to remain in dialog with Xcel Energy. Staff has viewed this as an exercise in due diligence. Council's previous direction to staff was to explore all potential options, including a new form of partnership with Xcel Energy. Xcel has made clear that any proposal from the company would be contingent on the city entering into a twenty-year franchise. Passage on first reading keeps this option open. Failure to do so closes this door and leaves the city with only two options: 1) some form of a municipal utility, or 2) maintain the status quo.

2. The Franchise Being Presented.

The franchise attached to the first reading ordinance represents the agreement reached by the city and Xcel Energy in 2010, with a few minor modifications. Because the items considered as side-agreements are not part of the franchise itself, they are not included as attachments. Staff is not prepared to recommend that council place this franchise on the ballot by itself, although staff could make such a recommendation if the franchise were associated with the proposal which Xcel has outlined. Xcel's outline contemplated a proposal going to the voters along with the franchise. Staff expressed concern that if the voters were induced to pass a franchise by passing an associated proposal, there would need to be some assurance that the proposal would go forward. Xcel has agreed that if the franchise goes to the voters and the voters approve the franchise and the proposal, there would be some provision for terminating the franchise if, through no fault of the city, the proposal cannot proceed.

3. Gas Only Option.

The franchise being proposed is for both gas and electricity. Council has not discussed, but could consider, a gas only franchise. Passing the proposed ordinance on first reading also keeps this option open for council.

4. Ordinances Granting Franchises and Election Requirements.

For ordinances granting franchises, the city Charter requires that there are at least 60 days between first reading and the final approval of the ordinance. During this 60 or more day period, there are publication requirements. There are no limitations on amendments that may be considered or on the number of additional readings or public hearings that may be held during that time.

In addition to the timing requirements related to reading the ordinance, there are also requirements under state and local election law to provide ballot questions to the County Clerk at least 60 days prior to the election.

There are a number of factors that lead to the timing of putting a first reading on the June 7, 2011 meeting. The first issue to consider is the City Council recess. This removes the opportunity for a mid-June consideration of a ballot question. The next factor to consider is that the first business meeting in July is scheduled for July 19, 2011. The last regularly scheduled council business meeting before the deadline for submitting ballot questions to the County Clerk is August 17.

Moving the first reading to the July 19, 2011 meeting leaves insufficient time to meet the Charter's 60-day requirement. Staff recommends that the council attempt to approve its ballot questions and issues no later than the second business meeting in August.

<u>NEXT STEPS</u>

Staff continues to have discussions with Xcel Energy. In the event that there is a proposal that the city manager can support, the manager will place the matter before the council. If a second

reading is scheduled for this ordinance, any proposed changes to the franchise agreement submitted with this ordinance on first reading will be offered as amendments to this ordinance.

MATRIX OF OPTIONS:

Complete first reading of this ordinance; or
Decide not to place any Xcel Energy franchise on the ballot for the year 2011.

Attachments:

A: Proposed Ordinance with the proposed franchise attached.
B: Proposed Franchise redlined to show changes from the franchise passed on first reading in June 2010.

ORDINANCE NO. _____

AN ORDINANCE CALLING A SPECIAL COORDINATED MUNICIPAL ELECTION TO BE HELD ON TUESDAY, THE 1ST DAY OF NOVEMBER, 2011, IN THE CITY OF BOULDER, COLORADO, AND PROVIDING FOR THE SUBMISSION TO THE ELECTORS ENTITLED TO VOTE THEREON OF THE QUESTION OF A FRANCHISE BY THE CITY OF BOULDER, COLORADO, BEING GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, ITS SUCCESSORS AND ASSIGNS, TO FURNISH, SELL, AND DISTRIBUTE GAS AND ELECTRICITY TO THE CITY AND TO ALL PERSONS, BUSINESSES, AND INDUSTRIES WITHIN THE CITY AND THE RIGHT TO ACQUIRE, CONSTRUCT, INSTALL, LOCATE, MAINTAIN, OPERATE, AND EXTEND INTO, WITHIN, AND THROUGH SAID CITY ALL FACILITIES REASONABLY NECESSARY TO FURNISH, SELL, AND DISTRIBUTE GAS AND ELECTRICITY WITHIN THE CITY AND THE RIGHT TO MAKE REASONABLE USE OF ALL STREETS, PUBLIC EASEMENTS AND OTHER CITY PROPERTY AS HEREIN DEFINED AS MAY BE NECESSARY; FIXING THE TERMS AND CONDITIONS THEREOF; AND SETTING FORTH RELATED DETAILS.

The City Council finds that:

A. Public Service Company of Colorado has applied to the city for the grant of a franchise to furnish, sell, and distribute gas and electricity to the city, its residents, businesses, and industries and to make reasonable use of the city streets, public easements, and other city property to do so.

B. Section 108 of the Boulder home rule charter provides that no franchise may be granted by the city except upon the vote of the qualified taxpaying electors.

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

Section 1. That a special coordinated municipal election be held in the various precincts and at the polling places in the city of Boulder, county of Boulder and state of Colorado, on Tuesday, the 1st day of November, 2011, between the hours of 7:00 am and 7:00 pm.

Section 2. At that election there shall be submitted to the electors of the city of Boulder entitled by law to vote thereon the question of whether or not a franchise shall be granted by the city of Boulder to Public Service Company of Colorado, its successors and assigns, for the use of city streets, public easements, and other city property to furnish, sell, and distribute gas and electricity within the city under the terms and conditions of the franchise agreement attached hereto as Exhibit A.

Section 3. The official ballot shall contain the following ballot title, which shall also be the designation and submission clause for the question:

BALLOT QUESTION NO. ____

PUBLIC SERVICE COMPANY FRANCHISE

SHALL THE CITY OF BOULDER GRANT A FRANCHISE TO PUBLIC SERVICE COMPANY OF COLORADO TO FURNISH, SELL, AND DISTRIBUTE GAS AND ELECTRICITY TO THE CITY AND TO ALL PERSONS, BUSINESSES, AND INDUSTRIES WITHIN THE CITY AND THE RIGHT TO MAKE REASONABLE USE OF ALL STREETS AND OTHER PUBLIC PLACES AND PUBLIC EASEMENTS AS MAY BE NECESSARY?

FOR THE QUESTION ____ AGAINST THE QUESTION ____

Section 4. If a majority of all the votes cast at the election on the question submitted shall be for the question, the question shall be deemed to have passed and the franchise granted.

Section 5. The city clerk of the city of Boulder shall give public notice of the election on such question as required by law.

Section 6. The officers of the city are authorized to take all action necessary or appropriate to effectuate the provisions of this ordinance.

Section 7. If the electorate passes the ballot question, the city council deems this ordinance to be the ordinance granting a franchise as required by the city Charter, including Charter Section 20, "Ordinances Granting Franchise," Charter Section 108, "Franchises Granted Upon Vote," and Charter Section 109, "No Exclusive Grants-Ordinance in Plain Terms."

Section 8. If any section, paragraph, clause, or provisions of this ordinance shall for any reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining provisions of this ordinance.

Section 9. This ordinance is deemed necessary for the protection of the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

Section 10. The city council deems it appropriate that this ordinance be published by title only and orders that copies of the text hereof be 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 7th day of June 2011.

_____
Mayor

Attest:

_____
City Clerk on behalf of the
Director of Finance and Record

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED

PUBLISHED BY TITLE ONLY this _____ day of _____, 2011.

_____
Mayor

Attest:

_____
City Clerk on behalf of the
Director of Finance and Record

DRAFT

FRANCHISE AGREEMENT BETWEEN THE CITY OF BOULDER, COLORADO AND PUBLIC SERVICE COMPANY OF COLORADO

ARTICLE 1 DEFINITIONS
ARTICLE 2 GRANT OF FRANCHISE
ARTICLE 3 CITY POLICE POWERS
ARTICLE 4 FRANCHISE FEE
ARTICLE 5 ADMINISTRATION OF FRANCHISE
ARTICLE 6 SUPPLY, CONSTRUCTION, AND DESIGN
ARTICLE 7 RELIABILITY
ARTICLE 8 COMPANY PERFORMANCE OBLIGATIONS
ARTICLE 9 BILLING AND PAYMENT
ARTICLE 10 USE OF COMPANY ELECTRIC DISTRIBUTION POLES
ARTICLE 11 UNDERGROUNDING OF OVERHEAD FACILITIES
ARTICLE 12 PURCHASE OR CONDEMNATION
ARTICLE 13 MUNICIPALLY-PRODUCED UTILITY SERVICE
ARTICLE 14 ENVIRONMENT AND CONSERVATION
ARTICLE 15 TRANSFER OF FRANCHISE
ARTICLE 16 CONTINUATION OF UTILITY SERVICE
ARTICLE 17 INDEMNIFICATION AND IMMUNITY
ARTICLE 18 BREACH
ARTICLE 19 AMENDMENTS
ARTICLE 20 EQUAL OPPORTUNITY
ARTICLE 21 MISCELLANEOUS

DRAFT

TABLE OF CONTENTS

Page

ARTICLE 1 DEFINITIONS.....[PAGE #'S WILL BE IN FINAL]
§1.1 City .....
§1.2 City Council.....
§1.3 City Facilities……
§1.4 Code……
§1.5 Company…….
§1.6 Company Facilities.....
§1.7 Design and Construction Standards……
§1.8 Electric Gross Revenues.....
§1.9 Energy Conservation .....
§1.10 Energy Efficiency.....
§1.11 Force Majeure……..
§1.12 Gross Revenues .....
§1.13 Other City Property .....
§1.14 Private Project .....

§1.15 Public Project.....
§1.16 Public Utilities Commission.....
§1.17 Relocate……..
§1.18 Residents.....
§1.19 Street Lighting Agreement……
§1.20 Streets .....
§1.21 Supporting Documentation…….
§1.22 Tariffs…….
§1.23 Traffic Facilities .....
§1.24 Utility Service.....

ARTICLE 2 GRANT OF FRANCHISE.....
§2.1 Grant of Franchise. .....
§2.2 Conditions and Limitations. .....
§2.3 Effective Date and Term. .....

ARTICLE 3 CITY POLICE POWERS .....
§3.1 Police Powers .....
§3.2 Regulation of Streets or Other City Property .....
§3.3 Compliance with Laws.....

ARTICLE 4 FRANCHISE FEE .....
§4.1 Franchise Fee.....
§4.2 Remittance Of Franchise Fee. .....
§4.3 Franchise Fee Payment Not In Lieu of Permit or Other Fees .....
§4.4 Change of Franchise Fee……

ARTICLE 5 ADMINISTRATION OF FRANCHISE [PAGE #'S WILL BE IN FINAL]
§5.1 City Designee .....
§5.2 Company Designee.....
§5.3 Coordination of Work.....

ARTICLE 6 SUPPLY, CONSTRUCTION, AND DESIGN.....
§6.1 Purpose .....
§6.2 Supply.....
§6.3 Service To City Facilities. .....
§6.4 Restoration Of Service. .....
§6.5 Obligations Regarding Company Facilities.....
§6.6 Excavation And Construction.....
§6.7 Restoration.....
§6.8 Relocation Of Company Facilities. .....
§6.9 Service To New Areas.....
§6.10 City Not Required to Advance Funds .....
§6.11 Technological Improvements .....

ARTICLE 7 RELIABILITY.....
§7.1 Reliability .....
§7.2 Franchise Performance Obligations .....
§7.3 Reliability Reports.....

ARTICLE 8 COMPANY PERFORMANCE OBLIGATIONS .....
§8.1 New or Modified Service to City Facilities.....
§8.2 Adjustments to Company Facilities.....
§8.3 Third Party Damage Recovery. .....

ARTICLE 9 BILLING AND PAYMENT.....
§9.1 Billing for Utility Services. .....
§9.2 Payment to City .....

ARTICLE 10 USE OF COMPANY ELECTRIC DISTRIBUTION POLES.....
§10.1 City Use of Company Electric Distribution Poles.....
§10.2 Existing Signs……..
§10.3 Third Party Use of Company Facilities .....
§10.4 City Use of Company Transmission Rights-of-Way.....
§10.5 Emergencies .....

ARTICLE 11 UNDERGROUNDING OF OVERHEAD FACILITIES .....
§11.1 Underground Electrical Lines.....
§11.2 Underground Conversion at Expense of Company. .....
§11.3 Undergrounding Performance .....
§11.4 Audit of Underground Fund .....
§11.5 Cooperation With Other Utilities .....
§11.6 Planning and Coordination of Undergrounding Projects .....

ARTICLE 12 PURCHASE OR CONDEMNATION [PAGE #'S WILL BE IN FINAL]
§12.1 City'sl Right to Purchase or Condemn. .....

ARTICLE 13 MUNICIPALLY-PRODUCED UTILITY SERVICE .....
§13.1 City Reservation. .....
§13.2 Franchise Not to Limit City's Rights……

ARTICLE 14 ENVIRONMENT AND CONSERVATION .....
§14.1 Environmental Leadership .....
§14.2 Energy Conservation and Efficiency. .....
§14.3 Continuing Commitment .....
§14.4 PUC Approval .....

ARTICLE 15 TRANSFER OF FRANCHISE .....
§15.1 Consent of City Required .....
§15.2 Transfer Fee .....

ARTICLE 16 CONTINUATION OF UTILITY SERVICE .....
§16.1 Continuation of Utility Service .....

ARTICLE 17 INDEMNIFICATION AND IMMUNITY .....
§17.1 City Held Harmless .....
§17.2 Immunity .....

ARTICLE 18 BREACH .....
§18.1 Non-Contestability .....
§18.2 Breach. .....

ARTICLE 19 AMENDMENTS .....
§19.1 Proposed Amendments .....
§19.2 Effective Amendments .....

ARTICLE 20 EQUAL OPPORTUNITY .....
§20.1 Economic Development .....
§20.2 Employment. .....
§20.3 Contracting. .....
§20.4 Coordination .....

ARTICLE 21 MISCELLANEOUS .....
§21.1 No Waiver .....
§21.2 Successors and Assigns .....
§21.3 Third Parties .....
§21.4 Notice .....
§21.5 Examination of Records. .....
§21.6 Reliability Reports……
§21.7 List of Utility Property……..
§21.8 Other Information……
§21.9 Payment of Taxes and Fees. .....

§21.10 Conflict of Interest.....[PAGE #'S WILL BE IN FINAL]
§21.11 Certificate of Convenience and Necessity.....
§21.12 Authority.....
§21.13 Severability.....
§21.14 Force Majeure.....
§21.15 Earlier Franchises Superseded.....
§21.16 Titles Not Controlling.....
§21.17 Applicable Law .....
§21.18 Payment of Expenses Incurred by City in Relation to Franchise Agreement .....

ARTICLE 1
DEFINITIONS

For the purposes of this franchise agreement, the following words and phrases shall have the meaning given in this Article. When not inconsistent with context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural. The word "shall" is mandatory and "may" is permissive. Words not defined in this Article shall be given the meaning assigned to them in the regulations of the Colorado Public Utilities Commission, 4 C.C.R. 723-3 or 4 C.C.R. 723-4, as applicable, or if undefined in such regulations, their common and ordinary meaning.

§ 1.1 "City" refers to the City of Boulder, a municipal corporation of the State of Colorado.

§ 1.2 "City Council" or "Council" refers to the legislative body of the City.

§ 1.3 "City Facilities" refers to all facilities owned by the City including but not limited to buildings, structures, City-owned street lights, traffic signals, parking lots, parks and recreational facilities, and water, sewer, storm water, reclaimed water, telecommunication and transportation systems.

§ 1.4 "Code" refers to the Boulder Revised Code, 1981, as the same may be amended from time to time.

§ 1.5 "Company" refers to Public Service Company of Colorado d/b/a Xcel Energy and its successors and assigns, including affiliates or subsidiaries that undertake to perform any of the obligations under this franchise agreement.

§ 1.6 "Company Facilities" refer to all facilities of the Company reasonably necessary to provide gas and electric service into, within and through the City, including but not limited to plants, works, systems, substations, transmission and distribution structures, lines, equipment, pipes, mains, conduit, transformers, underground lines, gas compressors, meters, meter reading devices, communication and data transfer equipment, control equipment, gas regulator stations, Company-owned street lights, wire, cables and poles.

§ 1.7 "Design and Construction Standards" refers to those design and construction standards adopted by the City, as the same may be amended from time to time.

§ 1.8 "Electric Gross Revenues" refers to those amounts of money that the Company receives from the sale or delivery of electricity in the City, after adjusting for refunds, net write-offs of uncollectible accounts, corrections, or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. "Electric Gross Revenues" shall exclude any revenue for the sale or delivery of electricity to the City.

§ 1.9 "Energy Conservation" refers to the decrease in energy requirements of specific customers during any selected time period, resulting in a reduction in end-use services.

§ 1.10 "Energy Efficiency" refers to the decrease in energy requirements of specific customers during any selected period with end-use services of such customers held constant.

§ 1.11 "Force Majeure" refers to the inability to undertake an obligation of this franchise agreement due to a cause that could not be reasonably anticipated by a party or is beyond its reasonable control after exercise of best efforts to perform, including but not limited to fire, strike, war, riots, terrorist acts, acts of governmental authority, acts of God, floods, epidemics, quarantines, labor disputes, unavailability or shortages of materials or equipment or failures or delays in the delivery of materials.

§ 1.12 "Gross Revenues" refers to those amounts of money which the Company receives from the sale of gas and electricity within the City under rates authorized by the Public Utilities Commission, as well as from the transportation of gas to its customers within the City and from the use of Company Facilities in Streets, public easements and Other City Property (unless otherwise preempted by applicable federal or state law), as adjusted for refunds, net write-offs of uncollectible accounts, corrections, or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. "Gross Revenues" shall exclude any revenues from the sale of gas or electricity to the City or the transportation of gas to the City.

§ 1.13 "Other City Property" refers to the surface, the air space above the surface and the area below the surface of any property owned or controlled by the City or hereafter held by the City, not including Streets or public easements, that are suitable locations for the placement of Company Facilities, as determined by the City in its sole discretion.

§ 1.14 "Private Project" refers to any project that is not covered by the definition of Public Project.

§ 1.15 "Public Project" refers to (1) any public work or improvement within the City that is wholly or beneficially owned by the City; or (2) any public work or improvement within the City where fifty percent (50%) or more of the funding is provided by any combination of the City, the federal government, the State of Colorado, any Colorado county, the Regional Transportation District, and the Urban Drainage and Flood Control District, but excluding all other entities established under Title 32 of the Colorado Revised Statutes.

§ 1.16 "Public Utilities Commission" or "PUC" refers to the Public Utilities Commission of the State of Colorado or such other state agency succeeding to the regulatory powers of the Public Utilities Commission.

§ 1.17 "Relocate," "Relocating" or "Relocation" refers to any temporary or permanent removal, relocation, change or alteration in the position of any Company Facility in accordance with the terms of Section 6.8 of this franchise agreement.

§ 1.18 "Residents" refer to all persons, businesses, industries, governmental agencies, including the City, and any other entity whatsoever, presently located or to be hereinafter located, in whole or in part, within the incorporated boundaries of the City.

§ 1.19 "Street Lighting Agreement" refers to the Street Lighting and Traffic Signal Lighting Service Agreement entered into by the City and the Company contemporaneously with this franchise agreement

§ 1.20 "Streets" or "City Streets" refers to the surface, the air space above the surface and the area below the surface of any City-dedicated streets, alleys, bridges, roads, lanes, and other public rights-of-way within the City, which are primarily used for vehicular traffic. Streets shall not include public easements or Other City Property.

§ 1.21 "Supporting Documentation" refers to all information necessary or reasonably required in order to allow the Company to design and construct any work performed under the provisions of this franchise agreement.

§ 1.22 "Tariffs" refer to those tariffs of the Company on file and in effect with the PUC, as the same may be amended from time to time.

§ 1.23 "Traffic Facilities" refers to any City-owned or authorized traffic signal, traffic signage or other traffic control or monitoring device, equipment or facility, including all associated controls, connections and other support facilities or improvements, located in any Streets, public easements or Other City Property.

§ 1.24 "Utility Service" refers to the sale of gas or electricity to Residents by the Company, as well as the delivery of gas to Residents by the Company.

ARTICLE 2
GRANT OF FRANCHISE

§ 2.1 Grant of Franchise.

A. Grant. The City hereby grants to the Company, subject to all conditions, limitations, terms, and provisions contained in this franchise agreement, the non-exclusive right to make reasonable use of City Streets, public easements and Other City Property as may be necessary to carry out the terms of this franchise agreement, subject

to the applicable requirements and review process set forth in the Code and the Design and Construction Standards:

(1) To provide Utility Service to the City and to its Residents; and

(2) To acquire, purchase, construct, install, locate, maintain, operate, and extend into, within and through the City all Company Facilities reasonably necessary for the generation, production, manufacture, sale, storage, purchase, exchange, transmission, transportation and distribution of Utility Service within and through the City.

B. Street Lighting and Traffic Signal Lighting Service. The rights granted by this franchise agreement encompass the nonexclusive right to provide street lighting service and traffic signal lighting service as directed by the City, and the applicable provisions of this franchise agreement shall apply with full and equal force to street lighting service and traffic signal lighting service provided by the Company. Wherever reference is made in this franchise agreement to the sale or provision of Utility Service, these references shall be deemed to include the provision of street lighting service and traffic signal lighting service. Conflicting provisions of this franchise agreement notwithstanding, street lighting service and traffic signal lighting service within the City shall be governed by applicable tariffs on file with the PUC and the terms of the Street Lighting Agreement.

C. Company Facilities on Other City Property. The City's grant to the Company of the right to locate Company Facilities in or on Other City Property shall be subject to (1) the Company's already having or first receiving from the City a revocable license, permit or other written agreement approving the location of such Company Facilities; and (2) the terms and conditions of such revocable license agreement, permit or other written agreement. The City shall not be required to grant the Company an easement for Company Facilities. Nothing in this subsection C. shall modify or extinguish pre-existing Company property rights.

D. Conveyance of City Streets, Public Easements or Other City Property.

(1) In the event the City vacates, releases or sells, conveys, transfers or otherwise disposes of a City Street, or any portion of a public easement or Other City Property in which Company Facilities are located along with City utilities, the City shall reserve unto itself a public easement over that portion of the Street, public easement or Other City Property in which such utilities are located. The Company and the City shall work together to prepare the necessary legal description to effectuate such reservation.

(2) In the event the City vacates, releases, sells, conveys, transfers or otherwise disposes of a City Street, public easement or Other City Property and no City utilities are co-located with Company Facilities within such Street, public easement or Other City Property, the City agrees to use its best efforts not to finalize such conveyance until the resulting owner has provided the Company with an easement for the existing Company

Facilities. For the purposes of Section 6.8.A of this franchise agreement, the land vacated, released, sold, conveyed, transferred or otherwise disposed of by the City shall no longer be deemed to be a Street, public easement or Other City Property from which the City may demand the Company temporarily or permanently Relocate Company Facilities at the Company's sole expense.

§ 2.2 Conditions and Limitations.

A. Scope of Franchise. The grant of this franchise shall extend to all areas of the City as it is now or hereafter constituted**;** however, nothing contained in this franchise agreement shall be construed to authorize the Company to engage in activities other than the provision of Utility Service.

B. Subject to City Usage. The right to make reasonable use of City Streets, public easements and Other City Property to provide Utility Service to the City and its Residents pursuant to this franchise agreement is subject to and subordinate to any City usage of said Streets, public easements and Other City Property.

C. Prior Grants Not Revoked. This grant is not intended to revoke any prior license, grant, or right to use the Streets, public easements and Other City Property and such licenses, grants or rights of use are hereby affirmed.

D. Franchise Not Exclusive. The rights granted by this franchise agreement are not, and shall not be deemed to be, granted exclusively to the Company, and the City reserves the right to make or grant a franchise to any other person, firm, or corporation.

§ 2.3 Effective Date and Term.

A. Term. This franchise agreement shall take effect on _____, ____ and shall supersede any prior franchise agreements between the Company and the City. This franchise shall terminate on _____, _____, unless extended by mutual consent.

B. Execution. The Company shall execute this franchise agreement and deliver five (5) executed originals to the City Manager prior to the City formally scheduling the City's grant of a franchise to the Company for a vote of the registered electors of the City. Within forty-five (45) days after approval of the City's grant of a franchise by vote of the registered electors of the City, the Mayor of the City and other necessary or proper officials of the City are hereby authorized and directed to sign this franchise agreement in the name of the City, and the City Clerk is hereby authorized and directed to attest to the same under seal of the City, and to do all things necessary for the delivery of this franchise agreement and for fully carrying out the grant of the franchise.

C. Condition Subsequent. Concurrently with this franchise agreement, the City and the Company have agreed to the terms of the Street Lighting Agreement. The Street

Lighting Agreement shall be adopted by the City Council of the City of Boulder within sixty (60) days of voter approval of the grant of the franchise. The Company shall signify its acceptance of the Street Lighting Agreement by executing the Street Lighting Agreement and delivering five (5) executed originals to the City Manager concurrently with its delivery of the executed originals of this franchise agreement. Failure to execute and deliver the Street Lighting Agreement to the City in accordance with this section shall render this franchise agreement void and of no further force and effect.

ARTICLE 3
CITY POLICE POWERS

§ 3.1 Police Powers. The City and the Company do not waive any of their rights under the statutes and Constitution of the State of Colorado and the United States, except as otherwise specifically set forth herein. The Company expressly acknowledges the City's right to adopt, from time to time, in addition to the provisions contained herein, such laws, including ordinances and regulations, as it may deem necessary in the exercise of its governmental powers. If the City considers making any substantive changes in its local codes or regulations that in the City's reasonable opinion will significantly impact the Company's operations in the City's Streets, public easements and Other City Property, it will make a good faith effort to advise the Company of such consideration; provided, however, that lack of notice shall not be justification for the Company's non-compliance with any applicable local requirements.

§ 3.2 Regulation of Streets, Public Easements and Other City Property. The Company expressly acknowledges the City's right to enforce regulations concerning the Company's access to or use of the Streets, public easements, and Other City Property, including requirements for permits.

§ 3.3 Compliance with Laws. The Company shall promptly and fully comply with all laws, regulations, permits and orders enacted or issued by the City and with all applicable federal, state and local laws, regulations, permits, and orders that relate to the terms and conditions of this franchise agreement or the City's grant of a franchise to the Company. This provision shall not be interpreted to allow the City to make a determination of whether the Company is in compliance with federal and state laws, regulations, permits and orders. The parties expressly agree that a determination of compliance with federal and state laws, regulations, permits and orders shall reside exclusively with the judicial or regulatory body having jurisdiction over the subject matter.

ARTICLE 4
FRANCHISE FEE

§ 4.1 Franchise Fee.

A. Fee. In partial consideration for the franchise, which provides for the Company's use of City Streets, public easements and Other City Property, which are valuable public properties acquired and maintained by the City at great expense to its Residents, and in

recognition that the grant to the Company of the use of City Streets, public easements and Other City Property is a valuable right, the Company shall pay the City a sum equal to three percent (3%) of all Gross Revenues. The Company shall collect this fee from a surcharge upon Residents who are customers of the Company.

B. Obligation in Lieu of Fee. In the event that the franchise fee specified herein is declared void for any reason by a court of competent jurisdiction, unless prohibited by law, the Company shall be obligated to pay the City, at the same times and in the same manner as provided in this franchise agreement, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as partial consideration for use of the City Streets, public easements and Other City Property. To the extent required by law, the Company shall collect the amounts agreed upon through a surcharge upon Utility Service provided to Residents, not including the City.

C. Changes in Utility Service Industries.

(1) The City and the Company recognize that utility service industries are the subject of restructuring initiatives by legislative and regulatory authorities, and are also experiencing other changes as a result of mergers, acquisitions, and reorganizations. Some of such initiatives and changes have or may have an adverse impact upon the franchise fee revenues provided for herein. In recognition of the length of the term of this franchise agreement, the Company agrees that in the event of any such initiatives or changes and to the extent permitted by law, upon receiving a written request from the City, the Company will cooperate with and assist the City in modifying this franchise agreement to assure that the City receives an amount in franchise fees or some other form of compensation that is the same amount of franchise fees that would have been paid to the City pursuant to this franchise agreement.

(2) The Company and the City recognize that many aspects of the gas and electric utility business are currently the subject of discussion, examination and inquiry by different segments of the industries, the PUC and the Colorado General Assembly and that these activities may ultimately result in fundamental changes in the way the Company conducts its business and meets its service obligations. In recognition of the present state of uncertainty respecting these matters, the Company and the City agree, upon the request of the other during the term of this franchise agreement, to meet with the other and discuss in good faith whether it would be appropriate, in view of developments of the kind referred to above during the term of this franchise agreement, to amend this franchise agreement or to enter into separate, mutually satisfactory arrangements to effect a proper accommodation of any such developments. However, nothing contained in this section shall be deemed to require either Party to consent to any amendment proposed by the other party.

D. Utility Service Provided to City. No franchise fee shall be charged to the City for Utility Service provided to the City for its own consumption, including street lighting service and traffic signal service.

§ 4.2 Remittance Of Franchise Fee.

A. Remittance Schedule. Franchise fee revenues shall be remitted by the Company to the City as directed by the City in monthly installments not more than thirty (30) days following the close of each month.

B. Correction of Franchise Fee Payments. In the event that either the City or the Company discovers that there has been an error in the calculation of the franchise fee payment to the City, it shall provide written notice to the other party within a reasonable time after discovering the error. If the party receiving written notice of error does not agree with the written notice of error, that party may challenge the written notice of error pursuant to Section 4.2.D of this franchise agreement; otherwise, the error shall be corrected in the next monthly payment. However, if the error results in an overpayment of the franchise fee to the City, and said overpayment is in excess of Five Thousand Dollars ($5,000.00), credit for the overpayment shall be spread over the same period of time during which the error occurred. All franchise fee underpayments shall be corrected in the next monthly payment, together with interest computed at the rate set by the PUC for customer security deposits held by the Company, from the date when due until the date paid. In no event shall either party be required to fund or refund any overpayment or underpayment made as a result of a Company error which occurred more than five (5) years prior to the discovery of the Company error.

C. Audit Of Franchise Fee Payments.

(1) Every three (3) years commencing at the end of the third year of this franchise agreement, the Company shall conduct an internal audit to investigate and determine the correctness of the franchise fee paid to the City. Such audit shall be limited to the previous three (3) calendar years. The Company shall provide a written report to the City Manager containing the audit findings regarding the franchise fee paid to the City for the previous three (3) calendar years.

(2) If the City disagrees with the results of the audit, and if the parties are not able to informally resolve their differences, the City may conduct its own audit at its own expense, and the Company shall cooperate fully, including but not necessarily limited to, providing the City's auditor with all information reasonably necessary to complete the audit.

(3) If the results of a City audit conducted pursuant to subsection C.(2) concludes that the Company has underpaid the City by two percent (2%) or more, in

addition to the obligation to pay such amounts to the City, the Company shall also pay all costs of the audit.

D. Fee Disputes. Either party may challenge any written notification of error as provided for in Section 4.2.B of this franchise agreement by filing a written notice to the other party within thirty (30) days of receipt of the written notification of error. The written notice shall contain a summary of the facts and reasons for the party's notice. The parties shall make good faith efforts to resolve any such notice of error by any reasonable means, including the sharing of relevant documents, before initiating any formal legal proceedings for the resolution of such error.

E. Reports. Upon written request by the City, but not more than once per year, the Company shall supply the City with reports, in such formats and providing such details as reasonably requested by the City, of all suppliers of utility service that utilize Company Facilities to sell or distribute utility service to Residents and the names and addresses of each such supplier.

§ 4.3 Franchise Fee Payment Not In Lieu of Permit or Other Fees. Payment of the franchise fee does not exempt the Company from any other lawful tax or fee imposed generally upon persons doing business within the City, including any fee for a revocable license, a right-of-way permit, a street closure permit, an excavation permit, a street cut permit, or other lawful permits hereafter required by the City, except that the franchise fee provided for herein shall be in lieu of any occupation or similar tax for the use of City Streets, public easements and Other City Property.

§ 4.4 Change of Franchise Fee.

A. Reporting. The Company shall report to the City, within sixty days, the execution or change of any franchise agreement under which a municipality receives a franchise fee greater than is provided for herein or in which the undergrounding fund percentage is greater than established in this Article.

B. Change of Fee. Once each year the City Council may, by ordinance, change the franchise fee and the undergrounding fund percentage established in Article 11, below, to that provided under any municipal franchise entered into by the Company in Colorado, after first giving thirty (30) days' written notice to the Company.

ARTICLE 5
ADMINISTRATION OF FRANCHISE

§ 5.1 City Designee. The City shall designate in writing to the Company an official having full power and authority to administer the franchise. The City may also designate one or more City representatives to act as the primary liaison with the Company as to particular matters addressed by this franchise agreement and shall provide the Company with the name and telephone

numbers of said City representatives. The City may change these designations by providing written notice to the Company. The City's designee shall have the right, at all reasonable times, to inspect any Company Facilities in City Streets, public easements and Other City Property.

§ 5.2 Company Designee. The Company shall designate a representative to act as the primary liaison with the City and shall provide the City with the name, address, and telephone number for the Company's representative under this franchise agreement. The Company may change its designation by providing written notice to the City. The City shall use this liaison to communicate with the Company regarding Utility Service and related service needs for City Facilities, unless it is appropriate for the City to communicate with another Company representative regarding a particular issue.

§ 5.3 Coordination of Work.

A. Information Exchange. The Company agrees to coordinate its activities in City Streets, public easements and Other City Property with the City. The City and the Company shall meet semi-annually upon the written request of the City designee to exchange their respective short-term and long-term forecasts and/or work plans for construction and other similar work which may affect City Streets, public easements, Other City Property, or City Facilities, including but not limited to any planned City street paving projects, transportation projects, utilities projects or other capital improvement projects, and to share information regarding anticipated projects which will require Relocation of Company Facilities in City Streets, public easements or Other City Property. In addition, the City and the Company shall exchange additional information with a view towards coordinating their respective activities in those areas where such coordination may prove beneficial and so that the City will be assured that all provisions of this franchise agreement, building and zoning codes, and air and water pollution regulations are complied with, and that aesthetic and other relevant planning principles have been given due consideration. Meetings shall be held at a greater frequency if either party deems it necessary.

B. Notice. In addition to the foregoing meetings, the Company agrees to provide sufficient notice to the City whenever the Company initiates plans to significantly upgrade its infrastructure, including without limitation the placement of utility poles or other Company Facilities in order to allow for City input and consultation on Company work plans prior to the time that said work plans are finalized so that the beneficial coordination described in A., above, may occur.

ARTICLE 6
SUPPLY, CONSTRUCTION, AND DESIGN

§ 6.1 Purpose. The Company acknowledges the critical nature of the municipal services performed or provided by the City to the Residents which require the Company to provide prompt and reliable Utility Service and to perform related services for City Facilities. The City

and the Company wish to provide for certain terms and conditions under which the Company will provide Utility Service and perform related services for the City in order to facilitate and enhance the operation of City Facilities. They also wish to provide for other processes and procedures related to the provision of Utility Service to the City.

§ 6.2 Supply. Subject to the jurisdiction of the PUC, the Company shall take all reasonable and necessary steps to provide a sufficient supply of gas and electricity to Residents.

§ 6.3 Service to City Facilities.

A. Transport Gas. To the extent the City is or elects to become a gas transport customer of the Company, the Company shall transport natural gas purchased by the City for use in City Facilities pursuant to separate contracts with the City.

B. Transport Electricity. To the extent the City is permitted by law to become and elects to become an electric transport customer of the Company, the Company shall transport electricity purchased by the City for use in City Facilities pursuant to separate contracts with the City.

§ 6.4 Restoration of Service.

A. Notification. The Company shall provide to the City daytime and nighttime telephone numbers of a designated Company representative from whom the City designee may obtain status information from the Company on a twenty-four (24) hour basis concerning interruptions of Utility Service in any part of the City.

B. Restoration. In the event the Company's gas system or electric system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore such systems to satisfactory service within the shortest practicable time, or provide a reasonable alternative to such system if the Company elects not to restore such system.

§ 6.5 Obligations Regarding Company Facilities.

A. Company Facilities. All Company Facilities within City Streets, public easements and Other City Property shall be maintained in good repair, appearance and condition.

B. Company Work within the City. All work within City Streets, public easements and Other City Property performed or caused to be performed by the Company shall be done:

(1) In a high-quality manner;
(2) In a timely and expeditious manner;
(3) In a manner which minimizes inconvenience to the public;

(4) In a cost-effective manner, which may include the use of qualified contractors;
(5) In accordance with all applicable laws, ordinances, and regulations; and
(6) In accordance with requirements set forth in the City's Code, Design and Construction Standards, and all applicable licenses, permits and written agreements between the parties.

C. No Interference With City Facilities. Subject to federal and state laws and regulations regarding vegetation management programs to which the Company is subject, Company Facilities shall not interfere with any City Facilities, or other City uses of the Streets, public easements or Other City Property. Company Facilities shall be installed and maintained in City Streets, public easements and Other City Property so as to minimize interference with other property, trees, and other improvements and natural features in and adjoining the Streets, public easements and Other City Property.

D. Permit and Inspection. The installation, renovation, and replacement of any Company Facilities in the City Streets, public easements or Other City Property by or on behalf of the Company shall be subject to permit, inspection and approval by the City. Such permitting, inspection and approval may include, without limitation, the following matters: location of Company Facilities, cutting and trimming of trees and shrubs, and disturbance of pavement, sidewalks, and surfaces of City Streets, public easements or Other City Property. The Company agrees to cooperate with the City in conducting inspections and shall promptly perform any remedial action lawfully required by the City pursuant to any such inspection.

E. Compliance. The Company, and all of its contractors and subcontractors, shall comply with the requirements of the Code, the Design and Construction Standards and all City laws, ordinances, regulations, permits, and standards, including without limitation, requirements of all building and zoning codes, and requirements regarding curb and pavement cuts, excavating, digging, and other construction activities. The Company shall assure that its contractors working in City Streets, public easements and Other City Property hold the necessary licenses and permits required by law, including City licenses to work in the public right-of-way.

F. Increase in Voltage. Unless otherwise provide by law, the Company shall reimburse the City for the cost of upgrading the electrical system or facility of any City building or facility that uses Utility Service where such upgrading is solely caused or occasioned by the Company's decision to increase the voltage of delivered electrical energy. This provision shall not apply to voltage increases requested by the City. The Company shall not be required to reimburse the City for costs caused by voltage increases if the voltage increases are requested by the City, if they are required by law, or if by lawful order the PUC determines that the Company shall not be responsible for the cost of upgrading the electrical system or facility of any City building or facility.

§ 6.6 Excavation and Construction. The Company shall be responsible for obtaining, paying for, and complying with all applicable permits including, but not limited to, right-of-way, excavation, street closure and street cut permits, in the manner required by the laws, ordinances, and regulations of the City. Although the Company shall be responsible for obtaining and complying with the terms of such permits when performing Relocations requested by the City under Section 6.8 of this franchise agreement and undergrounding requested by the City under Article 11 of this franchise agreement, the City will not require the Company to pay the fees charged for such permits

§ 6.7 Restoration. When the Company does any work in or affecting the City Streets, it shall, at its own expense, promptly remove therefrom any Company-placed obstructions and restore such City Streets or Other City Property to a condition that meets applicable City standards, including the Design and Construction Standards. If weather or other conditions do not permit the complete restoration required by this Section, the Company may with the approval of the City, temporarily restore the affected City Streets, public easements or Other City Property, provided that such temporary restoration is at the Company's sole expense and provided further that the Company promptly undertakes and completes the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Upon the request of the City, the Company shall restore the Streets, public easements or Other City Property to a better condition than existed before the work was undertaken, provided that the City shall be responsible for any additional costs of such restoration.

A. Restoration by City After Notice. If the Company fails to promptly restore the City Streets, public easements or Other City Property when there is no immediate public health and safety issue, upon giving fourteen (14) days written notice to the Company, the City may restore such City Streets, public easements or Other City Property or remove the Company-placed obstruction therefrom. The Company shall be responsible for the actual cost incurred by the City to restore such City Streets, public easements or Other City Property or to remove any Company-placed obstructions and shall reimburse the City within thirty (30) days of being billed for such work. In the course of its restoration of City Streets, public easements or Other City Property under this Section, the City shall not perform work on Company Facilities unless specifically authorized by the Company in writing on a project by project basis and subject to the terms and conditions agreed to in such authorization.

B. Restoration by City Without Notice. If the Company fails to promptly restore the City Streets, public easements or Other City Property as required by this Section, and if, in the reasonable discretion of the City immediate action is required for the protection of public health and safety, the City may restore such City Streets, public easements or Other City Property or remove the Company-placed obstruction therefrom. However, in the course of its restoration of City Streets, public easements or Other City Property under this sub-section, the City shall not perform work on Company Facilities unless specifically authorized by the Company in writing on a project by project basis and subject to the terms and conditions agreed to in such authorization.

§ 6.8 Relocation of Company Facilities.

A. Relocation Obligation. The Company shall Relocate any Company Facility in City Streets, public easements or Other City Property at no cost to the City whenever the City shall determine that such Relocation is necessary for the completion of any Public Project. If such Relocation of Company Facilities is necessary due to lack of space for Company Facilities within the Public Street, public easement or Other City Property after City Facilities are installed, then the Company shall be required to Relocate the Company Facilities at its own cost and expense, including the acquisition of any necessary real property right to accommodate such Relocated Company Facilities. For all Relocations, the Company and the City agree to cooperate on the location and Relocation of the Company Facilities in the City Streets, public easements or Other City Property in order to achieve Relocation in the most efficient and cost-effective manner possible. Notwithstanding the foregoing, once the Company has Relocated any Company Facility at the City's direction, if the City requests that the same Company Facility be Relocated within two years from the completion (as such completion is required by Section 6.8.F., below) of the first Relocation, the subsequent Relocation shall not be at the Company's expense. Nothing provided herein shall prevent the Company from obtaining reimbursement of its Relocation costs from third parties.

B. Relocation from Company Property.

(1) Nothing herein contained shall be construed to require a Relocation of any Company Facilities from property (a) owned by the Company in fee; (b) in which the Company has a private easement; or (c) in which the Company has another type of privately-held property right. In the event of a conflict between the property interests of the City and the property interests of the Company, the parties agree that principles of Colorado state property law shall control.

(2) Notwithstanding the requirements of Section 6.8.A., above, if Company Facilities are located within a public easement identified on a plat as "Public Utilities," "Utilities," or words of similar meaning or intent and said easement does not contain any City utilities, the Company shall not be responsible for the cost of Relocating Company Facilities from such easement. However, if (a) the City determines that the Relocation of Company Facilities is necessary for the completion of a Public Project; and (b) if the City is of the opinion that the originally intended purpose of such easement included the use contemplated by the Public Project even though City utilities are not presently located in such easement, then the City and the Company shall meet to discuss the originally intended purpose of such easement and, based on that intended purpose, shall determine at that time whether the City or the Company or both shall pay to Relocate the Company Facilities. The parties agree that principles of Colorado state property law shall control in determining the intended purpose of the easement.

C. Private Projects. Notwithstanding anything to the contrary herein, the Company shall not be responsible for the expenses of any Relocation required by Private Projects, and the Company has the right to require the payment of estimated Relocation expenses from the affected party or parties before undertaking such Relocation.

D. Relocation Performance. The Relocations set forth in Section 6.8.A of this franchise agreement shall be completed within a reasonable time, not to exceed ninety (90) days from the later of the date on which the City designee requests in writing that the Relocation commence, or the date when the Company is provided all Supporting Documentation. The City shall provide sufficient advance notice to the Company to provide the Company at least the ninety- (90-) day notice period set forth above, in order to allow the Company adequate time to comply with all applicable City Code and permit requirements. Subject to Section 6.8.E, below, the Company shall be entitled to an extension of time to complete a Relocation where the Company's performance was delayed due to Force Majeure or the failure of the City to provide Supporting Documentation. The Company has the burden of presenting evidence to reasonably demonstrate the basis for the delay. Upon request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

E. City Revision of Supporting Documentation. The parties acknowledge that in order to prepare Supporting Documentation, the City may be required to rely upon information from the Company regarding the type and location of Company Facilities in the area. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding facility Relocation shall be deemed good cause for a reasonable extension of time to complete the Relocation under this franchise agreement unless the information provided by the Company was the cause of the City's need to revise the Supporting Documentation. Revisions necessitated by errors in information provided to the Company by the City shall be excluded from Company-caused revisions of the Supporting Documentation.

F. Completion. Each such Relocation shall be deemed complete only when the Company actually Relocates the Company Facilities, restores the Relocation site in accordance with Section 6.7 of this franchise agreement or as otherwise agreed with the City, and removes from the site or properly abandons on site all unused facilities, equipment, material and other impediments.

G. Scope of Obligation. The Relocation obligations set forth in this Section 6.8 shall only apply to Company Facilities located in City Streets, public easements or Other City Property.

H. Underground Relocation. Underground facilities shall be Relocated underground. Above-ground facilities shall be placed above ground unless the Company is paid for the

incremental amount by which the underground cost would exceed the above ground cost of Relocation, or the City requests that such additional incremental cost be paid out of available funds under Article 11 of this franchise agreement.

I. Coordination.

(1) When requested in writing by the City or the Company, representatives of the City and the Company shall meet to share information regarding anticipated projects which will require Relocation of Company Facilities in City Streets, public easements or Other City Property. Such meetings shall be for the purpose of minimizing conflicts where possible and to facilitate coordination with any timetable established by the City for any Public Project.

(2) The City shall make reasonable best efforts to provide the Company with two (2) years advance notice of any planned street repaving. The Company shall make reasonable best efforts to complete any necessary or anticipated repairs or upgrades to Company Facilities that are located underneath the Streets within the two-year period if practicable.

J. Proposed Alternatives or Modifications. Upon receipt of written notice of a required Relocation, the Company may propose an alternative to or modification of the Public Project requiring the Relocation in an effort to mitigate or avoid the impact of the required Relocation of Company Facilities. The City shall in good faith review the proposed alternative or modification. The City's acceptance of the proposed alternative or modification shall be at the sole discretion of the City. In the event the City accepts the proposed alternative or modification, the Company agrees to promptly compensate the City for all additional costs, expenses or delay that the City reasonably determines resulted from the implementation of the proposed alternative.

§ 6.9 Service To New Areas**.** If the territorial boundaries of the City are expanded during the term of this franchise agreement, the Company shall, to the extent permitted by law, extend service to Residents in the expanded area at the earliest practicable time if the expanded area is within the Company's PUC-certificated service territory.

§ 6.10 City Not Required to Advance Funds. If permitted pursuant to the Company's Tariffs, upon receipt of the City's authorization for billing and construction, the Company shall install Company Facilities to provide Utility Service to the City as a customer, without requiring the City to advance funds prior to construction; the City shall pay for the installation of Company Facilities once completed in accordance with Company Tariffs.

§ 6.11 Technological Improvements. The Company shall use its best efforts to incorporate, as soon as practicable, technological advances in its equipment and service within the City when such advances are technically and economically feasible, and are safe and beneficial to the City and its Residents.

ARTICLE 7
RELIABILITY

§ 7.1 Reliability. The Company shall install, operate, maintain, relocate and replace Company Facilities efficiently and economically and in accordance with the high standards and best systems, methods, and skills consistent with the provision of adequate, safe, and reliable Utility Service.

§ 7.2 Franchise Performance Obligations. The Company recognizes that, as part of its obligations and commitments under this franchise agreement, the Company shall carry out each of its performance obligations in a timely, expeditious, efficient, economical, and workmanlike manner.

§ 7.3 Reliability Reports. Upon written request, the Company shall provide the City with a report regarding the reliability of Company Facilities and Utility Service.

ARTICLE 8
COMPANY PERFORMANCE OBLIGATIONS

§ 8.1 New or Modified Service to City Facilities. In providing new or modified Utility Service to City Facilities, the Company agrees to perform as follows:

A. Performance. The Company shall complete each project requested by the City within a reasonable time. The parties agree that a reasonable time shall not exceed one hundred eighty (180) days from the date upon which the City designee makes a written request and provides the required Supporting Documentation for all Company Facilities other than Traffic Facilities as described in this section. The Company shall notify the City within ten (10) days of receipt of the request if the Supporting Documentation is insufficient to complete the project. The Company shall be entitled to an extension of time to complete a project where the Company's performance was delayed due to Force Majeure. Upon request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

B. City Revision of Supporting Documentation. In order to prepare the Supporting Documentation, the City may be required to rely upon information from the Company regarding the type and location of Company Facilities in the area. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding new or modified service to City facilities shall be deemed good cause for a reasonable extension of time to complete its performance, unless the information provided by the Company was the cause of the City's need to revise the Supporting Documentation.

C. Completion/Restoration. Each such project shall be complete only when the Company actually provides the service installation or modification required, restores the project site in accordance with Section 6.7 of this franchise agreement or as otherwise agreed upon with the City and removes from the site or properly abandons on site any unused facilities, equipment, material and other impediments.

§ 8.2 Adjustments to Company Facilities. The Company shall perform adjustments to Company Facilities, including raising or lowering manholes and other appurtenances in Streets, public easements and Other City Property, to accommodate City maintenance, repair and paving operations at no cost to the City. At the City's request, the Company shall provide manhole extension rings to the City and/or City's contractor for installation directly behind paving operations whenever this method for adjustment is deemed appropriate by the Company. In providing such adjustments to Company Facilities, the Company agrees to perform as follows:

A. Performance. The Company shall complete each requested adjustment within a reasonable time, not to exceed thirty (30) days from the date upon which the City makes a written request and provides to the Company all information reasonably necessary to perform the adjustment. The Company shall be entitled to an extension of time to complete an adjustment where the Company's performance was delayed due to Force Majeure. Upon request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

B. Completion/Restoration. Each such adjustment shall be complete only when the Company actually adjusts the Company Facility to accommodate the City operations in accordance with City instructions.

C. Coordination. As requested by the City or the Company, representatives of the City and the Company shall meet regarding anticipated street maintenance operations which will require such adjustments to Company Facilities in Streets, public easements or Other City Property. Such meetings shall be for the purpose of coordinating and facilitating performance under this Section.

§ 8.3 Third Party Damage Recovery.

A. Damage to Company Interests. If any individual or entity damages any Company Facilities that the Company is responsible to repair or replace, then, to the extent permitted by law, the City will notify the Company within forty-five (45) days after the City has knowledge of any such incident and will provide to the Company within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

B. Damage to City Interests. If any individual or entity damages any Company Facilities for which the City is obligated to reimburse the Company for the cost of the repair or replacement of the damaged facility, to the extent permitted by law the Company will notify the

City within forty-five (45) days after the Company has knowledge of any such incident and will provide to the City within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

C. Meeting. The Company and the City agree to meet periodically, upon written request of either party, for the purpose of developing, implementing, reviewing, improving and/or modifying mutually beneficial procedures and methods for the efficient gathering and transmittal of information useful in recovery efforts against third parties for damaging Company Facilities.

ARTICLE 9
BILLING AND PAYMENT

§9.1 Billing for Utility Services.

A. Monthly Billing. Unless otherwise provided in its Tariffs, the rules and regulations of the PUC, or the Public Utilities Law, the Company shall render bills monthly to the offices of the City for Utility Service and other related services for which the Company is entitled to payment and for which the City has authorized payment.

B. Address for Billing. Billings for Utility Service rendered during the preceding month, except for billings pursuant to the Street Lighting Agreement which shall be governed by the terms of the Street Lighting Agreement, shall be sent to the person(s) designated by the City and payment for same shall be made pursuant to the Tariffs**.** Billings for services other than Utility Service rendered during the preceding months, shall be sent to the person designated by the City to receive such bill and payment for same shall be made within thirty (30) days of receipt.

C. City Requests for Information. Unless otherwise requested by the City, the Company shall provide all billings and any underlying support documentation reasonably requested by the City in an editable and manipulable electronic format that is acceptable to the Company and the City.

D. Annual Meetings. The Company agrees to meet with the City designee at least annually for the purpose of developing, implementing, reviewing, and/or modifying mutually beneficial and acceptable billing procedures, methods, and formats which may include, without limitation, electronic billing and upgrades or beneficial alternatives to the Company's current most advanced billing technology, for the efficient and cost effective rendering and processing of such billings submitted by the Company to the City.

§ 9.2 Payment to City. If the City determines after written notice to the Company that the Company is liable to the City for payments, costs, expenses or damages of any nature, then subject to the Company's right to challenge such determination, the City may deduct all monies

due and owing the City from any other amounts currently due and owing the Company. Upon receipt of such written notice, the Company may request a meeting between the Company's designee and a designee of the City Manager to discuss such determination. The City agrees to attend such a meeting. As an alternative to such deduction, the City may bill the Company for such assessment(s), in which case the Company shall pay each such bill within thirty (30) days of the date of receipt of such bill. If the Company challenges the City determination of liability, the City shall make such payments pursuant to the Company's Tariffs until the challenge has been finally resolved.

ARTICLE 10
USE OF COMPANY ELECTRIC DISTRIBUTION POLES

§ 10.1 City Use of Company Electric Distribution Poles. The City shall be permitted to make use of Company electric distribution poles in the City at no cost to the City for the placement of City equipment or facilities necessary to serve a legitimate police, fire, emergency, public safety or traffic control purpose, or for any other purpose consistent with the City's police powers. The City will notify the Company in advance and in writing or by electronic mail of its intent to use Company electric distribution poles and the nature of such use unless it is impracticable to provide such advance notice because of emergency circumstances, in which event the City will provide such notice as soon as practicable. The City shall be responsible for costs associated with modifications to Company electric distribution poles to accommodate the City's use of such Company electric distribution poles and for any electricity used. No such use of Company electric distribution poles shall be permitted if it would constitute a safety hazard or would interfere with the Company's use of Company electric distribution poles. Any such City use must comply with the National Electric Safety Code and all other applicable laws, rules and regulations.

§10.2 Existing Signs. The City shall not be required to remove its existing signs, equipment or facilities from Company electric distribution poles, unless the Company determines after consultation with the City that attachment of specific equipment or facilities on specific poles creates a safety hazard or interferes with the Company's use of its those poles. If after such determination the City is required to remove its existing equipment or facilities from those poles, the Company shall allow the City ten (10) days from the date of written notice, including by electronic mail, within which to remove its equipment or facilities. If the City fails to remove the equipment or facilities, the Company may perform the removal at the City's sole expense.

§10.3 Third Party Use of Company Facilities. If requested in writing by the City, the Company may allow other companies who hold franchises, or otherwise have obtained consent from the City to use the Streets, public easements or Other City Property to utilize Company electric distribution poles for the placement of their facilities upon approval by the Company and agreement upon reasonable terms and conditions including payment of fees established by the Company. No such use shall be permitted if it would constitute a safety hazard or would interfere with the Company's use of Company Facilities. The Company shall not be required to

permit third party use of Company distribution facilities for the provision of utility service except as otherwise required by law.

§10.4 City Use of Company Transmission Rights-of-Way. The Company shall offer to grant to the City use of transmission rights-of-way which it now, or in the future, owns in fee within the City for trails, parks and open space on terms comparable to those offered to other municipalities; provided, however, that the Company shall not be required to make such an offer in any circumstance where such offer would constitute a safety hazard or would interfere with the Company's use of the transmission right-of-way. In order to exercise this right, the City must make specific written request to the Company for any such use

§ 10.5 Emergencies. Upon written request, the Company shall assist the City in developing an emergency management plan. In the case of any emergency or disaster, the Company shall, upon verbal request of the City, make available Company Facilities for emergency use during the emergency or the disaster period. Such use of Company Facilities shall be of a limited duration and will only be allowed if the use does not interfere with the Company's own use of Company Facilities.

ARTICLE 11
UNDERGROUNDING OF OVERHEAD FACILITIES

§ 11.1 Undergrounding of Electrical Lines. The Company shall place all newly constructed electrical distribution lines in newly developed areas underground in accordance with applicable laws, regulations and orders.

§ 11.2 Underground Conversion at Expense of Company.

A. Underground Fund. The Company shall budget and allocate an annual amount, equivalent to one percent (1%) of the preceding year's Electric Gross Revenues (the "Fund"), for the purpose of undergrounding existing overhead distribution facilities in the City, as may be requested by the City. Except as provided in Section 6.8.H, no Relocation expenses which the Company would be required to expend pursuant to Article 6 of this franchise agreement shall be charged to this Fund.

B. Unexpended Portion and Advances. Any unexpended portion of the Fund shall be carried over to succeeding years and, in addition, upon request by the City, the Company agrees to expend amounts anticipated to be available under the preceding paragraph for up to three (3) years in advance. Any amounts so expended shall be credited against amounts to be expended in succeeding years. Any Fund balance accumulated under any prior franchise agreement shall be carried over to this franchise agreement. The City shall have no vested interest in the Fund and any monies in the Fund not expended at the expiration or termination of this franchise agreement shall remain the property of the Company. At the expiration or termination of this franchise

agreement, the Company shall not be required to underground any existing overhead facilities under this Article, but may do so in its sole discretion.

C. System-wide Undergrounding. If, during the term of this franchise agreement, the Company should receive authority from the PUC to undertake a system-wide program or programs of undergrounding its electric distribution facilities, the Company will budget and allocate to the program of undergrounding in the City such amount as may be determined and approved by the PUC, but in no case shall such amount be less than the one percent (1%) of annual Electric Gross Revenues provided above.

D. City Requirement to Underground. In addition to the provisions of this Article, the City may require any above ground Company Facilities to be moved underground at the City's expense.

§ 11.3 Undergrounding Performance. Upon receipt of a written request from the City, the Company shall, to the extent of monies available in the Fund and as otherwise provided herein, underground Company Facilities in accordance with the procedures set forth in this Section.

A. Estimates. Promptly upon receipt of an undergrounding request from the City and the Supporting Documentation necessary for the Company to design the undergrounding project, the Company shall prepare a detailed, good faith cost estimate of the anticipated actual cost of the requested project for the City to review and, if acceptable to the City, the City will issue a project authorization. The Company shall notify the City within ten (10) days of receipt of the request if the Supporting Documentation is insufficient to prepare the cost estimate for the project. The City and the Company agree to meet during the period when the Company is preparing its estimate to discuss all aspects of the project toward the end of enabling the Company to prepare an accurate cost estimate. At the City's request, the Company will provide all documentation that forms the basis of the estimate. The Company will not proceed with any requested project until the City has provided a written acceptance of the Company's estimate and authorized the Company to proceed with the project. The Company's cost estimate shall be void unless accepted by the City within sixty (60) days after it has been transmitted to the City.

B. Performance. The Company shall have a reasonable time to design and complete each undergrounding project requested by the City, which may be fewer than but shall not exceed two hundred forty (240) days after it receives a written request from the City designee and all Supporting Documentation. The City shall be permitted a sixty (60) day period in which to review the Company's estimate and designs , which shall toll[1] the running of the two hundred forty- (240-) day period. The City and the Company shall agree to a longer completion date when required for large scale undergrounding projects. The Company shall be entitled to an extension of time to complete each undergrounding project where the Company's performance was delayed due to a Force Majeure

[1] To "toll" means to suspend or stop temporarily.

condition. Upon written request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

C. City Revision of Supporting Documentation. In order to prepare the Supporting Documentation, the City may rely upon information from the Company regarding the type and location of Company Facilities in the area. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding an undergrounding project shall be deemed good cause for a reasonable extension of time to complete the undergrounding project under this franchise agreement, unless the information provided by the Company was not the cause of the City's need to revise the Supporting Documentation.

D. Project Management. Upon the City's request that the Company underground distribution facilities using the Fund, the Company and the City shall each assign a project manager to represent it during the undergrounding project. The City's project manager shall be identified at the time it submits its Supporting Documentation for the project. The Company's project manager shall be identified during the design phase of the project. The project managers, along with identified support staff, shall meet bi-weekly during construction, unless the parties agree otherwise, to review the progress of the undergrounding project, project costs, changes and projected completion dates and cost. The project managers shall be accessible throughout the duration of the undergrounding project.

E. Completion/Restoration. Each undergrounding project shall be deemed complete only when the Company actually undergrounds the designated Company Facilities, restores the undergrounding site in accordance with Section 6.7 of this franchise agreement or as otherwise agreed with the City and removes from the site any unused overhead or ground-mounted facilities, equipment, material and other impediments and properly abandons on site any unused underground facilities, equipment, material and other impediments. "Unused" for the purposes of this section shall mean the Company is no longer using the facilities in question and has no plans to use the facilities in the foreseeable future.

F. Report of Actual Costs. Upon completion of each undergrounding project, the Company shall submit to the City a detailed report of the Company's actual cost to complete the project and the Company shall reconcile this total actual cost with the accepted cost estimate. The report shall be provided within one hundred twenty (120) days after completion of the undergrounding project.

G. Audit of Underground Projects. The City may require that the Company undertake an independent audit of up to two (2) undergrounding projects in any calendar year. The cost of any such independent audit shall reduce the amount of the Fund. The Company shall cooperate fully with any audit and the independent auditor shall prepare

and provide to the City and the Company a final audit report showing the actual costs associated with completion of the project. If a project audit is required by the City, only those actual project costs confirmed and verified by the independent auditor as commercially reasonable and commercially necessary to complete the project shall be charged to the Fund balance.

§ 11.4 Audit of Underground Fund. Upon written request of the City, but no more frequently than once every three (3) years, the Company shall, at its sole cost and expense, audit the Fund for the City. Such audits shall be limited to the previous three (3) calendar years. The Company shall provide the audit report to the City and shall reconcile the Fund consistent with the findings contained in the audit report. If the City has concerns about any material information contained in the audit, the parties shall meet and make good faith attempts to resolve any outstanding issues. If the matter cannot be resolved to the City's reasonable satisfaction, the Company shall, at its expense, cause an independent auditor to investigate and determine the correctness of the charges to the Fund. The independent auditor shall provide a written report containing its findings to the City and the Company. Only those costs confirmed and verified by the independent auditor as commercially reasonable and commercially necessary to complete the undergrounding projects requested by the City shall be charged to the Fund. The Company shall reconcile the balance of the Fund consistent with the findings contained in the independent auditor's written report.

§ 11.5 Cooperation with Other Utilities. When the Company is undertaking an undergrounding project, the City and the Company shall coordinate with other utilities or companies that have their facilities above ground to attempt to have all facilities undergrounded as part of the same project. When other utilities or companies are placing their facilities underground, to the extent the Company has received prior notification, the Company shall cooperate with these utilities and companies and undertake to underground Company facilities as part of the same project where financially, technically and operationally feasible. The Company shall not be required to pay for the cost of undergrounding the facilities of other companies.

§ 11.6 Planning and Coordination of Undergrounding Projects. The City and the Company agree to meet, as required, to review planned future undergrounding projects. The purpose of such meetings shall be to further cooperation between the City and the Company to achieve the orderly undergrounding of Company Facilities. At such meetings, the parties shall review future undergrounding requests, including but not limited to, conversions, known or anticipated Public Projects, known or anticipated Private Projects, known or anticipated Company projects and the Company's plans for additional undergrounding.

ARTICLE 12
PURCHASE OR CONDEMNATION

§12.1 City's Right to Purchase or Condemn. The right of the City to construct, purchase or condemn any public utility works or ways and the Company's rights in connection therewith, as provided by the Colorado Constitution and statutes, are hereby expressly reserved and each party

shall have the rights provided by law relating to condemnation; provided, however, no award shall be made for the value of the franchise or public rights-of-way.

ARTICLE 13
MUNICIPALLY-PRODUCED UTILITY SERVICE

§ 13.1 City Reservation. The City expressly reserves the right to engage in the production of utility service to the extent permitted by law. The Company agrees to negotiate in good faith long-term contracts to purchase City-generated power made available for sale, consistent with PUC requirements. The Company further agrees to offer transmission and delivery services to the City that are required by judicial, statutory and/or regulatory directives and that are comparable to the services offered to any other customer with similar generation facilities.

§ 13.2 Franchise Not to Limit City's Rights. Nothing in this franchise agreement prohibits the City from becoming an aggregator of utility service or from selling utility service to customers should it be permissible under law.

ARTICLE 14
ENVIRONMENT AND CONSERVATION

§ 14.1 Environmental Leadership. The City and the Company agree that sustainable development, environmental excellence and innovation shall form the foundation of the Utility Service provided by the Company under this franchise agreement. The Company is committed to sustainable development and energy conservation for the term of this franchise agreement by continuing to provide leadership, support and assistance, in collaboration with the City, to identify, develop, implement and maintain new and creative programs. The Company agrees to continue to actively pursue reduction of carbon emissions attributable to its electric generation facilities with a rigorous combination of Energy Conservation and Energy Efficiency measures, Clean Energy measures, and promoting and implementing the use of Renewable Energy Resources on both a distributed and centralized basis. The Company shall strive to conduct its operations in a way that avoids adverse environmental impacts where feasible, subject to the ongoing regulatory oversight of the Colorado PUC and other state and federal regulatory agencies. The Company shall continue to cost-effectively monitor its operations to mitigate environmental impacts; shall meet or exceed the requirements of environmental laws, regulations and permits; shall invest in cost-effective, environmentally-sound technologies; shall consider environmental issues in its planning and decision-making; and shall support environmental research and development projects and partnerships in its service territory through various means, including but not limited to corporate giving and employee involvement. The Company shall continue to explore ways to reduce water consumption at its facilities and to use recycled water, where feasible. The Company shall continue to work with the U.S. Fish and Wildlife Service to develop and implement avian protection plans to reduce electrocution and collision risks by eagles, raptors and other migratory birds with transmission and distribution lines. On or before December 1 of each year, the Company shall provide the City with a written report describing its progress in carbon reduction and other environmental efforts, including the actions

the Company has taken or plans to take to reduce greenhouse gas emissions. The parties shall meet at a mutually convenient time and place for a discussion of such. In meeting its obligation under this section, the Company is not precluded from providing existing internal and external reports that may be used for other reporting requirements.

§ 14.2 Energy Conservation and Efficiency.

A. Energy Efficiency Programs. The City and the Company recognize and agree that Energy Conservation and Energy Efficiency programs offer opportunities for the efficient use of energy and reduction of customers' energy consumption and costs. The City and the Company further recognize that creative and effective Energy Conservation solutions are crucial to sustainable development. The Company recognizes and shares the City's desire to advance the implementation of cost-effective Energy Conservation and Energy Efficiency programs that direct opportunities to Residents to manage more efficiently their use of energy and, thereby, create the opportunity to reduce their energy consumption, costs, and impact on the environment in order to assist the City in meeting its Climate Action Plan goals. The Company shall seek authority from the PUC to develop and offer Energy Efficiency programs to its customers. Subject to PUC approval, the Company commits to offer programs that attempt to capture market opportunities for cost-effective Energy Efficiency improvements such as municipal specific programs that provide cash rebates for efficient lighting, energy design programs to assist architects and engineers to incorporate energy efficiency in new construction projects, and recommissioning programs to analyze existing systems to optimize performance and conserve energy. Subject to PUC approval, the Company commits to offer Demand Side Management (DSM) programs and succeeding programs, which provide customers the opportunity to reduce their energy usage. In doing so, the Company recognizes the importance of (i) implementing cost-effective programs, the benefits of which could otherwise be lost if not pursued in a timely fashion and (ii) developing cost-effective energy management programs for the various classes of the Company's customers, including low-income Residents. The Company shall advise the City and City Residents of the availability of assistance that the Company makes available for investments in Energy Conservation through its account managers, area manager, newspaper advertisements, bill inserts and Energy Efficiency workshops and by maintaining information of these programs on the Company's website. Further, the Company shall designate a conservation representative to act as the primary liaison with the City who will provide the City with information on how the City may take advantage of reducing energy consumption in City Facilities and how the City may participate in Energy Conservation and Energy Efficiency programs sponsored by the Company.

B. Renewable Energy Resource Programs. The Company agrees to consider Renewable Energy Resource programs as an integral part of the Company's provision of Utility Service to its customers. The Company agrees to comply with the mandates of United States and Colorado law concerning Energy Efficiency and clean energy technologies. Unless otherwise required by law, the Company shall obtain electricity

from renewable sources equivalent to at least thirty percent (30%) of retail sales by 2020. The Company will promote a significant role for Renewable Energy Resources in its future resource acquisitions, consistent with acceptable rate impacts, legislative requirements, and applicable provisions of law.

C. Promotion of Renewable Resource Programs. The Company will continue to promote existing or new programs in its service territory to comply with applicable provisions of law relating to renewable resources. The City actively supports the Company's compliance with the renewable resource standards required by law. The Company agrees that, in complying with this provision, it shall take the following steps to encourage participation by the City and the Company's customers in available renewable resource programs:

(1) Notify the City regarding all eligible renewable resource programs;

(2) Provide the City with support regarding how the City may participate in eligible renewable resource programs;

(3) Advise Residents regarding participation in eligible renewable resource programs.

Notwithstanding the foregoing, to the extent that any Company assistance is needed to support Renewable Energy Resource Programs that are solely for the benefit of Company customers located within the City, the Company retains the sole discretion as to whether to incur such costs.

§ 14.3 Continuing Commitment. It is the express intention of the City and the Company that the collaborative effort provided for in this Article continue for the entire term of this franchise agreement. The City and the Company also recognize, however, that the programs identified in this Article may be for a limited duration and that the regulations and technologies associated with Energy Efficiency and Energy Conservation are subject to change. Given this variability, the Company agrees to maintain its commitment to sustainable development, Energy Efficiency and Energy Conservation and renewable resource energy programs for the term of this franchise agreement by continuing to provide leadership, support and assistance, in collaboration with the City, to identify, develop, implement and maintain new and creative programs similar to the programs identified in this franchise agreement in order to assist the City achieve its environmental and Climate Action Plan goals.

§ 14.4 PUC Approval. The Company shall not be required to invest in technologies or to incur costs for the implementation and maintenance of programs without having received approval from the PUC that enables the Company to recover the cost of that investment or those programs through the ratemaking process.

ARTICLE 15
TRANSFER OF FRANCHISE

§ 15.1 Consent of City Required. The Company shall not transfer or assign any rights under this franchise agreement to an unaffiliated third party, unless the City approves such transfer or assignment in writing. Approval of the transfer or assignment shall not be unreasonably withheld.

§ 15.2 Transfer Fee. In order that the City may share in the value this franchise agreement adds to the Company's operations, any transfer or assignment of rights granted under this franchise agreement requiring City approval, as set forth herein, shall be subject to the condition that the Company shall promptly pay to the City a transfer fee in an amount equal to the proportion of the City's then-population provided Utility Service by the Company to the then-population of the City and County of Denver provided Utility Service by the Company multiplied by One Million Dollars ($1,000,000.00). Except as otherwise required by law, such transfer fee shall not be recovered from a surcharge placed only on the rates of Residents.

ARTICLE 16
CONTINUATION OF UTILITY SERVICE

§ 16.1 Continuation of Utility Service. In the event this franchise agreement is not renewed at the expiration of its term or is terminated for any reason, and the City has not provided for alternative utility service, the Company shall have no right to remove any Company Facilities pending resolution of the disposition of the system unless otherwise ordered by the PUC, and shall continue to provide Utility Service within the City until the City arranges for utility service from another provider. The Company further agrees that it will not withhold any temporary Utility Services necessary to protect the public. The City agrees that in the circumstances of this Article, the Company shall be entitled to monetary compensation as provided in the Company's Tariffs and the Company shall be entitled to collect from Residents and shall be obligated to pay the City, at the same times and in the same manner as provided in this franchise agreement, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the City's Streets, public easements and Other City Property. Only upon receipt of written notice from the City stating that the City has adequate alternative utility service for Residents and upon order of the PUC shall the Company be allowed to discontinue the provision of Utility Service to the City and its Residents. This provision shall survive the termination of this franchise agreement.

ARTICLE 17
INDEMNIFICATION AND IMMUNITY

§ 17.1 City Held Harmless. The Company shall indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of or arising from the grant of this franchise agreement, the exercise by the Company of the related rights, or from the operations of the Company within the City, and shall pay the costs

of defense plus reasonable attorneys' fees. The City shall (a) give prompt written notice to the Company of any claim, demand or lien with respect to which the City seeks indemnification hereunder and (b) unless in the City's judgment a conflict of interest may exist between the City and the Company with respect to such claim, demand or lien, shall permit the Company to assume the defense of such claim, demand, or lien with counsel satisfactory to the City. If such defense is assumed by the Company, the Company shall not be subject to any liability for any settlement made without its consent. If such defense is not assumed by the Company or if the City determines that a conflict of interest exists, the parties reserve all rights to seek all remedies available in this franchise agreement against each other. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or intentional act or failure to act of the City or any of its officers or employees.

§17.2 Immunity. Nothing in this Section or any other provision of this franchise agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the City may have under the Colorado Governmental Immunity Act (§ 4-10-101, C.R.S., *et. seq*.) or of any other defenses, immunities, or limitations of liability available to the City by law.

ARTICLE 18
BREACH

§18.1 Non-Contestability. The City and the Company agree to take all reasonable and necessary actions to assure that the terms of this franchise agreement are performed and neither will take any legal action to secure modification of this franchise agreement. However, the Company reserves the right to seek a change before the PUC in its Tariffs, including but not limited to the rates, charges, terms, and conditions of providing Utility Service to the City and its Residents and the City retains all rights it may have to intervene and participate in any such proceedings. The City, similarly, reserves the right to amend the Code and the Design and Construction Standards.

§ 18.2 Breach.

A. Notice/Cure/Remedies. Except as otherwise provided in this franchise agreement, if a party (the "breaching party") to this franchise agreement fails or refuses to perform any of the terms or conditions of this franchise agreement (a "breach"), the other party (the "non-breaching party") may provide written notice to the breaching party of such breach. Upon receipt of such notice, the breaching party shall be given a reasonable time, not to exceed thirty (30) days, in which to remedy the breach.

B. Termination of Franchise by City. In addition to the foregoing remedies, if the Company fails or refuses to perform any material term or condition of this franchise agreement (a "material breach"), the City may provide written notice to the Company of such material breach. Upon receipt of such notice, the Company shall be given a reasonable time, not to exceed ninety (90) days, within which to remedy the material

breach. If the Company does not remedy the material breach within the time allowed in the notice, the City may, at its sole option, terminate the franchise and this franchise agreement**.** This remedy shall be in addition to the City's right to exercise any of the remedies provided for elsewhere in this franchise agreement. Upon such termination, the Company shall continue to provide Utility Service to the City and its Residents until the City makes alternative arrangements for such service and until otherwise ordered by the PUC, and the Company shall be entitled to collect from Residents and shall be obligated to pay the City, at the same times and in the same manner as provided in this franchise agreement, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the City Streets, public easements and Other City Property. This provision shall survive the termination of the franchise and this franchise agreement.

C. Company Shall Not Terminate Franchise. In no event shall the Company have the right to terminate this franchise agreement.

D. No Limitation. Except as provided herein, nothing in this franchise agreement shall limit or restrict any legal rights or remedies that either party may possess arising from any alleged breach of this franchise agreement.

ARTICLE 19
AMENDMENTS

§ 19.1 Proposed Amendments. At any time during the term of this franchise agreement, the City or the Company may propose amendments to this franchise agreement by giving thirty- (30-) days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). However, nothing contained in this section shall be deemed to require either Party to consent to any amendment proposed by the other Party.

§ 19.2 Effective Amendments. No alterations, amendments or modifications to this franchise agreement shall be valid unless executed by an instrument in writing by the parties, adopted with the same formality used in adopting this franchise agreement, to the extent required by law. Neither this franchise agreement, nor any term hereof, may be changed, modified or abandoned, in whole or in part, except by an instrument in writing, and no subsequent oral agreement shall have any validity whatsoever.

ARTICLE 20
EQUAL OPPORTUNITY

§ 20.1 Economic Development. The Company is committed to the principle of stimulating, cultivating and strengthening the participation and representation of persons of color, women and members of other under-represented groups within the Company and in the local business

community. The Company believes that increased participation and representation of under-represented groups will lead to mutual and sustainable benefits for the local economy. The Company is also committed to the principle that the success and economic well-being of the Company is closely tied to the economic strength and vitality of the diverse communities and people it serves. The Company believes that contributing to the development of a viable and sustainable economic base among all Company customers is in the best interests of the Company and its shareholders.

§ 20.2 Employment.

A. Programs. The Company is committed to undertaking programs that identify, consider and develop persons of color, women and members of other under-represented groups for positions at all skill and management levels within the Company.

B. Businesses. The Company recognizes that the City and the business community in the City, including women-owned and minority-owned businesses, provide a valuable resource in assisting the Company to develop programs to promote persons of color, women and members of under-represented communities into management positions, and agrees to keep the City regularly advised of the Company's progress by providing the City a copy of the Company's annual affirmative action report upon the City's written request.

C. Recruitment. In order to enhance the diversity of the employees of the Company, the Company is committed to recruiting diverse employees by strategies such as partnering with colleges, universities and technical schools with diverse student populations, utilizing diversity specific media to advertise employment opportunities, internships, and engaging recruiting firms with diversity specific expertise.

D. Advancement. The Company is committed to developing a world-class workforce through the advancement of its employees, including persons of color, women and members of under-represented groups. In order to enhance opportunities for advancement, the Company will offer training and development opportunities for its employees. Such programs may include mentoring programs, training programs, classroom training, and leadership programs.

E. Non-Discrimination. The Company is committed to a workplace free of discrimination based on race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability or any other protected status in accordance with all federal, state or local laws. The Company shall not, solely because of race, creed, color, religion, sex, age, national origin or ancestry or handicap, refuse to hire, discharge, promote, demote or discriminate in matters of compensation, against any person otherwise qualified, and further agrees to insert the foregoing provision or its equivalent in all agreements the Company enters into in connection with this franchise agreement.

F. Board of Directors. The Company shall identify and consider women, persons of color and other under-represented groups to recommend for its Board of Directors, consistent with the responsibility of boards to represent the interests of the shareholders, customers and employees of the Company.

§ 20.3 Contracting.

A. Contracts. It is the Company's policy to make available to women-owned and minority-owned business enterprises and other small and/or disadvantaged business enterprises the maximum practical opportunity to compete with other service providers, contractors, vendors and suppliers in the marketplace. The Company is committed to increasing the proportion of Company contracts awarded to women-owned and minority-owned business enterprises and other small and/or disadvantaged business enterprises for services, construction, equipment and supplies to the maximum extent consistent with the efficient and economical operation of the Company.

B. Community Outreach. The Company agrees to maintain and continuously develop contracting and community outreach programs calculated to enhance opportunity and increase the participation of minority- and women-owned business enterprises and other small and/or disadvantaged business enterprises to encourage economic vitality. The Company agrees to keep the City regularly advised of the Company's programs.

C. Community Development. The Company shall maintain and support partnerships with local chambers of commerce and business organizations, including those representing predominately minority-owned, women-owned and disadvantaged businesses, to preserve and strengthen open communication channels and enhance opportunities for minority-owned, women-owned and disadvantaged businesses to contract with the Company.

§ 20.4 Coordination. City agencies provide collaborative leadership and mutual opportunities or programs relating to City based initiatives on economic development, employment and contracting opportunity. The Company agrees to review Company programs and mutual opportunities responsive to this Article with these agencies, upon their request, and to collaborate on best practices regarding such programs and coordinate and cooperate with the agencies in program implementation.

ARTICLE 21
MISCELLANEOUS

§ 21.1 No Waiver. Neither the City nor the Company shall be excused from complying with any of the terms and conditions of this franchise agreement by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions, to insist upon or to seek compliance with any such terms and conditions.

§21.2 Successors and Assigns. The rights, privileges, and obligations, in whole or in part, granted and contained in this franchise agreement shall inure to the benefit of and be binding upon the Company, its successors and assigns, to the extent that such successors or assigns have succeeded to or been assigned the rights of the Company pursuant to Article 15 of this franchise agreement.

§ 21.3 Third Parties. Nothing contained in this franchise agreement shall be construed to provide rights to third parties.

§ 21.4 Notice. Both parties shall designate from time to time in writing representatives for the Company and the City who will be the persons to whom notices shall be sent regarding any action to be taken under this franchise agreement. Notice shall be in writing and forwarded by certified mail or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party, delivered in person or by certified mail. Until any such change shall hereafter be made, notices shall be sent as follows:

To the City:

Mayor of Boulder
1777 Broadway
Boulder, Colorado 80306

City Manager
City of Boulder
1777 Broadway
Boulder, Colorado 80306

With a copy to:

City Attorney
City of Boulder
1777 Broadway
Boulder, Colorado 80306

To the Company:

Regional Vice President, Customer and Community Services
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

With a copy to:

Legal Department
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

§ 21.5 Examination of Records.

A. Right to Examine. The parties agree that a duly authorized representative of the City shall have the right to examine any books, documents, papers, and records of the Company reasonably related to the Company's compliance with the terms and conditions of this franchise agreement. Information shall be provided within thirty (30) days of any written request. Any books, documents, papers, and records of the Company in any form that are requested by the City that contain confidential information shall be conspicuously identified as "confidential" or "proprietary" by the Company. In no case shall any privileged communication be subject to examination by the City pursuant to the terms of this section. "Privileged communication" means any communication that would not be discoverable due to the attorney-client privilege or any other privilege that is generally recognized in Colorado, including but not limited to the work product privilege. The work product privilege shall include, without limitation, information developed by the Company in preparation for PUC proceedings.

B. Confidential and Proprietary Information. With respect to any information requested by the City which the Company identifies as "Confidential" or "Proprietary":

(1) The City will maintain the confidentiality of the information by keeping it under seal and segregated from information and documents that are available to the public;

(2) The information shall be used solely for the purpose of determining the Company's compliance with the terms and conditions of this franchise agreement;

(3) The information shall only be made available to City employees and consultants who represent in writing that they agree to be bound by the provisions of this subsection B;

(4) The information shall be held by the City for such time as is reasonably necessary for the City to address the franchise issue(s) that generated the request and shall be returned to the Company, along with all copies of the information made by the City, when the City has concluded its use of the information. The parties agree that in most cases, the information should be returned within one hundred twenty (120) days. However, in the event that the information is needed in connection with any action that requires more time, including, but not necessarily limited to litigation, administrative proceedings and/or other disputes, the City may maintain the information until such issues are fully and finally concluded.

C. Open Records Act. If an Open Records Act request is made by any third party for confidential or proprietary information that the Company has provided to the City pursuant to this franchise agreement, the City will promptly notify the Company of the request and shall allow the Company to defend such request at its sole expense, including filing a legal action in any court of competent jurisdiction to prevent disclosure of such information. In any such legal action the Company shall join the person requesting the information and the City. In no circumstance shall the City provide to any third party confidential information provided by the Company pursuant to this franchise agreement without first notifying the Company in writing. The Company shall defend, indemnify and hold the City harmless from any claim, judgment, costs or attorney fees incurred in participating in such proceeding.

D. Excluded Information. Unless otherwise agreed between the parties, the following information shall not be provided by the Company: confidential employment matters, specific information regarding any of the Company's customers, information related to the compromise and settlement of disputed claims including but not limited to PUC dockets, information provided to the Company which is declared by the provider to be confidential, and which would be considered confidential to the provider under applicable law.

E. Reports. Upon written request by the City, but not more than once per year, the Company shall supply the City with reports, in such formats and providing such details as reasonably requested by the City, of all suppliers of utility service that utilize Company Facilities to sell or distribute utility service to Residents and the names and addresses of each such supplier.

§ 21.6 Reliability Reports. Upon written request, the Company shall provide the City with a report regarding the reliability of Company Facilities and Utility Service.

§21.7 List of Utility Property. The Company shall provide the City, upon request not more than every two (2) years, a list of all real property and leasehold interests in real property owned by the Company within the City, excepting easements. Upon request by the City, such list shall include the legal description and land area of each listed property and shall be accompanied by a map showing the location of each listed property and shall include real property and leasehold interest in real property owned by the Company within the Boulder Valley Comprehensive Plan area, as identified by the City.

§21.8 Other Information. Upon written request, the Company shall provide the City Manager or the City Manager' designee with:

A. Copies of all applications, advice letters and periodic reports, together with any accompanying non-confidential testimony and exhibits, filed by the Company with the PUC;

B. A copy of the Company's or its parent company's consolidated annual financial report, or alternatively, a URL link to a location where the same information is available on the Company's web site;

C. Maps or schematics indicating the location of specific Company Facilities, including gas or electric lines, located within the City, to the extent those maps or schematics are in existence at the time of the request; and

D. A copy of any report required to be prepared for a federal or state agency detailing the Company's efforts to comply with federal and state air and water pollution laws.

§21.9 Payment of Taxes and Fees.

A. Payment by Company. The Company shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extra-ordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge against this franchise agreement ("Impositions"), provided that Company shall have the right to contest any such Impositions and shall not be in breach of this section so long as it is actively contesting such Impositions.

B. City Not Liable. The City shall not be liable for the payment of taxes, late charges, interest or penalties of any nature other than pursuant to applicable Tariffs.

§21.10 Conflict of Interest. The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and the Company further agrees not to hire or contract for services any official, officer or employee of the City to the extent prohibited by law, including ordinances and regulations of the City.

§21.11 Certificate of Convenience and Necessity. The City agrees to support any application the Company may file with the PUC to obtain a certificate of public convenience and necessity to exercise the rights and obligations granted under this franchise agreement.

§21.12 Authority. Each party represents and warrants that except as set forth below, it has taken all actions that are necessary or that are required by its ordinances, regulations, procedures, bylaws, or applicable law, to legally authorize the undersigned signatories to execute this franchise agreement on behalf of the parties and to bind the parties to its terms. The persons executing this franchise agreement on behalf of each of the parties warrant that they have full authorization to execute this franchise agreement. The City acknowledges that notwithstanding

the foregoing, the Company requires a certificate of public convenience and necessity from the PUC in order to operate under the terms of this franchise agreement.

§21.13 Severability. Should any one or more provisions of this franchise agreement be determined to be unconstitutional, illegal, unenforceable or otherwise void, all other provisions nevertheless shall remain effective; provided, however, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft one or more substitute provisions that will achieve the original intent of the parties hereunder.

§21.14 Force Majeure. Neither the City nor the Company shall be in breach of this franchise agreement if a failure to perform any of the duties under this franchise agreement is due to Force Majeure as defined herein.

§21.15 Earlier Franchises Superseded. This franchise agreement shall constitute the only franchise agreement between the City and the Company for the furnishing of Utility Service and it supersedes and cancels all former franchise agreements between the parties hereto.

§21.16 Titles Not Controlling. Titles of the paragraphs herein are for reference only, and shall not be used to construe the language of this franchise agreement.

§21.17 Applicable Law. Colorado law shall apply to the construction and enforcement of this franchise agreement. The parties agree that venue for any litigation arising out of this franchise agreement shall be in the District Court for Boulder County, State of Colorado.

§21.18 Payment of Expenses Incurred by City in Relation to Franchise Agreement. The Company shall pay for expenses incurred for the franchise election, including the publication of notices, publication of ordinances, and photocopying of documents.

IN WITNESS WHEREOF, the parties have caused this franchise agreement to be executed as of the day and year first above written.

CITY OF BOULDER

ATTEST:

_____
Susan Osborne, Mayor

_____
City Clerk on behalf of the
Director of Finance and Record

APPROVED AS TO FORM:

_____
Attorney for the City of Boulder

PUBLIC SERVICE COMPANY OF COLORADO

By:_____
Jerome Davis
Regional Vice President

Attest: _____
Asst. Secretary

DRAFT

FRANCHISE AGREEMENT BETWEEN THE CITY OF BOULDER, COLORADO AND PUBLIC SERVICE COMPANY OF COLORADO

ARTICLE 1 DEFINITIONS
ARTICLE 2 GRANT OF FRANCHISE
ARTICLE 3 CITY POLICE POWERS
ARTICLE 4 FRANCHISE FEE
ARTICLE 5 ADMINISTRATION OF FRANCHISE
ARTICLE 6 SUPPLY, CONSTRUCTION, AND DESIGN
ARTICLE 7 RELIABILITY
ARTICLE 8 COMPANY PERFORMANCE OBLIGATIONS
ARTICLE 9 BILLING AND PAYMENT
ARTICLE 10 USE OF COMPANY ELECTRIC DISTRIBUTION POLES
ARTICLE 11 UNDERGROUNDING OF OVERHEAD FACILITIES
ARTICLE 12 PURCHASE OR CONDEMNATION
ARTICLE 13 MUNICIPALLY-PRODUCED UTILITY SERVICE
ARTICLE 14 ENVIRONMENT AND CONSERVATION
ARTICLE 15 TRANSFER OF FRANCHISE
ARTICLE 16 CONTINUATION OF UTILITY SERVICE
ARTICLE 17 INDEMNIFICATION AND IMMUNITY
ARTICLE 18 BREACH
ARTICLE 19 AMENDMENTS
ARTICLE 20 EQUAL OPPORTUNITY
ARTICLE 21 MISCELLANEOUS

DRAFT

TABLE OF CONTENTS

Page

ARTICLE 1 DEFINITIONS.....[PAGE #'S WILL BE IN FINAL]
§1.1 City .....
§1.2 City Council.....
§1.3 City Facilities……
§1.4 Code……
§1.5 Company…….
§1.6 Company Facilities.....
§1.7 Design and Construction Standards……
§1.8 Electric Gross Revenues.....
§1.9 Energy Conservation .....
§1.10 Energy Efficiency.....
§1.11 Force Majeure……..
§1.12 Gross Revenues .....
§1.13 Other City Property .....
§1.14 Private Project .....

§1.15 Public Project.....
§1.16 Public Utilities Commission.....
§1.17 Relocate……..
§1.18 Residents.....
§1.19 Street Lighting Agreement……
§1.20 Streets .....
§1.21 Supporting Documentation…….
§1.22 Tariffs…….
§1.23 Traffic Facilities .....
§1.24 Utility Service.....

ARTICLE 2 GRANT OF FRANCHISE.....
§2.1 Grant of Franchise. .....
§2.2 Conditions and Limitations. .....
§2.3 Effective Date and Term. .....

ARTICLE 3 CITY POLICE POWERS .....
§3.1 Police Powers .....
§3.2 Regulation of Streets or Other City Property .....
§3.3 Compliance with Laws.....

ARTICLE 4 FRANCHISE FEE .....
§4.1 Franchise Fee.....
§4.2 Remittance Of Franchise Fee. .....
§4.3 Franchise Fee Payment Not In Lieu of Permit or Other Fees .....
§4.4 Change of Franchise Fee……

DRAFT

ARTICLE 5 ADMINISTRATION OF FRANCHISE [PAGE #'S WILL BE IN FINAL]
§5.1 City Designee .....
§5.2 Company Designee.....
§5.3 Coordination of Work.....

ARTICLE 6 SUPPLY, CONSTRUCTION, AND DESIGN.....
§6.1 Purpose .....
§6.2 Supply.....
§6.3 Service To City Facilities. .....
§6.4 Restoration Of Service. .....
§6.5 Obligations Regarding Company Facilities.....
§6.6 Excavation And Construction.....
§6.7 Restoration.....
§6.8 Relocation Of Company Facilities. .....
§6.9 Service To New Areas.....
§6.10 City Not Required to Advance Funds .....
§6.11 Technological Improvements .....

ARTICLE 7 RELIABILITY.....
§7.1 Reliability .....
§7.2 Franchise Performance Obligations .....
§7.3 Reliability Reports.....

ARTICLE 8 COMPANY PERFORMANCE OBLIGATIONS .....
§8.1 New or Modified Service to City Facilities.....
§8.2 Adjustments to Company Facilities.....
§8.3 Third Party Damage Recovery. .....

ARTICLE 9 BILLING AND PAYMENT.....
§9.1 Billing for Utility Services. .....
§9.2 Payment to City .....

ARTICLE 10 USE OF COMPANY ELECTRIC DISTRIBUTION POLES.....
§10.1 City Use of Company Electric Distribution Poles.....
§10.2 Existing Signs……..
§10.3 Third Party Use of Company Facilities .....
§10.4 City Use of Company Transmission Rights-of-Way.....
§10.5 Emergencies .....

ARTICLE 11 UNDERGROUNDING OF OVERHEAD FACILITIES .....
§11.1 Underground Electrical Lines.....
§11.2 Underground Conversion at Expense of Company. .....
§11.3 Undergrounding Performance .....
§11.4 Audit of Underground Fund .....
§11.5 Cooperation With Other Utilities .....
§11.6 Planning and Coordination of Undergrounding Projects .....

DRAFT

ARTICLE 12 PURCHASE OR CONDEMNATION [PAGE #'S WILL BE IN FINAL]
§12.1 City'sl Right to Purchase or Condemn. .....

ARTICLE 13 MUNICIPALLY-PRODUCED UTILITY SERVICE .....
§13.1 City Reservation. .....
§13.2 Franchise Not to Limit City's Rights……

ARTICLE 14 ENVIRONMENT AND CONSERVATION .....
§14.1 Environmental Leadership .....
§14.2 Energy Conservation and Efficiency. .....
§14.3 Continuing Commitment .....
§14.4 PUC Approval .....

ARTICLE 15 TRANSFER OF FRANCHISE .....
§15.1 Consent of City Required .....
§15.2 Transfer Fee .....

ARTICLE 16 CONTINUATION OF UTILITY SERVICE .....
§16.1 Continuation of Utility Service .....

ARTICLE 17 INDEMNIFICATION AND IMMUNITY .....
§17.1 City Held Harmless .....
§17.2 Immunity .....

ARTICLE 18 BREACH .....
§18.1 Non-Contestability .....
§18.2 Breach. .....

ARTICLE 19 AMENDMENTS .....
§19.1 Proposed Amendments .....
§19.2 Effective Amendments .....

ARTICLE 20 EQUAL OPPORTUNITY .....
§20.1 Economic Development .....
§20.2 Employment. .....
§20.3 Contracting. .....
§20.4 Coordination .....

ARTICLE 21 MISCELLANEOUS .....
§21.1 No Waiver .....
§21.2 Successors and Assigns .....
§21.3 Third Parties .....
§21.4 Notice .....
§21.5 Examination of Records. .....
§21.6 Reliability Reports……
§21.7 List of Utility Property……..
§21.8 Other Information……
§21.9 Payment of Taxes and Fees. .....

§21.10 Conflict of Interest.....[PAGE #'S WILL BE IN FINAL]
§21.11 Certificate of Convenience and Necessity.....
§21.12 Authority.....
§21.13 Severability.....
§21.14 Force Majeure.....
§21.15 Earlier Franchises Superseded.....
§21.16 Titles Not Controlling.....
§21.17 Applicable Law .....
§21.18 Payment of Expenses Incurred by City in Relation to Franchise Agreement .....

DRAFT

ARTICLE 1
DEFINITIONS

For the purposes of this franchise agreement, the following words and phrases shall have the meaning given in this Article. When not inconsistent with context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural. The word "shall" is mandatory and "may" is permissive. Words not defined in this Article shall be given the meaning assigned to them in the regulations of the Colorado Public Utilities Commission, 4 C.C.R. 723-3 or 4 C.C.R. 723-4, as applicable, or if undefined in such regulations, their common and ordinary meaning.

§ 1.1 "City" refers to the City of Boulder, a municipal corporation of the State of Colorado.

§ 1.2 "City Council" or "Council" refers to the legislative body of the City.

§ 1.3 "City Facilities" refers to all facilities owned by the City including but not limited to buildings, structures, City-owned street lights, traffic signals, parking lots, parks and recreational facilities, and water, sewer, storm water, reclaimed water, telecommunication and transportation systems.

§ 1.4 "Code" refers to the Boulder Revised Code, 1981, as the same may be amended from time to time.

§ 1.5 "Company" refers to Public Service Company of Colorado d/b/a Xcel Energy and its successors and assigns, including affiliates or subsidiaries that undertake to perform any of the obligations under this franchise agreement.

§ 1.6 "Company Facilities" refer to all facilities of the Company reasonably necessary to provide gas and electric service into, within and through the City, including but not limited to plants, works, systems, substations, transmission and distribution structures, lines, equipment, pipes, mains, conduit, transformers, underground lines, gas compressors, meters, meter reading devices, communication and data transfer equipment, control equipment, gas regulator stations, Company-owned street lights, wire, cables and poles.

§ 1.7 "Design and Construction Standards" refers to those design and construction standards adopted by the City, as the same may be amended from time to time.

§ 1.8 "Electric Gross Revenues" refers to those amounts of money that the Company receives from the sale or delivery of electricity in the City, after adjusting for refunds, net write-offs of uncollectible accounts, corrections, or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. "Electric Gross Revenues" shall exclude any revenue for the sale or delivery of electricity to the City.

§ 1.9 "Energy Conservation" refers to the decrease in energy requirements of specific customers during any selected time period, resulting in a reduction in end-use services.

§ 1.10 "Energy Efficiency" refers to the decrease in energy requirements of specific customers during any selected period with end-use services of such customers held constant.

§ 1.11 "Force Majeure" refers to the inability to undertake an obligation of this franchise agreement due to a cause that could not be reasonably anticipated by a party or is beyond its reasonable control after exercise of best efforts to perform, including but not limited to fire, strike, war, riots, terrorist acts, acts of governmental authority, acts of God, floods, epidemics, quarantines, labor disputes, unavailability or shortages of materials or equipment or failures or delays in the delivery of materials.

§ 1.12 "Gross Revenues" refers to those amounts of money which the Company receives from the sale of gas and electricity within the City under rates authorized by the Public Utilities Commission, as well as from the transportation of gas to its customers within the City and from the use of Company ~~f~~Facilities in Streets, public easements and Other City Property (unless otherwise preempted by applicable federal or state law), as adjusted for refunds, net write-offs of uncollectible accounts, corrections, or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. "Gross Revenues" shall exclude any revenues from the sale of gas or electricity to the City or the transportation of gas to the City.

§ 1.13 "Other City Property" refers to the surface, the air space above the surface and the area below the surface of any property owned or controlled by the City or hereafter held by the City, not including Streets or public easements, that are suitable locations for the placement of Company Facilities, as determined by the City in its sole discretion.

§ 1.14 "Private Project" refers to any project that is not covered by the definition of Public Project.

§ 1.15 "Public Project" refers to (1) any public work or improvement within the City that is wholly or beneficially owned by the City; or (2) any public work or improvement within the City where fifty percent (50%) or more of the funding is provided by any combination of the City, the federal government, the State of Colorado, any Colorado county, the Regional Transportation District, and the Urban Drainage and Flood Control District, but excluding all other entities established under Title 32 of the Colorado Revised Statutes.

§ 1.16 "Public Utilities Commission" or "PUC" refers to the Public Utilities Commission of the State of Colorado or such other state agency succeeding to the regulatory powers of the Public Utilities Commission.

§ 1.17 "Relocate," "Relocating" or "Relocation" refers to any temporary or permanent removal, relocation, change or alteration in the position of any Company Facility in accordance with the terms of Section 6.8 of this franchise agreement.

§ 1.18 "Residents" refer to all persons, businesses, industries, governmental agencies, including the City, and any other entity whatsoever, presently located or to be hereinafter located, in whole or in part, within the incorporated boundaries of the City.

§ 1.19 "Street Lighting Agreement" refers to the Street Lighting and Traffic Signal Lighting Service Agreement entered into by the City and the Company contemporaneously with this franchise agreement

§ 1.20 "Streets" or "City Streets" refers to the surface, the air space above the surface and the area below the surface of any City-dedicated streets, alleys, bridges, roads, lanes, and other public rights-of-way within the City, which are primarily used for vehicular traffic. Streets shall not include public easements or Other City Property.

§ 1.21 "Supporting Documentation" refers to all information necessary or reasonably required in order to allow the Company to design and construct any work performed under the provisions of this franchise agreement.

§ 1.22 "Tariffs" refer to those tariffs of the Company on file and in effect with the PUC, as the same may be amended from time to time.

§ 1.23 "Traffic Facilities" refers to any City-owned or authorized traffic signal, traffic signage or other traffic control or monitoring device, equipment or facility, including all associated controls, connections and other support facilities or improvements, located in any Streets, public easements or Other City Property.

§ 1.24 "Utility Service" refers to the sale of gas or electricity to Residents by the Company, as well as the delivery of gas to Residents by the Company.

ARTICLE 2
GRANT OF FRANCHISE

§ 2.1 Grant of Franchise.

A. Grant. The City hereby grants to the Company, subject to all conditions, limitations, terms, and provisions contained in this franchise agreement, the non-exclusive right to make reasonable use of City Streets, public easements and Other City Property as may be necessary to carry out the terms of this franchise agreement, subject

to the applicable requirements and review process set forth in the Code and the Design and Construction Standards:

(1) To provide Utility Service to the City and to its Residents; and

(2) To acquire, purchase, construct, install, locate, maintain, operate, and extend into, within and through the City all Company Facilities reasonably necessary for the generation, production, manufacture, sale, storage, purchase, exchange, transmission, transportation and distribution of Utility Service within and through the City.

B. Street Lighting and Traffic Signal Lighting Service. The rights granted by this franchise agreement encompass the nonexclusive right to provide street lighting service and traffic signal lighting service as directed by the City, and the applicable provisions of this franchise agreement shall apply with full and equal force to street lighting service and traffic signal lighting service provided by the Company. Wherever reference is made in this franchise agreement to the sale or provision of Utility Service, these references shall be deemed to include the provision of street lighting service and traffic signal lighting service. Conflicting provisions of this franchise agreement notwithstanding, street lighting service and traffic signal lighting service within the City shall be governed by applicable tariffs on file with the PUC and the terms of the Street Lighting Agreement.

C. Company Facilities on Other City Property. The City's grant to the Company of the right to locate Company Facilities in or on Other City Property shall be subject to (1) the Company's already having or first receiving from the City a revocable license, permit or other written agreement approving the location of such Company Facilities; and (2) the terms and conditions of such revocable license agreement, permit or other written agreement. The City shall not be required to grant the Company an easement for Company Facilities. Nothing in this subsection C. shall modify or extinguish pre-existing Company property rights.

D. Conveyance of City Streets, Public Easements or Other City Property.

(1) In the event the City vacates, releases or sells, conveys, transfers or otherwise disposes of a City Street, or any portion of a public easement or Other City Property in which Company Facilities are located along with City utilities, the City shall reserve unto itself a public easement over that portion of the Street, public easement or Other City Property in which such utilities are located. The Company and the City shall work together to prepare the necessary legal description to effectuate such reservation.

(2) In the event the City vacates, releases, sells, conveys, transfers or otherwise disposes of a City Street, public easement or Other City Property and no City utilities are co-located with Company Facilities within such Street, public easement or Other City Property, the City agrees to use its best efforts not to finalize such conveyance until the resulting owner has provided the Company with an easement for the existing Company

Facilities. For the purposes of Section 6.8.A of this franchise agreement, the land vacated, released, sold, conveyed, transferred or otherwise disposed of by the City shall no longer be deemed to be a Street, public easement or Other City Property from which the City may demand the Company temporarily or permanently Relocate Company Facilities at the Company's sole expense.

§ 2.2 Conditions and Limitations.

A. Scope of Franchise. The grant of this franchise shall extend to all areas of the City as it is now or hereafter constituted**;** however, nothing contained in this franchise agreement shall be construed to authorize the Company to engage in activities other than the provision of Utility Service.

B. Subject to City Usage. The right to make reasonable use of City Streets, public easements and Other City Property to provide Utility Service to the City and its Residents pursuant to this~~e~~ franchise agreement is subject to and subordinate to any City usage of said Streets, public easements and Other City Property.

C. Prior Grants Not Revoked. This grant is not intended to revoke any prior license, grant, or right to use the Streets, public easements and Other City Property and such licenses, grants or rights of use are hereby affirmed.

D. Franchise Not Exclusive. The rights granted by this franchise agreement are not, and shall not be deemed to be, granted exclusively to the Company, and the City reserves the right to make or grant a franchise to any other person, firm, or corporation.

§ 2.3 Effective Date and Term.

A. Term. This franchise agreement shall take effect on _____, ____ and shall ~~—~~supersede any prior franchise agreements between~~grants to~~ the Company ~~by~~ and the City. This franchise shall terminate on _____, _____, unless extended by mutual consent.

B. Execution. The Company shall execute this franchise agreement and deliver five (5) executed originals to the City Manager prior to the City formally scheduling the City's grant of a franchise to the Company for a vote of the registered electors of the City. Within forty-five (45) days after approval of the City's grant of a franchise by vote of the registered electors of the City, the Mayor of the City and other necessary or proper officials of the City are hereby authorized and directed to sign this franchise agreement in the name of the City, and the City Clerk is hereby authorized and directed to attest to the same under seal of the City, and to do all things necessary for the delivery of this franchise agreement and for fully carrying out the grant of the franchise.

C. Condition Subsequent. Concurrently with this franchise agreement, the City and the Company have agreed to the terms of the Street Lighting Agreement. The Street

Lighting Agreement shall be adopted by the City Council of the City of Boulder within sixty (60) days of voter approval of the grant of the franchise. The Company shall signify its acceptance of the Street Lighting Agreement by executing the Street Lighting Agreement and delivering five (5) executed originals to the City Manager concurrently with its delivery of the executed originals of this franchise agreement. Failure to execute and deliver the Street Lighting Agreement to the City in accordance with this section shall render this franchise agreement void and of no further force and effect.

ARTICLE 3
CITY POLICE POWERS

§ 3.1 Police Powers. The City and the Company do not waive any of their rights under the statutes and Constitution of the State of Colorado and the United States, except as otherwise specifically set forth herein. The Company expressly acknowledges the City's right to adopt, from time to time, in addition to the provisions contained herein, such laws, including ordinances and regulations, as it may deem necessary in the exercise of its governmental powers. If the City considers making any substantive changes in its local codes or regulations that in the City's reasonable opinion will significantly impact the Company's operations in the City's Streets, public easements and Other City Property, it will make a good faith effort to advise the Company of such consideration; provided, however, that lack of notice shall not be justification for the Company's non-compliance with any applicable local requirements.

§ 3.2 Regulation of Streets, Public Easements and Other City Property. The Company expressly acknowledges the City's right to enforce regulations concerning the Company's access to or use of the Streets, public easements, and Other City Property, including requirements for permits.

§ 3.3 Compliance with Laws. The Company shall promptly and fully comply with all laws, regulations, permits and orders enacted or issued by the City and with all applicable federal, state and local laws, regulations, permits, and orders that relate to the terms and conditions of this franchise agreement or the City's grant of a franchise to the Company. This provision shall not be interpreted to allow the City to make a determination of whether the Company is in compliance with federal and state laws, regulations, permits and orders. The parties expressly agree that a determination of compliance with federal and state laws, regulations, permits and orders shall reside exclusively with the judicial or regulatory body having jurisdiction over the subject matter.

ARTICLE 4
FRANCHISE FEE

§ 4.1 Franchise Fee.

A. Fee. In partial consideration for the franchise, which provides for the Company's use of City Streets, public easements and Other City Property, which are valuable public properties acquired and maintained by the City at great expense to its Residents, and in

recognition that the grant to the Company of the use of City Streets, public easements and Other City Property is a valuable right, the Company shall pay the City a sum equal to three percent (3%) of all Gross Revenues. The Company shall collect this fee from a surcharge upon Residents who are customers of the Company.

B. Obligation in Lieu of Fee. In the event that the franchise fee specified herein is declared void for any reason by a court of competent jurisdiction, unless prohibited by law, the Company shall be obligated to pay the City, at the same times and in the same manner as provided in the~~is~~ franchise agreement, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as partial consideration for use of the City Streets, public easements and Other City Property. To the extent required by law, the Company shall collect the amounts agreed upon through a surcharge upon Utility Service provided to Residents, not including the City.

C. Changes in Utility Service Industries.

(1) The City and the Company recognize that utility service industries are the subject of restructuring initiatives by legislative and regulatory authorities, and are also experiencing other changes as a result of mergers, acquisitions, and reorganizations. Some of such initiatives and changes have or may have an adverse impact upon the franchise fee revenues provided for herein. In recognition of the length of the term of this franchise agreement, the Company agrees that in the event of any such initiatives or changes and to the extent permitted by law, upon receiving a written request from the City, the Company will cooperate with and assist the City in modifying this franchise agreement to assure that the City receives an amount in franchise fees or some other form of compensation that is the same amount of franchise fees that would have been paid to the City pursuant to this franchise agreement.

(2) The Company and the City recognize that many aspects of the gas and electric utility business are currently the subject of discussion, examination and inquiry by different segments of the industries, the PUC and the Colorado General Assembly and that these activities may ultimately result in fundamental changes in the way the Company conducts its business and meets its service obligations. In recognition of the present state of uncertainty respecting these matters, the Company and the City agree, upon the request of the other during the term of this franchise agreement, to meet with the other and discuss in good faith whether it would be appropriate, in view of developments of the kind referred to above during the term of this franchise agreement, to amend this franchise agreement or to enter into separate, mutually satisfactory arrangements to effect a proper accommodation of any such developments. However, nothing contained in this section shall be deemed to require either Party to consent to any amendment proposed by the other party.

D. Utility Service Provided to City. No franchise fee shall be charged to the City for Utility Service provided to the City for its own consumption, including street lighting service and traffic signal service.

§ 4.2 Remittance Of Franchise Fee.

A. Remittance Schedule. Franchise fee revenues shall be remitted by the Company to the City as directed by the City in monthly installments not more than thirty (30) days following the close of each month.

B. Correction of Franchise Fee Payments. In the event that either the City or the Company discovers that there has been an error in the calculation of the franchise fee payment to the City, it shall provide written notice to the other party within a reasonable time after discovering the error. If the party receiving written notice of error does not agree with the written notice of error, that party may challenge the written notice of error pursuant to Section 4.2.D of this franchise agreement; otherwise, the error shall be corrected in the next monthly payment. However, if the error results in an overpayment of the franchise fee to the City, and said overpayment is in excess of Five Thousand Dollars ($5,000.00), credit for the overpayment shall be spread over the same period of time during which the error occurred. All franchise fee underpayments shall be corrected in the next monthly payment, together with interest computed at the rate set by the PUC for customer security deposits held by the Company, from the date when due until the date paid. In no event shall either party be required to fund or refund any overpayment or underpayment made as a result of a Company error which occurred more than five (5) years prior to the discovery of the Company error.

C. Audit Of Franchise Fee Payments.

(1) Every three (3) years commencing at the end of the third year of this franchise agreement, the Company shall conduct an internal audit to investigate and determine the correctness of the franchise fee paid to the City. Such audit shall be limited to the previous three (3) calendar years. The Company shall provide a written report to the City Manager containing the audit findings regarding the franchise fee paid to the City for the previous three (3) calendar years.

(2) If the City disagrees with the results of the audit, and if the parties are not able to informally resolve their differences, the City may conduct its own audit at its own expense, and the Company shall cooperate fully, including but not necessarily limited to, providing the City's auditor with all information reasonably necessary to complete the audit.

(3) If the results of a City audit conducted pursuant to subsection C.(2) concludes that the Company has underpaid the City by two percent (2%) or more, in

addition to the obligation to pay such amounts to the City, the Company shall also pay all costs of the audit.

D. Fee Disputes. Either party may challenge any written notification of error as provided for in Section 4.2.B of this franchise agreement by filing a written notice to the other party within thirty (30) days of receipt of the written notification of error. The written notice shall contain a summary of the facts and reasons for the party's notice. The parties shall make good faith efforts to resolve any such notice of error by any reasonable means, including the sharing of relevant documents, before initiating any formal legal proceedings for the resolution of such error.

E. Reports. Upon written request by the City, but not more than once per year, the Company shall supply the City with reports, in such formats and providing such details as reasonably requested by the City, of all suppliers of utility service that utilize Company Facilities to sell or distribute utility service to Residents and the names and addresses of each such supplier.

§ 4.3 Franchise Fee Payment Not In Lieu of Permit or Other Fees. Payment of the franchise fee does not exempt the Company from any other lawful tax or fee imposed generally upon persons doing business within the City, including any fee for a revocable license, a right-of-way permit, a street closure permit, an excavation permit, a street cut permit, or other lawful permits hereafter required by the City, except that the franchise fee provided for herein shall be in lieu of any occupation or similar tax for the use of City Streets, public easements and Other City Property.

§ 4.4 Change of Franchise Fee.

A. Reporting. The Company shall report to the City, within sixty days, the execution or change of any franchise agreement under which a municipality receives a franchise fee greater than is provided for herein or in which the undergrounding fund percentage is greater than established in this Article.

B. Change of Fee. Once each year the City Council may, by ordinance, change the franchise fee and the undergrounding fund percentage established in Article 11, below, to that provided under any municipal franchise entered into by the Company in Colorado, after first giving thirty (30) days' written notice to the Company.

ARTICLE 5
ADMINISTRATION OF FRANCHISE

§ 5.1 City Designee. The City shall designate in writing to the Company an official having full power and authority to administer the franchise. The City may also designate one or more City representatives to act as the primary liaison with the Company as to particular matters addressed by this franchise agreement and shall provide the Company with the name and telephone

numbers of said City representatives. The City may change these designations by providing written notice to the Company. The City's designee shall have the right, at all reasonable times, to inspect any Company Facilities in City Streets, public easements and Other City Property.

§ 5.2 Company Designee. The Company shall designate a representative to act as the primary liaison with the City and shall provide the City with the name, address, and telephone number for the Company's representative under this franchise agreement. The Company may change its designation by providing written notice to the City. The City shall use this liaison to communicate with the Company regarding Utility Service and related service needs for City Facilities, unless it is appropriate for the City to communicate with another Company representative regarding a particular issue.

§ 5.3 Coordination of Work.

A. Information Exchange. The Company agrees to coordinate its activities in City Streets, public easements and Other City Property with the City. The City and the Company shall meet semi-annually upon the written request of the City designee to exchange their respective short-term and long-term forecasts and/or work plans for construction and other similar work which may affect City Streets, public easements, Other City Property, or City Facilities, including but not limited to any planned City street paving projects, transportation projects, utilities projects or other capital improvement projects, and to share information regarding anticipated projects which will require Relocation of Company Facilities in City Streets, public easements or Other City Property. In addition, the City and the Company shall exchange additional information with a view towards coordinating their respective activities in those areas where such coordination may prove beneficial and so that the City will be assured that all provisions of this franchise agreement, building and zoning codes, and air and water pollution regulations are complied with, and that aesthetic and other relevant planning principles have been given due consideration. Meetings shall be held at a greater frequency if either party deems it necessary.

B. Notice. In addition to the foregoing meetings, the Company agrees to provide sufficient notice to the City whenever the Company initiates plans to significantly upgrade its infrastructure, including without limitation the placement of utility poles or other Company Facilities in order to allow for City input and consultation on Company work plans prior to the time that said work plans are finalized so that the beneficial coordination described in A., above, may occur.

ARTICLE 6
SUPPLY, CONSTRUCTION, AND DESIGN

§ 6.1 Purpose. The Company acknowledges the critical nature of the municipal services performed or provided by the City to the Residents which require the Company to provide prompt and reliable Utility Service and to perform related services for City Facilities. The City

and the Company wish to provide for certain terms and conditions under which the Company will provide Utility Service and perform related services for the City in order to facilitate and enhance the operation of City Facilities. They also wish to provide for other processes and procedures related to the provision of Utility Service to the City.

§ 6.2 Supply. Subject to the jurisdiction of the PUC, the Company shall take all reasonable and necessary steps to provide a sufficient supply of gas and electricity to Residents.

§ 6.3 Service to City Facilities.

A. Transport Gas. To the extent the City is or elects to become a gas transport customer of the Company, the Company shall transport natural gas purchased by the City for use in City Facilities pursuant to separate contracts with the City.

B. Transport Electricity. To the extent the City is permitted by law to become and elects to become an electric transport customer of the Company, the Company shall transport electricity purchased by the City for use in City Facilities pursuant to separate contracts with the City.

§ 6.4 Restoration of Service.

A. Notification. The Company shall provide to the City daytime and nighttime telephone numbers of a designated Company representative from whom the City designee may obtain status information from the Company on a twenty-four (24) hour basis concerning interruptions of Utility Service in any part of the City.

B. Restoration. In the event the Company's gas system or electric system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore such systems to satisfactory service within the shortest practicable time, or provide a reasonable alternative to such system if the Company elects not to restore such system.

§ 6.5 Obligations Regarding Company Facilities.

A. Company Facilities. All Company Facilities within City Streets, public easements and Other City Property shall be maintained in good repair, appearance and condition.

B. Company Work within the City. All work within City Streets, public easements and Other City Property performed or caused to be performed by the Company shall be done:

(1) In a high-quality manner;
(2) In a timely and expeditious manner;
(3) In a manner which minimizes inconvenience to the public;

(4) In a cost-effective manner, which may include the use of qualified contractors;
(5) In accordance with all applicable laws, ordinances, and regulations; and
(6) In accordance with requirements set forth in the City's Code, Design and Construction Standards, and all applicable licenses, permits and written agreements between the parties.

C. No Interference With City Facilities. Subject to federal and state laws and regulations regarding vegetation management programs to which the Company is subject, Company Facilities shall not interfere with any City Facilities, or other City uses of the Streets, public easements or Other City Property. Company Facilities shall be installed and maintained in City Streets, public easements and Other City Property so as to minimize interference with other property, trees, and other improvements and natural features in and adjoining the Streets, public easements and Other City Property.

D. Permit and Inspection. The installation, renovation, and replacement of any Company Facilities in the City Streets, public easements or Other City Property by or on behalf of the Company shall be subject to permit, inspection and approval by the City. Such permitting, inspection and approval may include, without limitation, the following matters: location of Company Facilities, cutting and trimming of trees and shrubs, and disturbance of pavement, sidewalks, and surfaces of City Streets, public easements or Other City Property. The Company agrees to cooperate with the City in conducting inspections and shall promptly perform any remedial action lawfully required by the City pursuant to any such inspection.

E. Compliance. The Company, and all of its contractors and subcontractors, shall comply with the requirements of the Code, the Design and Construction Standards and all City laws, ordinances, regulations, permits, and standards, including without limitation, requirements of all building and zoning codes, and requirements regarding curb and pavement cuts, excavating, digging, and other construction activities. The Company shall assure that its contractors working in City Streets, public easements and Other City Property hold the necessary licenses and permits required by law, including City licenses to work in the public right-of-way.

F. Increase in Voltage. Unless otherwise provide by law, the Company shall reimburse the City for the cost of upgrading the electrical system or facility of any City building or facility that uses Utility Service where such upgrading is solely caused or occasioned by the Company's decision to increase the voltage of delivered electrical energy. This provision shall not apply to voltage increases requested by the City. The Company shall not be required to reimburse the City for costs caused by voltage increases if the voltage increases are requested by the City, if they are required by law, or if by lawful order the PUC determines that the Company shall not be responsible for the cost of upgrading the electrical system or facility of any City building or facility.

§ 6.6 Excavation and Construction. The Company shall be responsible for obtaining, paying for, and complying with all applicable permits including, but not limited to, right-of-way, excavation, street closure and street cut permits, in the manner required by the laws, ordinances, and regulations of the City. Although the Company shall be responsible for obtaining and complying with the terms of such permits when performing Relocations requested by the City under Section 6.8 of this franchise agreement and undergrounding requested by the City under Article 11 of this franchise agreement, the City will not require the Company to pay the fees charged for such permits

§ 6.7 Restoration. When the Company does any work in or affecting the City Streets, it shall, at its own expense, promptly remove therefrom any Company-placed obstructions and restore such City Streets or Other City Property to a condition that meets applicable City standards, including the Design and Construction Standards. If weather or other conditions do not permit the complete restoration required by this Section, the Company may with the approval of the City, temporarily restore the affected City Streets, public easements or Other City Property, provided that such temporary restoration is at the Company's sole expense and provided further that the Company promptly undertakes and completes the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Upon the request of the City, the Company shall restore the Streets, public easements or Other City Property to a better condition than existed before the work was undertaken, provided that the City shall be responsible for any additional costs of such restoration.

A. Restoration by City After Notice. If the Company fails to promptly restore the City Streets, public easements or Other City Property when there is no immediate public health and safety issue, upon giving fourteen (14) days written notice to the Company, the City may restore such City Streets, public easements or Other City Property or remove the Company-placed obstruction therefrom. The Company shall be responsible for the actual cost incurred by the City to restore such City Streets, public easements or Other City Property or to remove any Company-placed obstructions and shall reimburse the City within thirty (30) days of being billed for such work. In the course of its restoration of City Streets, public easements or Other City Property under this Section, the City shall not perform work on Company Facilities unless specifically authorized by the Company in writing on a project by project basis and subject to the terms and conditions agreed to in such authorization.

B. Restoration by City Without Notice. If the Company fails to promptly restore the City Streets, public easements or Other City Property as required by this Section, and if, in the reasonable discretion of the City immediate action is required for the protection of public health and safety, the City may restore such City Streets, public easements or Other City Property or remove the Company-placed obstruction therefrom. However, in the course of its restoration of City Streets, public easements or Other City Property under this sub-section, the City shall not perform work on Company Facilities unless specifically authorized by the Company in writing on a project by project basis and subject to the terms and conditions agreed to in such authorization.

§ 6.8 Relocation of Company Facilities.

A. Relocation Obligation. The Company shall Relocate any Company Facility in City Streets, public easements or Other City Property at no cost to the City whenever the City shall determine that such Relocation is necessary for the completion of any Public Project. If such Relocation of Company Facilities is necessary due to lack of space for Company Facilities within the Public Street, public easement or Other City Property after City Facilities are installed, then the Company shall be required to Relocate the Company Facilities at its own cost and expense, including the acquisition of any necessary real property right to accommodate such Relocated Company Facilities. For all Relocations, the Company and the City agree to cooperate on the location and Relocation of the Company Facilities in the City Streets, public easements or Other City Property in order to achieve Relocation in the most efficient and cost-effective manner possible. Notwithstanding the foregoing, once the Company has Relocated any Company Facility at the City's direction, if the City requests that the same Company Facility be Relocated within two years from the completion (as such completion is required by Section 6.8.F., below) of the first Relocation, the subsequent Relocation shall not be at the Company's expense. Nothing provided herein shall prevent the Company from obtaining reimbursement of its Relocation costs from third parties.

B. Relocation from Company Property.

(1) Nothing herein contained shall be construed to require a Relocation of any Company Facilities from property (a) owned by the Company in fee; (b) in which the Company has a private easement; or (c) in which the Company has another type of privately-held property right. In the event of a conflict between the property interests of the City and the property interests of the Company, the parties agree that principles of Colorado state property law shall control.

(2) Notwithstanding the requirements of Section 6.8.A., above, if Company Facilities are located within a public easement identified on a plat as "Public Utilities," "Utilities," or words of similar meaning or intent and said easement does not contain any City utilities, the Company shall not be responsible for the cost of Relocating Company Facilities from such easement. However, if (a) the City determines that the Relocation of Company Facilities is necessary for the completion of a Public Project; and (b) if the City is of the opinion that the originally intended purpose of such easement included the use contemplated by the Public Project even though City utilities are not presently located in such easement, then the City and the Company shall meet to discuss the originally intended purpose of such easement and, based on that intended purpose, shall determine at that time whether the City or the Company or both shall pay to Relocate the Company Facilities. The parties agree that principles of Colorado state property law shall control in determining the intended purpose of the easement.

C. Private Projects. Notwithstanding anything to the contrary herein, the Company shall not be responsible for the expenses of any Relocation required by Private Projects, and the Company has the right to require the payment of estimated Relocation expenses from the affected party or parties before undertaking such Relocation.

D. Relocation Performance. The Relocations set forth in Section 6.8.A of this franchise agreement shall be completed within a reasonable time, not to exceed ninety (90) days from the later of the date on which the City designee requests in writing that the Relocation commence, or the date when the Company is provided all Supporting Documentation. The City shall provide sufficient advance notice to the Company to provide the Company at least the ninety- (90-) day notice period set forth above, in order to allow the Company adequate time to comply with all applicable City ~~c~~Code and permit requirements. Subject to Section 6.8.E, below, the Company shall be entitled to an extension of time to complete a Relocation where the Company's performance was delayed due to Force Majeure or the failure of the City to provide Supporting Documentation. The Company has the burden of presenting evidence to reasonably demonstrate the basis for the delay. Upon request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

E. City Revision of Supporting Documentation. The parties acknowledge that in order to prepare Supporting Documentation, the City may be required to rely upon information from the Company regarding the type and location of Company Facilities in the area. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding facility Relocation shall be deemed good cause for a reasonable extension of time to complete the Relocation under the~~e~~is franchise agreement unless the information provided by the Company was the cause of the City's need to revise the Supporting Documentation. Revisions necessitated by errors in information provided to the Company by the City shall be excluded from Company-caused revisions of the Supporting Documentation.

F. Completion. Each such Relocation shall be deemed complete only when the Company actually Relocates the Company Facilities, restores the Relocation site in accordance with Section 6.7 of this franchise agreement or as otherwise agreed with the City, and removes from the site or properly abandons on site all unused facilities, equipment, material and other impediments.

G. Scope of Obligation. The Relocation obligations set forth in this Section 6.8 shall only apply to Company Facilities located in City Streets, public easements or Other City Property.

H. Underground Relocation. Underground facilities shall be Relocated underground. Above-ground facilities shall be placed above ground unless the Company is paid for the

incremental amount by which the underground cost would exceed the above ground cost of Relocation, or the City requests that such additional incremental cost be paid out of available funds under Article 11 of this franchise agreement.

I. Coordination.

(1) When requested in writing by the City or the Company, representatives of the City and the Company shall meet to share information regarding anticipated projects which will require Relocation of Company Facilities in City Streets, public easements or Other City Property. Such meetings shall be for the purpose of minimizing conflicts where possible and to facilitate coordination with any timetable established by the City for any Public Project.

(2) The City shall make reasonable best efforts to provide the Company with two (2) years advance notice of any planned street repaving. The Company shall make reasonable best efforts to complete any necessary or anticipated repairs or upgrades to Company Facilities that are located underneath the Streets within the two-year period if practicable.

J. Proposed Alternatives or Modifications. Upon receipt of written notice of a required Relocation, the Company may propose an alternative to or modification of the Public Project requiring the Relocation in an effort to mitigate or avoid the impact of the required Relocation of Company Facilities. The City shall in good faith review the proposed alternative or modification. The City's acceptance of the proposed alternative or modification shall be at the sole discretion of the City. In the event the City accepts the proposed alternative or modification, the Company agrees to promptly compensate the City for all additional costs, expenses or delay that the City reasonably determines resulted from the implementation of the proposed alternative.

§ 6.9 Service To New Areas**.** If the territorial boundaries of the City are expanded during the term of the~~is~~ franchise agreement, the Company shall, to the extent permitted by law, extend service to Residents in the expanded area at the earliest practicable time if the expanded area is within the Company's PUC-certificated service territory.

§ 6.10 City Not Required to Advance Funds. If permitted pursuant to the Company's Tariffs, u~~U~~pon receipt of the City's authorization for billing and construction, the Company shall install Company Facilities to provide Utility Service to the City as a customer, without requiring the City to advance funds prior to construction; t~~. T~~he City shall pay for the installation of Company Facilities once completed in accordance with Company Tariffs.

§ 6.11 Technological Improvements. The Company shall use its best efforts to incorporate, as soon as practicable, technological advances in its equipment and service within the City when such advances are technically and economically feasible, and are safe and beneficial to the City and its Residents.

ARTICLE 7
RELIABILITY

§ 7.1 Reliability. The Company shall install, operate, maintain, relocate and replace Company Facilities efficiently and economically and in accordance with the high standards and best systems, methods, and skills consistent with the provision of adequate, safe, and reliable Utility Service.

§ 7.2 Franchise Performance Obligations. The Company recognizes that, as part of its obligations and commitments under this franchise agreement, the Company shall carry out each of its performance obligations in a timely, expeditious, efficient, economical, and workmanlike manner.

§ 7.3 Reliability Reports. Upon written request, the Company shall provide the City with a report regarding the reliability of Company Facilities and Utility Service.

ARTICLE 8
COMPANY PERFORMANCE OBLIGATIONS

§ 8.1 New or Modified Service to City Facilities. In providing new or modified Utility Service to City Facilities, the Company agrees to perform as follows:

A. Performance. The Company shall complete each project requested by the City within a reasonable time. The parties agree that a reasonable time shall not exceed one hundred eighty (180) days from the date upon which the City designee makes a written request and provides the required Supporting Documentation for all Company Facilities other than Traffic Facilities as described in this section. The Company shall notify the City within ten (10) days of receipt of the request if the Supporting Documentation is insufficient to complete the project. The Company shall be entitled to an extension of time to complete a project where the Company's performance was delayed due to Force Majeure. Upon request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

B. City Revision of Supporting Documentation. In order to prepare the Supporting Documentation, the City may be required to rely upon information from the Company regarding the type and location of Company Facilities in the area. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding new or modified service to City facilities shall be deemed good cause for a reasonable extension of time to complete its performance, unless the information provided by the Company was the cause of the City's need to revise the Supporting Documentation.

C. Completion/Restoration. Each such project shall be complete only when the Company actually provides the service installation or modification required, restores the project site in accordance with Section 6.7 of the~~e~~is franchise agreement or as otherwise agreed upon with the City and removes from the site or properly abandons on site any unused facilities, equipment, material and other impediments.

§ 8.2 Adjustments to Company Facilities. The Company shall perform adjustments to Company Facilities, including raising or lowering manholes and other appurtenances in Streets, public easements and Other City Property, to accommodate City maintenance, repair and paving operations at no cost to the City. At the City's request, the Company shall provide manhole extension rings to the City and/or City's contractor for installation directly behind paving operations whenever this method for adjustment is deemed appropriate by the Company. In providing such adjustments to Company Facilities, the Company agrees to perform as follows:

A. Performance. The Company shall complete each requested adjustment within a reasonable time, not to exceed thirty (30) days from the date upon which the City makes a written request and provides to the Company all information reasonably necessary to perform the adjustment. The Company shall be entitled to an extension of time to complete an adjustment where the Company's performance was delayed due to Force Majeure. Upon request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

B. Completion/Restoration. Each such adjustment shall be complete only when the Company actually adjusts the Company Facility to accommodate the City operations in accordance with City instructions.

C. Coordination. As requested by the City or the Company, representatives of the City and the Company shall meet regarding anticipated street maintenance operations which will require such adjustments to Company Facilities in Streets, public easements or Other City Property. Such meetings shall be for the purpose of coordinating and facilitating performance under this Section.

§ 8.3 Third Party Damage Recovery.

A. Damage to Company Interests. If any individual or entity damages any Company Facilities that the Company is responsible to repair or replace, then, to the extent permitted by law, the City will notify the Company within forty-five (45) days after the City has knowledge of any such incident and will provide to the Company within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

B. Damage to City Interests. If any individual or entity damages any Company Facilities for which the City is obligated to reimburse the Company for the cost of the repair or replacement of the damaged facility, to the extent permitted by law the Company will notify the

City within forty-five (45) days after the Company has knowledge of any such incident and will provide to the City within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

C. Meeting. The Company and the City agree to meet periodically, upon written request of either party, for the purpose of developing, implementing, reviewing, improving and/or modifying mutually beneficial procedures and methods for the efficient gathering and transmittal of information useful in recovery efforts against third parties for damaging Company Facilities.

ARTICLE 9
BILLING AND PAYMENT

§9.1 Billing for Utility Services.

A. Monthly Billing. Unless otherwise provided in its ~~t~~Tariffs, the rules and regulations of the PUC, or the Public Utilities Law, the Company shall render bills monthly to the offices of the City for Utility Service and other related services for which the Company is entitled to payment and for which the City has authorized payment.

B. Address for Billing. Billings for Utility Service rendered during the preceding month, except for billings pursuant to the Street Lighting Agreement which shall be governed by the terms of the Street Lighting Agreement, shall be sent to the person(s) designated by the City and payment for same shall be made pursuant to the Tariffs**.** Billings for services other than Utility Service rendered during the preceding months, shall be sent to the person designated by the City to receive such bill and payment for same shall be made within thirty (30) days of receipt.

C. City Requests for Information. Unless otherwise requested by the City, the Company shall provide all billings and any underlying support documentation reasonably requested by the City in an editable and manipulable electronic format that is acceptable to the Company and the City.

D. Annual Meetings. The Company agrees to meet with the City designee at least annually for the purpose of developing, implementing, reviewing, and/or modifying mutually beneficial and acceptable billing procedures, methods, and formats which may include, without limitation, electronic billing and upgrades or beneficial alternatives to the Company's current most advanced billing technology, for the efficient and cost effective rendering and processing of such billings submitted by the Company to the City.

§ 9.2 Payment to City. If the City determines after written notice to the Company that the Company is liable to the City for payments, costs, expenses or damages of any nature, then subject to the Company's right to challenge such determination, the City may deduct all monies

due and owing the City from any other amounts currently due and owing the Company. Upon receipt of such written notice, the Company may request a meeting between the Company's designee and a designee of the City Manager to discuss such determination. The City agrees to attend such a meeting. As an alternative to such deduction, the City may bill the Company for such assessment(s), in which case the Company shall pay each such bill within thirty (30) days of the date of receipt of such bill. If the Company challenges the City determination of liability, the City shall make such payments pursuant to the Company's ~~t~~Tariffs until the challenge has been finally resolved.

ARTICLE 10
USE OF COMPANY ELECTRIC DISTRIBUTION POLES

§ 10.1 City Use of Company Electric Distribution Poles. The City shall be permitted to make use of Company electric distribution poles in the City at no cost to the City for the placement of City equipment or facilities necessary to serve a legitimate police, fire, emergency, public safety or traffic control purpose, or for any other purpose consistent with the City's police powers. The City will notify the Company in advance and in writing or by electronic mail of its intent to use Company electric distribution poles and the nature of such use unless it is impracticable to provide such advance notice because of emergency circumstances, in which event the City will provide such notice as soon as practicable. The City shall be responsible for costs associated with modifications to Company electric distribution poles to accommodate the City's use of such Company electric distribution poles and for any electricity used. No such use of Company electric distribution poles shall be ~~required~~ permitted if it would constitute a safety hazard or would interfere with the Company's use of Company electric distribution poles. Any such City use must comply with the National Electric Safety Code and all other applicable laws, rules and regulations.

§10.2 Existing Signs. The City shall not be required to remove its existing signs, equipment or facilities from Company electric distribution poles, unless the Company determines after consultation with the City that attachment of specific equipment or facilities on specific poles creates a safety hazard or interferes with the Company's use of its those poles. If after such determination the City is required to remove its existing equipment or facilities from those poles, the Company shall allow the City ten (10) days from the date of written notice, including by electronic mail, within which to remove its equipment or facilities. If the City fails to remove the equipment or facilities, the Company may perform the removal at the City's sole expense.

§10.3 Third Party Use of Company Facilities. If requested in writing by the City, the Company may allow other companies who hold franchises, or otherwise have obtained consent from the City to use the Streets, public easements or Other City Property to utilize Company electric distribution poles for the placement of their facilities upon approval by the Company and agreement upon reasonable terms and conditions including payment of fees established by the Company. No such use shall be permitted if it would constitute a safety hazard or would interfere with the Company's use of Company Facilities. The Company shall not be required to

permit third party use of Company distribution facilities for the provision of utility service except as otherwise required by law.

§10.4 City Use of Company Transmission Rights-of-Way. The Company shall offer to grant to the City use of transmission rights-of-way which it now, or in the future, owns in fee within the City for trails, parks and open space on terms comparable to those offered to other municipalities; provided, however, that the Company shall not be required to make such an offer in any circumstance where such offer would constitute a safety hazard or would interfere with the Company's use of the transmission right-of-way. In order to exercise this right, the City must make specific written request to the Company for any such use

§ 10.5 Emergencies. Upon written request, the Company shall assist the City in developing an emergency management plan. In the case of any emergency or disaster, the Company shall, upon verbal request of the City, make available Company Facilities for emergency use during the emergency or the disaster period. Such use of Company Facilities shall be of a limited duration and will only be allowed if the use does not interfere with the Company's own use of Company Facilities.

ARTICLE 11
UNDERGROUNDING OF OVERHEAD FACILITIES

§ 11.1 Undergrounding of Electrical Lines. The Company shall place all newly constructed electrical distribution lines in newly developed areas underground in accordance with applicable laws, regulations and orders.

§ 11.2 Underground Conversion at Expense of Company.

A. Underground Fund. The Company shall budget and allocate an annual amount, equivalent to one percent (1%) of the preceding year's Electric Gross Revenues (the "Fund"), for the purpose of undergrounding existing overhead distribution facilities in the City, as may be requested by the City. Except as provided in Section 6.8.H, no ~~r~~Relocation expenses which the Company would be required to expend pursuant to Article 6 of this franchise agreement shall be charged to this Fund.

B. Unexpended Portion and Advances. Any unexpended portion of the Fund shall be carried over to succeeding years and, in addition, upon request by the City, the Company agrees to expend amounts anticipated to be available under the preceding paragraph for up to three (3) years in advance. Any amounts so expended shall be credited against amounts to be expended in succeeding years. Any Fund balance accumulated under any prior franchise agreement shall be carried over to this franchise agreement. The City shall have no vested interest in the Fund and any monies in the Fund not expended at the expiration or termination of this franchise agreement shall remain the property of the Company. At the expiration or termination of this franchise

agreement, the Company shall not be required to underground any existing overhead facilities under this Article, but may do so in its sole discretion.

C. System-wide Undergrounding. If, during the term of this franchise agreement, the Company should receive authority from the PUC to undertake a system-wide program or programs of undergrounding its electric distribution facilities, the Company will budget and allocate to the program of undergrounding in the City such amount as may be determined and approved by the PUC, but in no case shall such amount be less than the one percent (1%) of annual Electric Gross Revenues provided above.

D. City Requirement to Underground. In addition to the provisions of this Article, the City may require any above ground Company Facilities to be moved underground at the City's expense.

§ 11.3 Undergrounding Performance. Upon receipt of a written request from the City, the Company shall, to the extent of monies available in the Fund and as otherwise provided herein, underground Company Facilities in accordance with the procedures set forth in this Section.

A. Estimates. Promptly upon receipt of an undergrounding request from the City and the Supporting Documentation necessary for the Company to design the undergrounding project, the Company shall prepare a detailed, good faith cost estimate of the anticipated actual cost of the requested project for the City to review and, if acceptable to the City, the City will issue a project authorization. The Company shall notify the City within ten (10) days of receipt of the request if the Supporting Documentation is insufficient to prepare the cost estimate for the project. The City and the Company agree to meet during the period when the Company is preparing its estimate to discuss all aspects of the project toward the end of enabling the Company to prepare an accurate cost estimate. At the City's request, the Company will provide all documentation that forms the basis of the estimate. The Company will not proceed with any requested project until the City has provided a written acceptance of the Company's estimate and authorized the Company to proceed with the project. The Company's cost estimate shall be void unless accepted by the City within sixty (60) days after it has been transmitted to the City.

B. Performance. The Company shall have a reasonable time to design and complete each undergrounding project requested by the City, which may be fewer than but shall not exceed two hundred forty (240) days after it receives a written request from the City designee and all Supporting Documentation. The City shall be permitted a sixty (60) day period in which to review the Company's estimate and designs , which shall toll[1] the running of the two hundred forty- (240-) day period. The City and the Company shall agree to a longer completion date when required for large scale undergrounding projects. The Company shall be entitled to an extension of time to complete each undergrounding project where the Company's performance was delayed due to a Force Majeure

[1] To "toll" means to suspend or stop temporarily.

condition. Upon written request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

C. City Revision of Supporting Documentation. In order to prepare the Supporting Documentation, the City may rely upon information from the Company regarding the type and location of Company Facilities in the area. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding an undergrounding project shall be deemed good cause for a reasonable extension of time to complete the undergrounding project under the~~is~~ franchise agreement, unless the information provided by the Company was not the cause of the City's need to revise the Supporting Documentation.

D. Project Management. Upon the City's request that the Company underground distribution facilities using the Fund, the Company and the City shall each assign a project manager to represent it during the undergrounding project. The City's project manager shall be identified at the time it submits its Supporting Documentation for the project. The Company's project manager shall be identified during the design phase of the project. The project managers, along with identified support staff, shall meet bi-weekly during construction, unless the parties agree otherwise, to review the progress of the undergrounding project, project costs, changes and projected completion dates and cost. The project managers shall be accessible throughout the duration of the undergrounding project.

E. Completion/Restoration. Each undergrounding project shall be deemed complete only when the Company actually undergrounds the designated Company Facilities, restores the undergrounding site in accordance with Section 6.7 of this franchise agreement or as otherwise agreed with the City and removes from the site any unused overhead or ground-mounted facilities, equipment, material and other impediments and properly abandons on site any unused underground facilities, equipment, material and other impediments. "Unused" for the purposes of this section shall mean the Company is no longer using the facilities in question and has no plans to use the facilities in the foreseeable future.

F. Report of Actual Costs. Upon completion of each undergrounding project, the Company shall submit to the City a detailed report of the Company's actual cost to complete the project and the Company shall reconcile this total actual cost with the accepted cost estimate. The report shall be provided within one hundred twenty (120) days after completion of the undergrounding project.

G. Audit of Underground Projects. The City may require that the Company undertake an independent audit of up to two (2) undergrounding projects in any calendar year. The cost of any such independent audit shall reduce the amount of the Fund. The Company shall cooperate fully with any audit and the independent auditor shall prepare

and provide to the City and the Company a final audit report showing the actual costs associated with completion of the project. If a project audit is required by the City, only those actual project costs confirmed and verified by the independent auditor as commercially reasonable and commercially necessary to complete the project shall be charged to the Fund balance.

§ 11.4 Audit of Underground Fund. Upon written request of the City, but no more frequently than once every three (3) years, the Company shall, at its sole cost and expense, audit the Fund for the City. Such audits shall be limited to the previous three (3) calendar years. The Company shall provide the audit report to the City and shall reconcile the Fund consistent with the findings contained in the audit report. If the City has concerns about any material information contained in the audit, the parties shall meet and make good faith attempts to resolve any outstanding issues. If the matter cannot be resolved to the City's reasonable satisfaction, the Company shall, at its expense, cause an independent auditor to investigate and determine the correctness of the charges to the Fund. The independent auditor shall provide a written report containing its findings to the City and the Company. Only those costs confirmed and verified by the independent auditor as commercially reasonable and commercially necessary to complete the undergrounding projects requested by the City shall be charged to the Fund. The Company shall reconcile the balance of the Fund consistent with the findings contained in the independent auditor's written report.

§ 11.5 Cooperation with Other Utilities. When the Company is undertaking an undergrounding project, the City and the Company shall coordinate with other utilities or companies that have their facilities above ground to attempt to have all facilities undergrounded as part of the same project. When other utilities or companies are placing their facilities underground, to the extent the Company has received prior notification, the Company shall cooperate with these utilities and companies and undertake to underground Company facilities as part of the same project where financially, technically and operationally feasible. The Company shall not be required to pay for the cost of undergrounding the facilities of other companies.

§ 11.6 Planning and Coordination of Undergrounding Projects. The City and the Company agree to meet, as required, to review planned future undergrounding projects. The purpose of such meetings shall be to further cooperation between the City and the Company to achieve the orderly undergrounding of Company Facilities. At such meetings, the parties shall review future undergrounding requests, including but not limited to, conversions, known or anticipated Public Projects, known or anticipated Private Projects, known or anticipated Company projects and the Company's plans for additional undergrounding.

ARTICLE 12
PURCHASE OR CONDEMNATION

§12.1 City's Right to Purchase or Condemn. The right of the City to construct, purchase or condemn any public utility works or ways and the Company's rights in connection therewith, as provided by the Colorado Constitution and statutes, are hereby expressly reserved and each party

shall have the rights provided by law relating to condemnation; provided, however, no award shall be made for the value of the franchise or public rights-of-way.

ARTICLE 13
MUNICIPALLY-PRODUCED UTILITY SERVICE

§ 13.1 City Reservation. The City expressly reserves the right to engage in the production of utility service to the extent permitted by law. The Company agrees to negotiate in good faith long-term contracts to purchase City-generated power made available for sale, consistent with PUC requirements. The Company further agrees to offer transmission and delivery services to the City that are required by judicial, statutory and/or regulatory directives and that are comparable to the services offered to any other customer with similar generation facilities.

§ 13.2 Franchise Not to Limit City's Rights. Nothing in this franchise agreement prohibits the City from becoming an aggregator of utility service or from selling utility service to customers should it be permissible under law.

ARTICLE 14
ENVIRONMENT AND CONSERVATION

§ 14.1 Environmental Leadership. The City and the Company agree that sustainable development, environmental excellence and innovation shall form the foundation of the Utility Service provided by the Company under this franchise agreement. The Company is committed to sustainable development and energy conservation for the term of this franchise agreement by continuing to provide leadership, support and assistance, in collaboration with the City, to identify, develop, implement and maintain new and creative programs. The Company agrees to continue to actively pursue reduction of carbon emissions attributable to its electric generation facilities with a rigorous combination of Energy Conservation and Energy Efficiency measures, Clean Energy measures, and promoting and implementing the use of Renewable Energy Resources on both a distributed and centralized basis. The Company shall strive to conduct its operations in a way that avoids adverse environmental impacts where feasible, subject to the ongoing regulatory oversight of the Colorado PUC and other state and federal regulatory agencies. The Company shall continue to cost-effectively monitor its operations to mitigate environmental impacts; shall meet or exceed the requirements of environmental laws, regulations and permits; shall invest in cost-effective, environmentally-sound technologies; shall consider environmental issues in its planning and decision-making; and shall support environmental research and development projects and partnerships in its service territory through various means, including but not limited to corporate giving and employee involvement. The Company shall continue to explore ways to reduce water consumption at its facilities and to use recycled water, where feasible. The Company shall continue to work with the U.S. Fish and Wildlife Service to develop and implement avian protection plans to reduce electrocution and collision risks by eagles, raptors and other migratory birds with transmission and distribution lines. On or before December 1 of each year, the Company shall provide the City with a written report describing its progress in carbon reduction and other environmental efforts, including the actions

the Company has taken or plans to take to reduce greenhouse gas emissions. The parties shall meet at a mutually convenient time and place for a discussion of such. In meeting its obligation under this section, the Company is not precluded from providing existing internal and external reports that may be used for other reporting requirements.

§ 14.2 Energy Conservation and Efficiency.

A. Energy Efficiency Programs. The City and the Company recognize and agree that Energy Conservation and Energy Efficiency programs offer opportunities for the efficient use of energy and reduction of customers' energy consumption and costs. The City and the Company further recognize that creative and effective Energy Conservation solutions are crucial to sustainable development. The Company recognizes and shares the City's desire to advance the implementation of cost-effective Energy Conservation and Energy Efficiency programs that direct opportunities to Residents to manage more efficiently their use of energy and, thereby, create the opportunity to reduce their energy consumption, costs, and impact on the environment in order to assist the City in meeting its Climate Action Plan goals. The Company shall seek authority from the PUC to develop and offer Energy Efficiency programs to its customers. Subject to PUC approval, the Company commits to offer programs that attempt to capture market opportunities for cost-effective Energy Efficiency improvements such as municipal specific programs that provide cash rebates for efficient lighting, energy design programs to assist architects and engineers to incorporate energy efficiency in new construction projects, and recommissioning programs to analyze existing systems to optimize performance and conserve energy. Subject to PUC approval, the Company commits to offer Demand Side Management (DSM) programs and succeeding programs, which provide customers the opportunity to reduce their energy usage. In doing so, the Company recognizes the importance of (i) implementing cost-effective programs, the benefits of which could otherwise be lost if not pursued in a timely fashion and (ii) developing cost-effective energy management programs for the various classes of the Company's customers, including low-income Residents. The Company shall advise the City and City Residents of the availability of assistance that the Company makes available for investments in Energy Conservation through its account managers, area manager, newspaper advertisements, bill inserts and Energy Efficiency workshops and by maintaining information of these programs on the Company's website. Further, the Company shall designate a conservation representative to act as the primary liaison with the City who will provide the City with information on how the City may take advantage of reducing energy consumption in City Facilities and how the City may participate in Energy Conservation and Energy Efficiency programs sponsored by the Company.

B. Renewable Energy Resource Programs. The Company agrees to consider Renewable Energy Resource programs as an integral part of the Company's provision of Utility Service to its customers. The Company agrees to comply with the mandates of United States and Colorado law concerning Energy Efficiency and clean energy technologies. Unless otherwise required by law, the Company shall obtain electricity

from renewable sources equivalent to at least thirty percent (30%) of retail sales by 2020. The Company will promote a significant role for Renewable Energy Resources in its future resource acquisitions, consistent with acceptable rate impacts, legislative requirements, and applicable provisions of law.

C. Promotion of Renewable Resource Programs. The Company will continue to promote existing or new programs in its service territory to comply with applicable provisions of law relating to renewable resources. The City actively supports the Company's compliance with the renewable resource standards required by law. The Company agrees that, in complying with this provision, it shall take the following steps to encourage participation by the City and the Company's customers in available renewable resource programs:

(1) Notify the City regarding all eligible renewable resource programs;

(2) Provide the City with support regarding how the City may participate in eligible renewable resource programs;

(3) Advise Residents regarding participation in eligible renewable resource programs.

Notwithstanding the foregoing, to the extent that any Company assistance is needed to support Renewable Energy Resource Programs that are solely for the benefit of Company customers located within the City, the Company retains the sole discretion as to whether to incur such costs.

§ 14.3 Continuing Commitment. It is the express intention of the City and the Company that the collaborative effort provided for in this ~~a~~Article continue for the entire term of this franchise agreement. The City and the Company also recognize, however, that the programs identified in this ~~a~~Article may be for a limited duration and that the regulations and technologies associated with Energy Efficiency and Energy Conservation are subject to change. Given this variability, the Company agrees to maintain its commitment to sustainable development, Energy Efficiency and Energy Conservation and renewable resource energy programs for the term of this franchise agreement by continuing to provide leadership, support and assistance, in collaboration with the City, to identify, develop, implement and maintain new and creative programs similar to the programs identified in this franchise agreement in order to assist the City achieve its environmental and Climate Action Plan goals.

§ 14.4 PUC Approval. The Company shall not be required to invest in technologies or to incur costs for the implementation and maintenance of programs without having received approval from the PUC that enables the Company to recover the cost of that investment or those programs through the ratemaking process.

ARTICLE 15
TRANSFER OF FRANCHISE

§ 15.1 Consent of City Required. The Company shall not transfer or assign any rights under ~~the~~ this franchise agreement to an unaffiliated third party, unless the City approves such transfer or assignment in writing. Approval of the transfer or assignment shall not be unreasonably withheld.

§ 15.2 Transfer Fee. In order that the City may share in the value this franchise agreement adds to the Company's operations, any transfer or assignment of rights granted under this franchise agreement requiring City approval, as set forth herein, shall be subject to the condition that the Company shall promptly pay to the City a transfer fee in an amount equal to the proportion of the City's then-population provided Utility Service by the Company to the then-population of the City and County of Denver provided Utility Service by the Company multiplied by One Million Dollars ($1,000,000.00). Except as otherwise required by law, such transfer fee shall not be recovered from a surcharge placed only on the rates of Residents.

ARTICLE 16
CONTINUATION OF UTILITY SERVICE

§ 16.1 Continuation of Utility Service. In the event this franchise agreement is not renewed at the expiration of its term or is terminated for any reason, and the City has not provided for alternative utility service, the Company shall have no right to remove any Company Facilities pending resolution of the disposition of the system unless otherwise ordered by the PUC, and shall continue to provide Utility Service within the City until the City arranges for utility service from another provider. The Company further agrees that it will not withhold any temporary Utility Services necessary to protect the public. The City agrees that in the circumstances of this Article, the Company shall be entitled to monetary compensation as provided in the Company's ~~t~~Tariffs ~~on file with the Public Utilities Commission~~ and the Company shall be entitled to collect from Residents and shall be obligated to pay the City, at the same times and in the same manner as provided in the~~i~~s franchise agreement, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the City's Streets, public easements and Other City Property. Only upon receipt of written notice from the City stating that the City has adequate alternative ~~U~~utility ~~S~~service for Residents and upon order of the PUC shall the Company be allowed to discontinue the provision of Utility Service to the City and its Residents. This provision shall survive the termination of this franchise agreement.

ARTICLE 17
INDEMNIFICATION AND IMMUNITY

§ 17.1 City Held Harmless. The Company shall indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of or arising from the grant of this franchise agreement, the exercise by the Company of the related rights, or from the operations of the Company within the City, and shall pay the costs

of defense plus reasonable attorneys' fees. The City shall (a) give prompt written notice to the Company of any claim, demand or lien with respect to which the City seeks indemnification hereunder and (b) unless in the City's judgment a conflict of interest may exist between the City and the Company with respect to such claim, demand or lien, shall permit the Company to assume the defense of such claim, demand, or lien with counsel satisfactory to the City. If such defense is assumed by the Company, the Company shall not be subject to any liability for any settlement made without its consent. If such defense is not assumed by the Company or if the City determines that a conflict of interest exists, the parties reserve all rights to seek all remedies available in this franchise agreement against each other. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or intentional act or failure to act of the City or any of its officers or employees.

§17.2 Immunity. Nothing in this Section or any other provision of this franchise agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the City may have under the Colorado Governmental Immunity Act (§ 4-10-101, C.R.S., *et. seq*.) or of any other defenses, immunities, or limitations of liability available to the City by law.

ARTICLE 18
BREACH

§18.1 Non-Contestability. The City and the Company agree to take all reasonable and necessary actions to assure that the terms of this franchise agreement are performed and neither will take any legal action to secure modification of this franchise agreement. However, the Company reserves the right to seek a change before the PUC in its ~~t~~Tariffs, including but not limited to the rates, charges, terms, and conditions of providing Utility Service to the City and its Residents and the City retains all rights it may have to intervene and participate in any such proceedings. The City, similarly, reserves the right to amend the Code and the Design and Construction Standards.

§ 18.2 Breach.

A. Notice/Cure/Remedies. Except as otherwise provided in this franchise agreement, if a party (the "breaching party") to this franchise agreement fails or refuses to perform any of the terms or conditions of this franchise agreement (a "breach"), the other party (the "non-breaching party") may provide written notice to the breaching party of such breach. Upon receipt of such notice, the breaching party shall be given a reasonable time, not to exceed thirty (30) days, in which to remedy the breach.

B. Termination of Franchise by City. In addition to the foregoing remedies, if the Company fails or refuses to perform any material term or condition of this franchise agreement (a "material breach"), the City may provide written notice to the Company of such material breach. Upon receipt of such notice, the Company shall be given a reasonable time, not to exceed ninety (90) days, within which to remedy the material

breach. If the Company does not remedy the material breach within the time allowed in the notice, the City may, at its sole option, terminate the franchise and this franchise agreement**.** This remedy shall be in addition to the City's right to exercise any of the remedies provided for elsewhere in this franchise agreement. Upon such termination, the Company shall continue to provide Utility Service to the City and its Residents until the City makes alternative arrangements for such service and until otherwise ordered by the PUC, and the Company shall be entitled to collect from Residents and shall be obligated to pay the City, at the same times and in the same manner as provided in this franchise agreement, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the City Streets, public easements and Other City Property. This provision shall survive the termination of the franchise and this franchise agreement.

C. Company Shall Not Terminate Franchise. In no event ~~does~~ shall the Company have the right to terminate this franchise agreement.

D. No Limitation. Except as provided herein, nothing in this franchise agreement shall limit or restrict any legal rights or remedies that either party may possess arising from any alleged breach of this franchise agreement.

ARTICLE 19
AMENDMENTS

§ 19.1 Proposed Amendments. At any time during the term of this franchise agreement, the City or the Company may propose amendments to this franchise agreement by giving thirty- (30-) days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). However, nothing contained in this section shall be deemed to require either Party to consent to any amendment proposed by the other Party.

§ 19.2 Effective Amendments. No alterations, amendments or modifications to this franchise agreement shall be valid unless executed by an instrument in writing by the parties, adopted with the same formality used in adopting this franchise agreement, to the extent required by law. Neither this franchise agreement, nor any term hereof, may be changed, modified or abandoned, in whole or in part, except by an instrument in writing, and no subsequent oral agreement shall have any validity whatsoever.

ARTICLE 20
EQUAL OPPORTUNITY

§ 20.1 Economic Development. The Company is committed to the principle of stimulating, cultivating and strengthening the participation and representation of persons of color, women and members of other under-represented groups within the Company and in the local business

community. The Company believes that increased participation and representation of under-represented groups will lead to mutual and sustainable benefits for the local economy. The Company is also committed to the principle that the success and economic well-being of the Company is closely tied to the economic strength and vitality of the diverse communities and people it serves. The Company believes that contributing to the development of a viable and sustainable economic base among all Company customers is in the best interests of the Company and its shareholders.

§ 20.2 Employment.

A. Programs. The Company is committed to undertaking programs that identify, consider and develop persons of color, women and members of other under-represented groups for positions at all skill and management levels within the Company.

B. Businesses. The Company recognizes that the City and the business community in the City, including women-owned and minority-owned businesses, provide a valuable resource in assisting the Company to develop programs to promote persons of color, women and members of under-represented communities into management positions, and agrees to keep the City regularly advised of the Company's progress by providing the City a copy of the Company's annual affirmative action report upon the City's written request.

C. Recruitment. In order to enhance the diversity of the employees of the Company, the Company is committed to recruiting diverse employees by strategies such as partnering with colleges, universities and technical schools with diverse student populations, utilizing diversity specific media to advertise employment opportunities, internships, and engaging recruiting firms with diversity specific expertise.

D. Advancement. The Company is committed to developing a world-class workforce through the advancement of its employees, including persons of color, women and members of under-represented groups. In order to enhance opportunities for advancement, the Company will offer training and development opportunities for its employees. Such programs may include mentoring programs, training programs, classroom training, and leadership programs.

E. Non-Discrimination. The Company is committed to a workplace free of discrimination based on race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability or any other protected status in accordance with all federal, state or local laws. The Company shall not, solely because of race, creed, color, religion, sex, age, national origin or ancestry or handicap, refuse to hire, discharge, promote, demote or discriminate in matters of compensation, against any person otherwise qualified, and further agrees to insert the foregoing provision or its equivalent in all agreements the Company enters into in connection with this franchise agreement.

F. Board of Directors. The Company shall identify and consider women, persons of color and other under-represented groups to recommend for its Board of Directors, consistent with the responsibility of boards to represent the interests of the ~~S~~shareholders, customers and employees of the Company.

§ 20.3 Contracting.

A. Contracts. It is the Company's policy to make available to women-owned and minority- ~~and women-~~owned business enterprises and other small and/or disadvantaged business enterprises the maximum practical opportunity to compete with other service providers, contractors, vendors and suppliers in the marketplace. The Company is committed to increasing the proportion of Company contracts awarded to women-owned and minority-owned ~~minority- and women-owned~~ business enterprises and other small and/or disadvantaged business enterprises for services, construction, equipment and supplies to the maximum extent consistent with the efficient and economical operation of the Company.

B. Community Outreach. The Company agrees to maintain and continuously develop contracting and community outreach programs calculated to enhance opportunity and increase the participation of minority- and women-owned business enterprises and other small and/or disadvantaged business enterprises to encourage economic vitality. The Company agrees to keep the City regularly advised of the Company's programs.

C. Community Development. The Company shall maintain and support partnerships with local chambers of commerce and business organizations, including those representing predominately minority-owned, women-owned and disadvantaged businesses, to preserve and strengthen open communication channels and enhance opportunities for minority-owned, women-owned and disadvantaged businesses to contract with the Company.

§ 20.4 Coordination. City agencies provide collaborative leadership and mutual opportunities or programs relating to City based initiatives on economic development, employment and contracting opportunity. The Company agrees to review Company programs and mutual opportunities responsive to this Article with these agencies, upon their request, and to collaborate on best practices regarding such programs and coordinate and cooperate with the agencies in program implementation.

ARTICLE 21
MISCELLANEOUS

§ 21.1 No Waiver. Neither the City nor the Company shall be excused from complying with any of the terms and conditions of this franchise agreement by any failure of the other, or any of

its officers, employees, or agents, upon any one or more occasions, to insist upon or to seek compliance with any such terms and conditions.

§21.2 Successors and Assigns. The rights, privileges, and obligations, in whole or in part, granted and contained in this franchise agreement shall inure to the benefit of and be binding upon the Company, its successors and assigns, to the extent that such successors or assigns have succeeded to or been assigned the rights of the Company pursuant to Article 15 of this franchise agreement.

§ 21.3 Third Parties. Nothing contained in this franchise agreement shall be construed to provide rights to third parties.

§ 21.4 Notice. Both parties shall designate from time to time in writing representatives for the Company and the City who will be the persons to whom notices shall be sent regarding any action to be taken under this franchise agreement. Notice shall be in writing and forwarded by certified mail or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party, delivered in person or by certified mail. Until any such change shall hereafter be made, notices shall be sent as follows:

To the City:

Mayor of Boulder
1777 Broadway
Boulder, Colorado 80306

City Manager
City of Boulder
1777 Broadway
Boulder, Colorado 80306

With a copy to:

City Attorney
City of Boulder
1777 Broadway
Boulder, Colorado 80306

To the Company:

Regional Vice President, Customer and Community Services
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

With a copy to:

Legal Department
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

§ 21.5 Examination of Records.

A. Right to Examine. The parties agree that a duly authorized representative of the City shall have the right to examine any books, documents, papers, and records of the Company reasonably related to the Company's compliance with the terms and conditions of this franchise agreement. Information shall be provided within thirty (30) days of any written request. Any books, documents, papers, and records of the Company in any form that are requested by the City that contain confidential information shall be conspicuously identified as "confidential" or "proprietary" by the Company. In no case shall any privileged communication be subject to examination by the City pursuant to the terms of this section. "Privileged communication" means any communication that would not be discoverable due to the attorney-client privilege or any other privilege that is generally recognized in Colorado, including but not limited to the work product privilege. The work product privilege shall include, without limitation, information developed by the Company in preparation for PUC proceedings.

B. Confidential and Proprietary Information. With respect to any information requested by the City which the Company identifies as "Confidential" or "Proprietary":

(1) The City will maintain the confidentiality of the information by keeping it under seal and segregated from information and documents that are available to the public;

(2) The information shall be used solely for the purpose of determining the Company's compliance with the terms and conditions of this franchise agreement;

(3) The information shall only be made available to City employees and consultants who represent in writing that they agree to be bound by the provisions of this subsection B;

(4) The information shall be held by the City for such time as is reasonably necessary for the City to address the franchise issue(s) that generated the request and shall be returned to the Company, along with all copies of the information made by the City, when the City has concluded its use of the information. The parties agree that in most cases, the information should be returned within one hundred twenty (120) days. However, in the event that the information is needed in connection with any action that requires more time, including, but not necessarily limited to litigation, administrative

proceedings and/or other disputes, the City may maintain the information until such issues are fully and finally concluded.

C. Open Records Act. If an Open Records Act request is made by any third party for confidential or proprietary information that the Company has provided to the City pursuant to this franchise agreement, the City will promptly notify the Company of the request and shall allow the Company to defend such request at its sole expense, including filing a legal action in any court of competent jurisdiction to prevent disclosure of such information. In any such legal action the Company shall join the person requesting the information and the City. In no circumstance shall the City provide to any third party confidential information provided by the Company pursuant to this franchise agreement without first ~~conferring with~~notifying the Company in writing. The Company shall defend, indemnify and hold the City harmless from any claim, judgment, costs or attorney fees incurred in participating in such proceeding.

D. Excluded Information. Unless otherwise agreed between the parties, the following information shall not be provided by the Company: confidential employment matters, specific information regarding any of the Company's customers, information related to the compromise and settlement of disputed claims including but not limited to PUC dockets, information provided to the Company which is declared by the provider to be confidential, and which would be considered confidential to the provider under applicable law.

E. Reports. Upon written request by the City, but not more than once per year, the Company shall supply the City with reports, in such formats and providing such details as reasonably requested by the City, of all suppliers of utility service that utilize Company Facilities to sell or distribute utility service to Residents and the names and addresses of each such supplier.

§ 21.6 Reliability Reports. Upon written request, the Company shall provide the City with a report regarding the reliability of Company Facilities and Utility Service.

§21.7 List of Utility Property. The Company shall provide the City, upon request not more than every two (2) years, a list of ~~utility related property owned or leased by the Company within the City. All such records must be kept for a minimum of four (4) years.~~ all real property and leasehold interests in real property owned by the Company within the City, excepting easements. Upon request by the City, such list shall include the legal description and land area of each listed property and shall be accompanied by a map showing the location of each listed property and shall include real property and leasehold interest in real property owned by the Company within the Boulder Valley Comprehensive Plan area, as identified by the City.

§21.8 Other Information. Upon written request, the Company shall provide the City Manager or the City Manager' designee with:

A. Copies of all applications, advice letters and periodic reports, together with any accompanying non-confidential testimony and exhibits, filed by the Company with the PUC;

B. A copy of the Company's or its parent company's consolidated annual financial report, or alternatively, a URL link to a location where the same information is available on the Company's web site;

C. Maps or schematics indicating the location of specific Company Facilities, including gas or electric lines, located within the City, to the extent those maps or schematics are in existence at the time of the request; and

D. A copy of any report required to be prepared for a federal or state agency detailing the Company's efforts to comply with federal and state air and water pollution laws.

§21.9 Payment of Taxes and Fees.

A. Payment by Company. The Company shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extra-ordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge against this franchise agreement ("Impositions"), provided that Company shall have the right to contest any such Impositions and shall not be in breach of this section so long as it is actively contesting such Impositions.

B. City Not Liable. The City shall not be liable for the payment of taxes, late charges, interest or penalties of any nature other than pursuant to applicable ~~t~~Tariffs ~~on file and in effect from time to time with the PUC~~.

§21.10 Conflict of Interest. The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and the Company further agrees not to hire or contract for services any official, officer or employee of the City to the extent prohibited by law, including ordinances and regulations of the City.

§21.11 Certificate of Convenience and Necessity. The City agrees to support any application the Company may file with the PUC to obtain a certificate of public convenience and necessity to exercise the rights and obligations granted under this franchise agreement.

§21.12 Authority. Each party represents and warrants that except as set forth below, it has taken all actions that are necessary or that are required by its ordinances, regulations, procedures,

bylaws, or applicable law, to legally authorize the undersigned signatories to execute this franchise agreement on behalf of the parties and to bind the parties to its terms. The persons executing this franchise agreement on behalf of each of the parties warrant that they have full authorization to execute this franchise agreement. The City acknowledges that notwithstanding the foregoing, the Company requires a certificate of public convenience and necessity from the PUC in order to operate under the terms of this franchise agreement.

§21.13 Severability. Should any one or more provisions of this franchise agreement be determined to be unconstitutional, illegal, unenforceable or otherwise void, all other provisions nevertheless shall remain effective; provided, however, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft one or more substitute provisions that will achieve the original intent of the parties hereunder.

§21.14 Force Majeure. Neither the City nor the Company shall be in breach of this franchise agreement if a failure to perform any of the duties under this franchise agreement is due to Force Majeure as defined herein.

§21.15 Earlier Franchises Superseded. This franchise agreement shall constitute the only franchise agreement between the City and the Company for the furnishing of Utility Service~~,~~, and it supersedes and cancels all former franchise~~s~~ agreements between the parties hereto.

§21.16 Titles Not Controlling. Titles of the paragraphs herein are for reference only, and shall not be used to construe the language of this franchise agreement.

§21.17 Applicable Law. Colorado law shall apply to the construction and enforcement of this franchise agreement. The parties agree that venue for any litigation arising out of this franchise agreement shall be in the District Court for Boulder County, State of Colorado.

§21.18 Payment of Expenses Incurred by City in Relation to Franchise Agreement. The Company shall pay for expenses incurred for the franchise election, including the publication of notices, publication of ordinances, and photocopying of documents.

DRAFT

IN WITNESS WHEREOF, the parties have caused this franchise agreement to be executed as of the day and year first above written.

CITY OF BOULDER

ATTEST:

_____
Susan Osborne, Mayor

_____
City Clerk on behalf of the
Director of Finance and Record

APPROVED AS TO FORM:

_____
Attorney for the City of Boulder

PUBLIC SERVICE COMPANY OF COLORADO

By:_____
Jerome Davis
Regional Vice President

Attest: _____
Asst. Secretary

MATTERS FROM THE CITY MANAGER – ITEM 6A

CITY OF BOULDER
CITY COUNCIL AGENDA ITEM

MEETING DATE: June 7, 2011

AGENDA TITLE Policy discussion regarding the purchase of Long's Garden (conservation easement and 1/3 acre in fee)

PRESENTER/S
Jane S. Brautigam, City Manager
Paul J. Fetherston, Deputy City Manager
Michael D. Patton, Director, Open Space and Mountain Parks Department
Doug Newcomb, Property Agent

EXECUTIVE SUMMARY

On a 25.1 acre agriculturally zoned parcel located on North Broadway adjacent to the North Boulder Recreation Center, the Long family has lived and operated its bulb and flower business (Long's Garden) in what has become an urban setting for 100 years. In April 2009, a nonbinding Letter of Intent (LOI) was executed by the City of Boulder (city) and Margaret Anne Long, Catherine Long Gates, and The Long Property Limited Partnership to purchase a conservation easement on the Long's Gardens property. The LOI addressed two specific interests: to assign historic preservation protection to the main family home and to preserve the property in its current agricultural condition, providing for only minor modification to support the Growing Gardens non-profit organization which leases the east half of the property.

Subsequent to the LOI, the owner submitted a proposed Conservation Easement Agreement that was inconsistent with the LOI and provided for substantial development on the Growing Gardens lease area and removed/weakened preservation guarantees relative to the home.

In order to determine next steps on the conservation easement purchase, City Council direction on allowable development and historic preservation on the site is needed. Additionally, a funding source has not been identified for purchase of the conservation easement.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – The impacts related to purchasing a conservation easement on Long's Gardens can better be identified after the terms of a mutually acceptable conservation easement are known.
- Environmental – Preserving Long's Gardens much as it is today, would provide an urban environment with many of the same environmental benefits associated with open space and parks. These include wildlife habitat, urban spacing, open lands and aesthetic scenery. The property presents an opportunity to maximize local agricultural uses and make multi-model transportation connections supporting efforts to reduce carbon emission.
- Social – Long's Gardens and its current tenant Growing Gardens, provide social and educational opportunities to the entire Boulder community. It has won a place in the hearts of Boulder citizens and is Boulder's only urban farm.

BACKGROUND

The Long's Garden Property

Long's Garden is a family-owned, 25.1-acre parcel located on N. Broadway, just north of the North Boulder Recreation Center and the Parks & Recreation Department's headquarters. Although it is annexed into the City of Boulder, the property remains zoned as agricultural land and is home to a 100-year-old bulb and flower business as well as Growing Gardens, a community sponsored non-profit corporation. The agricultural zoning allows for up to one home per five acres; thus the total development potential under existing city zoning is for a maximum of five homes.

The property is improved with a well-maintained, two-story, 1900-era house, a large building which serves as office space/display area and storage area for the family bulb and flower business, and another large building used as a storage barn. The property, which also contains three or four smaller outbuildings in a lesser state of repair, is physically bisected by the Farmer's Ditch (Ditch) with 13.2 acres lying west of the Ditch and 11.9 acres on the east side. The west side of the property is used by the Long family for its historic bulb and flower business, while the east side is under lease to Growing Gardens. Growing Gardens oversees the operation of roughly 200 individual vegetable garden plots maintained by residents, as well as an operating greenhouse providing various agriculturally-related community programs on the site.

The Conservation Easement Letter of Intent

In May 2007, on the Long family's behalf, the Conservation Fund contacted the Open Space and Mountain Parks (OSMP) Department to explore the City of Boulder's interest in acquiring a conservation easement on the entire Long property. The OSMP director and acquisitions staff met with the city manager at that time to relay this opportunity and seek input regarding the city's overall interest in the project. After receiving the city manager's support for the project at that time, staff proceeded to do more background research on the property and began negotiations with the Long family and their representatives. At various points, discussions regarding the property were held with

other city departments including Community Planning and Sustainability, Housing and Human Services, Public Works - Transportation and Parks & Recreation.

Negotiations with the Long family culminated in the development and execution of a nonbinding Letter of Intent (LOI) in April of 2009 (**Attachment D**). Under the terms of the LOI, both the LOI and option to purchase a conservation easement expire on March 1, 2012. The proposed transaction also provides the Parks & Recreation Department with a lease-purchase option for a 1/3-acre parcel adjacent to the North Boulder Recreation Center. The proposed price for the purchase of the conservation easement and the 1/3 acre in fee is $4,700,000 payable as follows:

- $1,500,000 as a down payment on or before March 1, 2012; and
- The balance of the purchase price to be financed with two Boulder Municipal Property Authority (BMPA) notes, one calling for yearly payments of $263,000 for 10 years and the second calling for yearly payments of $68,300 for 25 years.

The Parks & Recreation Department has committed to contributing $300,000 for the purchase of the 1/3-acre parcel.

The general intent of the conservation easement, as expressed in the LOI, is to maintain the property's open and agricultural nature much as it exists today, preserving it as a place to learn about sustainable agriculture. The LOI also (a) intended that appropriate historical preservation protection be placed on the existing house and viable existing buildings; and (b) contemplated parking facilities and a minimal, agriculture-related structure for Growing Gardens.

Seller's proposed Conservation Easement

In October 2010, the Long family submitted a proposed conservation easement document which contained terms inconsistent with the Letter of Intent. The inconsistencies are related to historic preservation and allowing new development.

New Development

The LOI states, in part, that

> the intent of the conservation easement shall be to keep the Ag land ...as open space and agricultural in nature, much as we see it today. No new structures shall be constructed on the Property...other than a minimum of new agricultural related structures which will be allowed....

The conservation easement proposed by the Long family would allow the construction of a building up to 30 feet in height and up to a total of 28,000 square feet as well as a parking lot on the 12-acre portion of the property east of the bike path for Growing Gardens purposes. The proposed uses of the buildings include: processing and selling plants and animals, gatherings, celebrations, classes, education, research, cooking classes, workshops, farm festivals, picnics and permanent or temporary living quarters. The terms

of the proposed conservation easement require that (i) the city permit the construction and uses of the buildings; and (ii) such approval is a vested property right.

Historical Preservation
The LOI states, in part, that the

> "Main house and major outbuildings will be subjected to appropriate restrictions to maintain the historical nature of the existing improvements..."

The conservation easement proposed by the Long family states in part

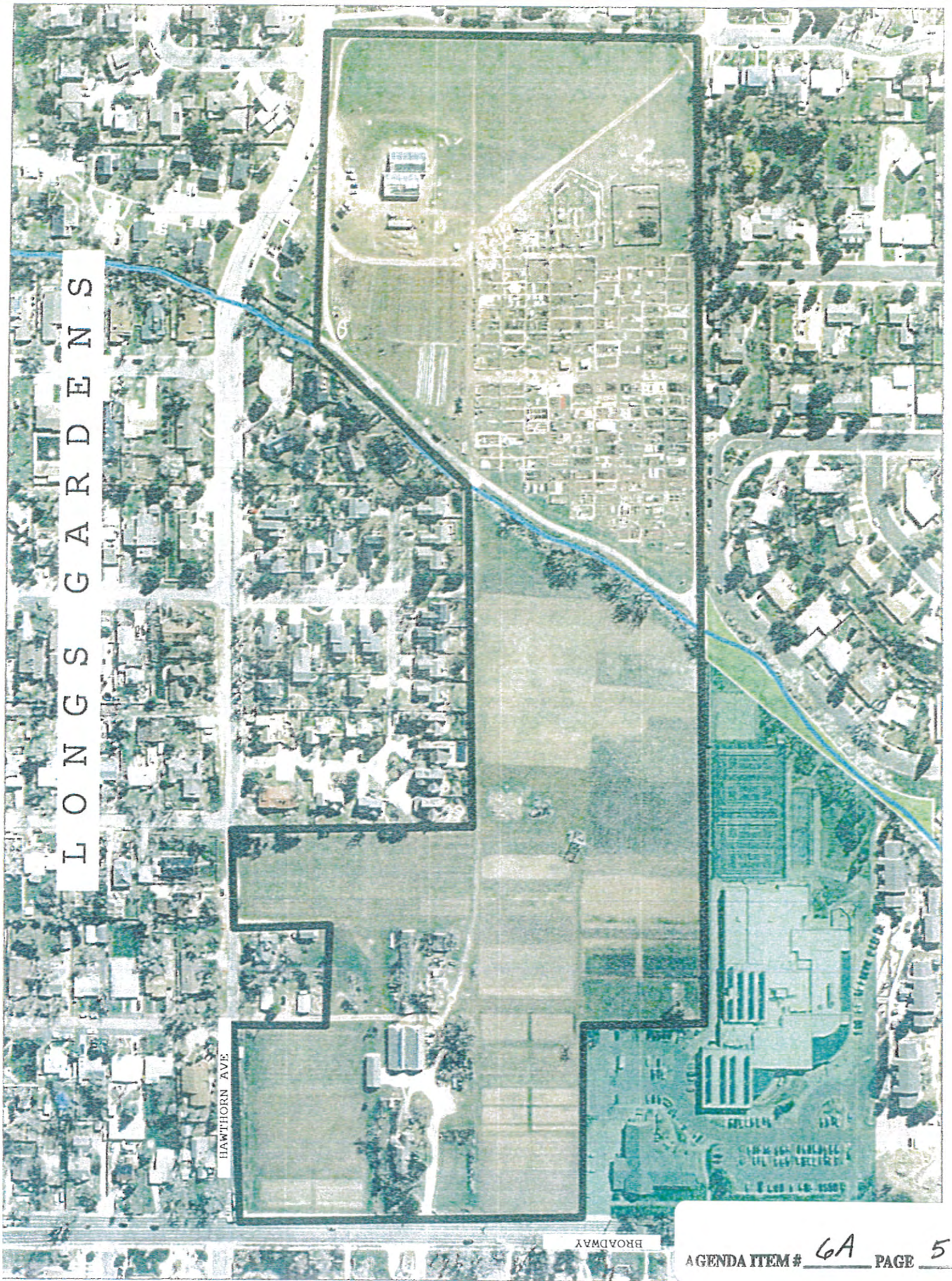
> "in the event...any structure becomes...prohibitively expensive to maintain, as determined by the Grantor (Longs) in its discretion, Grantor may remove and replace the...existing structure."

These proposed terms, which are significantly inconsistent with the LOI, were never discussed or contemplated at the time the LOI was signed.

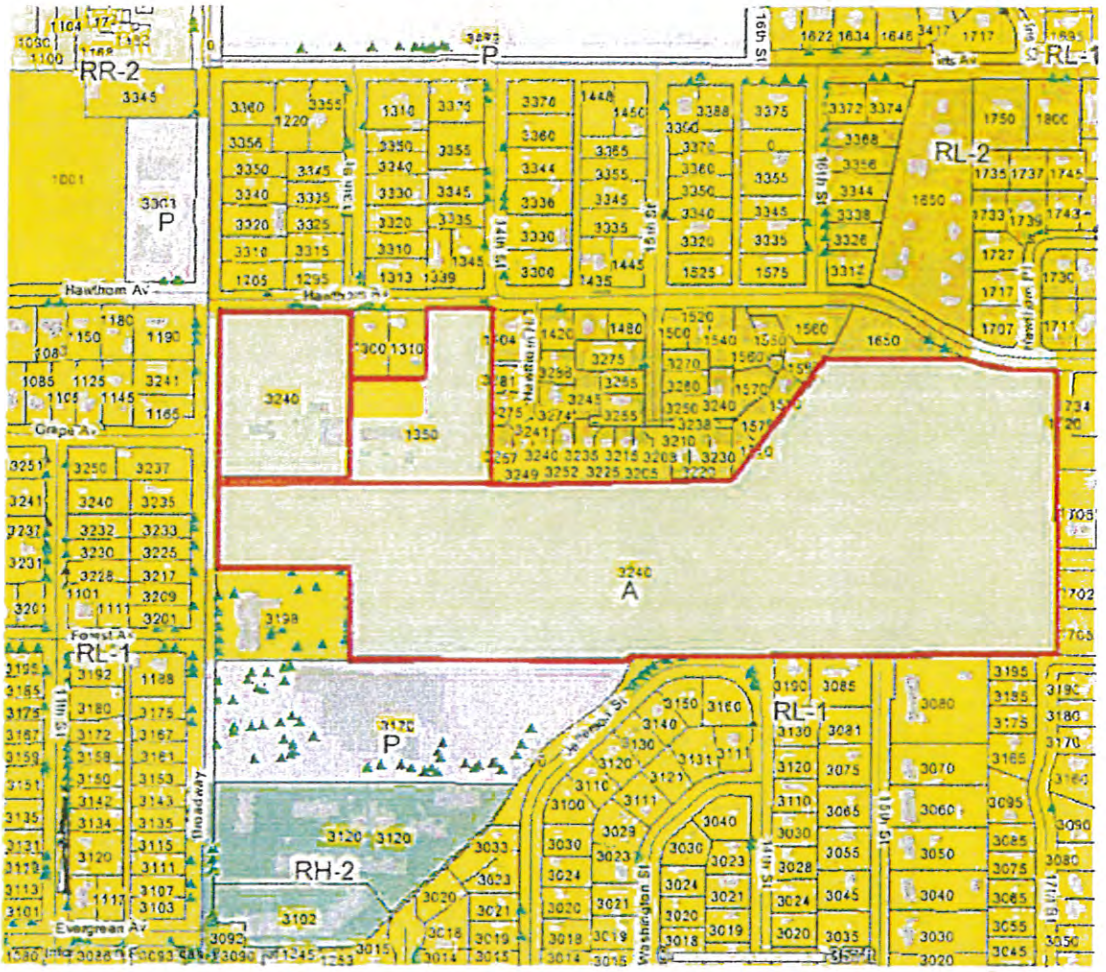
Longs Gardens Conservation Easement Funding
While the Parks & Recreation Department has committed $300,000 towards the purchase of the 1/3-acre parcel adjacent to the North Boulder Recreation Center, no other source has been identified to fund the conservation easement's $4.7 million purchase price. Funding options are varied including potential allocation of the purchase price among city departments and seeking a voter approved bond issue.

ATTACHMENTS
A. Map of Long's Gardens
B. Long's Gardens Zoning Map
C. Long's Gardens Flood Plain Map
D. Long's Gardens Letter of Intent
E. Long's Gardens covenant to hold as one parcel

ATTACHMENT A

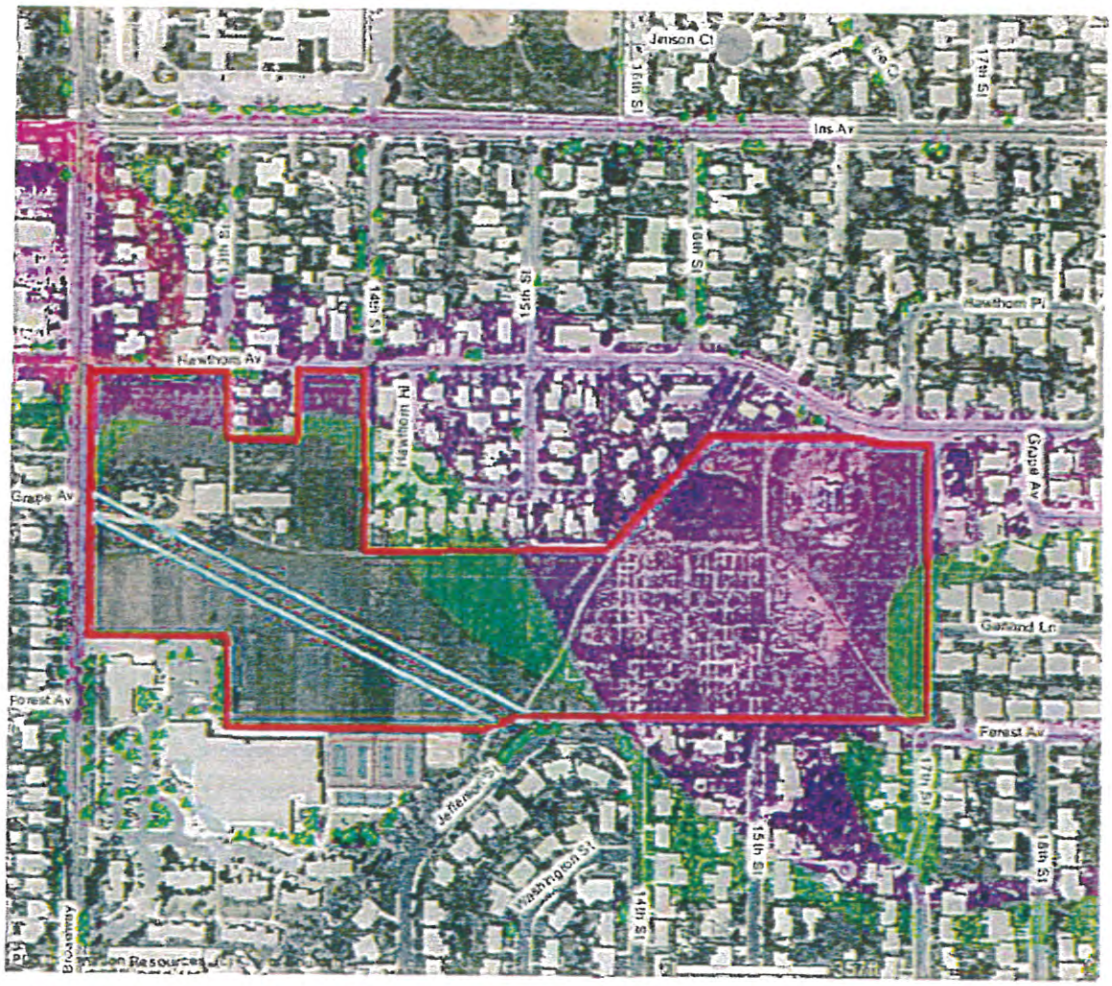


ZONING MAP



Subject property delineated in red; the green colored area is zoned A (Agricultural) and a small area located at the subject's 1350 Hawthorn Avenue property the yellow colored area is zoned RL-1 (Residential-Low 1).

City of Boulder's Flood Plain Map



Subject property delineated in red; the purple shaded area represents the 100-year flood plain hazards and the green shaded areas are within the 500-year flood plain. Relative to the flood plain hazard impacts, the blue parallel lines indicate the approximate location of the 75-foot wide PSCO easement.

LETTER OF INTENT
REGARDING THE GRANTING OF A CONSERVATION EASEMENT
April 2, 2009

SELLERS:

Margaret Anne Long
Catherine Long Gates
The Long Property Limited Partnership

PURCHASER:

The City of Boulder, Colorado

This letter shall serve as a declaration of the intent of the Sellers and the Purchaser to pursue, in good faith, negotiations aimed at entering into a option for the sale by Sellers and the purchase by Purchaser of a conservation easement in the property commonly known as Long's Gardens on North Broadway in Boulder, Colorado. Some of the salient terms and conditions of such an option and the sale and purchase which would result from an exercise of such an option are, subject to negotiation of a final contract, as follows:

1. Lease/Option on Parking Parcel. It is anticipated that the Partnership will grant to the Purchaser, by separate document and prior to entering into a final contract for an option to purchase the Conservation Easement, a lease containing an option to purchase the fee simple title to the Parking Parcel. The purchase price payable for the Parking Parcel shall be deemed to constitute partial payment of the total purchase price payable for the Conservation Easement.

2. Option to Purchase Conservation Easement. Purchaser will be granted an option to purchase a Conservation Easement in the Property, which option may be exercised by the Purchaser on or after October 1, 2010, and before March 1, 2012. Closing of the sale and purchase shall occur 30 days after the option is exercised. The Property which will be encumbered by the Conservation Easement shall exclude the Parking Parcel if the Purchaser has, prior to or simultaneously with the closing on the purchase of the Conservation Easement, exercised and closed on its option to acquire the fee simple title to the Parking Parcel. The right of the Purchaser to exercise its option to purchase the Conservation Easement shall be conditioned upon the prior or simultaneous exercise and closing of its option to purchase the Parking Parcel.

3. Option Payment. Purchaser shall, at the time a formal option agreement is entered into, pay to Sellers the sum of $50,000 as consideration for the granting of the option to purchase the Conservation Easement. The option payment shall be non-refundable, but shall be applied toward the purchase price of the Conservation Easement if the option to purchase the Conservation Easement is exercised. The option payment shall be allocated 60% to the Homesite Sellers and 40% to the Partnership.

4. Purchase Price. The total purchase price payable for the Conservation Easement and the Parking Parcel shall be $4,700,000, generally allocated 60% to the Homesite Sellers and 40% to the Partnership. The purchase Price shall be payable as follows:

Cg

(a) $1,500,000 cash at closing, less credit for the $50,000 option payment. Credit for payment of the purchase price for the Parking Parcel shall be attributable to the Partnership whether that payment has been received prior to or simultaneously with the closing for the Conservation Easement. $870,000 would be allocated to the Homesite Sellers and $580,000 less the credit for Parking Parcel would be attributable to the Partnership

(b) Two thirds of the remaining balance due to the Homesite Sellers and two-thirds of the remaining balance due the Partnership would be evidenced by promissory notes from BMPA, amortized in annual payments over a ten-year term, with interest at the rate of 4% per annum; and

(c) One third of the remaining balance due to the Homesite Sellers and one-third of the remaining balance due the Partnership would be evidenced by promissory notes from BMPA, amortized in annual payments over a twenty-five year term, with interest at the rate of 4% per annum.

(d) The promissory notes will provide that the Purchaser has no right to prepay principal without the prior written consent of the payees.

(e) All of the BMPA promissory notes and other documents relating to the Conservation Easement shall contain a cross default provision providing that a default (for any reason) under any one promissory note or other document shall constitute a default under all of the promissory notes.

(f) All of the promissory notes shall be secured by a Deed of Trust encumbering the Conservation Easement.

5. General Provisions of Conservation Easement.

(a) The intent of the Conservation Easement shall be to keep the Ag Land and the undeveloped portions of the Homesite, less the Parking Parcel, as open space and agricultural in nature, much as we see it today. No new structures shall be constructed on the Property other than to repair, restore or replace damaged, destroyed or deteriorated existing structures, and other than a minimum of new agricultural related structures which will be allowed.

(b) No part of the Property shall hereafter be subdivided or sold separate and apart from the remainder of the Property, with the exception of the subdivision creating the Parking Parcel. The City will waive subdivision requirements or bear all costs associated with subdividing the Parking Parcel.

(c) The main house and major outbuildings will be subjected to appropriate restrictions to maintain the historical nature of the existing improvements. These will not include Landmarking the Property or any portion thereof.

(d) An easement will be granted for the existing bike path and appropriate connector bikeways.

(e) A long term lease agreement will give possession of all of the Property lying East of the Farmers Ditch to Growing Gardens, a non-profit Colorado corporation.

(f) All water rights currently owned by the Partnership and/or the Homesite Owners will be restricted to be used only on the Property.

6. Additional Issues. Subsequent negotiations will deal with the following identified issues, as well as any other issues which the parties may raise, with the goal of reaching mutually satisfactory agreements regarding the same:

(a) Affirmative undertaking by the City to repair, maintain and provide snow removal on any and all public sidewalks, bikepaths or other public path or roadway that is located on or abuts the Property.

(b) Parking and facilities needed by Growing Gardens.

(c) Affirmative undertaking by the City to repair and maintain the Silver Lake Ditch lateral from its headgate on the Silver Lake Ditch to and into the Property, and to take no action which would defeat or diminish the flow of water to the Property under the water rights presently owned by the Partnership and/or the Homesite Owners.

(d) Affirmative undertaking by the City to bear any and all costs assessed against the Property from the removal, replacement or undergrounding of the Public Service Company's power line across the Property, or from any other abutting public improvements.

(e) Enforcement of the terms of the Conservation Easement and any discretion to be vested in the City regarding the rights of the owner(s) of the Property under the terms of the Conservation Easement shall be in the hands of the City Manager of the City or her/his designee.

(f) Rights of the owners of the Property to reside upon and to use the property and to transfer their interests in the Property, subject to the Conservation Easement, to their heirs, personal representatives, successors and assigns.

(g) Affirmative undertaking by the City to survey the Property and to conduct the Baseline Documentation Report. Mutual agreement as to the form and content of the Baseline Documentation Report (including building areas, etc.) shall be a condition precedent to the granting of the Conservation Easement.

This Letter of Intent shall not be construed as creating any contractual obligations on the part of the City, the Homesite Owners, or the Partnership. No such obligations shall arise unless and until the parties have executed a formal agreement granting to the City an Option to

CSG

Purchase the Conservation Easement. It is anticipated that the Option to Purchase shall have attached to it the final form of the actual grant of the Conservation Easement.

IN WITNESS WHEREOF, the parties have signed this Letter of Intent as of the date or dates set forth beside their signatures below.

THE HOMESITE OWNERS:

Margaret Anne Long

Margaret Anne Long

(Date) 4/8/09

Catherine Long Gates

Catherine Long Gates

(Date) 4/11/09

THE PARTNERSHIP:
LONG PROPERTY LIMITED PARTNERSHIP
By: LONG FAMILY INCORPORATED
a Colorado corporation,

By: Catherine Long Gates
Catherine Long Gates, President

(Date) 4/11/09

THE CITY:

THE CITY OF BOULDER, COLORADO
A municipal corporation

By James S. Schmidt

(Name) Jim Schmidt

(Title) Property Agent

(Date) 4-20-09

GLOSSARY OF TERMS

(Letter of Intent Regarding Conservation Easement)

The following definitions and abbreviations are employed in this Letter of Intent dated April 2, 2009:

----- The "City:" The City of Boulder, Colorado, a municipal corporation organized under the laws of the State of Colorado.

----- The "Homesite Owners/Sellers:" Catherine Long Gates and Margaret Anne Long, individuals residing in the State of Colorado.

----- The "Partnership:" Long Property Limited Partnership, a limited partnership organized and existing under the laws of the State of Colorado.

----- The "Homeplace:" The property owned by Catherine Long Gates and Margaret Anne Long, including the house, sheds, barns and other improvements consisting of the real property described as Block 9, Parsons Park subdivision together with abutting vacated streets and alleys appurtenant thereto, less any portion thereof conveyed to the City for the reconstruction of Broadway.

----- The "Ag Land:" The real property owned by Long Property Limited Partnership consisting of the entire Long's Gardens acreage other than the Homeplace, less any portion thereof conveyed to the City for the reconstruction of Broadway.

----- The "Growing Gardens Acreage:" That portion of the Ag Land lying East of the Farmers Ditch, presently under lease to Growing Gardens, a Colorado non-profit corporation.

----- The "Parking Parcel:" That portion of the Ag Land, consisting of approximately one-third acre located immediately East of the property owned by the City upon which is located the headquarter building for the Boulder Park and Recreation Department, with respect to which the City has expressed an interest in acquiring fee simple title.

----- The "Property:" All of the Homeplace and all of the Ag Land except the Parking Parcel, to be burdened by the Conservation Easement, together with the water rights owned by the Partnership and Homeplace Owners which water rights shall be restricted and inseparably tied to ownership of the Property.

CGG

Boulder County Clerk, CO AG R 26.00 D 0

COVENANT AND AGREEMENT TO HOLD AS ONE PARCEL

This Covenant and Agreement to hold property as one parcel (Agreement) is made and entered into this 15th day of MAY, 1998, by and between the CITY OF BOULDER, a Colorado municipal corporation ("City"), and the Long Property Limited Partnership, a Colorado Limited Partnership, ("Owner"), with reference to the following:

A. The Long Property Limited Partnership is the fee Owner of certain real property commonly known as Longs Gardens, City of Boulder, County of Boulder, State of Colorado, consisting of a 7.2 acre parcel which includes lots in Block 8 of Parsons Park together with an adjacent vacated alley and street rights-of-way, legally described as set forth in Exhibit "A" attached hereto and incorporated herein (the "Property").

B. The Owner desires to obtain City approval for a Lot Line Adjustment, between the Property, and a parcel owned by Wayne J. Yee, (the "Yee Property") legally described as the East one-half of Lots 1 and 2, Block 8, Parsons Park and the East one-half of the North 35 feet of Lot 3, Block 8, Parsons Park, City of Boulder, County of Boulder, State of Colorado.

C. As one of the conditions to the City's approval of a Lot Line Adjustment between the Property, and the Yee Property, the City has requested that the Owner record a covenant to hold the Property as one parcel, subject to the terms, covenants and conditions of this Agreement, in order to ensure that the Property, which includes lots in Block 8 of Parsons Park together with an adjacent vacated alley and street rights-of-way, is and will remain a legal parcel under the City of Boulder Code, "Parcel as a Building Lot and Merger of Non-Standard Lots or Parcels," Section 9-3.1-2 (d), B.R.C. 1981 and, "Schedule of Bulk Requirements," Section 9-3.2-1, B.R.C. 1981.

NOW, THEREFORE, in consideration of the foregoing recitals, and the City's approval of a Lot Line Adjustment, the parties herein agree as follows:

1. That the Owner shall hold the Property legally described on Exhibit "A", attached hereto and incorporated herein as one parcel, and that no portion of this Property shall be sold separately without the Owner having first received written approval therefor from the City.

2. The terms of this Covenant and Agreement are for the benefit of the Property, shall run with the Property, and shall benefit and be binding upon the Owner, the Owner's successors, representatives, and assigns, both jointly and individually and shall be recorded in the office of the Boulder County Clerk and Recorder in order to put prospective purchases or other interested parties on notice of its terms. Additionally, the Owner agrees to notify subsequent purchasers of the Property or any portion thereof, of the existence of this Agreement and the purchasers' potential obligation hereunder.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Agreement as of the day just above written.

Long Property Limited Partnership,
a Colorado Limited Partnership

By: Long Family Incorporated,
a Colorado corporation,
as General Partner

By: Catherine C. Gates
Catherine C. Gates, Vice President

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me, a notary public, this 15th day of May, 1998, by Catherine C. Gates, as Vice President of Long Family Incorporated as General Partner of Long Property Limited Partnership, a Colorado Limited Partnership.

Witness my hand and official seal.

My commission expires: August 1, 1999

(SEAL) NOTARY PUBLIC STATE OF COLORADO

Phyllis Perenger
Notary Public

CITY OF BOULDER, COLORADO

By: _____
Acting City Manager

Attest:

_____
Director of Finance and Record
Ex-Officio City Clerk

Approved as to form:

_____
City Attorney

5-8-98
Date

Ra1310h1.A

Exhibit "A"

THE SOUTH 15 FEET OF LOT 3, AND LOTS 4-14 INCLUSIVE, IN BLOCK 8, PARSONS PARK, A SUBDIVISION IN THE CITY OF BOULDER, COUNTY OF BOULDER, STATE OF COLORADO, ACCORDING TO THE RECORDED PLAT THEREOF, TOGETHER WITH VACATED PORTION OF STREETS AND ALLEYS ADJACENT THERETO AND THAT TRACT OF LAND AS DESCRIBED AS PARCEL D ON FILM 1548 AS RECEPTION NO. 944159 OF THE RECORDS OF BOULDER COUNTY, COLORADO, ALL DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 1, IN SAID BLOCK 8, THENCE S00°00'00"E, 140.00 FEET ALONG THE EAST LINE OF LOTS 1, 2 AND 3, IN SAID BLOCK 8 TO THE SOUTHEAST CORNER OF THE NORTH 35 FEET OF SAID LOT 3 AND THE TRUE POINT OF BEGINNING;

THENCE N90°00'00"E, 10.00 FEET TO THE CENTERLINE OF THE ALLEY IN SAID BLOCK 8;

THENCE N00°00'00"E, 140.15 FEET ALONG THE CENTERLINE OF SAID ALLEY TO SOUTHERLY RIGHT-OF-WAY LINE OF HAWTHORN AVENUE IN THE CITY OF BOULDER, COLORADO;

THENCE N89°06'55"E, 165.02 FEET ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID HAWTHORN AVENUE TO THE CENTERLINE OF 14TH STREET (VACATED) IN THE CITY OF BOULDER, COLORADO, ACCORDING TO THE RECORDED PLAT OF SAID PARSONS PARK;

THENCE S00°00'00"E, 384.83 FEET ALONG THE CENTERLINE OF SAID 14TH STREET TO THE NORTH LINE OF THAT TRACT OF LAND DESCRIBED AS PARCEL D ON SAID FILM 1548 AS RECEPTION NO. 944159;

THENCE N89°05'00"E, 560.98 FEET ALONG THE NORTH LINE OF THAT TRACT OF LAND DESCRIBED AS SAID PARCEL D TO THE NORTHEAST CORNER THEREOF;

THENCE S32°45'00"W, 176.00 FEET ALONG THE EASTERLY LINE OF THAT TRACT OF LAND DESCRIBED AS SAID PARCEL D;

THENCE S30°30'00"W, 45.00 FEET ALONG THE EASTERLY LINE OF THAT TRACT OF LAND DESCRIBED AS SAID PARCEL D TO THE SOUTHEAST CORNER THEREOF;

THENCE S89°05'00"W, 1078.00 FEET ALONG THE SOUTH LINE OF THAT TRACT OF LAND DESCRIBED AS SAID PARCEL D TO THE EAST RIGHT-OF-WAY LINE OF BROADWAY IN THE CITY OF BOULDER, COLORADO;

THENCE N00°00'00"E, 184.91 FEET ALONG THE EAST RIGHT-OF-WAY LINE OF SAID BROADWAY TO THE NORTH LINE OF THAT TRACT OF LAND DESCRIBED AS SAID PARCEL D;

THENCE N89°05'00"E, 305.03 FEET ALONG THE NORTH LINE OF THAT TRACT OF LAND DESCRIBED AS SAID PARCEL D TO THE CENTERLINE OF 13TH STREET (VACATED) IN THE CITY OF BOULDER, COLORADO, ACCORDING TO THE RECORDED PLAT OF SAID PARSONS PARK;

THENCE N00°00'00"E, 245.40 FEET ALONG THE CENTERLINE OF SAID 13TH STREET;

THENCE N90°00'00"E, 25.00 FEET TO THE SOUTHWEST CORNER OF THE NORTH 35 FEET OF SAID LOT 3;

THENCE N89°06'55"E, 130.02 FEET ALONG THE SOUTH LINE OF NORTH 35 FEET OF SAID LOT 3 TO THE SOUTHEAST CORNER OF THE NORTH 35 FEET AND THE TRUE POINT OF BEGINNING.

AREA = 7.208 ACRES, (313,998 SQUARE FEET)

MATTERS FROM THE CITY ATTORNEY – ITEM 7A

CITY OF BOULDER
CITY COUNCIL AGENDA ITEM

MEETING DATE: June 7, 2011

AGENDA TITLE Consideration of a motion to authorize the disposal of approximately one-third acre of Rice Sisters' open space conservation easement located at Kneale Road and Eldorado Springs Drive.

PRESENTER
Jane S. Brautigam, City Manager
Tom Carr, City Attorney
Paul J. Fetherston, Deputy City Manager
Michael D. Patton, Director, Open Space and Mountain Parks
John P. D'Amico, Property Agent

EXECUTIVE SUMMARY
In 2006, the City of Boulder purchased a conservation easement covering approximately 40 acres of land from Jena and Traven Rice. This land is located at the west end of Eldorado Canyon State Park along the south side of Kneale Road.

In 2008, approximately one-half acre of land along the south side of Kneale Road adjacent to the Rice Open Space conservation easement was purchased by a private party (the Myers). After the purchase of this small parcel, the Myers asserted a lack of access as well as discrepancies in the boundary. A lawsuit was filed by the Myers naming all adjacent property owners as defendants. The lawsuit primarily involved the Rices as they were the fee owners of the adjacent land.

After nearly one year of legal process, the Rices agreed to sell the approximately one-third acre that was in dispute to the plaintiff. This small section would become the front yard of the Myers property. Instead of owning a one-third acre conservation easement located in the front yard of a third party, Open Space and Mountain Parks (OSMP) proposed that portion be eliminated from the original conservation easement. Myers, the owner of the small parcel, agreed to pay OSMP to eliminate approximately one-third acre of the conservation easement as described in Attachment B.

STAFF RECOMMENDATION

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

Motion to approve the disposition of approximately one-third acre of Rice open space conservation easement and authorize the city manager to execute the required documents for the disposition.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic: The purchase of Open Space is a component of the OSMP Acquisition and Management Plan, which contributes to council's economic vitality goal, because it provides the physical context for the diverse and vibrant economic system that sustains services for residents. The land system and the quality of life it represents attract visitors and help businesses to recruit and retain quality employees. Funds generated by the disposition of this land will be returned to the Acquisitions CIP of the Open Space Fund.
- Environmental: The Open Space Acquisition and Management Plan is a significant community-based program that is recognized worldwide as a leader in preservation of open space lands contributing to the environmental sustainability goal of the City Council.
- Social: Since the Open Space land system is equally accessible to all members of the community, it helps support council's community sustainability goal because all residents "who live in Boulder can feel a part of and thrive in" this aspect of their community.

OTHER IMPACTS

- Fiscal: $5,000 will be reimbursed to the Open Space Acquisition Fund.
- Staff time: Sufficient funding for staff time is available to process this disposition.

BOARD AND COMMISSION FEEDBACK

This item was heard at the May 11, 2011 Open Space Board of Trustees meeting and was unanimously approved.

PUBLIC COMMENT

This item is being heard at this public meeting as advertised in the *Daily Camera* on June 5, 2011. A notice of disposition of Open Space Lands was published in the *Daily Camera* on April 29, 2011 and May 1, 2011 pursuant to Section 177 of the City Charter. A notice of Disposition of Open Space Lands was also mailed to all property owners within a 1,500-foot radius of the property. Three members of the public commented on the disposition.

ANALYSIS

A significant goal of the lawsuit brought by Myers was to establish title to approximately one-third acre of land surrounding property they had purchased in 2008. The surrounding property was owned by Jenna and Traven Rice. The city was a party to the lawsuit because it was the holder of a conservation easement over this property owned by the Rices.

Another goal of the Myers' lawsuit was to establish access to their property. One of the legal theories asserted to support their access claim was that Kneale Road, the road which continues up the canyon on the west side of the state park, was a public road. The assertion of the public road theory was neither supported by the city nor any of the property owners. Before this claim had been asserted, a two-day trial had been set; with the addition of the public road claim, it was anticipated that a five-day trial would be needed. All of the participating defendants vigorously opposed the public road claim. Mediation was set by the court in an attempt to resolve the issues prior to the trial date.

At the time of the mediation, the city's options were limited because (a) it held only a conservation easement over the property at issue, not a fee interest, (b) the city's conservation easement did not restrict the Rices from selling any or all of their property, and (c) the city believed it to be unfeasible, and inconsistent with Open Space policy, to retain and manage a conservation easement encumbering a small amount of property, such as that which the Myers might be awarded as a result of the lawsuit.

Although it did not appear that the facts and legal theories relied upon by the Myers would support their claim to the full one-third acre they sought, those facts would have potentially entitled them to a small triangle of the land owned by the Rices. In addition, the Rices were willing to sell the property at issue to the Myers, rather than incur the additional expenses of going to trial.

Given all of the facts and circumstances, the city agreed to release its conservation easement from the property in exchange for $5,000, that amount representing roughly the per square-foot amount the city paid for its conservation easement in 2006.

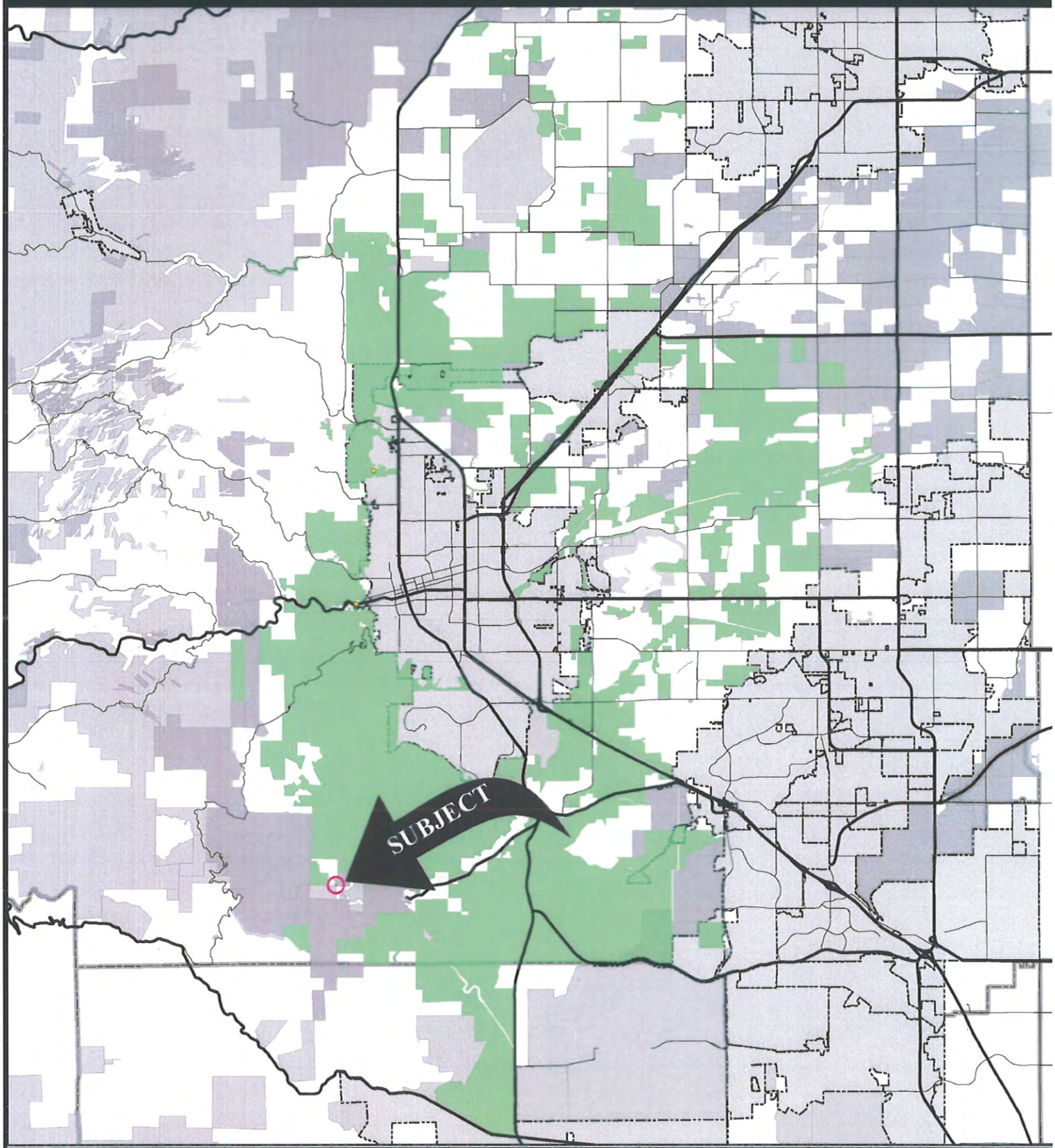
While overseen by the City Attorney's Office, most city legal fees were borne by the company which had provided title insurance on this property.

ATTACHMENTS:

A. Vicinity Map
B. Location Map

ATTACHMENT A - City of Boulder Open Space & Mountain Parks

VICINITY MAP - Rice Disposition



© 2010 City of Boulder, Colorado

All rights reserved. The data information contained herein is intended for the sole use of the purchaser and may not be copied, duplicated or redistributed in any way, in whole or in part, without the expressed written consent of the City of Boulder.

The information displayed is provided as a graphical representation only. While source data sets were developed in compliance with National Map Accuracy Standards, the City of Boulder provides no guarantee, express or implied, as to the accuracy and/or completeness of the information contained herein.

Subject Property

City of Boulder OSMP

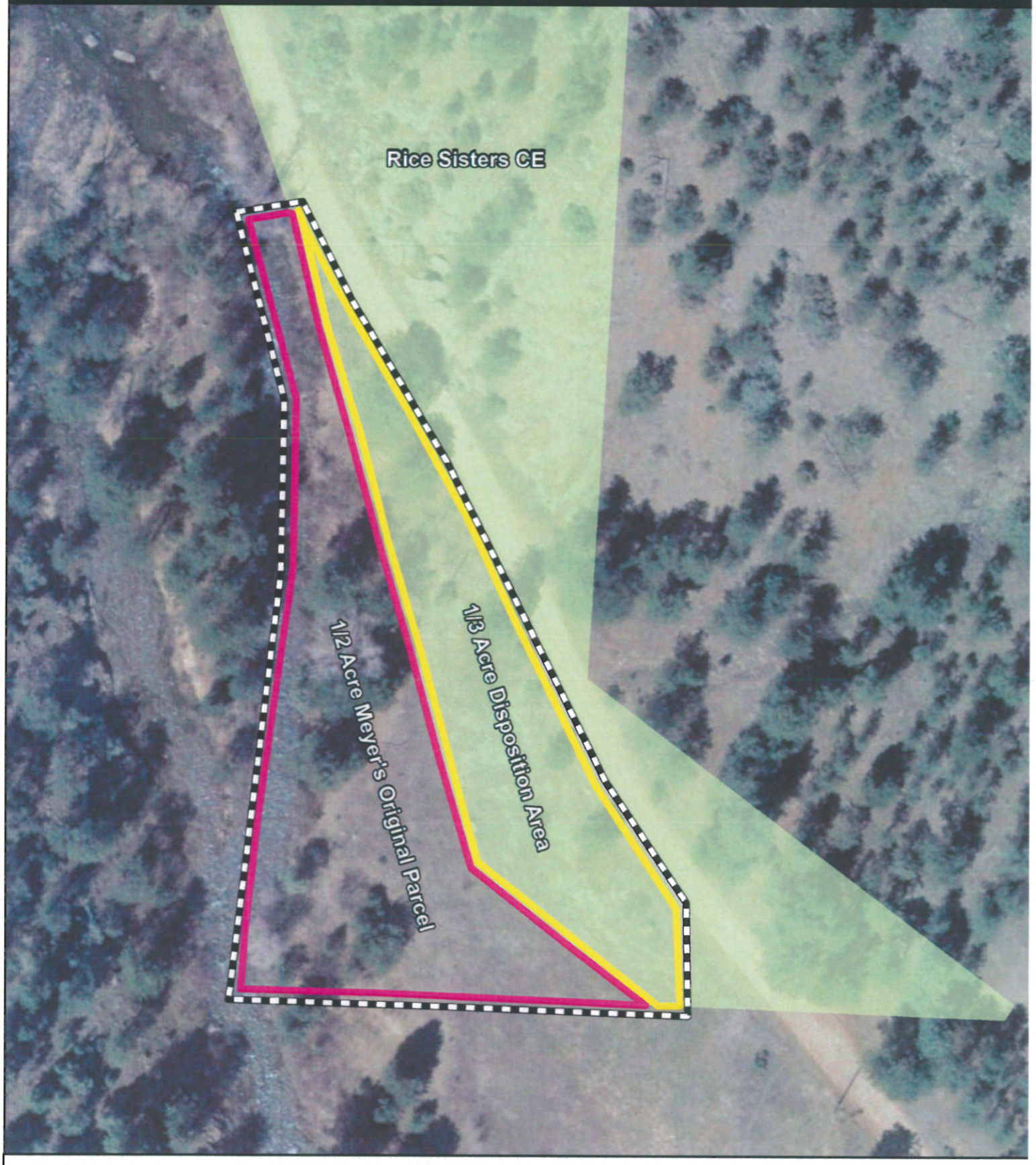
Other Public Lands

0 0.5 1 2 3 4 5 Miles

Approximate property boundaries from Boulder County Assessor's data.

E:\MapFiles\Property\Rice Sisters\RiceDisposition_A.mxd

Attachment B - Detail Map Rice Disposition



© 2010 City of Boulder, Colorado

All rights reserved. The map information contained hereon is intended for the sole use of the purchaser and may not be copied, displayed or redistributed in any way, in whole or in part, without the expressed written consent of the City of Boulder.

The information depicted is provided as a graphical representation only. While source documents were developed in compliance with National Map Accuracy standards, the City of Boulder provides no guarantee, express or implied, as to the accuracy and/or completeness of the information contained hereon.

Rice Sisters - CE
Meyer Future Parcel
Meyer Original Parcel
Disposition Area

NOT TO SCALE

0 50 100 Fee

REFERENCE MATERIALS

City of Boulder Proposed Work Plan January - March 2011

	1st Qtr. - 2011		2nd Qtr. 2011		3rd Qtr. 2011		4th Qtr. 2011	
General								
Boulder Valley Comp. Plan - 5 yr. update^	STAFF	CC -SS	CC - PH					
Carter Lake Pipeline	STAFF						CC - IP	
Chautauqua Study Session^			CC - SS					
Children & Youth Study Session Follow Up	CC - IP		CC - IP					
Comcast Franchise Renewal	CC - IP			CC				
Community Survey		Developed			Administered		Results	
Compatible Development Implementation Rpt.			CC - IP					
Drought Planning & Response Plan Update	CC - PH							
IBM Connector Trail - IGA								
Keep it Clean Partnership - IGA			CC - PH					
Legislative Agenda^							CC - SS	CC - Matter
Medical Marijuana								
Code Update	CC - PH							
Sales & Use Tax Audit/ Rev.	STAFF				CC - IP			
Open Space - Disposal of Eldorado Fire Station site	STAFF/ PUBLIC PROCESS		CC					
75th Street Wastewater Treatment Facility	STAFF				CC - IP			
State of the Court Presentation	CC - Presentation							
University of Colorado at Boulder								
Wastewater Re-Use					CC - IP			
Master Plan	STAFF		CC - MATTER					
Grandview	STAFF		CC - MATTER					
University Hill - issues			CC - IP	CC - Matter				
Valmont Butte Site Management and Remediation^			CC - MATTER					
Water and Ditch Rights	STAFF				CC - PH			
Water Budget Study for Industrial, Commercial & Institutional Customers (ICI)	STAFF/ PUBLIC PROCESS						CC - IP	
Water Conservation and Municipal Water Budgets			CC - IP					
West Trail Study Area (West TSA)		CC - PH						
Boulder Junction Implementation								
Financial Plan^			CC - IP		CC - via budget			
Private/ Public Development^			CC - IP		CC - via budget			
TDM & Parking Access GID's^			CC - IP					
Code Changes/ Updates								
Bike Share ^	CC - ACTION		CC - ACTION					
2012 ICC Building, Fire and Energy Codes	STAFF/ PUBLIC PROCESS				CC ACTION			
Café Seating^			CC - PH					
Community Gardens/ Solar Generation Fac.				CC - PH				
Contractor Licensing							CC - PH	
Mobile Food Vending			CC - PH					
Public Works Design & Construction Standards Update							CC ACTION	
RH-2 Zone District							CC - PH	
Tree Protection	CC							
Wind Generation Facilities							PB/ CC	

	1st Qtr. - 2011		2nd Qtr. 2011		3rd Qtr. 2011		4th Qtr. 2011	
SoDA, Downtown Zone Districts & Site Review Criteria for Height Modifications			CC - PH					
Out-of-City Utility Permits			CC - PH					
Code Enforcement								
Graffiti Enforcement and Regulations			CC - IP					
Rental Housing Enforcement/Smart Regs Impl.	STAFF/ PUBLIC PROCESS				CC - SS			
Smoking in Public Places	STAFF/ PUBLIC PROCESS						CC - PH	
Snow Removal Ordinance	CC - PH							
Development Review - Potential Call Ups/ Annexation Applications								
Boulder Community Hospital							Potential Call up	
Daily Camera Site			CONCEPT PLAN					
First Christian Church - 950 28th Street			CONCEPT PLAN				Potential Call up	
Gunbarrel Town Center	CONCEPT PLAN							
Harper Hollow - annexation application			CC - PH					
Hogan Pancost - Annexation/ Site Review			CONCEPT PLAN					
Junior Academy			CONCEPT PLAN				Potential Call up	
RTD Bus Facility at Boulder Junction			CONCEPT PLAN					
Waterview Apts. (63rd/ Arapahoe)			CONCEPT PLAN					
955 Broadway/ 1715 Aurora - multi family			CONCEPT PLAN					
Economic Vitality/ Downtown/ Uni Hill								
Civic Use Task Force IV		CC	STAFF					
Diagonal Plaza	ULI TAP/ CC - Matter							
13th/15th- Streetscape Improvements	CC - IP							
Federal Lab Partnerships/ MOU's					CC			
Randolph Center Condominium Association	STAFF		CC - Consent					
University Hill Revitalization								
Innovation District^	STAFF	ULI TAP						
14th Street - Lot Redevelopment^	STAFF			CC				
Residential Service District^	STAFF	CC - IP	CC		STAFF			
Energy								
Boulder Canyon Hydroelectric Agreement					CC - IP			
Boulder's Energy Future^	CC ROUNDTABLE / SS				CC - PH			
Congressional Field Hearing on Sustainability^					Council Participation			
Local Environmental Action Division (LEAD)								
Program evaluation check in			CC - IP					
Sustainability IGAs			CC					
Finance/ Budget								
Capital Improvement Plan (CIP)^			CC - Matters		CC -SS and action			
City Wide Ballot Issues (CIP, etc)^		CC - SS	CC - SS		CC - SS			
Construction Use Tax - Imp. & Training^	STAFF				CC - IP			
2012 Recommended Budget^						CC - SS	CC - PH	
Purchasing procedures	STAFF			CC - IP				
Flood Management and Mitigation Program								
Boulder Creek Flood Map Updates	STAFF/ PUBLIC PROCESS				CC - PH			
Critical Facilities Flood Ordinance	STAFF/ PUBLIC PROCESS				CC - PH			
Multi-hazard mitigation plan update			CC - IP					
Wonderland Creek at Foothills Parkway,	STAFF				CC - IP			

City of Boulder Proposed Work Plan January - March 2011

	1st Qtr. - 2011	2nd Qtr. 2011	3rd Qtr. 2011	4th Qtr. 2011
Four Mile Fire/ Potential Flood Impact		CC - IP		
South Boulder Creek Flood Mitigation Plan	STAFF/ PUBLIC PROCESS			CC - PH
Master Plans				
Boulder Reservoir Master Plan			CC	
DUHMD/ PS Master Plan			CC - IP	CC - Present
FAM Master Plan Update				CC ACTION
Fire Master Plan	STAFF			CC - SS
Greenways Master Plan Update	STAFF	CC - PH		
Parks and Recreation Master Plan Update	STAFF			CC
Police Department Master Plan Update	STAFF			CC
Waste Reduction Master Plan				
Master Plan	CC - SS			
6400 Arapahoe Annexation^			CC - PH	
Water Utility Master Plan				CC - PH
Social Sustainability				
Affordable Housing				
Inclusionary Housing/ Program Review	CC	STAFF		
Mobile Home Park Strategies	STAFF			CC- PH
Task Force		CC - UPDATE	Recommendation	STAFF
Homelessness - 10 yr. plan implementation	STAFF			
Mapleton Early Childhood Center	CC - IP	CC - Matter		
Transportation Related				
Broadway/Euclid		CC - IP	CC - IP	
DRCOG-TIP Coordination	STAFF		CC - via budget	
Pedestrian Crossing Treatment Guidelines review	STAFF		CC - ACTION	
Transportation Demand Management (TDM), Parking, BVSD & RTD Coordination	STAFF	CC - IP		
Transportation Capital Construction	STAFF	CC - IP		
Transportation Master Plan Implementation		CC - IP		IP (Metrics & Multimodal Study
Regional Transportation Issues/ US 36	STAFF	CC - IP		
Urban Wildlife/ Integrated Pest Mgmt. Issues				
Integrated Pest Mgt. Policy Revision^		CC - IP		
Nuisance Mosquito Pilot Evaluation		CC - PH		
Urban Wildlife Plan - Bear/Lion^		CC- direction		CC - acceptance

KEY:
CC = City Council Public Hearing or Matter
CC = Information Packet Memo (IP)
CC = Consent Item
STAFF

^ = Cross Departmental Item
IP = Information Packet
SS = Study Session

BVSD = Boulder Valley School District
CEAP = Community & Environment Assessment Process
CIP = Capital Improvement Plan
DRCOG = Denver Region Council of Governments
DUHMD = Downtown/ University Hill Management District
FAM - Facilities and Asset Management
GID = General Improvement District
ICC = International Code Council
ICI = Industrial, Commercial & Institutional Customers
IGA = Inter Governmental Agreement
MOU = Memorandum of Understanding
PS = Parking Services
RH = Residential Housing
RTD = Regional Transit District
SoDA = South of Downtown Area
TIP = Transportation Improvement Program
TDM = Transportation Demand Management

	1st Qtr. - 2011		2nd Qtr. 2011		3rd Qtr. 2011		4th Qtr. 2011	

Note: Dates are tentative and subject to change.

2010-2011 City Council Goals
REVISED JANUARY 2011

Boulder's Energy Future – Note: Highlighted Section is new
The city's top priority for 2011 is to develop a vision and framework to guide planning and decision making about Boulder's energy future, and to analyze and make decisions about potential options for achieving the community's vision. The project's overarching goal is:

> *To ensure that Boulder residents, businesses and institutions have access to energy that is increasingly clean, reliable and competitively priced.*

In charting Boulder's energy future, the following objectives will be used to evaluate success:

Boulder's energy future will:

- Ensure a stable, safe and reliable energy supply
- Ensure competitive rates, balancing short-term and long-term interests
- Significantly reduce carbon emissions and pollutants
- Provide energy customers with a greater say about their energy supply
- Promote local economic vitality
- Promote social and environmental justice

Specific actions to be accomplished in 2011 are:

1) **Develop a November 2011 Ballot Measure** through a series of community engagement opportunities, intensive research efforts and council discussions to establish the city's options or preferred option for its energy future; and

2) **Conduct Analysis to Inform Development of a 2012 Action Plan** which would be implement council and voter direction as established in the November 2011 vote.

ADDITIONAL COUNCIL PRIORITIES

Affordable Housing

- Receive the Affordable Housing Task Force recommendations on program goals and strategies in August. Based on council decisions regarding these recommendations, develop an implementation plan for the updated Affordable Housing Strategy.
- Conduct a study session in 4Q, 2011 to review approaches to addressing the maintenance and preservation of mobile home parks as affordable housing options and staff recommendations on a comprehensive approach to addressing mobile home park issues

Climate Action Plan

- Focus on success of projects and programs already underway, especially implementation of SmartRegs and Energy Smart, and work to reduce energy consumption in the commercial and industrial sectors
- Maximize utilization of Xcel's SmartGrid: part of localization strategy
- Fund transportation projects that reduce greenhouse gas impacts
- Integrate Climate Action Plan with BVCP

University Hill Revitalization

- Continue work of Ownership Group to develop comprehensive revitalization strategy
- Investigate formation of a general improvement district, including the commercial area and part of the residential area to control trash and other problems
- Change boundaries of BMS land use to coincide with UHGID through BVCP process
- Support private development and investment in Hill area, including potential partnership for redevelopment on city-owned properties
- Partner with CU to consider opportunities for properties in the Hill area
- Provide an opportunity to explore big ideas

Boulder Junction Implementation

- Continue to implement key elements of Boulder Junction by: coordinating with public and private development, including RTD and its selected developer and the developer of the 3100 Pearl project; refining financial commitments which prioritize and phase in key public improvements, and advancing the Access and TDM Districts.
- Design key public improvements in greater detail; refine project costing and prioritize projects for phasing.
- Prioritize city actions to facilitate private investment
- Focus additional planning work on reconsidering use for Pollard site

Capital Investment Strategy

- Develop a capital investment strategy that commits unallocated existing revenues to address deficiencies first and high priority enhancements second.
- Consider asking voters for bonding authority based on existing revenues as early as Nov 2011.
- Establish a stakeholder committee which would provide advice to staff and City Council regarding potential new revenues for an expanded capital investment strategy, with the potential for a 2012 ballot item.

Waste Reduction

- Update Waste Reduction Master Plan, focusing on innovative solutions such as "waste to energy;" reduction of commercial waste stream; and reduction of toxic materials.

Homelessness

- Continue to participate in the implementation of the Ten Year Plan to Address Homelessness, including balancing long term and short term service needs and investing new available resources in the Housing First model.
- Continue to work with emergency service providers such as Carriage House, Shelter for the Homeless and Boulder Outreach for Homeless Overflow to coordinate emergency services.

Sustainable Agriculture and Local Food Systems

- Identify lands for potential food production
- Continue efforts to identify and address constraints of the Farmer's Market, and to explore potential for development of a year-round market facility
- Create a stronger policy framework for sustainable agriculture in the BVCP update

Mapleton Early Childhood Center

- Continue to work with community service providers, BVSD and Head Start to identify opportunities for meeting a range of family needs and incomes for early childhood programs and services which address the achievement gap.

OTHER CITY GOALS AND WORK PLAN ITEMS

In addition, the City Council endorsed the staff work plan for 2011 which includes completion of the five year update to the Boulder Valley Comprehensive Plan, land use and zoning code changes, studies in support of water budgets, engagement with the Colorado Chautauqua Assocation regarding their planning efforts, work with CU related to their ten-year facilities master plan, a Congressional field hearing on sustainability, a critical facilities flood ordinance, and investigation of opportunities to support capital investment in the community. The full 2011 work program is detailed in the attached spreadsheet.

Realizing the magnitude of the work plan, the City Council also directed staff to utilize additional staff resources, if any, on background investigations to support Civic Center planning.

Council will reconvene in June 2011, to review progress on the Council goals and to address prioritization of projects.

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.

Council Communication:

- Council members agree to keep quasi-judicial roles scrupulously clean between members of boards and members of council, like expressing ideas to board members on things coming before the Board, and carefully disclose or recuse themselves when they're 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, the a 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 response 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 goal committee meetings will be scheduled to accommodate the council members on the committee.
- Notice of the times and places for each goal 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.

Approved by Council 10/19/04

2011 Study Sessions: 4:30 - 6pm Energy Roundtable, 6-6:30 dinner and 6:30 study session start times				
Thursday, June 9, 2011	1) Joint w/ Landmarks (2 hours); 2) Affordable Housing Task Force Update (1 hour)			LOBBY - Susan Richstone
June 14, 2011	Clean Energy 6-9 PM (per Mary Ann Weiderman)	3 hours total	**Televised**	Council Chambers
Thursday, June 16 2011	Work Plan Prioritization			LOBBY Paul Fetherston x3006
July 26, 2011	Clean Energy (placeholder if needed)	2 hours		Council Chambers
August 9, 2011	1) Clean Energy Roundtable and 2) CIP		**Budget Televised**	Council Chambers
August 23, 2011	1) Clean Energy Roundtable and 2) Hold for Utility Rates & Fees and Zero Waste Master Plan (follow up on ballot items if needed)	2 hours	**Budget Televised**	Council Chambers
August 30, 2011	1) Clean Energy Roundtable and 2) Update on Smart Regs Implementation and Rental Housing Enforcement (3) Zero Waste Master Plan (tentative)			
September 13, 2011	1) Clean Energy Roundtable and 2) Recommended 2012 Budget - 2 hours	3 hours total	**Budget Televised**	Council Chambers
September 27, 2011	1) Clean Energy Roundtable and 2) Recommended 2012 Budget - 2 hours (Follow-up if necessary - might be able to have another topic)	3 hours total	**Budget Televised**	
October 11, 2011	1) Clean Energy Roundtable - Zero Waste Master Plan hold date if not finished on August 30.			
October 25, 2011	1) Clean Energy Roundtable- HOLD FOR OPEN SPACE ISSUES (green tags)			
November 8, 2011	Council Meeting in lieu of study session due to election on November 1			

June 16 - SPECIAL MEETING 6pm	Est. time	CAO to Prepare Ordinance?	Ppoint	Timing Issues	Contact
Public Hearing:					
* Schnell property purchase	45 minutes	N			Jim Schmidt

NO MEETING JUNE 21					

July 19 - RESTRICTED - NO ADDITIONAL PUBLIC HEARINGS. POSSIBLE 5 p.m. Start Time	Est. time	CAO to Prepare Ordinance?	Ppoint	Timing Issues	Contact
CONSENT:					
* Minutes					
* April 26 study session summary re: 2012 Budget		N			Eichem?
PUBLIC HEARINGS:					
* 1st Reading ballot language: Boulder's Energy Future ballot item	2-3 hours	Y		2nd reading August 2nd	Driskell/Finfrock
* 1st Reading ballot language: CIP	1 hour	Y		2nd reading August 2nd	Budget office?
* 1st Reading; Charter Items		Y		2nd reading August 2nd	Alisa Lewis
* 2nd reading, EMERGENCY; Code of Conduct change re: B&C Members serving and voting on other boards		Y			Tom Carr
MATTERS FROM CITY MANAGER:					
MATTERS FROM CITY ATTORNEY:					
MATTERS FROM MAYOR AND MEMBERS:					
"Move To Amend" - Cowles					Per 5/23 CAC
CALL-UPS:					

Council Appointments to Committees: 2011 ASSIGNMENTS

INTERGOVERNMENTAL ORGANIZATIONS:

Boulder County Consortium of Cities:	**Ken Wilson, alternate George Karakehian**
Colorado Municipal League Policy Committee (CML):	**Matt Appelbaum, KC Becker, alternate Carl Castillo**
Denver Regional Council of Governments (DRCOG):	**Macon Cowles, alternate KC Becker**
Housing Authority (Boulder Housing Partners):	**Suzy Ageton**
Metro Mayors Caucus:	**Susan Osborne**
National League of Cities:	**Matt Appelbaum**
Resource Conservation Advisory Board:	**Lisa Morzel**
Rocky Flats Stewardship Council:	**Lisa Morzel, alternate Carl Castillo, second alternate Eric Stone**
CU/City Oversight Group:	**Crystal Gray, Ken Wilson and George Karakehian**
US 36 Mayors and Commission Coalition:	**Susan Osborne, alternate Suzy Ageton**
US 36 Commuting Solutions	**Suzy Ageton**
Urban Drainage and Flood Control District	**Ken Wilson**

REGIONAL STUDY COMMITTEES:

Beyond the Fences Coalition	**Lisa Morzel**
Northwest Rail Environmental Assessment Team:	**Suzy Ageton**

LOCAL ORGANIZATIONS:

Boulder Museum of Contemporary Art (BMoCA):	**Macon Cowles, alternate George Karakehian**
Boulder Convention and Visitors Bureau:	**Crystal Gray, alternate Susan Osborne**
Dairy Center for the Arts:	**George Karakehian**
Downtown Business Improvement District Board:	**KC Becker and Ken Wilson**

INTERNAL CITY COMMITTEES:

Audit Committee:	**Susan Osborne, George Karakehian, Lisa Morzel**
Boulder Valley School District Issues:	**Crystal Gray, Lisa Morzel, George Karakehian**
Evaluation Coordinators:	**Ken Wilson, Matt Appelbaum**
Civic Use/9th & Canyon:	**Crystal Gray and Lisa Morzel**
Legislative Committee:	**Matt Appelbaum, Crystal Gray. KC Becker, Susan Osborne**
Charter Committee:	**Suzy Ageton, KC Becker, Lisa Morzel**
Council Budget Action Plan Committee:	**Matt Appelbaum, Crystal Gray, KC Becker**

SISTER CITY REPRESENTATIVES:

Jalapa, Nicaragua:	**Lisa Morzel**
Kisumu, Kenya	**Lisa Morzel**
Llasa, Tibet:	**Suzy Ageton**
Dushanbe, Tajikistan:	**Susan Osborne, alternate George Karakehian**
Yamagata, Japan:	**Ken Wilson**
Mante, Mexico:	**KC Becker**
Yateras, Cuba:	**Crystal Gray, alternate Macon Cowles**
Sister City Sub-committee:	**Crystal Gray and Lisa Morzel**