City of Louisville
COLORADO • SINCE 1878

City Council

Agenda

Tuesday, May 5, 2015
City Hall, Council Chambers
749 Main Street
7:00 PM

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. APPROVAL OF AGENDA

4. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

Council requests that public comments be limited to 3 minutes. When several people wish to speak on the same position on a given item, Council requests they select a spokesperson to state that position.

5. CONSENT AGENDA

The following items on the City Council Agenda are considered routine by the City Manager and shall be approved, adopted, accepted, etc., by motion of the City Council and roll call vote unless the Mayor or a City Council person specifically requests that such item be considered under "Regular Business." In such an event the item shall be removed from the "Consent Agenda" and Council action taken separately on said item in the order appearing on the Agenda. Those items so approved under the heading "Consent Agenda" will appear in the Council Minutes in their proper order.

A. Approval of Bills
B. Approval of Minutes – April 21, 2015
C. Award Bid for 2015 Water Main Replacement Project

6. COUNCIL INFORMATIONAL COMMENTS ON PERTINENT ITEMS NOT ON THE AGENDA (Council general comments are scheduled at the end of the Agenda.)

7. CITY MANAGER'S REPORT

8. REGULAR BUSINESS

A. OLDER AMERICANS MONTH PROCLAMATION

- Staff Presentation

Citizen Information

If you wish to speak at the City Council meeting, please fill out a sign-up card and present it to the City Clerk.

Persons with disabilities planning to attend the meeting who need sign language interpretation, assisted listening systems, Braille, taped material, or special transportation, should contact the City Manager's Office at 303 335-4533. A forty-eight-hour notice is requested.

B. RESOLUTION NO. 25, SERIES 2015 –A RESOLUTION APPROVING A BUSINESS ASSISTANCE AGREEMENT WITH MCCASLIN RETAIL, LLC FOR AN ECONOMIC DEVELOPMENT PROJECT IN THE CITY OF LOUISVILLE

- Staff Presentation
- Public Comments (Please limit to three minutes each)
- Council Questions & Comments
- Action

C. GATEWAY ANNEXATION – *Continued from 04/21/2015*

1. ORDINANCE NO. 1687, SERIES 2015 – AN ORDINANCE AMENDING ORDINANCE NOS. 1165 AND 1166, SERIES 1994 CONCERNING THE GATEWAY ANNEXATION AND APPROVING AN AMENDMENT TO AN ADDENDUM TO ANNEXATION AGREEMENT – 2ND Reading – Public Hearing (Advertised *Daily Camera* 04/12/2015)

- Mayor Opens Public Hearing
- Staff Presentation
- Public Comments (Please limit to three minutes each)
- Council Questions & Comments
- Additional Public Comments
- Mayor Closes Public Hearing
- Action

2. RESOLUTION NO. 22, SERIES 2015 – A RESOLUTION APPROVING AN AMENDMENT TO THE GATEWAY FINAL PLANNED UNIT DEVELOPMENT (PUD) TO MODIFY THE HEIGHT ALLOWANCE LANGUAGE ON LOTS 1 AND 2, BLOCK 1 FROM "1 STORY WITH A 26 FEET MAXIMUM BUILDING HEIGHT" TO "1 OR 2 STORIES WITH A MAXIMUM BUILDING HEIGHT OF 26 FEET"

- Staff Presentation
- Public Comments (Please limit to three minutes each)
- Council Questions & Comments
- Action

D. RENEWAL OF COMCAST CABLE FRANCHISE

1. ORDINANCE NO. 1685, SERIES 2015, AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE BY THE CITY OF LOUISVILLE TO COMCAST OF COLORADO I, LLC AND ITS LAWFUL SUCCESSORS, TRANSFEREES AND ASSIGNS, FOR THE RIGHT TO MAKE REASONABLE AND LAWFUL USE OF RIGHTS-OF-WAY WITHIN THE CITY TO CONSTRUCT, OPERATE, MAINTAIN, RECONSTRUCT, REPAIR, AND UPGRADE A CABLE SYSTEM FOR THE PURPOSE OF PROVIDING CABLE SERVICES WITHIN THE CITY – 2nd Reading – Public Hearing (Advertised *Daily Camera* 04/12/2015)

- Mayor Opens Public Hearing
- Staff Presentation
- Public Comments (Please limit to three minutes each)
- Council Questions & Comments
- Additional Public Comments
- Mayor Closed Public Hearing
- Action

2. ORDINANCE NO. 1686, SERIES 2015, AN ORDINANCE REESTABLISHING CITY OF LOUISVILLE CABLE TELEVISION CUSTOMER SERVICE STANDARDS – 2nd Reading – Public Hearing (Advertised *Daily Camera* 04/12/2015)

- Mayor Opens Public Hearing
- Staff Presentation
- Public Comments (Please limit to three minutes each)
- Council Questions & Comments
- Additional Public Comments
- Mayor Closed Public Hearing
- Action

3. LETTER OF AGREEMENT BETWEEN THE CITY OF LOUISVILLE AND COMCAST

- Staff Presentation
- Public Comments (Please limit to three minutes each)
- Council Questions & Comments
- Action

E. RESOLUTION NO. 26, SERIES 2015 – A RESOLUTION APPROVING A CONSTRUCTION AND MAINTENANCE AGREEMENT WITH BNSF RAILWAY COMPANY FOR THE SOUTH STREET PEDESTRIAN/BIKE UNDERPASS

- Staff Presentation
- Public Comments (Please limit to three minutes each)
- Council Questions & Comments
- Action

F. CITY-WIDE MARGINAL COST FISCAL MODEL

- Staff Presentation
- Public Comments (Please limit to three minutes each)
- Council Questions & Comments
- Action

G. RESOLUTION NO. 27, SERIES 2015 – A RESOLUTION AMENDING THE 2015 BUDGET BY AMENDING APPROPRIATIONS IN THE GENERAL FUND, URBAN REVITALIZATION DISTRICT FUND, OPEN SPACE & PARKS FUND, CONSERVATION TRUST – LOTTERY FUND, CEMETERY FUND, HISTORIC PRESERVATION FUND, CAPITAL PROJECTS FUND, WATER UTILITY FUND, WASTEWATER UTILITY FUND, STORM WATER UTILITY FUND, GOLF COURSE FUND, AND FLEET MANAGEMENT FUND FOR CARRY FORWARD OF APPROPRIATIONS AND ADDITIONAL APPROPRIATIONS WITHIN SUCH FUNDS AND ADJUSTING BUDGETED REVENUE IN THE GENERAL FUND, URBAN REVITALIZATION DISTRICT FUND, OPEN SPACE & PARKS FUND, HISTORIC PRESERVATION FUND, CAPITAL PROJECTS FUND, IMPACT FEE FUND, WASTEWATER UTILITY FUND, STORM WATER UTILITY FUND, GOLF COURSE FUND, AND DEBT SERVICE FUND – PUBLIC HEARING (ADVERTISED DAILY CAMERA 05/03/2015)

- Staff Presentation
- Public Comments (Please limit to three minutes each)
- Council Questions & Comments
- Action

H. 2014 AND 2015 CAPITAL IMPROVEMENT PROJECTS UPDATE

- Staff Presentation
- Public Comments (Please limit to three minutes each)
- Council Questions & Comments

I. ORDINANCE NO. 1690, SERIES 2015 – AN ORDINANCE AMENDING SECTION 2.32.060 OF THE LOUISVILLE MUNICIPAL CODE REGARDING THE COLLECTION OF MUNICIPAL COURT ASSESSMENTS – 2nd Reading – Public Hearing – (Advertised *Daily Camera* 04/26/2015)

- Mayor Opens Public Hearing
- Staff Presentation
- Public Comments (Please limit to three minutes each)
- Council Questions & Comments
- Additional Public Comments
- Mayor Closed Public Hearing
- Action

J. ORDINANCE NO. 1689, SERIES 2015 – AN ORDINANCE REPEALING AND REENACTING CHAPTER 14.16 OF THE LOUISVILLE MUNICIPAL CODE REGARDING SPECIAL EVENTS PERMIT – 2nd Reading – Public Hearing – (Advertised *Daily Camera* 04/26/2015)

- Mayor Opens Public Hearing
- Staff Presentation
- Public Comments (Please limit to three minutes each)
- Council Questions & Comments
- Additional Public Comments
- Mayor Closed Public Hearing
- Action

K. RESOLUTION NO. 28, SERIES 2015 - A RESOLUTION DENYING A REZONING, FINAL PLAT, FINAL PLANNED UNIT DEVELOPMENT (PUD), AND SPECIAL REVIEW USE (SRU) FOR THE REDEVELOPMENT OF A 3.9 ACRE PROPERTY WITHIN THE CORE PROJECT AREA OF THE HIGHWAY 42 REVITALIZATION AREA. THE REDEVELOPMENT INCLUDES THE ADDITION OF APPROXIMATELY 19,308-23,000 SQ.FT. OF COMMERCIAL SPACE

- Staff Presentation
- Public Comments (Please limit to three minutes each)
- Council Questions & Comments
- Action

L. GRAIN ELEVATOR FINAL PLAT, FINAL PLANNED UNIT DEVELOPMENT, SPECIAL REVIEW USE, AND LANDMARK – REQUEST CONTINUANCE TO 05/19/2015

- City Attorney Introduction
- Action

M. ORDINANCE NO. 1691, SERIES 2015 – AN ORDINANCE AMENDING TITLE 17 OF THE LOUISVILLE MUNICIPAL CODE TO DEFINE LIVE-WORK USES AND ALLOW THEIR DEVELOPMENT IN THE MIXED USE ZONE DISTRICTS AND DOWNTOWN LOUISVILLE – 1ST Reading – Set Public Hearing 05/19/2015

- City Attorney Introduction
- Action

N. ORDINANCE NO. 1692, SERIES 2015 – AN ORDINANCE FOR THE REGULATION OF TRAFFIC BY THE CITY OF LOUISVILLE, COLORADO; AMENDING CERTAIN SECTIONS OF THE LOUISVILLE MUNICIPAL CODE CONCERNING FLASHING YELLOW SIGNALS AND DRIVING THROUGH PRIVATE PROPERTY – 1st Reading – Set Public Hearing 05/19/2015

- City Attorney Introduction
- Action

9. CITY ATTORNEY'S REPORT

10. COUNCIL COMMENTS, COMMITTEE REPORTS, AND IDENTIFICATION OF FUTURE AGENDA ITEMS

11. ADJOURNMENT

City of Louisville
Cash Disbursement Edit List

Batch: 90134 Period: 04/16/15

Vendor/ Remit#	Invoice Number	Description	Invoice Date	Due Date	Invoice Amount	Check Amount
	FOR BANK ACCOUNT:	4 FIRST NATIONAL BANK OF COLORAD			Control Disbursement Account	
4855-1	CENTURYLINK					
	032015A	MAR 15 PHONE SERVICE	03/20/15	04/19/15	224.07	224.07
13640-1	CHILD SUPPORT ENFORCE OFFICE					
	041015	EMPLOYEE GARNISHMENT PP#08	04/10/15	05/10/15	255.23	255.23
1115-1	COLONIAL INSURANCE					
	0401221	#9711888 APR 15 EMPLOYEE PREM	04/03/15	05/03/15	18.00	18.00
1205-1	COLORADO DEPT OF REVENUE					
	1QSTX2015	1Q 2015 REC CENTER SALES TAX	03/31/15	04/30/15	204.00	204.00
14002-1	KANSAS PAYMENT CENTER					
	041015	EMPLOYEE GARNISHMENT PP#08	04/10/15	05/10/15	270.46	270.46
13997-1	LAUREN TRICE					
	041615	TRAVEL ADVANCE 4/17-4/21/15	04/16/15	05/16/15	355.00	355.00
9859-2	METROPOLITAN ASSOC OF CHIEFS OF POLICE					
	041515	LECC CONFERENCE REG	04/15/15	05/15/15	50.00	50.00
15	HUTCHINSON CORNER LLC					
	041015	RELEASE CASH IMPROVE GUARANTEE	04/10/15	05/10/15	49,278.00	49,278.00
14066-1	MOUNTAINWORKS COMMUNICATIONS LLC					
	041515	PERFORMANCE MGMT TRAINING	04/15/15	05/15/15	800.00	800.00
8016-1	NATIONAL RESEARCH CENTER INC					
	5409	2015 PERMIT SURVEY	03/13/15	04/12/15	4,750.00	4,750.00
3370-1	PETTY CASH - JILL SIEWERT					
	041015	PETTY CASH LIBRARY	04/10/15	05/10/15	70.15	70.15
13696-1	SCOTT ROBINSON					
	041615	TRAVEL ADVANCE 4/17-4/21/15	04/16/15	05/16/15	284.00	284.00
11094-1	WESTERN DISPOSAL SERVICES					
	040115CITY	MAR 15 CITY TRASH SERVICE	04/01/15	05/01/15	1,564.75	
	040115CITY	MAR 15 CITY TRASH SERVICE	04/01/15	05/01/15	174.00	
	040115CITY	MAR 15 CITY TRASH SERVICE	04/01/15	05/01/15	155.00	
	040115CITY	MAR 15 CITY TRASH SERVICE	04/01/15	05/01/15	347.00	
	040115CITY	MAR 15 CITY TRASH SERVICE	04/01/15	05/01/15	191.00	
	040115RES	MAR 15 RESIDENTIAL TRASH SERV	04/01/15	05/01/15	116,277.60	118,709.35
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	BANK TOTAL PAYMENTS				175,268.26	175,268.26
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	GRAND TOTAL PAYMENTS				175,268.26	175,268.26

City of Louisville
Cash Disbursement Edit List

Batch: 90200 Period: 04/23/15

Vendor/ Remit#	Invoice Number	Description	Invoice Date	Due Date	Invoice Amount	Check Amount
	FOR BANK ACCOUNT:	4 FIRST NATIONAL BANK OF COLORAD			Control Disbursement Account	
11298-1	DELTA DENTAL OF COLORADO					
	DELTA0515A	#007562-0000 MAY 15 EMPL PREM	04/16/15	05/16/15	12,578.66	12,578.66
14072-1	JESSICA ARVANITES					
	042315	TRAVEL ADVANCE 4/27-5/1/15	04/23/15	05/23/15	236.00	236.00
6455-1	KAISER PERMANENTE					
	0017241794	05920-01-16 MAY 15 EMPL PREM	04/07/15	05/07/15	124,401.06	124,401.06
13997-1	LAUREN TRICE					
	042215	TRAVEL RECON 4/17-4/21/15	04/22/15	05/22/15	1,137.64	1,137.64
6062-1	LOUISVILLE MUNICIPAL COURT					
	042115	JURY FEES 5/6 & 5/13/15 TRIALS	04/21/15	05/21/15	132.00	132.00
22	HARLAN VITOFF					
	031415	SAFETY BOOTS VITOFF	03/14/15	04/13/15	150.00	150.00
10	FIORE & SONS					
	939	BULK WATER METER REFUND	04/16/15	05/16/15	150.00	150.00
700-1	PRAIRIE MOUNTAIN PUBLISHING LLP					
	445422	MAR 15 PUBLIC NOTICES	03/31/15	04/30/15	1,344.76	
	445422	MAR 15 PUBLIC NOTICES	03/31/15	04/30/15	244.56	
	445422	MAR 15 PUBLIC NOTICES	03/31/15	04/30/15	72.06	
	445422	MAR 15 PUBLIC NOTICES	03/31/15	04/30/15	257.82	
	445422	MAR 15 PUBLIC NOTICES	03/31/15	04/30/15	156.96	
	445422	MAR 15 PUBLIC NOTICES	03/31/15	04/30/15	313.14	
	445422	MAR 15 PUBLIC NOTICES	03/31/15	04/30/15	51.72	2,441.02
13696-1	SCOTT ROBINSON					
	042215	TRAVEL RECON 4/17-4/21/15	04/22/15	05/22/15	1,115.64	1,115.64
55	FIDELITY NATIONAL TITLE					
	U!00000970	18764/462191800: 1918 PATTI LA	04/23/15	04/23/15	67.70	67.70
3875-1	XCEL ENERGY					
	452246425	MAR 15 GROUP ENERGY	04/09/15	05/09/15	25,648.17	
	452246425	MAR 15 GROUP ENERGY	04/09/15	05/09/15	1,247.87	
	452246425	MAR 15 GROUP ENERGY	04/09/15	05/09/15	8,805.93	
	452246425	MAR 15 GROUP ENERGY	04/09/15	05/09/15	19,878.31	
	452246425	MAR 15 GROUP ENERGY	04/09/15	05/09/15	1,553.52	57,133.80
11371-1	XCEL ENERGY					
	451193988	MAR 15 TRAFFIC LIGHTS	04/01/15	05/01/15	1,305.26	
	451194511	MAR 15 STREET LIGHTS	04/01/15	05/01/15	37,810.61	
	451194815	MAR 15 FLASHERS	04/01/15	05/01/15	5.84	39,121.71
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	BANK TOTAL PAYMENTS				238,665.23	238,665.23

City of Louisville
Cash Disbursement Edit List

Batch: 90200 Period: 04/23/15

Vendor/ Remit#	Invoice Number	Description	Invoice Date	Due Date	Invoice Amount	Check Amount
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	GRAND TOTAL PAYMENTS				238,665.23	238,665.23

Batch: 90276 Period: 05/05/15

Vendor/ Remit#	Invoice Number	Description	Invoice Date	Due Date	Invoice Amount	Check Amount
	FOR BANK ACCOUNT:	4 FIRST NATIONAL BANK OF COLORAD			Control Disbursement Account	
6866-1	4 RIVERS EQUIPMENT					
	1451551	PARTS UNIT 5321	04/17/15	05/17/15	143.62	143.62
13547-1	A G WASSENAAR INC					
	248709	GEOTECH SERVICES CSF	03/27/15	04/26/15	90.00	
	248709	GEOTECH SERVICES CSF	03/27/15	04/26/15	90.00	
	248709	GEOTECH SERVICES CSF	03/27/15	04/26/15	90.00	
	248709	GEOTECH SERVICES CSF	03/27/15	04/26/15	90.00	360.00
14069-1	ABBIE PONIATOWSKI					
	001	MISSION/VALUES DEVELOPMENT PD	04/13/15	05/13/15	1,147.50	1,147.50
13960-1	ALFALFAS MARKET INC					
	042115	BUSINESS ASSISTANCE REBATE	04/21/15	05/21/15	42,100.83	
	042115	BUSINESS ASSISTANCE REBATE	04/21/15	05/21/15	21,050.41	63,151.24
9891-1	AMBIANCE					
	10156	APR 15 PLANT MAINT	04/10/15	05/10/15	195.00	195.00
13818-1	ARROWHEAD AWARDS					
	7705	NAME BADGE TRICE	03/06/15	04/05/15	10.00	10.00
7450-1	BASE LINE LAND & RESERVOIR CO					
	87	2015 ASSESSMENT	03/25/15	04/24/15	6,854.97	6,854.97
5492-1	BOULDER CONCERT BAND INC					
	032415	JULY 4TH MUSIC DEPOSIT	03/24/15	04/23/15	450.00	450.00
7706-1	BRANNAN SAND & GRAVEL CO LLC					
	137635	ASPHALT	04/14/15	05/14/15	257.61	
	137900	ASPHALT	04/21/15	05/21/15	65.59	323.20
13344-1	BROWN HILL ENGINEERING & CONTROLS LLC					
	9520	RAW WATER VALVE REPAIR WTP	04/03/15	05/03/15	740.50	740.50
13994-1	BRYAN CONSTRUCTION INC					
	PP05022815	CITY SERVICES FACILITY	02/28/15	03/30/15	233,702.13	
	PP05022815	CITY SERVICES FACILITY	02/28/15	03/30/15	233,702.13	
	PP05022815	CITY SERVICES FACILITY	02/28/15	03/30/15	233,702.13	
	PP05022815	CITY SERVICES FACILITY	02/28/15	03/30/15	233,702.12	934,808.51
14028-1	CAROL L BUTTERFIELD					
	041315	SEW PATCHES PD	04/13/15	05/13/15	6.00	6.00
13954-1	CATALYST COMMUNICATION INC					
	BL15B113	BIKELIFE BLDR MAGAZINE 2 PGS	04/22/15	05/22/15	1,000.00	1,000.00
13733-1	CATHY BAHR TRANSLATION SERVICES INC					
	042115	SPANISH INTERPRETER	04/21/15	05/21/15	110.00	110.00
248-1	CDW GOVERNMENT					
	TP78471	MERAKI WIRELESS SUPPORT	04/04/15	05/04/15	182.25	
	TP78471	MERAKI WIRELESS SUPPORT	04/04/15	05/04/15	182.25	

Batch: 90276 Period: 05/05/15

Vendor/ Remit#	Invoice Number	Description	Invoice Date	Due Date	Invoice Amount	Check Amount
	TV97054	VMWARE VSPHERE SUPPORT RENEWAL	04/16/15	05/16/15	1,334.22	1,698.72
935-1	CENTENNIAL PRINTING CO					
	57242	UTILITY BILLING ENVELOPES	04/17/15	05/17/15	2,257.00	
	57242	UTILITY BILLING ENVELOPES	04/17/15	05/17/15	2,257.00	4,514.00
1005-1	CHEMATOX LABORATORY INC					
	16220	DUI BLOOD TEST	04/04/15	05/04/15	20.00	20.00
4785-1	CINTAS CORPORATION #66					
	66292450	UNIFORM RENTAL WWTP	03/30/15	04/29/15	98.61	
	66295999	UNIFORM RENTAL WWTP	04/06/15	05/06/15	98.61	
	66296000	UNIFORM RENTAL WTP	04/06/15	05/06/15	201.85	
	66299620	UNIFORM RENTAL WWTP	04/13/15	05/13/15	98.61	
	66299621	UNIFORM RENTAL WTP	04/13/15	05/13/15	121.17	
	66303306	UNIFORM RENTAL WWTP	04/20/15	05/20/15	98.61	
	66303307	UNIFORM RENTAL WTP	04/20/15	05/20/15	121.17	838.63
4025-1	CINTAS FIRST AID AND SAFETY					
	5001082130	FIRST AID SUPPLIES	04/10/15	05/10/15	23.83	
	5001082130	FIRST AID SUPPLIES	04/10/15	05/10/15	32.37	
	5001082130	FIRST AID SUPPLIES	04/10/15	05/10/15	81.02	137.22
12676-1	CIVIC RESULTS					
	1926	2015 MMC RETREAT SPONSORSHIP	02/09/15	03/11/15	140.00	140.00
13260-1	CLIFTON LARSON ALLEN LLP					
	1019526	UTILITY BILLING SERVICES	04/14/15	05/14/15	4,046.32	
	1019526	UTILITY BILLING SERVICES	04/14/15	05/14/15	2,591.32	
	1019526	UTILITY BILLING SERVICES	04/14/15	05/14/15	582.00	
	1019526	UTILITY BILLING SERVICES	04/14/15	05/14/15	873.00	8,092.64
14011-1	CLOSE ASSOCIATES LLC					
	1504-03	NWTP CHLORINE TANK ASSESSMENT	04/01/15	05/01/15	1,942.50	1,942.50
10382-1	COBITCO INC					
	42286	RECLAMITE DRUM	04/22/15	05/22/15	313.20	313.20
11582-1	COLORADO CARPET CENTER INC					
	36715	FLOORING WORK	04/13/15	05/13/15	700.00	
	36715	FLOORING WORK	04/13/15	05/13/15	265.00	965.00
10916-1	COLORADO CODE CONSULTING LLC					
	6596	PLAN REVIEW	03/24/15	04/23/15	1,900.00	1,900.00
1245-1	COLORADO MOSQUITO CONTROL INC					
	15-3795	APR 15 MOSQUITO CONTROL SERV	04/24/15	05/24/15	1,280.56	
	15-3795	APR 15 MOSQUITO CONTROL SERV	04/24/15	05/24/15	236.69	1,517.25
1250-1	COLORADO MUNICIPAL LEAGUE					
	3375	MUNICIPAL CAUCUS LUNCH MUTH	04/13/15	05/13/15	13.00	13.00
1280-1	COLORADO STATE TREASURER					

Batch: 90276 Period: 05/05/15

Vendor/ Remit#	Invoice Number	Description	Invoice Date	Due Date	Invoice Amount	Check Amount
	042515	132653-00-6-151 UNEMPLOYMENT	04/25/15	05/25/15	7,448.00	
	042515	132653-00-6-151 UNEMPLOYMENT	04/25/15	05/25/15	2,128.00	9,576.00
12204-1	CONTRACT COMMERCIAL INTERIORS INC					
	9817	ROLLER SHADES BLDG SAFETY	04/23/15	05/23/15	360.00	360.00
9973-1	CPS DISTRIBUTORS INC					
	2062959-00	REUSE POND SILT FENCE	04/08/15	05/08/15	30.55	30.55
13370-1	CRIBARI LAW FIRM, PC					
	041515	PROSECUTING ATTORNEY	04/15/15	05/15/15	3,680.25	3,680.25
11476-1	DBC IRRIGATION SUPPLY					
	S2054591.001	IRRIGATION TUBING/DIFFUSERS	04/07/15	05/07/15	1,267.81	1,267.81
12486-1	DEBORAH J VAUGHAN					
	1512102-2	CONTRACTOR FEES SING & SIGN	05/02/15	06/01/15	49.00	
	1512103-2	CONTRACTOR FEES SING & SIGN	05/02/15	06/01/15	49.00	98.00
13685-1	DEWBERRY ENGINEERS INC					
	1178620	WWTP CONSTRUCTION MANAGEMENT	03/24/15	04/23/15	68,161.93	
	1178621	WWTP CONSTRUCTION MANAGEMENT	03/24/15	04/23/15	16,740.00	84,901.93
12392-1	DOOR TO DOOR PROMOTIONS					
	1457	PARKS CLOTHING	03/08/15	04/07/15	1,566.70	1,566.70
1505-1	DPC INDUSTRIES INC					
	737001208-15	CAUSTIC SODA NWTP	04/06/15	05/06/15	3,702.78	3,702.78
13790-1	EAGLE-NET ALLIANCE					
	10552	APR 15 INTERNET SERVICE	04/13/15	05/13/15	870.20	870.20
13963-1	ENSCICON CORPORATION					
	87099A	ENGINEERING SERV TOWNSEND	03/31/15	04/30/15	313.06	
	87099B	ENGINEERING SERV TOWNSEND	03/31/15	04/30/15	1,081.48	
	87099C	ENGINEERING SERV TOWNSEND	03/31/15	04/30/15	56.92	
	87099D	ENGINEERING SERV TOWNSEND	03/31/15	04/30/15	113.84	
	87099E	ENGINEERING SERV TOWNSEND	03/31/15	04/30/15	227.68	
	87099F	ENGINEERING SERV TOWNSEND	03/31/15	04/30/15	597.66	
	87238A	ENGINEERING SERV TOWNSEND	04/14/15	05/14/15	170.76	
	87238B	ENGINEERING SERV TOWNSEND	04/14/15	05/14/15	113.84	
	87238C	ENGINEERING SERV TOWNSEND	04/14/15	05/14/15	56.92	
	87238D	ENGINEERING SERV TOWNSEND	04/14/15	05/14/15	1,622.22	
	87337A	ENGINEERING SERV TOWNSEND	04/19/15	05/19/15	113.84	
	87337B	ENGINEERING SERV TOWNSEND	04/19/15	05/19/15	2,390.64	6,858.86
11037-1	ENVIRONMENTAL RESOURCE ASSOCIATES					
	746845	DMR QUALITY ASSURANCE	03/20/15	04/19/15	1,139.83	1,139.83
13660-1	ERIC MELVIN					
	042215	SUMMER CAMP PROGRAM	04/22/15	05/22/15	250.00	250.00
14074-1	FIRST SOUTHWEST					

Batch: 90276 Period: 05/05/15

Vendor/ Remit#	Invoice Number	Description	Invoice Date	Due Date	Invoice Amount	Check Amount
	9638	FINANCIAL SERVICES BOND ISSUE	10/27/14	11/26/14	2,400.00	2,400.00
14070-1	FORENSIC TRUTH VERIFICATION GROUP LLC					
	041615	PRE-EMPLOYMENT POLYGRAPH	04/16/15	05/16/15	140.00	140.00
10623-1	FRONT RANGE LANDFILL INC					
	37899	LANDFILL FEES	04/15/15	05/15/15	3,512.12	3,512.12
13945-1	G&G EQUIPMENT INC					
	39525	3 PT HITCH AERATOR	04/21/15	05/21/15	4,095.00	4,095.00
13098-1	G4S SECURE SOLUTIONS INC					
	7334595	BAILIFF SERVICES 4/6/15	04/12/15	05/12/15	110.00	110.00
6847-1	GENERAL AIR SERVICE & SUPPLY					
	91438829-1	CYLINDER RENTAL SHOPS	03/31/15	04/30/15	73.80	73.80
11214-1	GRAYLING					
	P005889	APR 15 PROFESSIONAL SERVICES	04/09/15	05/09/15	2,500.00	2,500.00
246-1	GREEN MILL SPORTSMAN CLUB					
	569	RANGE USE 3/13/15	04/10/15	05/10/15	20.00	20.00
2340-1	GREEN SPOT INC					
	85544-IN	ARBOR DAY TREES	04/16/15	05/16/15	1,780.00	1,780.00
2405-1	HACH COMPANY					
	9320871	HACH EQUIP SERVICE CONTRACT	04/08/15	05/08/15	2,297.00	2,297.00
11361-1	HARMONY K LARKE					
	1512191-2	CONTRACTOR FEES LITTLE ARTIST	04/22/15	05/22/15	297.00	
	1512195-1	CONTRACTOR FEES STAR WARS	03/25/15	04/24/15	189.00	
	1512195-2	CONTRACTOR FEES TEA PARTY	03/27/15	04/26/15	63.00	
	1512196-2	CONTRACTOR FEES ART	03/10/15	04/09/15	563.50	1,112.50
13565-1	HATCH MOTT MACDONALD LLC					
	IN13418	SLUDGE TREATMENT DESIGN	04/22/15	05/22/15	6,718.00	6,718.00
14019-1	HISTORY MATTERS LLC					
	032915	PRESERVATION MASTER PLAN	03/29/15	04/28/15	1,212.84	1,212.84
645-1	HUMANE SOCIETY OF BOULDER VALLEY					
	31505	1ST QTR ANIMAL IMPOUND FEES	04/20/15	05/20/15	1,800.00	1,800.00
13471-1	INTEGRATED CONTROL SYSTEMS INC					
	15-83	ADJUST HVAC CONTROLS CH	01/09/15	02/08/15	300.00	300.00
14048-1	INTERFACE COMMUNICATIONS CO					
	PP1040315	DILLON/ST ANDREW SIGNAL	04/03/15	05/03/15	197,647.91	197,647.91
10552-1	INTERNATIONAL MARTIAL ARTS					
	1512110-3	CONTRACTOR FEES KARATE	03/30/15	04/29/15	414.40	
	1512110-4	CONTRACTOR FEES KARATE	04/27/15	05/27/15	214.20	
	1512111-3	CONTRACTOR FEES KARATE	03/30/15	04/29/15	543.20	
	1512111-4	CONTRACTOR FEES KARATE	04/27/15	05/27/15	439.60	1,611.40
13346-1	ISS FACILITY SERVICES DENVER					

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Vendor/ Remit#	Invoice Number	Description	Invoice Date	Due Date	Invoice Amount	Check Amount
	871555	APR 15 JANITORIAL SERVICES	04/20/15	05/20/15	17,393.56	
	871555	APR 15 JANITORIAL SERVICES	04/20/15	05/20/15	606.06	
	871555	APR 15 JANITORIAL SERVICES	04/20/15	05/20/15	143.43	18,143.05
13511-1	ITRON INC					
	369606	ITRON ANNUAL SOFTWARE MAINT	04/11/15	05/11/15	2,910.14	2,910.14
9877-1	J-8 EQUIPMENT COMPANY INC					
	185318	FUEL CARDS UNIT 2144	04/08/15	05/08/15	20.65	20.65
372-1	JAMES NURSERY COMPANY					
	15-41521	ARBOR DAY TREES	04/16/15	05/16/15	1,870.00	1,870.00
11289-1	JVA INC					
	54644	STORM SEWER MASTER PLAN	03/23/15	04/22/15	6,970.00	6,970.00
9986-1	KORN'S LAMP LIGHTING INC					
	954	LSC BALLFIELD LIGHTING MAINT	03/30/15	04/29/15	2,190.00	2,190.00
13828-1	LANDSCAPES UNLIMITED LLC					
	PP08022815	2015 GROW IN	02/28/15	03/30/15	22,121.31	
	PP09033015	2015 GROW IN	03/30/15	04/29/15	89,446.58	111,567.89
10541-1	LITTLE VALLEY WHOLESALE NURSERY					
	285476	ARBOR DAY TREES	04/16/15	05/16/15	2,119.00	2,119.00
3070-1	LL JOHNSON DISTRIBUTING CO					
	1081845-00	WEED CONTROL	03/13/15	04/12/15	366.39	
	1680175-00	TURF MAINT EQUIPMENT CCGC	04/16/15	05/16/15	35,584.47	35,950.86
5432-1	LOUISVILLE FIRE PROTECTION DISTRICT					
	114525	DUI BLOOD DRAWS 3/15-3/19/15	04/15/15	05/15/15	70.00	70.00
14071-1	MARY RITTER					
	1510043-1	CONTRACTOR FEES FLUID RUNNING	04/30/15	05/30/15	235.20	235.20
15	KELLY ENTERPRISES LTD					
	042715	HPC FARMERS MARKET BOOTHS	04/27/15	05/27/15	90.00	90.00
226-1	MOUNTAIN STATES EMPLOYERS COUNCIL					
	302090	PUBLIC EMPLOYERS HR CONFERENCE	04/03/15	05/03/15	556.00	
	302176	FMLA A GUIDE FOR HR	04/03/15	05/03/15	175.00	
	302499	MANAGING ILL OR INJURED WORKER	04/06/15	05/06/15	175.00	906.00
7909-1	MUNICIPAL TREATMENT EQUIP INC					
	151340	CHLORINE REGULATOR PARTS WWTP	04/10/15	05/10/15	2,128.49	2,128.49
14035-1	NANCY E THOMADSEN					
	1510041-1	CONTRACTOR FEES DISCOVER MUSIC	04/06/15	05/06/15	63.00	
	1510041-2	CONTRACTOR FEES DISCOVER MUSIC	04/06/15	05/06/15	63.00	
	1510041-3	CONTRACTOR FEES DISCOVER MUSIC	04/06/15	05/06/15	63.00	
	1510041-4	CONTRACTOR FEES DISCOVER MUSIC	04/06/15	05/06/15	63.00	252.00
7113-1	NEVE'S UNIFORMS INC					
	LN-305754	UNIFORMS/ACCESSORIES FISHER	12/09/14	01/08/15	593.63	

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Vendor/ Remit#	Invoice Number	Description	Invoice Date	Due Date	Invoice Amount	Check Amount
	LN-309853	UNIFORMS/ACCESSORIES FISHER	02/26/15	03/28/15	185.68	779.31
6655-1	NEW COAL RIDGE DITCH COMPANY					
	042715	2015 ASSESSMENT	04/27/15	05/27/15	6,583.00	6,583.00
10175-1	NORMAN'S MEMORIALS INC					
	15-0422	MONUMENT REPAIR	04/22/15	05/22/15	355.00	355.00
6427-1	NORTHERN COLO WATER CONSERVANCY DIST					
	033115	2015 SWSP OPERATION ASSESSMENT	03/31/15	04/30/15	47,521.40	
	033115A	2015 SWSP VFD UPGRADE	03/31/15	04/30/15	104,865.87	152,387.27
13792-2	POLLARD WATER					
	11410	HYDRANT HOSE/PITOTLESS NOZZLE	04/10/15	05/10/15	1,650.45	1,650.45
3840-1	PREMIER TIRE TERMINAL					
	1687848	TIRES UNIT 5357	03/30/15	04/29/15	88.18	88.18
99	JOY LAESECKE					
	886192	ACTIVITY REFUND	04/16/15	05/16/15	133.00	133.00
99	ARIA MARTIN					
	886599	ACTIVITY REFUND	04/20/15	05/20/15	236.00	236.00
99	OTTO VERDONER					
	887364	ACTIVITY REFUND	04/27/15	05/27/15	80.00	80.00
6500-1	RECORDED BOOKS LLC					
	75110981	ADULT BOOKS AND MEDIA	04/03/15	05/03/15	6.95	
	75113932	ADULT BOOKS AND MEDIA	04/07/15	05/07/15	198.00	204.95
13735-1	REDZONE ROBOTICS INC					
	RZ9673	PIPE INSPECTIONS	10/31/14	11/30/14	1,599.05	1,599.05
13668-1	RESOURCE BASED INTERNATIONAL					
	2015-03	MAR 15 WATER RIGHTS ADMIN	04/24/15	05/24/15	14,139.50	14,139.50
13884-1	RG AND ASSOCIATES LLC					
	1010725	POND LINER REPLACEMENT PROJ	04/08/15	05/08/15	1,725.45	
	1010725	POND LINER REPLACEMENT PROJ	04/08/15	05/08/15	1,725.45	3,450.90
14043-1	SAMORA					
	302	SPORTS COMPLEX IRRIGATION POND	04/20/15	05/20/15	2,143.22	
	302	SPORTS COMPLEX IRRIGATION POND	04/20/15	05/20/15	2,143.23	4,286.45
13644-1	SCHULTZ INDUSTRIES INC					
	80868	APR 15 LANDSCAPE MAINT SERV	04/15/15	05/15/15	3,518.65	3,518.65
4215-1	SCOTT COX & ASSOCIATES INC					
	15125A	2015 SANITARY SEWER SURVEY	03/25/15	04/24/15	2,100.00	
	15125B	2015 DT PARKING SURVEY	03/25/15	04/24/15	2,200.00	
	15125C	2015 WATER LINE SURVEY	03/25/15	04/24/15	2,600.00	
	15125D	2015 STREET PROJECT SURVEY	03/25/15	04/24/15	2,300.00	9,200.00
1201-1	SUPPLYWORKS					
	334882370	JANITORIAL SUPPLIES RSC	04/15/15	05/15/15	1,969.97	

Batch: 90276 Period: 05/05/15

Vendor/ Remit#	Invoice Number	Description	Invoice Date	Due Date	Invoice Amount	Check Amount
	334882388	JANITORIAL SUPPLIES LIB	04/15/15	05/15/15	303.55	
	334882396	JANITORIAL SUPPLIES CH	04/15/15	05/15/15	231.94	
	334882404	JANITORIAL SUPPLIES PC	04/15/15	05/15/15	162.86	
	334882412	JANITORIAL SUPPLIES CS	04/15/15	05/15/15	191.82	
	334882420	JANITORIAL SUPPLIES AC	04/15/15	05/15/15	172.53	
	334882438	BREAKROOM SUPPLIES CH	04/15/15	05/15/15	119.51	
	334882446	BREAKROOM SUPPLIES CH	04/15/15	05/15/15	119.51	3,271.69
13957-1	TADDIKEN TREE COMPANY INC					
	5433	STUMP GRINDING GC	04/24/15	05/24/15	280.00	280.00
11624-1	TOWN OF SUPERIOR					
	259	POTABLE WATER INTERCONNECTION	04/17/15	05/17/15	4,795.00	4,795.00
14042-1	TRIENDURANCE LLC					
	2345	TRIATHLON GROUP SWIM	04/26/15	05/26/15	151.90	151.90
14065-1	TYLER TECHNOLOGIES INC					
	045-130471	TYLER SOFTWARE LICENSING	03/25/15	04/24/15	37,219.35	
	045-130471	TYLER SOFTWARE LICENSING	03/25/15	04/24/15	7,975.58	
	045-130471	TYLER SOFTWARE LICENSING	03/25/15	04/24/15	7,975.57	
	045-130577	TYLER SOFTWARE LICENSING	03/27/15	04/26/15	74,438.70	
	045-130577	TYLER SOFTWARE LICENSING	03/27/15	04/26/15	15,951.15	
	045-130577	TYLER SOFTWARE LICENSING	03/27/15	04/26/15	15,951.15	
	045-130589	TYLER OSDBA SERVICES	03/27/15	04/26/15	7,951.30	
	045-130589	TYLER OSDBA SERVICES	03/27/15	04/26/15	1,703.85	
	045-130589	TYLER OSDBA SERVICES	03/27/15	04/26/15	1,703.85	170,870.50
13426-1	UNIQUE MANAGEMENT SERVICES INC					
	303603	COLLECTION SERVICES	04/01/15	05/01/15	71.60	71.60
13241-1	UNITED REPROGRAPHIC SUPPLY INC					
	IN49187	OCE PRINTER QTR USAGE FEE	04/06/15	05/06/15	269.89	269.89
11087-1	UNITED SITE SERVICES					
	114-2847185	TOILET RENTAL MINERS FIELD	04/10/15	05/10/15	193.60	
	114-2847186	TOILET RENTAL CENTENNIAL PARK	04/10/15	05/10/15	193.60	
	114-2847188	TOILET RENTAL CLEO FIELD	04/10/15	05/10/15	193.60	
	114-2847190	TOILET RENTAL HERITAGE PARK	04/10/15	05/10/15	193.60	
	114-2847192	TOILET RENTAL LES FIELD	04/10/15	05/10/15	166.02	
	114-2847194	TOILET RENTAL COTTONWOOD PARK	04/10/15	05/10/15	166.02	
	114-2847196	TOILET RENTAL ENRIETTO FIELD	04/10/15	05/10/15	166.02	1,272.46
12479-1	VAN DIEST SUPPLY COMPANY					
	23830	MILESTONE HERBICIDE	04/10/15	05/10/15	692.50	
	23831	HI-LIGHT AND ESCORT	04/10/15	05/10/15	302.90	
	23832	METHYLATED SOY STICK	04/10/15	05/10/15	71.00	1,066.40
6210-1	W BRUCE JOSS					

Batch: 90276 Period: 05/05/15

Vendor/ Remit#	Invoice Number	Description	Invoice Date	Due Date	Invoice Amount	Check Amount
	042415	APR 15 MUNICIPAL JUDGE SALARY	04/24/15	05/24/15	2,000.00	2,000.00
10884-1	WORD OF MOUTH CATERING INC					
	2015-08	SR MEAL PROGRAM 4/13-4/24/15	04/24/15	05/24/15	2,273.50	2,273.50
13558-1	ZIONS CREDIT CORP					
	586570	APR 15 SOLAR POWER EQUIP LEASE	04/20/15	05/20/15	1,767.62	
	586570	APR 15 SOLAR POWER EQUIP LEASE	04/20/15	05/20/15	883.81	2,651.43
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	BANK TOTAL PAYMENTS				1,946,115.54	1,946,115.54
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	GRAND TOTAL PAYMENTS				1,946,115.54	1,946,115.54

City of Louisville
COLORADO • SINCE 1878

City Council
Meeting Minutes

April 21, 2015
City Hall, Council Chambers
749 Main Street
7:00 PM

Call to Order – Mayor Muckle called the meeting to order at 7:00 p.m.

Roll Call was taken and the following members were present:

City Council:	***Mayor Robert Muckle, Mayor Pro Tem Hank Dalton City Council members: Sue Loo, Ashley Stolzmann, Chris Leh and Jay Keany (arrived at 9:05 p.m.)***
Absent:	***Council member Jeff Lipton***
Staff Present:	***Malcolm Fleming, City Manager*** ***Heather Balser, Deputy City Manager*** ***Kevin Watson, Finance Director*** ***Dave Hayes, Police Chief*** ***Troy Russ, Planning & Building Safety Director*** ***Suzanne Janssen, Cultural Arts & Special Events*** ***Allan Gill, Parks Project Planner*** ***Nancy Varra, City Clerk***
Others Present:	***Sam Light, City Attorney***

PLEDGE OF ALLEGIANCE

All rose for the pledge of agenda.

APPROVAL OF AGENDA

Mayor Muckle called for changes to the agenda and hearing none, moved to approve the agenda, seconded by Mayor Pro Tem Dalton. All were in favor. Absent: Council members Lipton and Keany.

PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

Bruce MacKenzie, 1612 Cottonwood Drive, Louisville, CO addressed the public notice

process and noted the March 17th public hearing on the DELO project was held near midnight without any public participation. He felt Council members Loo, Leh and Keany wanted to hear the public voice, but stated there was not proper notification for such an important public hearing. He explained public notice is an honest notification of an important issue to the residents of Louisville. He urged the City Council to take this matter up for discussion before making a decision.

Robin Silk, 751 Peach Court, Louisville, CO, a Monarch High School Senior, explained he is on the committee to raise awareness for the open house and After Prom event. It is designed to be a safe and fun event for students to attend after the Prom. The Prom will be held on Saturday, April 25th at Monarch High School and this years' theme is Willy Wonka. He invited Council to attend the open house from 8:00 to 10:00 p.m.

Cory Nickerson, 2351 Senator Court, Louisville, CO explained she is a volunteer for the After Prom reception. They have raised $20,000 to promote the event and to provide prizes to entice the students to stay for the After Prom event. She invited and welcomed the community to the open house. She thanked Council member Stolzmann and City Manager Fleming and their spouses for volunteering for this project and the Louisville Police Department for volunteering two Police Officers. She thanked the Louisville Recreation Center for donating two passes for the raffle event and the City Council for their support.

APPROVAL OF THE CONSENT AGENDA

MOTION: Mayor Muckle moved to approve the consent agenda, seconded by Council member Leh. All were in favor. Absent: Council members Lipton and Keany.

- ***A. Approval of Bills***
- ***B. Approval of Minutes –April 7, 2015***
- ***C. Approve Resolution No. 19, Series 2015 – A Resolution Recommending Approval of a Replat to Subdivide a Single 334,325 SF Lot into Two Separate Lots in the P-C Zone District, Located at 248 Centennial Parkway/1172 W Century, Lot 1, Block 2, Centennial Valley Business Filing 6***
- ***D. Approve Resolution No. 20, Series 2015 – A Resolution Approving an Intergovernmental Agreement between Boulder County and the City of Louisville Concerning Boulder County's Environmental Sustainability Matching Grant Program for Award of a Community Garden Grant***
- ***E. Approve Resolution No. 21, Series 2015 – A Resolution Approving the Community Development Block Grant – Disaster Recovery Collaborative Intergovernmental Agreement***
- ***F. Approval of License and Improvement Agreement Between the City of Louisville and the Downtown Business Association for use of the Steinbaugh Pavilion for the Annual Street Faire***
- ***G. Approve 2015 Arbor Day Proclamation***

COUNCIL INFORMATIONAL COMMENTS ON PERTINENT ITEMS NOT ON THE AGENDA

Council member Loo reported on the Arbor Day celebration held on Saturday, April 18th. She thanked the Cub Scouts and the families for helping to plant 22 trees along Via Appia. The City received a $6,000 grant from the Colorado Tree Coalition, which is funded by Xcel Energy. Six different species were planted, one of which is called Zelkova and it is believed it is the first of its kind to be planted in Louisville. Other species were Elms and Red Oaks.

CITY MANAGER'S REPORT

City Manager Fleming noted the winter/spring weather had been very hard on the City's streets. He reported there will be a very robust street resurfacing program this summer. The City purchased new equipment to patch the roads. This years' street resurfacing program will include all of Via Appia and parts of McCaslin and Old Town.

REGULAR BUSINESS

LOUISVILLE CELEBRATION OF POETRY DAY PROCLAMATION

Mayor Muckle recited a poem entitled *The King's Breakfast*, by A.A. Milne in honor of Poetry Day. He then read the proclamation, which proclaimed May 17, 2015 as Louisville Celebration of Poetry Day in Honor of Julia Falkner. Julia is a resident 17-year old senior at Monarch High School, who was appointed by the President's Committee on the Arts & the Humanities to the National Student Poets Program (NSPP).

Suzanne Janssen, Cultural Arts & Special Events Coordinator accepted the proclamation on behalf of Julia Falkner and the Louisville Library. She stated it is quite an honor to have Julia as a member of the community. She encouraged Council and the public to attend the Poetry Day Celebration workshop on Sunday, May 17th at the Louisville Public Library. The workshop is designed for beginner poets as well as seasoned poets.

LOUISVILLE LAW ENFORCEMENT MEMORIAL AT HELBURG PARK – DISCUSSION AND DIRECTION

Mayor Muckle requested a staff presentation.

Police Chief Hayes updated Council on the progress of this project and provided background information on Louisville Marshall Victor Helburg, who on Oct. 28, 1915, was shot and killed in the line of duty. To this day, he remains the only Louisville law

enforcement official to have died in the line of duty. He reported members of the Helburg Memorial Committee and members of the Helburg Family were present in support of the project. In early 2012, a committee of citizens began to plan a memorial park suitable for Victor Helburg, to be located at the Police and Courts Building. The cost of the memorial is estimated to be approximately $50,000. The City will provide $10,000 towards the project in 2015 and up to $20,000 in 2016. The Helburg Committee was asked to raise the remaining $20,000. The Committee worked with the City's Parks Project Planner Allan Gill, and are in agreement with the design of the park and the memorial. City staff and members of the Helburg Committee are planning a ground breaking for this memorial at 10:00 a.m. on Friday, May 15, 2015 at the site of the new park.

Parks Project Planner Allan Gill presented the design of a Helburg Memorial Park on the grounds of the Police/Courts. The design is intended to create a sense of place, a sense of permanence and simplicity. The memorial is based on the simple classic shape of a circle. The proposed location is northeast of the Police Station and is approached by sidewalks from two opposite sides. There are two typical ballards to provide light and will play off the circle concept. The design includes a 30' trellis, with arms overhead in a circular pattern. Below the arms overhead there are two seat walls. The monument will be placed in the middle along with a simple water feature. Memorial trees and perennial plant beds are proposed, including the Green Tower Boxwood Tree and Native Verbena.

Michael Menaker, 1827 W. Choke Cherry Drive, Louisville, CO explained he is a member of the Committee working to finish the memorial by October 28, 2015. The Committee has raised over $27,000 toward the project and noted it has been an emotional journey. He asked Council to make note of two dates: May 15, 2015 at 10:15 p.m. for the ground breaking ceremony and October 28th, the 100th Anniversary of Victor Helburg's death. He requested the City Council support a contribution to the Helburg Memorial.

Members of the committee stood to be recognized and Victor Helburg's great and great-great grandchildren introduced themselves to the City Council.

COUNCIL COMMENTS

Mayor Muckle stated the City Council supports the project. The Council challenged the Committee to raise $20,000 for the memorial and they raised $27,700. He felt the donated amount will exceed $30,000 and noted The Home Depot has agreed to donate the materials for the project, which is significant. He hoped the City would fund whatever money is necessary to complete the project this year and to fill the gap for next year.

Council member Leh commended the committee who worked on this project and noted the web site for donations is LouisvilleHistoryFoundation.org and on Facebook.

Council member Stolzmann commended the committee for their work and for raising funds for the project. She agreed with the City's 2015 contribution for this project. She encouraged them to work with the Horticultural Forestry Advisory Board and noted they had concerns relative to the long-term maintenance of the memorial.

Council Direction: Council directed staff to provide the 2015 funding for the project.

GATEWAY ANNEXATION

1. **ORDINANCE No. 1687, SERIES 2015 – AN ORDINANCE AMENDING ORDINANCES NOS. 1165 AND 1166, SERIES 1994 CONCERNING THE GATEWAY ANNEXATION AND APPOVING AN AMENDMENT TO AN ADDENDUM TO ANNEXATION AGREEMENT – 2ND READING – PUBLIC HEARING**
2. **RESOLUTION No. 22, SERIES 2015 – A RESOLUTION APPROVING AN AMENDMENT TO THE GATEWAY FINAL PLANNED UNIT DEVELOPMENT (PUD) TO MODIFY THE HEIGHT ALLOWANCE LANGUAGE ON LOTS 1 AND 2, BLOCK 1 FROM "1 STORY WITH A 26 FEET MAXIMUM BUILDING HEIGHT" TO "1 OR 2 STORIES WITH A MAXIMUM BUILDING HEIGHT OF 26 FEET"**

Mayor Muckle requested a City Attorney introduction.

City Attorney Light introduced Ordinance No. 1687, Series 2015, which amends Ordinance No. 1165 and 1166, Series 1994 concerning the Gateway Annexation.

Mayor Muckle opened the public hearing and requested a staff presentation.

Planning and Building Safety Director Russ explained the property is situated prominently between McCaslin Boulevard and the western edge of Davidson Mesa and provides a view of the Boulder Valley. The applicant is requesting the City allow the 1 story restriction in the Design Criteria Table of the PUD be modified to allow a 2-story structure without altering the maximum 26 foot building height allowance.

Background: Gateway PUD Amendment. Ordinances Nos. 1165 and 1166, Series 1994 stipulated "no more than two single family dwellings may be constructed on the portion of the property located on the west side of McCaslin Boulevard. Such dwellings shall be single story and not more than twenty six (26) feet in height. The final number of such dwellings will be determined through the P.U.D. process and may be one dwelling or two dwellings." The PUD uses limited view preservation tools: 1) 26 foot height limit; 2) 1-story and 3) a 10% lot coverage (underlying RR-R District). The lot is 9,800 sf, translating to 9,800 sf footprint. No minimum roof pitch; no unique setback requirements and no landscape controls.

Staff contacted former City Council member Rob Lathrop, who made the motion requiring a 1-story home. Mr. Lathrop could not recall why the 1-story limitation was established. The Cooper Hill Homeowners Association (Gateway Subdivision) Design Review Committee reviewed the proposal submitted by the architect and supports the construction of a two-story house not to exceed 26" maximum in height.

Staff Analysis: 1) The allowed 26 foot, one-story structure will limit the existing unencumbered view; 2) A 26-foot, two-story structure will not worsen the impact on the view shed beyond what is allowed and 3) A two-story structure within the allowed 26-feet would likely minimize view impacts by allowing a smaller building footprint (lot coverage).

Staff recommendation: Staff recommended the City Council approve Ordinance No. 1687, Series 2015 and Resolution No. 22, Series 2015.

APPLICANT PRESENTATION

Vern Seieroe, 417 Vivian Street, Longmont, CO, Architect for the project used a white board to indicate the site and a model to illustrate the house configuration on the lot and the footprint between a 1-story and 2-story home. He addressed the request to design a two-story home by the owners and noted the view corridor is very important. The design proposes the second floor bedrooms be orientated to the west and bathrooms and closets on the east side of the home. If a one-story building was built on the lot, the footprint would be larger, the view would be lost and the value in the property would go down. The design for the home is in the American craftsman style because of the 26' height limit. The roof is of a 4/12 pitch, whereby American craftsman style is typically an 8/12 roof pitch and presented examples of American craftsman architecture. He noted they are limited with the footprint of 9,800 SF. The design they propose has a footprint of 4,950 SF, which is half of what is allowed. If the applicant is subject to the PUD they would have a larger footprint.

Tiera Nell and Jeremy Weiss, 2287 S. Columbine, Denver, CO, stated they are the owners of the property and have designed a home to accommodate themselves, their three small children and her parents. The living space will be on the first floor and the bedrooms on the second floor. Their motivation for building a 2-story home was to reduce the footprint. She stressed there are three environmental problems with a single story home 1) A bigger footprint requires more cement and more heat radiation; 2) A 2-story house decreases the landmass water absorption and 3) If the footprint is smaller the views can be maintained. Mr. Seieroe noted there is motivation for a two-story home because a one-story home has a larger footprint and is more costly to build.

Dan Boyd, Louisville, CO explained he is the owner of the property south of the subject property and voiced his support for this project. He felt the 2-story house will provide a smaller footprint.

COUNCIL COMMENT

Mayor Muckle inquired about the proposed floor ratio of the home. Planning and Building Safety Director Russ explained there is no floor ratio outside of Old Town. There is a10% maximum lot coverage and the applicant is proposing half of the maximum allowable lot coverage.

Council member Stolzmann stated she has struggled with this matter. After reading the minutes on the PUD approval it appears there was a desire to preserve the view corridor and not have any houses on the west side of McCaslin. However the original plan was to have fewer houses in the subdivision and to have only 1-story homes. The City code provides criteria for functional open space in terms of optimum preservation of natural features including trees, drainage areas, recreational areas, views and density relief. She felt the views were essential and although she understood if a home is spread out the view will be blocked, she felt 1-story homes were suitable on the west side of McCaslin.

Mayor Muckle inquired about limiting lot coverage for new homes in this area. Planning and Building Safety Director Russ felt lot coverage is a far more effective view preservation tool than height. If Council decided to put in a lot coverage limitation, it would be an effective tool to preserve the view corridors. The applicant is proposing a reduced footprint of 5% lot coverage. They have not submitted construction plans. It can be reviewed at the building permit process.

Mayor Muckle asked the applicant if there would be a problem of reducing the lot coverage to 5,000 SF. He agreed the intent was to preserve the view corridor and felt reduced lot coverage would accomplish that.

Mayor Pro Tem Dalton stated at one time, the City Council turned down a proposal from McStain Neighborhood to build homes on the east side of McCaslin. Had that development been authorized, those two lots would have remained empty. He supported the proposal.

Council member Loo was on Planning Commission when this development came forward and she concurred with some of Mayor Pro Tem Dalton's comments. She supported saving as much of the view shed as possible in cooperation with the applicant. She noted if the applicant sold the property, the Council does not want to be obligated to allow the next owner to build a home, which could block the view shed.

Ms. Nell stated the homes on the west side of McCaslin are not in Louisville. She asked about the lot coverage and the height restriction for those homes, which might block their view. She noted the trees in the area are Blue Spruce, which grow to be very large trees. She stated if their proposal is not approved and the land is sold, would Council want a 9,600 SF home on this property.

Michael Menaker, 1827 W. Choke Cherry Drive, Louisville, CO stated whether it is a 2-story or 1-story home, 26 feet is still 26 feet. He urged Council to approve this proposal without condition. He voiced his support for the proposal.

Mayor Council called for public comment and hearing none closed the public hearing.

COUNCIL COMMENTS

Council member Loo stated for the record, with respect to the original vote on the PUD, the minority of the Planning Commission and the City Council felt the open space was valuable and the development east of McCaslin was reasonable.

Council member Stolzmann agreed with many of Council's comments, but noted things changed in the future and supported adding a description of what Council hopes to accomplish.

Mayor Pro Tem Dalton stated it is still 26' across the lot whether it is a 1-story or 2-story home. Council member Leh agreed and stated he did not see much difference between 1-story or a 2-story home. He supported a 7% lot coverage limitation.

Council member Loo asked if there is any way to preserve the view shed that is left in exchange for what the applicant is proposing. Planning and Building Safety Director Russ explained there is an open space corridor off of the highest volume road (the intersection of McCaslin and South Boulder Road). He did not see a change by allowing a second story. If the house is moved to the north, the view of the Flatirons is preserved, but if it is moved to the south, Indian Peaks is preserved. He stated the current height allowance is dictating what can be done.

Mr. Weiss noted any other structure such as secondary house, sheds or barns must go before the HOA design review committee. He suggested leaving it at 10% lot coverage and let the design review committee decide what they will allow.

Council member Loo felt the views should be preserved for all the citizens of Louisville. She questioned whether the HOA is preserving the views for the HOA or for the citizens. Mr. Seieroe explained the HOA design review committee has a specific process and they have the right to review, accept or reject any proposal. They stipulated the south side of the house at a particular location to preserve the views.

Council member Stolzmann proposed the PUD be amended to reflect a 2-story with a 5,000 SF footprint. Mayor Pro Tem Dalton voiced his opposition.

City Attorney Light explained part of the application is to amend the Annexation Agreement from 1-story home with a height restriction of 26' to a 2-story home with a 26' height restriction. He recommended amending the Annexation Agreement prior to amending the language in the PUD and continuing both matters.

City Attorney Light explained the amendment includes both lots; one owned by the Boyd's and the second by the applicant. He recommended asking Mr. Boyd his position. Mr. Boyd stated his home is already under construction and is a single story, but voiced his support for the PUD amendment.

ORDINANCE No. 1687, SERIES 2015

MOTION: Mayor Muckle moved to continue Ordinance No. 1687, Series 2015, to May 5, 2015, seconded Council member Stolzmann. Council member Stolzmann requested more discussion prior to the vote to give direction to the City staff.

Mayor Pro Tem Dalton did not feel the footprint should be limited to the second house on the lot. There is no difference in the view sheds whether a 1-story house or a 2-story house is built because they are limited to 26'. He noted the HOA Design Review Committee will review proposals and dictate what can be built. He was opposed to Council redesigning houses. Mayor Muckle felt a 2-story house appears more massive.

Planning and Building Safety Director Russ stated the area along McCaslin is a rural. Council member Loo noted the views have changed with the addition of a berm and trees and questioned the rural nature of the area.

Mayor Muckle suggested directing staff to work with the applicant. Mayor Pro Tem Dalton suggested directing staff to negotiate a sufficient amount of leeway There was Council support.

VOTE: All were in favor. Absent: Council members Lipton and Keany.

RESOLUTION No. 22, SERIES 2015

MOTION: Mayor Muckle moved to continue Resolution No. 22, Series 2015 to May 5, 2015 seconded by Council member Stolzmann. All were in favor. Absent: Council members Lipton and Keany.

FLATIRONS REHABILITATION PLANNED UNIT DEVELOPMENT (PUD) AND GENERAL DEVELOPMENT PLAN (GDP)

1. **ORDINANCE No. 1688, SERIES 2015 – AN ORDINANCE APPROVING AN AMENDMENT TO THE CENTENNIAL VALLEY GENERAL DEVELOPMENT PLAN TO ALLOW INSTITUTIONAL USES ON PARCEL G2 - 2ND READING – PUBLIC HEARING**
2. **RESOLUTION No. 23, SERIES 2015 – A RESOLUTION APPROVING AN 8TH AMENDMENT TO THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR CENTENNIAL VALLEY**

3. RESOLUTION No. 24, SERIES 2015 – A RESOLUTION APPROVING A FINAL PLANNED UNIT DEVELOPMENT (PUD) PLAN TO ALLOW FOR THE CONSTRUCTION OF A 44,000 SQUARE FOOT, 48 BED SKILLED REHABILITATION FACILITY AT 1107 CENTURY DRIVE, LOT 1, BLOCK 3, CENTENNIAL VALLEY BUSINESS PARK 1

Mayor Muckle requested a City Attorney introduction.

City Attorney Light read Ordinance No. 1688, Series 2015. He explained Resolutions No. 23 and 24 also pertain to the Flatirons PUD and GDP request and stated the public may speak on any of the three items.

Mayor Muckle opened the public hearing and requested a staff presentation.

Planning and Building Safety Director Russ explained the request is for a Final Planned Unit Development (PUD) and subdivision agreement amendments for a new 44,000 square foot, 48 bed skilled rehabilitation facility at 1107 Century Drive in Centennial Valley. The property is zoned Planned Community Zone District – Commercial (PCZD-C) zone district and governed by the Centennial Valley General Development Plan (GDP).

The request is to amend the GDP to allow for institutional use. It is allowable if compatible with the Comprehensive Plan. The designated "Urban Special District" contains a mix of uses, including institutional. Such use is considered a compatible, complimentary use. The proposal for the facility includes the following: A 44,000 sf structure; 48 beds; 709 parking spaces. It complies with setback and coverage requirements and includes trash and generator enclosures. The proposed 26.5' tall building includes articulation and variation in colors and materials and additional detailing on wing ends with landscape buffers adjacent to the Centennial Lofts residential area.

The Planning Commission reviewed this request and by a vote of 6-1 approved the proposal. The dissenting vote was concerned over the design and wanted a more walkable and approachable building. Staff recommended approval of the final PUD and GDP and subdivision agreement amendments for Flatirons Rehab with one condition:

1) The trash and generator enclosure shall be constructed of durable materials such as stone, brick or metal with dark finishes in compliance with section 6.1 (F) of the CDDSG.

APPLICANT PRESENTATION

Fred Hermes, Part Owner of the Physicians Development Group, 7200 W. 13th Street N, Wichita, KS, explained this is a proposal for a skilled nursing facility for individuals who

are in need of services, basically seniors, although services are available for persons 16 years of age and older. The average stay is three weeks for rehabilitating broken bones or debilitating medical conditions such as strokes or similar maladies. The facility will employ a total of 75 caregivers; 25 registered nurses; 16 physical, speech and occupational therapists, nurse practitioners; 2 social workers; dietary and housekeeping staff. The design for this facility is for a home environment rather than an institution.

COUNCIL COMMENTS

Council member Loo stated there was some confusion initially, that the proposal was for alcohol and drug rehabilitation. From reading the materials and the applicant's report, she stated her understanding that is categorically not the case. Mr. Hermes stated that is correct. It is not, in fact the case.

Council member Loo asked whether there are any plans to add such rehabilitation as part of this facility. Mr. Hermes stated no.

COUNCIL COMMENTS

Cyril Sadowsky, President of the CPL HOA, Board of Directors, 1057 W. Century Drive, Unit 121, Louisville, CO, asked if Council had read his letters relative to the drainage problems on the east side of the property. He explained they have had serious problems with the drainage and wanted assurances this proposal will not recreate a similar drainage problem. He also voiced his concern over the noise and light pollution this facility will bring and requested the project architect and engineer to be conscientious of the 66 families living adjacent to the proposed property.

Council member Loo explained any proposal must be approved by the City Council.

Lionel Sadowsky, a Centennial Plaza Lofts resident, Louisville, CO stated there has been serious drainage problems in the past. The new facility will bring noise and light pollution and residents' views will be obstructed.

Council member Loo asked Planning and Building Safety Director Russ to present a map of the area. Planning and Building Safety Director Russ provided a map and noted the City Engineer has reviewed this proposal's drainage plan and he feels the drainage pond should manage the current overflow of water.

Priscilla Carlson, 1053 W. Century Drive, Unit 208, Louisville, CO explained she and her husband Dave Bahr, live in the Centennial Plaza Lofts. She asked the builders to make sure they clean up any construction debris, which would prohibit her mobility and possibly cut the paw of her husbands' guide dog. She addressed the problems with the drainage and noted the underground parking garage has had water and voiced her concern her high-tech handicapped accessible vehicle would be damaged.

Dave Bahr, 1053 W. Century Drive, Unit 208, Louisville, CO, explained the Centennial Plaza Lofts underground, heated garage which has drainage problems, also has odor problems. With respect to the aesthetics of the proposed building, he requested it be pleasing and not a hospital/institutional looking structure.

Jason Messaros, BHA Design Inc., Architect Design Team member, 1603 Oakridge Drive, Fort Collins, CO explained there have been very few changes in the proposal from the last presentation, other than the materials, which will conceal the trash enclosures. He noted with respect to the adjacent property, there is a parking lot between the rehab facility and the residential lofts, to provide a greater buffer. He explained Drexel Barrel is their civil engineering firm and they will be working on the drainage aspects. He felt the parking lot would capture more of the surface drainage.

Mr. Sadowsky explained the surface drainage is not the problem; it is the subsurface drainage seeping into the Centennial Plaza Lofts parking lot. He noted the HOA has spent over $70,000 to resolve this problem. He stated the seepage is coming from the upper hill and suggested the developer dig a deeper trench to contain the subsurface water from seeping onto the Centennial Plaza Lofts parking lot.

COUNCIL COMMENTS

Council member Loo asked if the Planning Commission reviewed the drainage issue. Planning and Building Safety Director Russ explained every PUD has a drainage report, grading plan and stormwater management plan, which is reviewed by the City Engineer according to the City and State standards. With respect to sub-drainage and water table issues, the Chief Building Official would review the foundation improvements.

City Attorney Light stated the fundamental drainage tenant law is to do no harm. The Public Works department will review the drainage plan to ensure it ties into the public water drainage. The developer must insure the drainage does not have an adverse effect on their neighbors.

Council member Loo stated the Council's responsibility is for the City's liability. She inquired whether the drainage problem at Centennial Lofts is a private issue. City Attorney Light stated the problem may be a private issue, however if the ground water seepage is affecting neighbors the City would look at the construction standards for the drainage plan.

Mayor Muckle asked Planning and Building Safety Director Russ to address the light and noise pollution and pedestrian access to the building. Planning and Building Safety Director Russ explained the application, other than the trash enclosures, met the standards of the Commercial Guidelines, including pedestrian access and lighting. Planning Commissioner Russell's concern the design was not compatible with the Comprehensive Plan are not applicable. He noted the small area plan would review and create new Commercial Guidelines.

Council member Keany arrived at 9:05 p.m.

Council member Stolzmann explained how she reviewed this proposal. First she looked at the zoning for commercial (defined as well planned shopping centers and facilities). Then she looked at the General Development Plan (GDP) (defined as research, office and retail). She felt a commercial area includes hospital and medical offices, but the confusion is in the GDP, which limits development to research and office. She felt Council is being asked to change the GDP to be clear on the usage. She takes into account public comment and voiced her concern over the underground drainage. She stated the project does include a drainage plan, but it may be a problem with ground water. She encouraged the neighbors to work with the developer. She addressed the construction debris and noted there are EPA requirements and encouraged the residents to contact Public Works should problems arise. She suggested changing the use to commercial, but felt the project should go forward.

Planning and Building Safety Director Russ explained this proposal is required to have a Stormwater Management Plan and Public Works Department makes their inspections on a weekly basis to make sure they are in compliance.

Mayor Muckle encouraged the two property owners to look into the ground water issues.

Mayor Muckle called for public comment and hearing none, closed the public hearing.

ORDINANCE No. 1688, SERIES 2015

MOTION: Mayor Pro Tem Dalton moved to approve Ordinance No. 1688, Series 2015, seconded by Council member Loo. Roll call vote was taken. The motion passed by a vote of 5-0. Council member Keany abstained. Absent: Council member Lipton.

RESOLUTION No. 23, SERIES 2015

MOTION: Mayor Pro Tem Dalton moved to approve Resolution No. 23, Series 2015, seconded by Mayor Muckle. The motion passed by a vote of 5-0. Council member Keany abstained. Absent: Council member Lipton.

RESOLUTION No. 24, SERIES 2015

MOTION: Mayor Pro Tem Dalton moved to approve Resolution No. 24, Series 2015, seconded by Council member Stolzmann. The motion passed by a vote of 5-0. Council member Keany abstained. Absent: Council member Lipton.

RECESS: Mayor Muckle called for a five-minute recess at 9:10 p.m. The meeting reconvened at 9:25 p.m.

DOWNTOWN/OLDTOWN PARKING STATUS UPDATE

Mayor Muckle requested a staff presentation.

City Manager Fleming provided Council and the public a status update on actions to be taken and the plan to address parking issues in Downtown and Old Town. To date by June 5th (the date for the Taste of Louisville), the following actions will be complete:

- Stepped-up enforcement on violations (blocking driveways, alleys, too close to intersections).
- "Parking Ambassadors" during major special events.
- Special Event parking requirements: designated parking for event vendors/employees/volunteers.
- Shuttle service into the Street Faire
- Agreement making 56 spaces at KoKo Plaza available for public parking after 6:00 PM.
- Bids on 28-spaces at 611 Front/Negotiated terms of acquisition
- Waiting to close on Tebo property providing 70 parking spaces on future Cannon Street.
- Installing 100 additional bicycle parking loops in Downtown.
- Installing traditional "Parking" signs.

Planned and/or Future Actions:

- More leases of private spaces for public parking.
- Finalize agreement with BNSF for right of way parking.
- Install additional downtown way-finding signage
- Council decision on whether to (1) install No-Parking Signs in Old Town, (2) extend white paint-designated parking spaces beyond those within a block of Main Street, (3) install No-Parking signs and paint curbs in Old Town, or (4) some combination of these alternatives.
- Designating motorcycle/moped parking areas.
- More discussion and public involvement on a neighborhood parking permit program.
- Evaluate parking structure(s): specific sites, utilization data, pedestrian activity areas, walking distances, vehicle traffic patterns, parking facility utilization; design, cost estimates, potential revenue streams and financing
- Potential Louisville Municipal Code changes: Revise parking standards for Downtown; update the payment in-lieu of parking fee; restrict or prohibit parking lots as a primary use by-right in Old Town (RM) Zone.
- County Eco-pass program.

COUNCIL COMMENTS

Council member Stolzmann inquired where the bicycle loops and no parking signs would be placed. Planning and Building Safety Director Russ explained 100 bike parking spaces have been planned in the bulb-outs from Spruce Street to the south and there are some underutilized bike spaces at the library and the City Hall.

Council member Stolzmann suggested more bicycle racks at the library in the skateboard spaces. She inquired about where the parking signs would be placed. Planning and Building Safety Director Russ explained the City's Principal Planner is working with the McCaslin wayfinding expert to locate those areas on key intersections.

Mayor Pro Tem Dalton inquired when the lease with BNSF would be finalized. City Manager Fleming could not provide a deadline, but stated staff is working with the railroad.

Mayor Pro Tem Dalton voiced his support for Option 2 (extend white paint-designated parking spaces beyond those within a block of Main Street).

Mayor Muckle inquired about the diagonal striping of South Street. Planning and Building Safety Director Russ stated diagonal parking on South Street did not yield a change because of existing driveway cuts and the alley opening. Staff is working on a different solution, however for now South Street will remain as it is.

Council member Keany inquired about the estimate on the no-parking signs. City Manager Fleming stated the estimate on the no-parking signs is under $15,000 for 120 different signs, which involves boring through concrete and staff time.

Council member Keany asked if there is a price difference between painting curbs and no-parking signs. City Manager Fleming did not have an estimate at this time.

Mayor Muckle also supported Option 2. Planning and Building Safety Director Russ explained painting stalls for parking is likely a reduction in parking spaces.

Council member Stolzmann commented she plans to bring up eco-passes for employees during the budget process. Mayor Muckle inquired about the County's eco-pass program. Council member Stolzmann stated they are conducting additional studies. If the study directs a positive interest in eco-passes, the voters will be asked in the 2016 election to consider funding community-wide eco-passes.

Mayor Pro Tem Dalton inquired how many employees used the eco-passes. City Manager Fleming stated several years ago the City offered free eco-passes as part of a county-wide incentive, however, the participation was not enough to justify the cost.

Mayor Muckle stated he was impressed how many spaces the City will get from KoKo Plaza. He encouraged staff to continue working on obtaining more parking spaces.

Council member Leh noted some residents in Old Town are disabled and asked if there was a way to accommodate them. City Manager Fleming stated the City supplies ADA compliant parking spaces for municipal facilities. Staff could investigate to determine if there are a sufficient number of spaces in the downtown area.

Council member Leh inquired whether there is a real-time phone app for available parking spaces during an event. City Manager Fleming noted the DBA advertises designated parking spaces and shuttle services on their web site.

Council member Leh inquired if there was a radio signal for the City. Police Chief Hayes explained the City now owns two FM radio stations and one station could be used for directing parking during City events. He suggested a continuing loop, which would direct visitors to available parking spaces.

AWARD BID FOR THE 2015 PARKING LOT EXTENSION: 611 FRONT STREET

Mayor Muckle requested a staff presentation.

City Manager Fleming explained per Council's actions regarding the Downtown/Old Town Parking Plan, Council supported extending the surface parking on the City's property at 611 Front Street to add 28 additional parking spaces. $100,000 was budgeted based on staff's cost estimate. $50,000 of the cost of all the work was to prepare and pave the surface parking lot on the City's property. The low bid for the work is $238,995. Based on Council's direction and comments on other, similar "basic services" issues, staff recommends Council award the bid so the work can proceed, with the understanding that a budget amendment will be necessary to cover the $190,995 shortfall. However, there are other options Council may wish to consider. Funding for the shortfall could come from Capital Projects Fund (CPF) reserves or potentially covered by funds saved from other projects.

COUNCIL COMMENTS

Mayor Pro Tem Dalton asked if the City had considered scraping the lot and using railroad ties to mark off the spaces. City Manager Fleming explained there has been discussion on this however, if the City does not allow other businesses to scrape for parking spaces, the City should not do so.

Other Options:

- Request proposals to partner with adjacent land owners to design and develop a parking structure on the site wrapped with retail and/or office space. This option would require significant time (and resources) to fully explore and may not be viable.
- Deferring the project to provide time to evaluate whether the other actions taken to address parking in downtown have reduced the need for this project.

Mayor Muckle asked if this could be included in the downtown resurfacing project. City Manager Fleming confirmed it could.

PUBLIC COMMENT

Randy Caranci, 441 Elk Trail, Lafayette, CO inquired how the parking would be approached at the KoKo Plaza one-way parking area. Planning and Building Safety Director Russ explained South Street is one-way; Walnut Street and the alley could be used to access the parking at KoKo Plaza. Local residents can access Front Street.

Mr. Caranci felt it would be very cumbersome to get people in and out of those parking spaces and it will not be fully utilized unless the City does something to advertise the parking. Planning and Building Safety Director Russ explained ultimately when the South Street Underpass comes in South Street to Main Street will be a two-way street.

Mr. Caranci inquired about the BNSF lease for parking areas and its location. Planning and Building Safety Director Russ explained the fencing negotiations are from Griffith Street to the end of Mr. Caranci property. The project was from the underpass to Pine Street, but staff worked with the BNSF engineers to fence to the edge of Mr. Caranci's lease.

Mr. Caranci requested the City include him in the negotiations with the BNSF railroad. Planning and Building Safety Director Russ explained during the BNSF negotiations for fencing, the staff was able to negotiate for head-in parking north of Pine Street and diagonal parking south of Pine Street.

Mr. Caranci stated his recollection that the TEBO project would provide 20 parking spaces through the dedication of Cannon Street. Mayor Muckle explained the TEBO parking lot has always been 70 spaces.

Mr. Caranci asked how the citizens would safely cross the railroad tracks to the downtown area. Planning and Building Safety Director Russ explained it is a land acquisition.

Mr. Caranci asked about the approval of the land acquisition. Mayor Muckle explained the Council is not discussing the land acquisition this evening. They are discussing the parking at 611 Front Street.

Mr. Caranci addressed the cost of paving the 611 Front Street lot and suggested using crushed road base and also allowing private parties to do so. Mayor Pro Tem Dalton explained the bidding environment has changed since last year.

Mr. Caranci disagreed and stated he wanted to be heard. He felt the City was using the citizen's money foolishly.

COUNCIL COMMENTS

Council member Stolzmann voiced her appreciation for the public comments, but felt the parking lot must be completed this year. She agreed with an interim gravel solution, which would be consistent with the Downtown Design Handbook. She noted there is a lot of difference between the two bids and suggested changing the scope of work and completing some of the improvements in-house. She called some contractors and inquired about the cost of paving a parking lot. A local contractor estimated between $60,000 and $80,000. She questioned whether the project was bid correctly.

Mayor Muckle also wanted the project completed this year and inquired about the storm water project. Planning and Building Safety Director Russ stated he would speak with the City's Engineering Department.

Mayor Pro Tem Dalton apologized to Mr. Caranci and stated he had every right to be heard.

Council member Loo stressed the importance of having parking and was in favor of a simpler solution.

Mayor Muckle proposed the Council direct staff to come back with a less expensive resurfacing package. City Manager Fleming noted staff could explore other options, but the bids will not be back in time for the summer events beginning June 5th.

City Attorney Light addressed the City's Procurement Policy and noted the City Council has the authority to reject any and all bids and rebid the project. The Louisville Municipal Code provides if the Council determines all bids are too high they can reject all bids and rebid a new project with different elements. Under the Procurement Policy if the Council rejects all bids because they are too high, they can negotiate a contract as long as the negotiated price shall not exceed the lowest bid received.

MOTION: Mayor Muckle moved to reject all bids for the 611 Front Street Parking Lot Extension because they are too high, seconded by Council member Loo. All were in favor. Absent: Council member Lipton.

MOTION: Mayor Muckle moved to direct staff to negotiate a contract for this project for no more than the lowest bid, or change the scope of the project to achieve the goal, seconded by Council member Loo. All were in favor. Absent: Council member Lipton.

APPROVAL OF 2016 GOALS

Mayor Muckle requested a staff presentation.

City Manager Fleming explained earlier this year at the Council's goal setting meeting, there was discussion relative to a more programmatic based budget. Staff presented a draft of programs, goals and measurements. Council reviewed and suggested edits to staff's draft Program Summary. Staff requested Council confirm the final draft reflects the programs, goals, sub-programs and key indicators around which staff should organize the 2016 budget. The Major 2015 Programs and Goals are as follows: Transportation; Utilities; Public Safety & Justice; Parks; Open Space & Trails; Recreation; Cultural Services; Community Design; Economic Prosperity and Administration & Support Services. Each of these programs has a defining statement. The programs are then broken up into sub-programs containing performance measures, which will become a new part of the City budget. Many people have relied on the way the budget was presented in the past, but staff will develop the 2016 budget for City Council consideration later this year, which will provide an organization around the programs and goals.

COUNCIL COMMENT

Council member Loo requested an asterisk in the CMRA chart if there is not room to spell out the description. This will allow the public to identify what the item is.

Mayor Muckle agreed with the changes made at Council's request, but questioned the Open Space acquisition subprogram including maintenance, and education. Council member Stolzmann felt the goals are a general aspiration for the program and the sub-programs serve the program. Mayor Muckle agreed.

Council member Stolzmann voiced her recollection when the Council added streetscapes as a sub-program to the Transportation Program they removed horticulture as a sub-program from the Parks Program. She explained if Horticulture is not removed from the Parks program there will be an overlap.

Council member Loo asked if the Arboretum is in the Parks Program. City Manager Fleming explained the Parks sub-programs are Parks, Forestry, and Cemetery.

Council member Stolzmann stressed the importance of having the streetscapes to differentiate purchases between streets and parks. She felt there are only a few items which fall into the horticulture and she would rather put it into another category. City Manager Fleming would discuss the requested changes with Parks and Recreation Director Stevens.

ORDINANCE No. 1689, SERIES 2015 – AN ORDINANCE REPEALING AND REEANACTING CHAPTER 14.16 OF THE LOUISVILLE MUNICIPAL CODE REGARDING SPECIAL EVENTS PERMITS – 1st Reading – Set Public Hearing 05/05/2015

Mayor Muckle requested a City Attorney introduction.

City Attorney Light introduced Ordinance No. 1689, Series 2015.

MOTION: Mayor Muckle moved to approve Ordinance No. 1689, Series 2015 on first reading, ordered it published and set a public hearing for May 5, 2015, seconded by Mayor Pro Tem Dalton. All were in favor. Absent: Council member Lipton.

ORDINANCE No. 1690, SERIES 2015 – AN ORDINANCE AMENDING SECTION 2.32.060 OF THE LOUISVILLE MUNICIPAL CODE REGARDING THE COLLECTION OF MUNICIPAL COURT ASSESSMENTS – 1st Reading – Set Public Hearing 05/05/2015

Mayor Muckle requested a City Attorney introduction.

City Attorney Light introduced Ordinance No. 1689, Series 2015

Mayor Muckle moved to approve Ordinance No. 1690, Series 2015 on first reading, ordered it published and set a public hearing for May 5, 2015, seconded by Mayor Pro Tem Dalton. All were in favor. Absent: Council member Lipton.

EXECUTIVE SESSION

1. **PENDING LITIGATION**
   (Louisville Charter, Section 5-2(d) – Authorized Topics – Consultation with an attorney representing the City with respect to pending litigation, and C.R.S. 24-6-402(4)(b).

   The City Manager and City Attorney requested the City Council convene an executive session for the purpose of consultation with respect to pending litigation.

REGULAR BUSINESS ITEMS SUSPENDED

City Attorney Light explained the executive session is at the request of the City Manager and City Attorney for the purpose of consultation with an attorney representing the City with respect to pending litigation.

City Clerk Varra read Section 2.90.050 public statement from the Louisville Municipal Code, which governs the topics, which may be discussed in an executive session.

City Attorney Light stated the authority for conducting the executive session is the Louisville Charter, Section 5-2(d) Authorized Topics – Consultation with an attorney representing the City with respect to pending litigation and C.R.S. 24-6-4-402(4)(b)).

MOTION: Mayor Muckle moved the City Council convene an executive session for the purpose of consideration of a consultation with respect to pending litigation and the executive session include members of the City Council, City Manager, Planning and Building Safety Director, and the City Attorney, seconded by Mayor Pro Tem Dalton. All were in favor. Absent: Council member Lipton.

The Council adjourned to executive session at 10:25 p.m. The regular meeting was reconvened at 11:05 p.m.

REGULAR BUSINESS ITEMS CONTINUED
REPORT – DISCUSSION/DIRECTION/ACTION –PENDING LITIGATION

City Attorney Light reported in executive session the City Council consulted with an attorney representing the City with respect to pending litigation. The City Attorney provided legal advice to the City Council with respect to a possible law suit however no action is required at this time.

CITY ATTORNEY'S REPORT

No items to report.

COUNCIL COMMENTS, COMMITTEE REPORTS, AND IDENTIFICATION OF FUTURE AGENDA ITEMS

No items to report.

ADJOURN

MOTION: Mayor Muckle moved for adjournment, seconded by Council member Loo. All were in favor. Absent: Council members Lipton and Keany. The meeting adjourned at 11:10 p.m.

_____
Robert P. Muckle, Mayor

_____
Nancy Varra, City Clerk

City of Louisville
COLORADO • SINCE 1878

CITY COUNCIL COMMUNICATION
AGENDA ITEM 5C

SUBJECT: **AWARD BID FOR 2015 WATER MAIN REPLACEMENT PROJECT**

DATE: **MAY 05, 2015**

PRESENTED BY: **KURT KOWAR, PUBLIC WORKS DEPARTMENT**

SUMMARY:
On April 22, 2015 bids were received and opened by staff for the 2015 Water Main Replacement Project. The bids received are listed below:

Contractor	Base Bid	Alt 1	Total
Concrete Works	**$186,578.50**	**$78,061.00**	**$264,639.50**
Diaz Construction	$210,707.00	$79,315.00	$290,022.00
Redpoint	$270,497.00	$113,851.00	$384,348.00
NCC	$270,983.00	$112,818.00	$383,801.00
Edge Contracting	$276,531.00	$107,704.00	$384,235.00
T. Lowell	$312,900.00	$113,500.00	$426,400.00
Duran Excavating	$324,765.00	$121,286.00	$446,051.00

This year's project includes water main replacement on Lafarge Ave. from Caledonia St. to Lafayette St., and Lafarge Ave from South St to Caledonia St. (Alt 1). The work also includes abandoning of 2 pressure reducing valve vaults and a sewer service abandonment on South Boulder Road east of Via Apia and some water meter and sewer service installation near Elm St. and Front St. The contract will begin in late May and finish in mid-July. A map of this year's Utility Project is attached. Detailed plans are available upon request. Staff recommends award of the project to Concrete Works for the base bid with alternate 1.

FISCAL IMPACT:
The breakdown of estimated project costs that includes construction, soft costs such as engineering and material testing and contingency are listed below:

051-498-55830-01 Water Line Replacement	$	210,000.00
051-499-55450-34 PRV Vault removal	$	25,000.00
010-000-21430-00 Parbois LOC	$	15,027.50
028-799-55120-04 Church Demolition	$	1,850.00
Engineering, Materials Testing	$	(9,000.00)
Contract	$	(264,639.50)
Contingency (5%)*	$	(13,500.00)
Remaining Budget	$	-35,262.00

*Contingency will be split between the accounts on a pro rata share of total project.

The total estimated project cost is $35,262 beyond the original budget. The line item shortfall will be covered by funds saved from other projects or through a budget amendment if necessary later in the year.

RECOMMENDATION:
Staff recommends City Council award the 2015 Water Main Replacement Project to Concrete Works of Colorado per their Base Bid plus Alt 1in the amount of $264,639.50, authorize staff to execute change orders up to $13,500 for additional work and project contingency, and authorize the Mayor, Public Works Director and City Clerk to sign and execute contract documents on behalf of the City.

ATTACHMENT(S):
1. Agreement
2. Map of locations

AGREEMENT

THIS AGREEMENT is made and entered into this **5th** day of **May** in the year 2015 by and between:

CITY OF LOUISVILLE, COLORADO
(hereinafter called OWNER)

and

CONCRETE WORKS OF COLORADO, INC.
(hereinafter called CONTRACTOR)

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows.

ARTICLE 1. WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

PROJECT: 2015 WATER MAIN REPLACMENT PROJECT
PROJECT NUMBER: 051-498-55830-01

ARTICLE 2. CONTRACT TIMES

2.1 The CONTRACTOR shall substantially complete all work by July 14, 2015 and within **40 Contract Days** after the date when the Contract Time commences to run. The Work shall be completed and ready for final payment in accordance with paragraph 14.13 of the General Conditions within **60 Contract Days** after the date when the Contract Times commence to run. The Contract Times shall commence to run on the day indicated in the Notice to Proceed.

2.2 LIQUIDATED DAMAGES. The OWNER and the CONTRACTOR agree and recognize that time is of the essence in this contract and that the OWNER will suffer financial loss if the Work is not substantially complete by the date specified in paragraph 2.1 above, plus any extensions thereof allowed in accordance with the Article 12 of the General Conditions. OWNER and CONTRACTOR also agree that such damages are uncertain in amount and difficult to measure accurately. Accordingly, the OWNER and CONTRACTOR agree that as liquidated damages, and not as a penalty, for delay in performance the CONTRACTOR shall pay the OWNER **EIGHT HUNDRED DOLLARS ($800)** for each and every **Contract Day** and portion thereof that expires after the time specified above for substantial completion of the Work until the same is finally complete and ready for final payment. The liquidated damages herein specified shall only apply to the CONTRACTOR's delay in performance, and shall not include litigation or attorneys' fees incurred by the OWNER, or other incidental or consequential damages suffered by the OWNER due to the CONTRACTOR's performance. If the OWNER charges liquidated damages to the CONTRACTOR, this shall not preclude the OWNER from commencing an action against the CONTRACTOR for other actual harm resulting from the CONTRACTOR's performance, which is not due to the CONTRACTOR's delay in performance.

ARTICLE 3. CONTRACT PRICE

3.1 The OWNER shall pay in current funds, and the CONTRACTOR agrees to accept in full payment for performance of the Work, subject to additions and deductions from extra and/or omitted work and determinations of actual quantities as provided in the Contract Documents, the Contract Price of Two Hundred Sixty-four Thousand Six Hundred Thirty-nine and 50/100 dollars ($264,639.50) as set forth in the Bid Form of the CONTRACTOR dated April 22, 2015.

As provided in paragraph 11.9 of the General Conditions estimated quantities are not guaranteed, and determinations of actual quantities and classification are to be made by ENGINEER as provided in paragraph 9.10 of the General Conditions. Unit prices have been computed as provided in paragraph 11.9 of the General Conditions.

ARTICLE 4. PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by OWNER as provided in the General Conditions.

4.1 PROGRESS PAYMENTS. OWNER shall make progress payments on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, on or about the third Wednesday of each month during construction as provided below. All progress payments will be on the basis of the progress of the Unit Price Work based on the number of units completed as provided in the General Conditions.

4.1.1.1 Prior to final completion and acceptance, progress payments will be made in the amount equal to 95 percent of the calculated value of completed Work, and/or 95 percent of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to OWNER as provided in 14.2 of the General Conditions), but in each case, less the aggregate of payments previously made and such less amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.7 of the General Conditions.

If OWNER finds that satisfactory progress is being made in any phase of the Work, it may, in its discretion and upon written request by the CONTRACTOR, authorize final payment from the withheld percentage to the CONTRACTOR or subcontractors who have completed their work in a manner finally acceptable to the OWNER. Before any such payment may be made, the OWNER must, in an exercise of its discretion, determine that satisfactory and substantial reasons exist for the payment and there must be provided to the OWNER written approval from any surety furnishing bonds for the Work.

Nothing contained in this provision shall preclude the OWNER and CONTRACTOR from making other arrangements consistent with C.R.S. 24-91-105 prior to contract award.

4.2 FINAL PAYMENT. Upon final completion and acceptance of the Work in accordance with paragraph 14.13 of the General Conditions, OWNER shall pay the remainder of the Contract Price as provided in said paragraph 14.13 of the General Conditions.

ARTICLE 5. CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

5.1 CONTRACTOR has examined and carefully studied the Contract Documents, (including the Addenda listed in paragraph 6.10) and the other related data identified in the Bidding Documents including "technical".

5.2 CONTRACTOR has inspected the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.

5.3 CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress and furnishing of the Work.

5.4 CONTRACTOR has carefully studied all reports of exploration and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions relating to surface or subsurface structures at or contiguous to the site (Except Underground facilities) which have been identified in the General Conditions as provided in paragraph 4.2.1 of the General Conditions. CONTRACTOR accepts the determination set forth in paragraph 4.2 of the General Conditions. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to such reports, drawings or to Underground Facilities at or contiguous to the site. CONTRACTOR has conducted, obtained and carefully studied (or assume responsibility for having done so) all necessary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

5.5 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.3 of the General Conditions.

5.6 CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the site that relates to the Work as indicated in the Contract Documents.

5.7 CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract

Documents and all additional examinations, investigations, explorations, tests studies and data with the Contract Documents.

5.8 CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing the Work.

ARTICLE 6. CONTRACT DOCUMENTS

The Contract Documents, which constitute the entire agreement between OWNER and CONTRACTOR concerning the Work, are all written documents, which define the Work and the obligations of the Contractor in performing the Work and the OWNER in providing compensation for the Work. The Contract Documents include the following:

6.1 Invitation to Bid.

6.2 Instruction to Bidders.

6.3 Bid Form.

6.4 This Agreement.

6.5 General Conditions.

6.6 Supplementary Conditions.

6.7 General Requirements.

6.8 Technical Specifications.

6.9 Drawings with each sheet bearing the title: **2015 Water Main Replacement Project**

6.10 Change Orders, Addenda and other documents which may be required or specified including:

6.10.1 Addenda No. __ to __ exclusive
6.10.2 Documentation submitted by CONTRACTOR prior to Notice of Award.
6.10.3 Schedule of Subcontractors
6.10.4 Anti-Collusion Affidavit
6.10.5 Certification of EEO Compliance
6.10.6 Notice of Award
6.10.7 Performance Bond
6.10.8 Labor and Material Payment Bond
6.10.9 Certificates of Insurance
6.10.10 Notice to Proceed
6.10.11 Contractor's Proposal Request
6.10.12 Contractor's Overtime Request
6.10.13 Field Order
6.10.14 Work Change Directive
6.10.15 Change Order
6.10.16 Application for Payment
6.10.17 Certificate of Substantial Completion

6.10.18 Claim Release
6.10.19 Final Inspection Report
6.10.20 Certificate of Final Completion
6.10.21 Guarantee Period Inspection Report

6.11 The following which may be delivered or issued after the Effective Date of the Agreement and are attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraphs 3.5 and 3.6 of the General Conditions.

6.12 In the event of conflict between the above documents, the prevailing document shall be as follows:

1. Permits from other agencies as may be required.

2. Special Provisions and Detail Drawings.

3. Technical Specifications and Drawings. Drawings and Technical Specifications are intended to be complementary. Anything shown or called for in one and omitted in another is binding as if called for or shown by both.

4. Supplementary Conditions.

5. General Conditions.

6. City of Louisville Design and Construction Standards.

7. Reference Specifications.

In case of conflict between prevailing references above, the one having the more stringent requirements shall govern.

There are no Contract Documents other than those listed above in this Article 6. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.5 and 3.6 of the General Conditions.

ARTICLE 7. MISCELLANEOUS

7.1 Terms used in this Agreement, which are defined in Article 1 of the General Conditions, shall have the meanings indicated in the General Conditions.

7.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge that assignor from any duty or responsibility under the Contract Documents.

7.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal

representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

ARTICLE 8. OTHER PROVISIONS

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to OWNER and CONTRACTOR. All portions of the Contract Documents have been signed, initialed or identified by OWNER and CONTRACTOR.

This Agreement will be effective on _____, 2015.

OWNER: CITY OF LOUISVILLE, COLORADO

By: _____
Robert P. Muckle, Mayor

(CORPORATE SEAL)

Attest: _____
Nancy Varra, City Clerk

Address for giving notices:

749 Main Street
Louisville, Colorado
80027

Attention: City Engineer

CONTRACTOR: Concrete Works of Colorado, Inc.

By: _____

(CORPORATE SEAL)

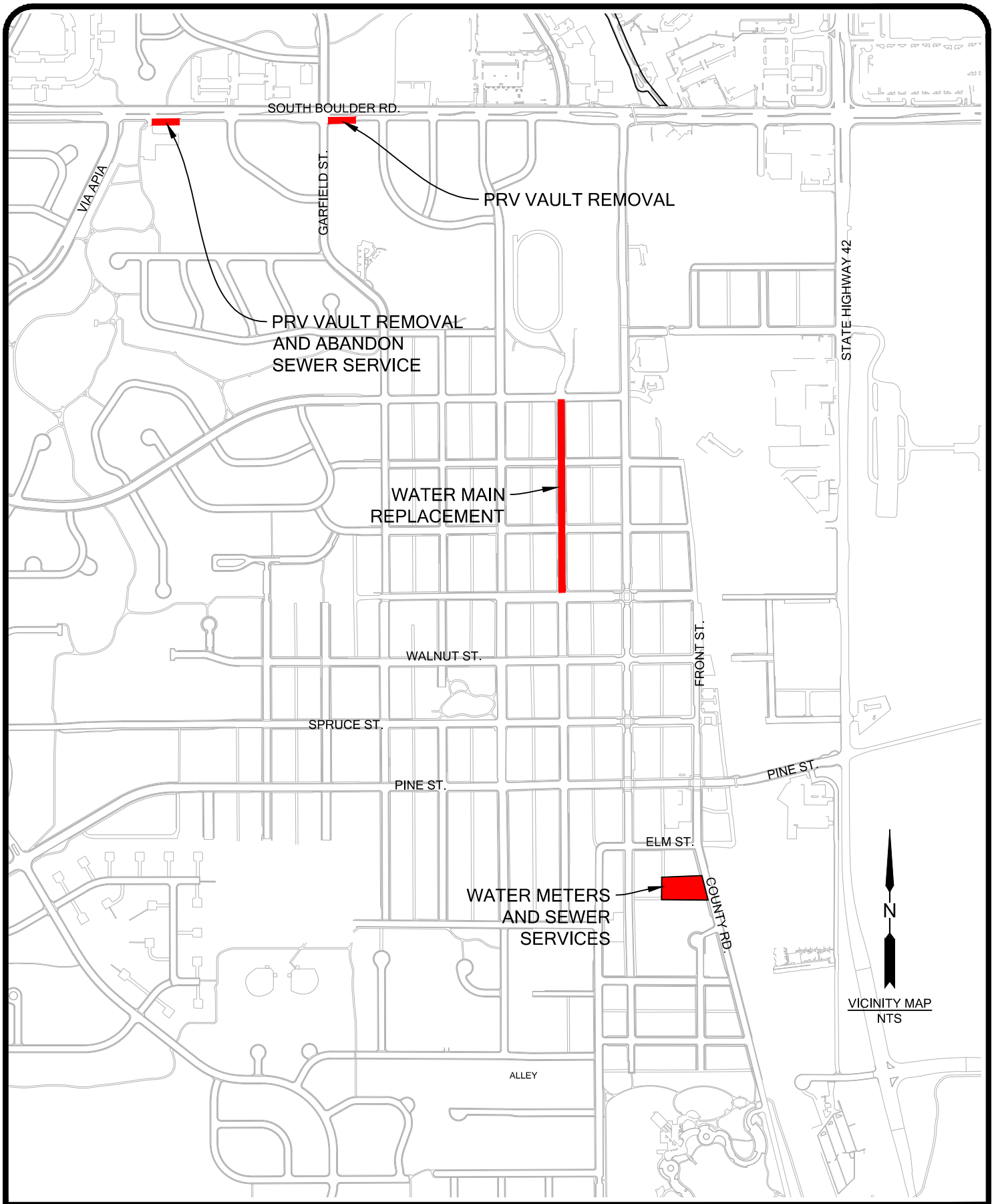
Attest: _____

Address for giving notices:

_____

_____

_____



REVISIONS	
DATE	BY

City *of* Louisville
COLORADO - SINCE 1878

DEPARTMENT OF PUBLIC WORKS

DRAWN BY: CLF 3/2015
APPROVED BY: CMD 3/2015

2015 WATER MAIN REPLACEMENT PROJECT

SHEET
1 OF 1

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SUBJECT: **OLDER AMERICANS MONTH PROCLAMATION**

DATE: **MAY 5, 2015**

PRESENTED BY: **KATIE BEASLEY, PARKS AND RECREATION**

SUMMARY:
Each May, the Administration for Community Living celebrates Older Americans Month to recognize older Americans for their contributions to the nation. This year, in honor of the 50th anniversary of the Older Americans Act (OAA), they are focusing on how older adults are taking charge of their health, getting engaged in their communities, and making a positive impact in the lives of others. The theme for Older Americans Month 2015 is *Get into the Act*.

The City of Louisville will host its annual luncheon on Wednesday, May 20, from 12:00-1:00 p.m. in honor of Older Americans Month.

Members of the Senior Advisory Board are: Julie Stone, Dianne Bernier, Rosie Gilbert, Dede King, Betty Heinrich, Debby Fahey, Karen Maddock, Greg Fickbohm and the newly appointed Aging Advisory Council Representative Sandy Stewart.

FISCAL IMPACT:
None

RECOMMENDATION:
Proclaim May 2015 as Older Americans Month in the City of Louisville. Senior Services staff and members of the Seniors of Louisville Advisory Board will be present to accept the proclamation.

ATTACHMENT(S):
1. Older Americans Month Proclamation, May 2015

OLDER AMERICANS MONTH PROCLAMATION
MAY 2015

WHEREAS, the 2015 Older Americans Month theme is, "Get into the Act"; and

WHEREAS, older adults represent the fastest growing segment of Boulder County; and

WHEREAS, the older adults in Louisville should be commended for their role in creating and bolstering the fiber of our community and nation; and

WHEREAS, our society can be enhanced by older adults aging gracefully in their communities; and

WHEREAS, while the majority of older adults in Louisville, Colorado are thriving, a smaller, yet sizeable, minority have multiple issues such as poor health, limitations in daily activities and limited inadequate incomes; and

WHEREAS, we recognize the value of community engagement and services in helping older adults remain healthy and active while giving back to others; and

WHEREAS, Louisville will continue to implement the updated county-wide "Age Well: Boulder County" initiative at the local level by focusing on the four quadrants:

Basic needs,
Health and Wellness,
Personal Connection and Community Involvement, and
Aging in Community.

NOW THEREFORE, BE IT RESOLVED that I, Mayor Robert P. Muckle, hereby proclaim May as OLDER AMERICANS MONTH IN LOUISVILLE, COLORADO and call on every resident to take time this month to celebrate older adults and the people who serve and support them as powerful and vital individuals who greatly contribute to the community.

DATED this 5th day May 2015

_____
Robert P. Muckle, Mayor

ATTEST:

_____
Nancy Varra, City Clerk

SUBJECT: **RESOLUTION NO. 25, SERIES 2015 –A RESOLUTION APPROVING A BUSINESS ASSISTANCE AGREEMENT WITH MCCASLIN RETAIL, LLC FOR AN ECONOMIC DEVELOPMENT PROJECT IN THE CITY OF LOUISVILLE**

DATE: **MAY 5, 2015**

PRESENTED BY: **AARON DEJONG, ECONOMIC DEVELOPMENT**

SUMMARY:
Staff requests City Council action on a proposed Economic Development Business Assistance Package (BAP) for a retail expansion project located at 994 Dillon Road.

The proposed business assistance is similar in nature to others recently granted, including partial rebates of the building permit fees, construction use taxes, and incremental retail sales tax revenues for expanding the retail square footage to approximately 13,000 square feet. Total permit and tax revenues from the redevelopment project over 5 years are estimated to be $776,000 and rebate payments are $275,000.

DISCUSSION:
The McCaslin Marketplace project is a redevelopment of the property at 994 Dillon Road. The property is currently tenanted by Old Santa Fe Grill and is proposed to be redeveloped into an approximately 13,000 sf retail building able to accommodate up to 6 retail tenants. The property is owned by McCaslin Retail, LLC and entity controlled by Signature Partners, led by Scott Reichenberg and Neil Littmann. A Planned Unit Development (PUD) has been submitted to the Planning Department for review.

McCaslin Retail, LLC is currently negotiating leases with the current tenant, Old Santa Fe Grill, as well as several food establishments and retailers not currently in Louisville. The retail additions have the potential to generate an additional $4,000,000 in retail sales above the current sales generated at the property. The prospective new tenants wish to remain confidential, but are national and regional brands that have had success in the metro Denver area.

The project has significant costs for construction and tenant improvements estimated at $2,800,000. The prospective tenants are pursuing high levels of tenant finish and assistance from the City will allow the owner to provide greater tenant improvement assistance to help encourage locating to this building rather than opportunities in Superior and Broomfield.

City staff estimates the redevelopment will generate new revenue of approximately $776,000 from building permit fees, construction use taxes, and increased sales tax generation directly to the City in the first 5 years of operation, given the investment

described above. Approximately $107,000 of that amount is fees designated for Open Space and Historic Preservation purposes.

Based upon the estimated revenue projection, staff recommends the following:

Proposed Assistance	**Approximate Value**
Building Permit-Fee Rebate 50% rebate on permit fees for tenant finish (Excludes tap fees)	$13,500
Building Use Tax Rebate 50% rebate on Building Use Tax for core and shell and Tenant finish (excludes 0.375 % Open Space tax and 0.125% Historic Preservation tax)	$21,000
Sales Tax Rebate 40% rebate of the City's general 3% sales tax rate on Increased sales tax rebates above the property's previous sales tax collections for a 5 year period.	$240,000
Total Estimated Assistance	**$274,500**

Staff suggests the assistance be provided at 50% of the actual Building Use Tax and Building Permit Fees, and 40% of increased sales tax collections above the property's previous collections for a 5 year period. The agreement is void if the core and shell for the project is not complete by December 31, 2016. The building must stay more than 50% occupied by sales tax generating uses for 10 years. In the event the building is more than 50% leased to non-retail sales tax generating uses, the agreement terminates and a pro-rata repayment of rebates already issued is owed.

The project meets the general criteria by which assistance may be granted in accordance with the Business Assistance Policy.

- It enhances sales tax generation through expanded sales tax opportunities.
- It represents redevelopment to an retail area in the City.
- It adds to the diversity of retail in town.
- The business assistance is a percentage of new revenue anticipated to be created by the project.

The assistance would be funded by permit fees and construction use tax and consumer use tax from the construction of the project, as well as increased sales tax collections from the tenants.

FISCAL IMPACT:
The total fiscal impact would be a total of 50**%** of the City's permit fees, and 50% construction use taxes paid (excluding the 0.375 % open space tax, 0.125% Historic Preservation tax, water and sewer tap fees, and impact fees) based on the costs associated with the redevelopment project, as well as 40% of increased sales tax collections above the property's previous collections for a 5 year period.

RECOMMENDATION:
Staff recommends City Council approve the attached Resolution approving a Business Assistance Agreement with McCaslin Retail, LLC.

ATTACHMENTS:
1. Resolution No. 25, Series 2015
2. Business Assistance Agreement
3. Staff Presentation

RESOLUTION NO. 25
SERIES 2015

A RESOLUTION APPROVING A BUSINESS ASSISTANCE AGREEMENT WITH MCCASLIN RETAIL, LLC FOR AN ECONOMIC DEVELOPMENT PROJECT IN THE CITY OF LOUISVILLE

WHEREAS, the successful attraction and retention of high quality development to the City of Louisville provides employment opportunities and increased revenue for citizen services and is therefore an important public purpose; and

WHEREAS, it is important for the City of Louisville to create and enhance retail sales tax opportunities and remain competitive with other local governments in creating assistance for creation and occupancy of commercial space in the City; and

WHEREAS, McCaslin Retail, LLC, plans to increase retail sales tax opportunities on the property located at 994 Dillon Road; and

WHEREAS, the Business Assistance Agreement between the City and McCaslin Retail, LLC, is attached hereto as Exhibit "A" and incorporated herein by this reference; and

WHEREAS, pursuant the Constitution of the State of Colorado, and the Home Rule Charter and ordinances of the City of Louisville, the City has authority to enter into the proposed Business Assistance Agreement;

WHEREAS, the City Council finds that the proposed Business Assistance Agreement is consistent with and in furtherance of the business assistance policies of the City, and desires to approve the Agreement and authorize its execution and implementation;

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

1. The proposed Business Assistance Agreement between the City of Louisville and McCaslin Retail, LLC (the "Agreement") is hereby approved in essentially the same form as the copy of such Agreement accompanying this Resolution.

2. The Mayor is hereby authorized to execute the Agreement on behalf of the City Council of the City of Louisville, except that the Mayor is hereby granted the authority to negotiate and approve such revisions to said Agreement as the Mayor determines are necessary or desirable for the protection of the City, so long as the essential terms and conditions of the Agreement are not altered.

3. City staff is hereby authorized to do all things necessary on behalf of the City to perform the obligations of the City under the Agreement, including but not limited to

funding and implementation of the Agreement in accordance with and upon performance of the terms thereof.

PASSED AND ADOPTED this _____ day of _____, 2015.

_____
Robert P. Muckle, Mayor

ATTEST:

_____
Nancy Varra, City Clerk

EXHIBIT A

A copy of the Business Assistance Agreement

BUSINESS ASSISTANCE AGREEMENT FOR
MCCASLIN RETAIL, LLC IN THE CITY OF LOUISVILLE

THIS AGREEMENT ("Agreement") is made and entered into as of the _____ day of _____, 2015, between the CITY OF LOUISVILLE, a Colorado home rule municipal corporation (the "City"), and MCCASLIN RETAIL, LLC, a Colorado limited liability company (the "Company").

WHEREAS, the City wishes to provide certain business assistance in connection with the Company's redevelopment and leasing of approximately 13,000 square feet (the "Project") at 994 W. Dillon Road, Louisville (the "Project Location"); and

WHEREAS, Company plans to complete the redevelopment project in 2016; and

WHEREAS, Company plans for the Project to generate new sales tax revenue to the City; and

WHEREAS, City Council finds the execution of this Agreement will serve to provide benefit and advance the public interest and welfare of the City and its citizens by securing this economic development project within the City.

NOW THEREFORE, in consideration of the mutual promises set forth below, the City and Company agree as follows:

1. Building Permit Fee Rebates. The City shall rebate to Company 50% of the building related permit fees for the Project, required under Louisville Municipal Code, section 15.04.050 and section 108.2 of the International Building Code as adopted by the City.

2. Use Tax Rebate-Construction. The City shall rebate to Company 50% of the Construction Use Tax on the building materials for the Project, required under Louisville Municipal Code, section 3.20.300, excluding all revenues from the open space tax and historic preservation tax.

3. Payment of Rebates. The building permit fee and construction use tax rebates described in Sections 1 and 2 above shall be paid by the City to Company within 60 days following issuance of the certificate of occupancy for the core and shell of the Project.

4. Sales Tax Rebates. The City shall rebate to Company 40% of the incremental sales tax revenues derived from the imposition of the City's 3.0% general sales tax (excluding the City's three-eighths percent (3/8%) Open Space Tax and the one-eighth percent (1/8%) Historic Preservation Tax) that is actually collected by the City and attributable to new retail sales occurring at the Project Location for five (5) years of operation over

and above the twelve months of sales reported to the City from July 1, 2014 to June 30, 2015. The five-year rebate period shall commence upon and run continuously from the date that at least fifty percent (50%) of the rentable square footage of the Project is leased and open for business to the public.

5. Payment of Sales Tax Rebates. The sales tax rebates shall be paid by the City in annual installments and shall be made in arrears on or before February 28th for the prior year. No interest shall be paid on amounts subject to rebate.

6. No Interest; Inspection and Disclosure of Records. No interest shall be paid on any amounts subject to rebate under this Agreement. Each party and its agents shall have the right to inspect and audit the applicable records of the other party to verify the amount of any payment under this Agreement, and each party shall cooperate and take such actions as may be necessary to allow such inspections and audits. The Company acknowledges that implementation of this Agreement requires calculations based on the amount of taxes collected and paid by the Company with respect to the term of this Agreement and issuance of rebate payment checks in amounts determined pursuant to this Agreement, and that the amounts of the rebate payment checks will be public information. The Company, for itself, its successors, assigns, and affiliated entities, hereby releases and agrees to hold harmless the City and its officers and employees from any and all liability, claims, demands, and expenses in any manner connected with any dissemination of information necessary for or generated in connection with the implementation of rebate provisions of this Agreement.

7. Use of Funds; Future Fees. Funds rebated pursuant to this Agreement shall be used by Company solely for obligations and/or improvements permitted under Louisville Municipal Code section 3.24.060 (as enacted by Ordinance No. 1507, Series 2007). The rebates provided for under this Agreement are solely for the initial construction of the Project. Any subsequent construction activities shall be subject to payment without rebate of all applicable building permit fees and construction use taxes.

8. Effect of Change in Tax Rate. Any increase or decrease in the City general sales, construction use, or consumer use tax rate above or below the applicable tax rate at the date of execution of this Agreement shall not affect the rebate payments to be made pursuant to this Agreement; rather, the amount of the rebate payments will continue to be based upon the general sales, construction use, or consumer use tax rate applicable at the date of execution of this Agreement (excluding the City's three-eighths percent (3/8%) Open Space Tax and the one-eighth percent (1/8%) Historic Preservation Tax). Any decrease in the City general sales, construction use, or consumer use tax rates shall cause the amount of the rebate payments made pursuant to this Agreement to be based on the

applicable percentage of revenues actually received by the City from application of the tax rate affected (excluding said Open Space and Historic Preservation Taxes).

9. Entire Agreement. This instrument shall constitute the entire agreement between the City and Company and supersedes any prior agreements between the parties and their agents or representatives, all of which are merged into and revoked by this Agreement with respect to its subject matter. Contact information is as follows:

   If to Company:
   McCaslin Retail, LLC
   Attn: Neil Littmann
   3434 47th Street #220
   Boulder, CO 80301
   neil@signature-partners.com

   If to City:
   Louisville City Hall
   Attn: Economic Development
   749 Main Street
   Louisville, CO 80027
   303.335.4531
   aarond@louisvilleco.gov

10. Termination. This Agreement shall terminate and become void and of no force or effect upon the City if, by December 31, 2016, Company has not completed the Project (as evidenced by the issuance of a certificate of occupancy for the core and shell of the Project); or should fail to comply with any City code.

11. Project Conversion. In the event that, within ten (10) years of the commencement of the sales tax rebate term, Company either converts or leases more than 50% of the Project's rentable square footage to a non-retail sales tax generating use (a "Conversion"), then in such event Company shall pay to the City the total amount of sales tax which were due and payable to the City but were rebated by the City to Company, as well as reimburse the City for any funds provided to Company pursuant to this Agreement. The amount required to be repaid to the City shall be reduced by 0.84% for each month prior to the Conversion that at least 50% of the Project's rentable square footage was leased for a retail sales tax generating use.

12. Subordination. The City's obligations pursuant to this Agreement are subordinate to the City's obligations for the repayment of any current or future bonded indebtedness and are contingent upon the existence of a surplus in sales and use tax revenues in excess of the sales and use tax revenues necessary to meet such existing or future bond indebtedness.

The City shall meet its obligations under this Agreement only after the City has satisfied all other obligations with respect to the use of sales tax revenues for bond repayment purposes. For the purposes of this Agreement, the terms "bonded indebtedness," "bonds," and similar terms describing the possible forms of indebtedness include all forms of indebtedness that may be incurred by the City, including, but not limited to, general obligation bonds, revenue bonds, revenue anticipation notes, tax increment notes, tax increment bonds, and all other forms of contractual indebtedness of whatsoever nature that is in any way secured or collateralized by sales and use tax revenues of the City.

13. Annual Appropriation. Nothing in this Agreement shall be deemed or construed as creating a multiple fiscal year obligation on the part of the City within the meaning of Colorado Constitution Article X, Section 20 or any other constitutional or statutory provision, and the City's obligations hereunder are expressly conditional upon annual appropriation by the City Council, in its sole discretion. Company understands and agrees that any decision of City Council to not appropriate funds for payment shall be without penalty or liability to the City and, further, shall not affect, impair, or invalidate any of the remaining terms or provisions of this Agreement.

14. Governing Law: Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. This Agreement shall be subject to, and construed in strict accordance with, the Louisville City Charter and the Louisville Municipal Code. In the event of a dispute concerning any provision of this Agreement, the parties agree that prior to commencing any litigation, they shall first engage in good faith the services of a mutually acceptable, qualified, and experience mediator, or panel of mediators for the purpose of resolving such dispute. In the event such dispute is not fully resolved by mediation or otherwise within 60 days a request for mediation by either party, then either party, as their exclusive remedy, may commence binding arbitration regarding the dispute through Judicial Arbiter Group. Judgment on any arbitration award may be enforced in any court of competent jurisdiction.

15. Legal Challenge; Escrow. The City shall have no obligation to make any rebate payment hereunder during the pendency of any legal challenge to this Agreement. The parties covenant that neither will initiate any legal challenge to the validity or enforceability of this Agreement, and the parties will cooperate in defending the validity or enforceability of this Agreement against any challenge by any third party. Any funds appropriated for payment under this Agreement shall be escrowed in a separate City account in the event there is a legal challenge to this Agreement.

16. Assignment. Company may assign this Agreement to any lender of a loan secured by the Project Location without the consent or authorization of the City Counsel of the City, provided such assignment is limited to a

collateral assignment or pledge of amounts payable to Company hereunder. Company may also assign this Agreement to any purchaser of the Project Location without the consent or authorization of the City Council of the City, provided such assignment is of the Agreement in its entirety to a single entity. In the event of any assignment pursuant to the preceding sentence, Company shall remain liable for the payment to City of the amounts described in Section 11 that were actually received by Company in the event a Conversion occurs within the time period set forth in said Section 11 and any successor-in-interest to Company shall remain liable for the payment to City of the amounts described in Section 11 that were actually received by such successor-in-interest in the event a Conversion occurs within the time period set forth in said Section 11. Company (and any successor-in-interest) shall promptly provide to the City written notice of any assignment of this Agreement. Any assignment of this Agreement other than as described above shall require the prior written consent and authorization of the City Council of the City, and any such purported assignment made without such prior authorization shall be void.

17. No Joint Venture. Nothing in this Agreement is intended or shall be construed to create a joint venture between the City and Company and the City shall never be liable or responsible for any debt or obligation of Company.

Signature page follows.

This Agreement is enacted this _____ day of _____, 2015.

MCCASLIN RETAIL, LLC
A Colorado LLC

By: _____
Neil Littmann
Co-Manager

CITY OF LOUISVILLE

_____
Robert P. Muckle
Mayor

ATTEST:

_____
Nancy Varra, City Clerk

City of Louisville
COLORADO • SINCE 1878

Business Assistance Package for McCaslin Retail, LLC

Aaron DeJong
Economic Development
May 5, 2015

BAP McCaslin Retail, LLC

City of Louisville
COLORADO • SINCE 1878

- Project to redevelop 994 Dillon Road from a single restaurant use to multi-tenant retail opportunity
- Owned by Signature Partners

BAP McCaslin Retail, LLC

City of Louisville
COLORADO • SINCE 1878

- Proposed building would have 6 units for retailers
- Interested tenants are regional and national retailers
- Assistance would help project assist tenants with tenant improvements
- Tenants are considering other locations, namely Broomfield and Superior

BAP McCaslin Retail, LLC

City of Louisville
COLORADO • SINCE 1878

- $2,800,000 for construction and tenant improvements
  - $76,000 paid in City Permit Fees and Construction Use taxes
  - $7,000 of amount is for Open Space and Historic Preservation purposes
- $4,000,000 in new retail sales above the property's existing sales
  - $700,000 in new sales taxes over 5 years
  - $100,000 of amount is for Open Space and Historic Preservation purposes
- **Total receipts = $776,000**

BAP McCaslin Retail, LLC

City of Louisville
COLORADO • SINCE 1878

Proposed Assistance:

- 50% rebate of City Building Permit Fees
  - $13,500 value
- 50% rebate of Construction Use Taxes
  - $21,000 value
- 40% rebate of increased Sales Taxes for 5 years
  - $240,000 value
- **Total Rebates = $274,500**

BAP McCaslin Retail, LLC

City of Louisville
COLORADO • SINCE 1878

Action Requested:

Resolution approving a Business Assistance Package with

McCaslin Retail, LLC

City of Louisville
COLORADO • SINCE 1878

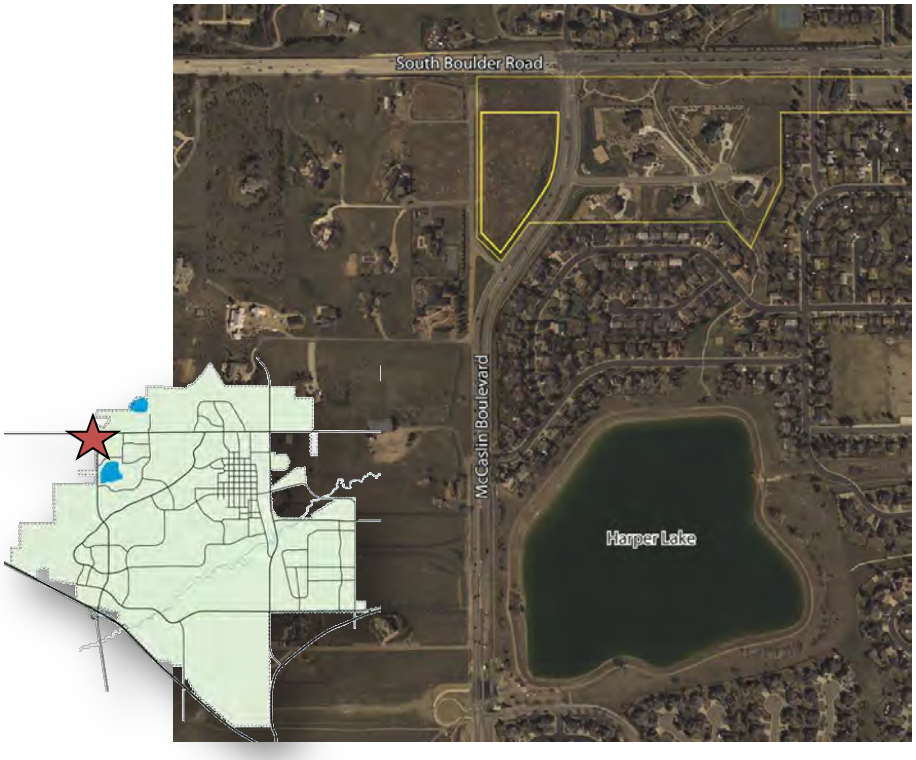
CITY COUNCIL COMMUNICATION
AGENDA ITEM 8C

SUBJECT: **ORDINANCE NO. 1687, SERIES 2015 – AN ORDINANCE AMENDING ORDINANCE NOS. 1165 AND 1166, SERIES 1994 CONCERNING THE GATEWAY ANNEXATION AND APPROVING AN AMENDMENT TO AN ADDENDUM TO ANNEXATION AGREEMENT – 2ND Reading – Public Hearing (Advertised *Daily Camera* 04/12/2015) - CONTINUED FROM APRIL 21, 2015**

RESOLUTION NO. 22, SERIES 2015 – A RESOLUTION APPROVING AN AMENDMENT TO THE GATEWAY FINAL PLANNED UNIT DEVELOPMENT (PUD) TO MODIFY THE HEIGHT ALLOWANCE LANGUAGE ON LOTS 1 AND 2, BLOCK 1 FROM "1 STORY WITH A 26 FEET MAXIMUM BUILDING HEIGHT" TO "1 OR 2 STORIES WITH A MAXIMUM BUILDING HEIGHT OF 26 FEET - CONTINUED FROM APRIL 21, 2015

DATE: **MAY 5, 2015**

PRESENTED BY: **TROY RUSS, DIRECTOR OF PLANNING AND BUILDING SAFETY**



SUMMARY (NEW INFORMATION):
The hearing from the April 21st was continued to May 5th. Council directed staff to work with the applicant to determine if there was a potential agreement between the land owner and City to introduce a lot coverage reduction in exchange for the City agreeing to modify the 1 story restriction and permit a 2nd story within the allowed 26-foot height allowance.

Staff approached the applicant with a possible lot coverage reduction; however, the applicant communicated they do not want to accept a lot coverage reduction from the allowed 10%. The applicant's request for the City to allow a 2nd floor within the allowed 26-foot height restriction remains unchanged.

Staff continues to believe the request, if approved, will not negatively impact the anticipated viewable areas when compared what is expected with the current building allowances.

BACKGROUND (Staff report and attachments from the April 21, 2015 packet)
The Louisville City Council approved the Gateway annexation and initial zoning with Ordinances 1165 and 1166, Series 1994. Section 5 of Ordinance 1165, Series 1994 and Section 3 of Ordinance 1166, Series 1994 (both attached) state, *"No more than two single family dwellings may be constructed on the portion of the property located on the west side of McCaslin Boulevard (Parcels Four and Five on Exhibit B). Such dwellings shall be single story and not more than twenty-six (26) feet in height. The final number of such dwellings will be determined through the P.U.D. process and may be one dwelling or two dwellings."*

The corresponding Annexation Agreement (also attached) includes the 1 story and 26 foot height restriction as stated in both the ordinances. The approved Gateway PUD regulates the 1 story and 26 foot height restriction in the Design Criteria Table on the coversheet.

In researching the item, staff believes the 1 story and 26 foot height restriction evolved from the community's interest in preserving the City's view of the Flatirons from McCaslin Boulevard. Minutes from the October 17, 1995 City Council meeting are attached.

The property is situated prominently between McCaslin Boulevard and the western edge of Davison Mesa, providing a spectacular view of the Boulder Valley. No additional regulatory tools (such as reduced lot coverage, increased roof pitch, or floor area) were employed in the PUD to preserve the view shed.

To supplement the 1995 minutes, staff interviewed the former City Council member who made the motion to approve the 26' height restriction, Rob Lathrup. As stated in this staff report, he mentioned he was concerned with the buildings' impact on the mountain views. He did not recall the specific reasoning behind the building story restriction.

Staff also tried unsuccessfully to connect with former Mayor Davidson as to the specific reasoning for his amendment to Lathrop's motion restricting the building heights.

REQUEST
The applicant is requesting the City allow the 1 story restriction in the Design Criteria Table of the PUD be modified to allow a 2 story structure without altering the maximum 26 foot building height allowance.

STAFF ANALYSIS
Staff reviewed the request with the regulatory tools employed in the approved PUD along with the Restricted Rural Residential (R-RR) Zone District's yard and bulk standards documented in the Louisville Municipal Code (LMC).

The LMC specifies a 27 foot maximum building height and a 10% maximum lot coverage allowance in the underlying R-RR Zone District. The LMC does not regulate residential structure heights by building stories.

The property is approximately 98,000 sf. As such, the 10% lot coverage allowance would yield a 9,800 sf house. Unlike the Old Town overlay district, the PUD does not regulate roof pitch. In other words, the one story structure could employ a flat roof where the entire 9,800 sf house would be allowed to be 26 feet in height.

Staff believes the request, if approved, will not negatively impact the view shed given the regulatory tools used in the existing PUD and the LMC. In fact, applicant's suggested building design would reduce the potential negative impacts on the view shed, if approved, by reducing the potential building foot print, or lot coverage.

The applicant provided alternative development scenarios to illustrate differences between a single story structure and a two story structure. Key arguments by the applicant include energy efficiency, lot coverage, and roof lines. The applicant argues a single story structure is less efficient as heat used in the second floor of a structure would get lost in attic space of a single story structure. Staff agrees. The applicant also stated a two story structure could reduce the overall building's lot coverage when compared to a one story structure.

COPPER HILL (GATEWAY) SUBDIVISION HOA DESIGN REVIEW COMMITTEE
The applicant submitted the requested 2-story house design to the Copper Hill (Gateway) Homeowners Association Design Review Committee. The review committee supported the request for a *"two-story house that does not exceed 26-feet maximum height".* The Committee's response to the architect is included in the packet for City Council review.

PUBLIC COMMENT
Staff posted the property and mailed a public notice all properties owners within 500-feet of Lots 1 and 2, Block 1 of the Gateway Subdivision. No comments were received

before the Planning Commission hearing. Three comments were received after the Planning Commission hearing (attached). One comment was in favor of the request. Two comments were opposed.

PLANNING COMMISSION ACTION:
The Planning Commission reviewed the proposal at its March 12, 2015 meeting and unanimously recommended approval. Planning Commission comments were focused on alternative techniques used to preserve view sheds and concluded they were not necessary given the nature of the original PUD language. The draft minutes to the hearing are attached.

Two public comments were heard during the public hearing. One was in favor of the requested. One individual asked for clarification regarding trade-off and public benefits.

FISCAL IMPACT:
No additional fiscal impacts are expected with this request.

STAFF RECOMMENDATION
Staff recommends City Council approve Ordinance No. 1687, Series 2015 and Resolution 22, 2015.

ATTACHMENTS:
1. Letter from Applicant
2. Ordinance No. 1687, Series 2015
3. Resolution 22, Series 2015 (new for packet)
4. Draft Annexation Agreement Amendment
5. Planning Commission Resolution No. 08, Series 2015
6. Planning Commission March 12, 2015 Minutes
7. Public Comment – Jeff Waters (March 17th)
8. Public Comment – Brian Larson (March 24th)
9. Public Comment – Susan Morris (April 7th) (new for packet)
10. Copperhill HOA Design Review Committee Letter
11. Land Use Application, transmittal letter, and proposed building elevations,
12. Ordinance 1165, Series 1994,
13. Ordinance 1166, Series 1994,
14. Gateway Annexation Agreement (1996),
15. City Council minutes October 17, 1995.
16. Resolution 65, Series 1996, and
17. City Council minutes October 15, 1996
18. PowerPoint

.

Drs. Jeremy Weiss and Tiera Nell
2287 S. Columbine St.
Denver, Colorado 80210
(303)945-1433

April 29, 2015

Honorable Mayor Bob Muckle
Mayor of Louisville, Colorado
749 Main St, Louisville, CO 80027

Dear Mayor Muckle and Louisville City Council,

We all chose to live in Colorado because of the wonderful things around us. Mountain views are essential to our everyday lives. We would assume that everyone living along the front range enjoys gazing westward and taking in the magnificent vistas.

At the last council meeting, we presented a proposition to amend the language in the existing Planned Unit Development to allow our family to build a two-story structure within the allowable height restriction. We apologize for any possible sense of inflexibility, but we feel that decreasing the lot coverage should not be part of this discussion.

We have already worked appropriately and amicably with the Home Owners Association and Design Review Committee and have received their full and unanimous endorsement to proceed with a two-story structure. The Gateway/Copper Hill HOA is firmly set on maintaining the mountain views and limiting any impedance of the visual corridors to the west. We have already complied with their requests regarding maximizing and preserving the views. We look forward to continue to mutually work with them in the design of our home.

The mayor mentioned that a two-story home, despite the height restriction, would appear more obtrusive. We humbly disagree. In fact, many may feel that two 10-foot floors with a softer angled roof would actually appear more modest and quaint as opposed to one 20-foot wall with large windows and a steeply pitched roof. It also became obvious that some members were against the development of the land at all. They wish that no homes would be built there and it would have been left as open space. It was mentioned that the existing berm and blue spruce trees that are there now are an “eye-sore”. We understand and respect the sentiment and feelings. We hope that emotion doesn’t blind the council to reason and reality.

We are not asking for any height extension, and we are also not asking for any lot coverage reduction. We are simply asking for the ability to place two-stories within the height restriction of 26 feet. The ability to “stack” floors upon themselves will eliminate the unnecessary sprawling of the needed living space over a wider foot print. This will be mutually beneficial and favorable to the environment, the views, and for all of the citizens of Louisville. We would like to proceed with a vote to simply adjust the language to allow a 2-story structure to be built within the allowable height restriction and lot coverage.

Thank you for your time and consideration. We look forward to meeting with you on May 5th.

Sincerely,

Jeremy Weiss & Tiera Nell

ORDINANCE NO. 1687
SERIES 2015

AN ORDINANCE AMENDING ORDINANCE NOS. 1165 AND 1166, SERIES 1994 CONCERNING THE GATEWAY ANNEXATION AND APPROVING AN AMENDMENT TO AN ADDENDUM TO ANNEXATION AGREEMENT

WHEREAS, on October 17, 1995, the City Council passed and adopted on second and final reading Ordinance No. 1165, Series 1994, "An Ordinance Annexing to the City of Louisville, Colorado, the Property Located in the North Half of Section 7, Township 1 South, Range 69 West, South of South Boulder Road and West of Washington Avenue," which was recorded on February 28, 1996 as Reception No. 01587000 in the Office of the Boulder County Clerk and Recorder; and

WHEREAS, also on October 17, 1995, the City Council passed and adopted on second and final reading Ordinance No. 1166, Series 1994, "An Ordinance Amending Title 17 of the Louisville Municipal Code Entitled 'Zoning' by Zoning Property Owned by the Louisview Corporation Known as the Gateway Annexation," which was recorded on February 28, 1996 as Reception No. 01587001 in the Office of the Boulder County Clerk and Recorder; and

WHEREAS, the City Council approved an Annexation Agreement for the Gateway Annexation dated December 5, 1995 and which was recorded on March 4, 1996 as Reception No. 01588412 in the Office of the Boulder County Clerk and Recorder and an Addendum to Annexation Agreement dated December 5, 1995 and which was recorded on March 4, 1996 as Reception No. 01588413 in the Office of the Boulder County Clerk and Recorder (the "Addendum"); and

WHEREAS, Ordinance Nos. 1165 and 1166 and the Addendum include provisions requiring the dwellings on the lots located on the west side of McCaslin Boulevard to be one story and no more than twenty-six feet in height; and

WHEREAS, there has been submitted to City Council a request to allow two story dwellings on said lots without changing the existing twenty-six foot height limitation; and

WHEREAS, City Council desires to amend Ordinance Nos. 1165 and 1166 and to approve an amendment to the Addendum to allow two story dwellings on said lots, subject to the twenty-six foot height limitation;

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

Section 1. Section 5 of Ordinance No. 1165, Series 1994 is hereby by amended to read as follows (words to be added are underlined; words to be deleted are ~~stricken through~~):

Section 5 – That no more than two single family dwellings may be constructed on the portion of the property on the west side of McCaslin Boulevard ~~(Parcels Four and Five on Exhibit A)~~ (Lots 1 and 2, Block 1, Gateway PUD, a/k/a Copper Hill Community Interest Community, Assessor Parcel Nos. 157507226001 and 157507226002). Such dwellings shall be single or two story, but in no event shall such dwellings be ~~and not~~ more than twenty-six (26) feet in height. The final number of such dwellings shall be determined thorough the P.U.D. process and may be one dwelling or two dwellings.

Section 2. Section 3 of Ordinance No. 1166, Series 1994 is hereby by amended to read as follows (words to be added are underlined; words to be deleted are ~~stricken through~~):

Section 3. No more than two single family dwellings may be constructed on the portion of the property located on the west side of McCaslin Boulevard ~~(Parcels Four and Five on Exhibit B)~~ (Lots 1 and 2, Block 1, Gateway PUD, a/k/a Copper Hill Community Interest Community, Assessor Parcel Nos. 157507226001 and 157507226002). Such dwellings shall be single or two story, but in no event shall such dwellings be ~~and not~~ more than twenty-six (26) feet in height. The final number of such dwellings shall be determined thorough the P.U.D. process and may be one dwelling or two dwellings.

Section 3. The Amendment to Addendum to Annexation Agreement (Gateway Annexation) is hereby approved in essentially the same form as the copy of such Amendment accompanying this Ordinance. The Mayor and City Clerk are authorized to execute such Amendment, either as a single Amendment for both Lots or as a separate Amendment for each Lot, and the Mayor is hereby further granted the authority to negotiate and approve such revisions to said Amendment as the Mayor determines are necessary or desirable for the protection of the City, so long as the essential terms and conditions of the Amendment are not altered.

Section 4. If any portion of this ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part be declared invalid.

Section 5. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

INTRODUCED, READ, PASSED ON FIRST READING, AND ORDERED PUBLISHED this _____ day of _____, 2015.

_____
Robert P. Muckle, Mayor

ATTEST:

_____
Nancy Varra, City Clerk

APPROVED AS TO FORM:

_____
Light Kelly, P.C.
City Attorney

PASSED AND ADOPTED ON SECOND AND FINAL READING, this _____ day of _____, 2015.

_____
Robert P. Muckle, Mayor

ATTEST:

_____
Nancy Varra, City Clerk

RESOLUTION NO. 22
SERIES 2015

A RESOLUTION APPROVING AN AMENDMENT TO THE GATEWAY FINAL PLANNED UNIT DEVELOPMENT (PUD) TO MODIFY THE HEIGHT ALLOWANCE LANGUAGE ON LOTS 1 AND 2, BLOCK 1 FROM "1 STORY WITH A 26 FEET MAXIMUM BUILDING HEIGHT" TO "1 OR 2 STORIES WITH A MAXIMUM BUILDING HEIGHT OF 26 FEET"

WHEREAS, there has been submitted to the Louisville City Council an application requesting an amendment to the Gateway PUD to allow two-story residential units on Lots 1 and 2 on Block 1 of the Gateway Subdivision without changing the existing 26-foot height limitation; and

WHEREAS, the City Staff has reviewed the PUD amendment application and found it to comply with Louisville zoning regulations and would not alter the intended goal of the previous restriction in maximizing the City's view of the Flatirons from McCaslin Boulevard, or the views of the Flatirons from adjacent properties; and

WHEREAS, after a duly noticed public hearing on March 12, 2015, where evidence and testimony were entered into the record, including the findings in the Louisville Planning Commission Staff Report dated March 12, 2015, the Planning Commission recommends approval of the PUD Amendment to the City Council with no conditions; and

WHEREAS, City Council has reviewed the application, including the recommendation of the Planning Commission, and finds that it complies with Chapter 17.28.210 of the Louisville Municipal Code;

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Louisville, Colorado does hereby recommend approval Resolution 22, Series 2015, a resolution recommending city council approve an amendment to the Gateway final Planned Unit Development (PUD) to modify the height allowance language on Lots 1 and 2, Block 1 from "1 story with a 26 feet maximum building height" to "1 or 2 stories with a maximum building height of 26 feet with no conditions.

PASSED AND ADOPTED this 21st day of April, 2015.

By: _____
Robert P. Muckle, Mayor
City of Louisville, Colorado

Attest: _____
Nancy Varra, City Clerk
City of Louisville, Colorado

AMENDMENT TO ADDENDUM TO ANNEXATION AGREEMENT

(Gateway Annexation)

THIS AMENDMENT TO ADDENDUM TO ANNEXATION AGREEMENT is made and entered into this _____ day of _____, 2015, by and between TIERA CHRISTINA NELL and JEREMY LANCE WEISS, whose address is 2287 South Columbine Street, Denver, CO 80210 and DAN AND JILL BOYD, whose address is 44 Cook Street, Suite 611, Denver, CO 80206 (collectively, the "Owners"), and the CITY OF LOUISVILLE, a home rule municipal corporation of the State of Colorado ("City") with reference to that certain ADDENDUM TO ANNEXATION AGREEMENT by and between Louisview Corporation and City which is dated December 5, 1995 and was recorded on March 4, 1996 as Reception No. 01588413 in the Office of the Boulder County Clerk and Recorder and is hereinafter referred to as the "Addendum" and that certain ANNEXATION AGREEMENT by and between Louisview Corporation and the City which is dated December 5, 1995 and was recorded on March 4, 1996 as Reception No. 01588412 in the Office of the Boulder County Clerk and Recorder and is hereinafter referred to as the "Annexation Agreement;" and

WHEREAS, the Owners are the owners of Lots 1 and 2, Block 1, Gateway PUD, a/k/a Copper Hill Community Interest Community, Assessor Parcel Nos. 157507226001 and 157507226002; and

WHEREAS, the Addendum includes a provision requiring the dwellings on Lots 1 and 2 to be one story and no more than twenty-six feet in height; and

WHEREAS, the Owners and City desire to amend the Addendum to allow two story dwellings on Lots 1 and 2 without changing the existing twenty-six foot height limitation;

NOW, THEREFORE, in consideration of the recitals, promises, covenants and undertakings hereinafter set forth, and other good and valuable consideration, the sufficiency of which is hereby acknowledged and confessed, the Owners and City agree as follows:

1. Section 14 of the Addendum is hereby amended to read as follows (words to be added are underlined; words deleted are ~~stricken through~~):

> 14. No more than two single family dwellings may be constructed on the portion of the property located on the west side of McCaslin Boulevard, Lots 1 and 2, Block 1, Gateway PUD, a/k/a Copper Hill Community Interest Community, Assessor Parcel Nos. 157507226001 and 157507226002 ~~Parcels No. 4 and No. 5 on the approved Annexation plat~~. Such dwellings shall be single or two story, but in no event shall such dwellings be ~~and not~~ more than twenty-six (26) feet in height. The final number of such dwellings will be determined thorough the P.U.D. process and may be one dwelling or two dwellings. If a final P.U.D. for the property is approved to the satisfaction of the City and the Owner, the Owner shall place the restrictions of this paragraph 14 in the deeds for the parcels of the property located on the west

side of McCaslin Boulevard, Lots 1 and 2, Block 1, Gateway PUD, a/k/a Copper Hill Community Interest Community, Assessor Parcel Nos. 157507226001 and 157507226002 ~~Parcels No. 4 and No. 5~~.

2. The Addendum to Annexation Agreement, as herein amended by this Amendment to Addendum, is hereby ratified and confirmed and remains in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the Owners and City have executed this Amendment to Addendum to Annexation Agreement as of the day and year first above set forth.

CITY OF LOUISVILLE

_____
Robert P. Muckle, Mayor

ATTEST:

_____
Nancy Varra, City Clerk

[Remainder of page left intentionally blank]

OWNER:
TIERA CHRISTINA NELL

_____

ACKNOWLEDGEMENT

STATE OF COLORADO)
)ss
COUNTY OF _____)

The above and foregoing signature of Tiera Christina Nell was subscribed and sworn to before me this _____ day of _____, 2015.

Witness my hand and official seal.

My commission expires on: _____.

(SEAL) _____
Notary Public

OWNER:
JEREMY LANCE WEISS

_____

ACKNOWLEDGEMENT

STATE OF COLORADO)
)ss
COUNTY OF _____)

The above and foregoing signature of Jeremy Lance Weiss was subscribed and sworn to before me this _____ day of _____, 2015.

Witness my hand and official seal.

My commission expires on: _____.

(SEAL) _____
Notary Public

OWNER:
DAN BOYD

_____

ACKNOWLEDGEMENT

STATE OF COLORADO)
)ss
COUNTY OF _____)

The above and foregoing signature of Dan Boyd was subscribed and sworn to before me this _____ day of _____, 2015.

Witness my hand and official seal.

My commission expires on: _____.

(SEAL) _____
Notary Public

OWNER:
JILL BOYD

_____

ACKNOWLEDGEMENT

STATE OF COLORADO)
)ss
COUNTY OF _____)

The above and foregoing signature of Jill Boyd was subscribed and sworn to before me this _____ day of _____, 2015.

Witness my hand and official seal.

My commission expires on: _____.

(SEAL) _____
Notary Public

Planning Commission

Meeting Minutes

March 12, 2015
City Hall, Council Chambers
749 Main Street
6:30 PM

DRAFT

Call to Order – Chairman Pritchard called the meeting to order at 6:30 P.M.

Roll Call was taken and the following members were present:

Commission Members Present:	Chris Pritchard, Chairman Cary Tengler, Vice Chairman Ann O'Connell, Secretary Steve Brauneis Jeff Moline Tom Rice Scott Russell
Staff Members Present:	Troy Russ, Director of Planning and Building Safety Sean McCartney, Principal Planner Scott Robinson, Planner II Lauren Trice, Planner I

Approval of Agenda –
Sean McCartney says that the first agenda item regarding Gateway PUD Amendment lists the wrong descriptor which should say" resolution recommending City Council approve an amendment to the Gateway Final Planned Unit Development (PUD) to modify the height allowance language on Lots 1 and 2, Block 1 from "1 story with 26 feet maximum building height" to "1 or 2 stories with a maximum building height of 26 feet".

Russell made motion and Moline seconded to approve the agenda. Motion passed by voice vote.

Approval of Minutes –
Moline made motion and O'Connell seconded to approve February minutes. Motion passed by voice vote. Abstain by Russell.

Public Comments: Items not on the Agenda
None.

Regular Business – Public Hearing Items

- **Gateway PUD Amendment: Resolution 08: Series 2015,** Resolution recommending City Council approve an amendment to the Gateway Final Planned Unit Development (PUD) to modify the height allowance language on Lots 1 and 2, Block 1 from "1 story

with 26 feet maximum building height" to "1 or 2 stories with a maximum building height of 26 feet".

- Applicant and Representative: Vern Seieroe, Architect
- Owner: Tiera Nell and Jeremy Weiss
- Case Manager: Troy Russ, Director of Planning and Building Safety

Conflict of Interest and Disclosure:
None.

Public Notice Certification:
Published in the Boulder Daily Camera on February 22, 2015. Posted in City Hall, Public Library, Recreation Center, Courts, and Police Building on February 20, 2015. Mailed to surrounding property owners and property posted on February 23, 2015.

Staff Report of Facts and Issues:
Russ presented from Power Point:

- Property located in southwest intersection of South Boulder Road and McCaslin in the Gateway subdivision. Block 1, Lots 1 and 2.
- Property annexed in the City with Ordinance 1166, Series 1994. Within the annexation is an agreement with specific language, both in ordinance and annexation agreement, stating the dwelling shall be a single story, not more than 26 feet in height, specifying floors and height.
- Property was approved for Planned Unit Development in Resolution 65, Series 1996. There is specific language on cover sheet under Land Use Summary stating maximum building height for Lots 1 and 2, Block 1 shall be one story with a maximum of 26 feet.
- City Council was concerned about the views. Staff interviewed the Council member who made the motion for the 26 feet height. He does not recall why Council did both the 26 feet height limitation and the story limitation. He said they were worried about preserving the view. It is consistent with the minutes found.
- Russ shows photographs taken on March 13, 2015 showing a building currently being built on Lot 1, which is 26 feet tall structure. Photography shows red line drawn to illustrate a 26 feet height for Lot 2.
- All properties east of McCaslin are allowed to build to 27 feet and two stories; west of McCaslin 26 feet and one story.
- Lot 2 is 98,000 sf, translating to a 9,800 sf footprint allowed.
- As a part of the PUD, there are no minimum root pitch requirements, no unique setback requirements, and no landscape controls.
- The approved landscape plan will eventually block the view. Landscaping in the right-of-way currently in place will crowd the view as well.
- A 26 feet, 2 story structure would not worsen the view corridor beyond what is allowed.
- Architect and property owners did contact the Copper Hill Homeowners Association Design Review Committee. The HOA Design Committee correspondence states they do support a two story house that does not exceed 26 feet in height. Staff has not received any comments from the public prior to this hearing.

Staff Recommendations:
Staff recommends approval of Resolution No. 08, Series 2015. A resolution recommending City Council approve an amendment to the Gateway Final Planned Unit Development (PUD) to modify the height allowance language on Lots 1 and 2, Block 1 from "1 story with 26 feet maximum building height" to "1 or 2 stories with a maximum building height of 26 feet".

Commission Questions of Staff:
Moline asks about location clarification of where photograph was taken.
Russ answers photo was taken at northwest corner of intersection, taken across McCaslin.

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O'Connell asks about the 9,800 footprint or total square footage of the house?
Russ answers just the footprint. In current regulations, this is the allowed maximum. Staff has not received a building permit request.
Brauneis thanks Russ for contacting the City Council member who was involved. He clarified that on the east side of McCaslin, a 27 feet allowance and two stories are allowed.
Russ answers it is consistent with the underlying zone district.

Applicant Presentation:
Verne Seieroe, Architect, 417 Vivian Street, Longmont, CO.

- Tiera Nell and Jeremy Weiss are parents of three young children.
- The house as designed is intended to be energy efficient. There will be a library, mudroom, domestic utility room, and modest mother-in-law suite. Ceilings are 8 feet and 10 feet which fits into the height limitation. The roof pitch is 4:12.
- The architect and owners have approached the Copper Hill HOA Design Review Committee twice. The first time was in regard to the placement of the structure. The site plan shows the building placement and the Design Committee suggested it there or further to the north. They are trying to preserve the view corridor at Copper Hill Drive. The lot was purchased for location, size, and western view.
- Design considerations include no two story glass and no vertical elements. There are horizontal lines with eave depth.

Tiera Nell and Jeremy Weiss, Owners, 2287 S Columbine, Denver, CO 80210

- House is designed for family needs. They have three small children. Ms Nell is sole adult responsible for her parents, who may be residing with them in the couple years due to age. This increases the family number to 7.
- House was never meant to be a mammoth-sized house. The first floor would be the living space and her parents' living space with the second floor being three bedrooms for them and their children. The second story is much smaller than the first story.
- If the home needs to be single story, she is concerned about the footprint and environmental impact. More concrete means more heat radiation and less water absorption and more water runoff. They are also concerned about a large footprint translating to a larger loss of views.
- They wish a Craftsman/New England style home for the two story home. If a ranch style footprint is approved, then higher ceilings will be requested. She thinks the one story plan or the two story plan will reach 26 feet height.

Commission Questions of Applicant:
Tengler asks about residence location clarification on Staff photo. Tengler asks how high would a one story house be?
Seieroe uses pointer to show approximate location. He says a one story would approach 24 to 25 feet. Ceilings have been held back to 8 feet and 10 feet. Roof pitch would be increased to a 6:12 pitch.
Rice asks about two story square footage footprint? What is the comparison between two story and a one story configuration?
Seieroe answers the two story is approximately 5000 sf excluding the garage. Footprint increased between a one story and two story footprint would be 300 sf.

Public Comment:
Sherry Sommer, 910 South Palisade Court, Louisville, CO 80027
She says that currently, the numbers and figures make the project seem amorphous so when do they become firm? She feels a concession is being given in saying this home can be built to two stories. She wonders if the owners can give a concession that will benefit the City.

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Pritchard answers that the Planning Commission (PC) is deciding the height issue tonight and what it entails. He states that the owners have a right to build to 26 feet resident, so a one story or a two story is allowed.
Russ answers that if there is a waiver to the LMC, then there is a trade-off for public benefit. This is not a waiver to the underlying zone district. They are not asking for a waiver to the LMC.
Rice clarifies that the PC is being asked to waive the one story requirement to allow two stories.
Russ answers affirmative.
Moline asks if the PC could recommend approval but it is conditional that the applicant presents the City with a plan consistent with the one presented tonight? Is that a reasonable condition?
Russ answers yes, but because of the level of specificity in the drawings Staff has as a part of the application, he would not feel comfortable for it to be binding. The PC could reduce the lot coverage requirement associated with this. They are at the 10% coverage and can build at 9,800 sf footprint down. He has not heard this size being proposed.

Dan Boyd, 1540 South 88th Street, Louisville, CO 80027
He is a professional civil engineer and building the home on Lot 1. He is in support of the request for two stories. He sees no negative impact and the positive impact is the reduced footprint for a two story. He would have built a two story if he had known he had the option.

Summary and request by Staff and Applicant:
Staff recommends approval. Nothing from applicant.

Closed Public Hearing and discussion by Commission:
Tengler in support. Brauneis in support. Moline in support. O'Connell in support. Rice in support. Russell in support. Pritchard in support.

Motion made by Russell to approve Resolution No. 08, Series 2015. Second by O'Connell.
Roll call vote.

Name	Vote
Chris Pritchard	Yes
Jeff Moline	Yes
Ann O'Connell	Yes
Cary Tengler	Yes
Steve Brauneis	Yes
Scott Russell	Yes
Tom Rice	Yes
Motion passed/failed:	Pass

Motion passes 7-0.

DRAFT

RESOLUTION NO. 08
SERIES 2015

A RESOLUTION RECOMMENDING CITY COUNCIL APPROVE AN AMENDMENT TO THE GATEWAY FINAL PLANNED UNIT DEVELOPMENT (PUD) TO MODIFY THE HEIGHT ALLOWANCE LANGUAGE ON LOTS 1 AND 2, BLOCK 1 FROM "1 STORY WITH A 26 FEET MAXIMUM BUILDING HEIGHT" TO "1 OR 2 STORIES WITH A MAXIMUM BUILDING HEIGHT OF 26 FEET.

WHEREAS, there has been submitted to the Louisville Planning Commission an application requesting an amendment to the Gateway PUD to allow two-story residential units on Lots 1 and 2 on Block 1 of the Gateway Subdivision without changing the existing 26-foot height limitation;

WHEREAS, the City Staff has reviewed the PUD amendment application and found it to comply with Louisville zoning regulations and would not alter the intended goal of the previous restriction in maximizing the City's view of the Flatirons from McCaslin Boulevard, or the views of the Flatirons from adjacent properties; and

WHEREAS, after a duly noticed public hearing on March 12, 2015, where evidence and testimony were entered into the record, including the findings in the Louisville Planning Commission Staff Report dated March 12, 2015, the Planning Commission recommends approval of the PUD Amendment to the City Council with no conditions:

NOW THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Louisville, Colorado does hereby recommend approval Resolution 08, Series 2015, a resolution recommending city council approve an amendment to the Gateway final Planned Unit Development (PUD) to modify the height allowance language on Lots 1 and 2, Block 1 from "1 story with a 26 feet maximum building height" to "1 or 2 stories with a maximum building height of 26 feet with no conditions.

PASSED AND ADOPTED this 12th day of March, 2015.

By: _____
Chris Pritchard, Chairman
Planning Commission

Attest: _____
Ann O'Connell, Secretary
Planning Commission

Troy Russ

From: Jeff Waters <jeffreytwaters@yahoo.com>
Sent: Tuesday, 17 March, 2015 1:08 PM
To: Planning
Subject: Gateway PUD Amendment- Case Number 14-051-FP

To Whom it May Concern;

We live at 1073 Copper Hill Ct which is directly east of this lot. We would be most affected by any change in the PUD. The first time I became aware of this is when I received your notification in the mail as my HOA board approved this without conferring with any other residents. We are obviously opposed to this change as it will increase the overall mass of the house and serve to obscure our view more than if the PUD is left as it is. This was a primary consideration when we purchased this lot and we hope this will be taken under serious consideration in your decision making process.

Best regards,

Jeff Waters

Troy Russ

From: Brian Larson <larson.brian.m@gmail.com>
Sent: Tuesday, 24 March, 2015 9:58 AM
To: Planning
Subject: 14-051 FP

Dear City of Louisville,

Please permit the 14-051 FP variance petition. There is no change in the maximum height of the building. It merely uses two stories instead of one in the same available space. This variance will help maintain existing views because it prevents the house from spreading out as far horizontally. It will also preserve more open space for animal habitat and recreation than a single story and widely spaced home would take up. The area where the planned build is occurring needs to efficiently avoid using open space to avoid erosion.

Our city needs to efficiently build where it is able to. Preventing a property owner who stays within the height restrictions from efficiently using their available property is cutting off the city's nose to spite its face. We also have goals for green space and small town feel. This plan encourages both of those goals. We should encourage this kind of creative development.

Sincerely,

Brian M. Larson
730 Copper Lane, #205
Louisville, CO 80027

Troy Russ

From: Troy Russ
Sent: Monday, 13 April, 2015 11:26 AM
To: Troy Russ
Subject: FW: Gateway request for change on west side of McCaslin

From: Susan Morris [mailto:susankmorris@gmail.com]
Sent: Tuesday, April 7, 2015 10:48 AM
To: City Council
Subject: Gateway request for change on west side of McCaslin

Mayor and City Council Members
I request that you deny any changes to the proposed house on the West side of McCaslin. I realize that the height limit will be the same.
However, I remember the lengthy thought process that was given to this parcel when it was first proposed. Our former mayor Chuck Sisk and former council member Tom Mayer discussed exactly this at length and made the height decisions both by feet and number of stories.
I hope you will honor the decision that was made by them and the rest of their city council.
Thank you
Susan Moris
939 West Maple Ct
Louisville

2 Feb 2015

TO: Vern Seieroe

FROM: Copper Hill Homeowners Association Design Review Committee

SUBJECT: Approval of Lot No 1, Block No. 1, PUD Amendment

The Copper Hill Homeowners Association Design Review Committee members have reviewed the proposal submitted by Vern Seieroe, architect for Tiera Nell/Jeremy Weiss. We do support the construction of a two-story house that does not exceed 26' maximum in height.

If you have any questions regarding this approval feel free to contact Kim Langley at 303-905-9936 or kim.langley01@gmail.com.

Regards,

Kim Langley, Phil Prine, and Katie Bell
Copper Hill Homeowners Association
Design Review Committee

RECEIVED
FEB 04 2015
CITY OF LOUISVILLE
DEPARTMENT OF PLANNING & BUILDING SAFETY

City of Louisville
COLORADO · SINCE 1878

Department of Planning and Building Safety

749 Main Street • Louisville CO 80027 • 303.335.4592 • www.louisvilleco.gov

LAND USE APPLICATION

CASE NO. _____

APPLICANT INFORMATION

Firm: Vern Seieroe, Architect
Contact: Vern Seieroe
Address: 417 Vivian St.
Longmont, CO 80501
Mailing Address: same
Telephone: 303 817 1303
Fax:
Email: vseieroe@aol.com

OWNER INFORMATION

Firm: Tiera Nell & Jeremy Weiss
Contact: Tiera Nell
Address: 2287 S. Columbine
Denver, CO 80210
Mailing Address: same
Telephone: 303 945 1429
Fax:
Email: ntiera@hotmail.com

REPRESENTATIVE INFORMATION

Firm:
Contact: see "applicant" above
Address:
Mailing Address:
Telephone:
Fax:
Email:

PROPERTY INFORMATION

Common Address: 1566 S. 80th / 80303
Legal Description: Lot 1 Blk 1
Subdivision Copper Hill
Area: 97,994 Sq. Ft.

TYPE (S) OF APPLICATION

- ☐ Annexation
- ☐ Zoning
- ☐ Preliminary Subdivision Plat
- ☐ Final Subdivision Plat
- ☐ Minor Subdivision Plat
- ☐ Preliminary Planned Unit Development (PUD)
- ☐ Final PUD
- ■ Amended PUD
- ☐ Administrative PUD Amendment
- ☐ Special Review Use (SRU)
- ☐ SRU Amendment
- ☐ SRU Administrative Review
- ☐ Temporary Use Permit: _____
- ☐ CMRS Facility: _____
- ☐ Other: (easement / right-of-way; floodplain; variance; vested right; 1041 permit; oil / gas production permit)

PROJECT INFORMATION

Summary: change language in PUD per maximum building height....Lot 1 & 2 Block 1 shall be 1 story w/ 26' maximum building height, to read, Lots 1 & 2 Block 1 shall be 1 or 2 story with 26' maximum building height.

Current zoning: ER Proposed zoning: ER

SIGNATURES & DATE

Applicant:
Print: Vern Seieroe
Owner:
Print: Tiera Nell & Jeremy Weiss
Representative:
Print: Vern Seieroe

CITY STAFF USE ONLY

- ☐ Fee paid: _____
- ☐ Check number: _____
- ☐ Date Received: _____

Vern Seieroe
architectural design • planning
office: 417 Vivian Street
telephone: 303 817 1303
Longmont, Colorado 80501
e-mail: vseieroe@aol.com

For consideration of:
Staff of the City of Louisville
Members of the Planning Commission of the City of Louisville
Member of the Council of the City of Louisville

Date: 5 February 2015

Re: Application for a Planned Unit Development Amendment
Tiera Nell / Jeremy Weiss Residence
Lot No. 1, Block 1 Gateway PUD, aka Copper Hill Neighborhood

Members of the Staff, Planning Commission and City Council,

Tiera Nell and Jeremy Weiss Residence are owners of Lot No. 1, Block 1 of the Gateway Planned Unit Development, also known as the Copper Hill Neighborhood

Mrs. Nell and Mr. Weiss submit a concise question for your consideration as a Planned Unit Development Amendment. Will you approve and cause the change, at their request (application), to the Gateway PUD the following language found in the "PUD Design Criteria" under subheading "Land Use Summary" sub-subheading "Residential (Block 1)", sub-sub-sub heading and criteria, less underline:

From "Maximum Building Height – Lots 1 & 2 Block 1 shall be <u>1 story</u> with 26' Maximum Building Height",

to read
"Maximum Building Height – Lots 1 & 2 Block 1 shall be <u>1 or 2 stories</u> with 26' Maximum Building Height".

The Gateway PUD Block 1, of which Nell / Weiss owned Lot No. 1, is a part, states:
"Maximum Building Height – 26' (Lots -3 – 9)
Lots 1 & 2 Block 1 shall be 1 Story with 26' Maximum Building Height"
See the attached copies of the Gateway Planned Unit Development including a partial sheet of the 'Design Criteria'.

It is our belief that if the house is 26' maximum building height, then it fulfills the intent of the Planned Unit Development and any other restrictions of height on Lot 1 and in fact improves the conditions for the purpose the language was intended and for the Copper Hill neighborhood. That reasoning is as follows.

1. The house will be 25' 6" in height. This satisfies any view criteria originally established as the maximum actual building height in unchanged. The number stories bears no effect upon building height as the effective and ultimate limitation of the PUD is the Maximum Building Height of 26 feet.

2. The roof, as proposed, is a lower sloped roof, 4:12 slope. If the residence were to be a one story structure, the architect would recommend a 6:12 slope with the greater space allowed so as to create a preferred design aesthetic and so as to create a greater attic volume dissipating heat vertically towards the ridge and more successfully as part of the attic ventilation system.

3. The house as proposed is placed upon the site so as to create a view corridor for the Copper Hill neighbors to the East, across McCaslin including as they drive along Copper Hill Court in a westerly direction. See the following proposed Site Plan.

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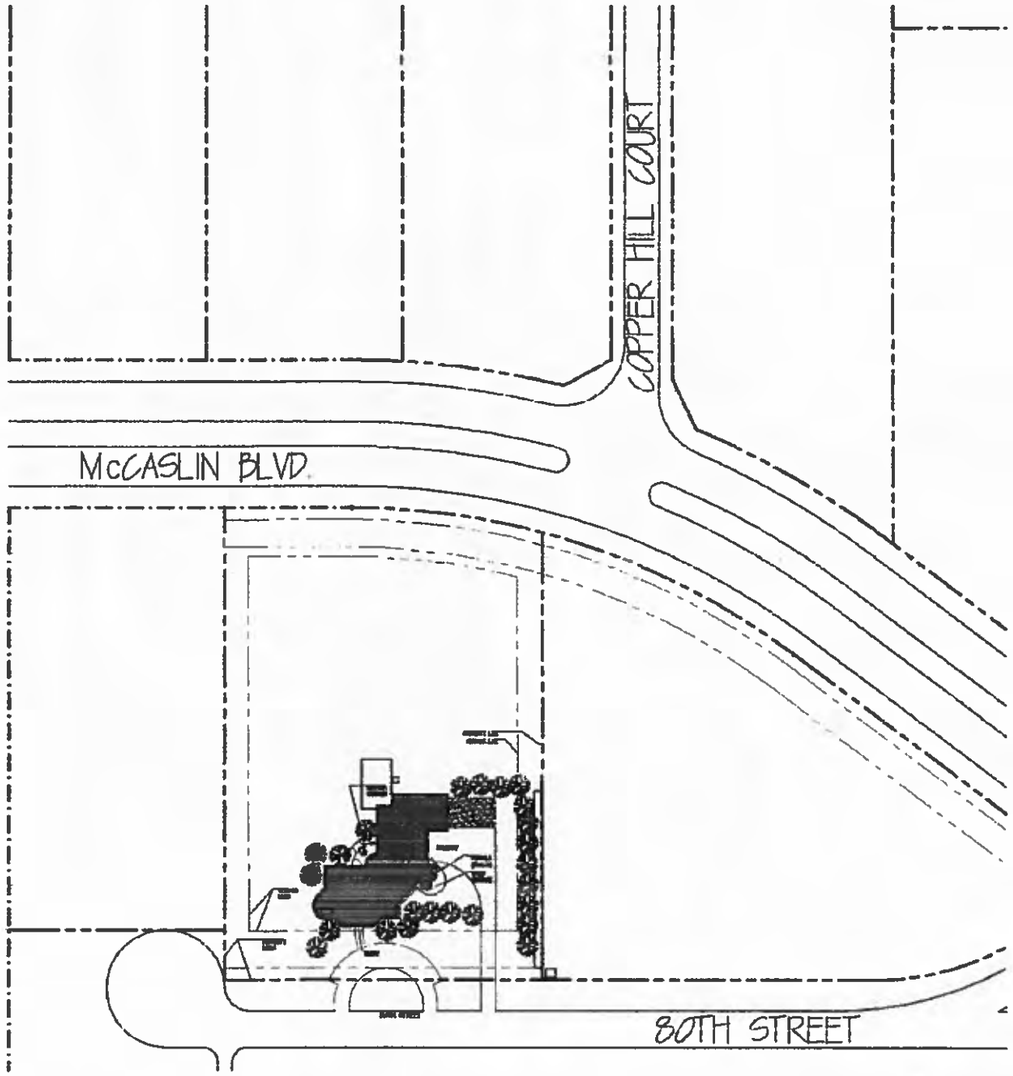
architectural design
office: 417 Vivian Street
telephone: 303 817 1303
planning
Longmont, Colorado 80501
e-mail: vseieroe@aol.com



1566 S. 80TH ST., LOUISVILLE, CO

SITE PLAN – 02/04/2015 1" = 100' 0"

← North This Site Plan encompasses the western portion of the Copper Hill neighborhood including some of the properties located east of McCaslin. The proposed residence is placed to the North so as to create more openness to the view from east of McCaslin.

4. A similar size house (floor area) as the proposed, but designed as a single story structure, would be spread a much greater distance across the lot blocking more view from the east. This is demonstrated in the following two site plans, first the proposed two story plan.

Vern Seleroe
architectural design
office: 417 Vivian Street
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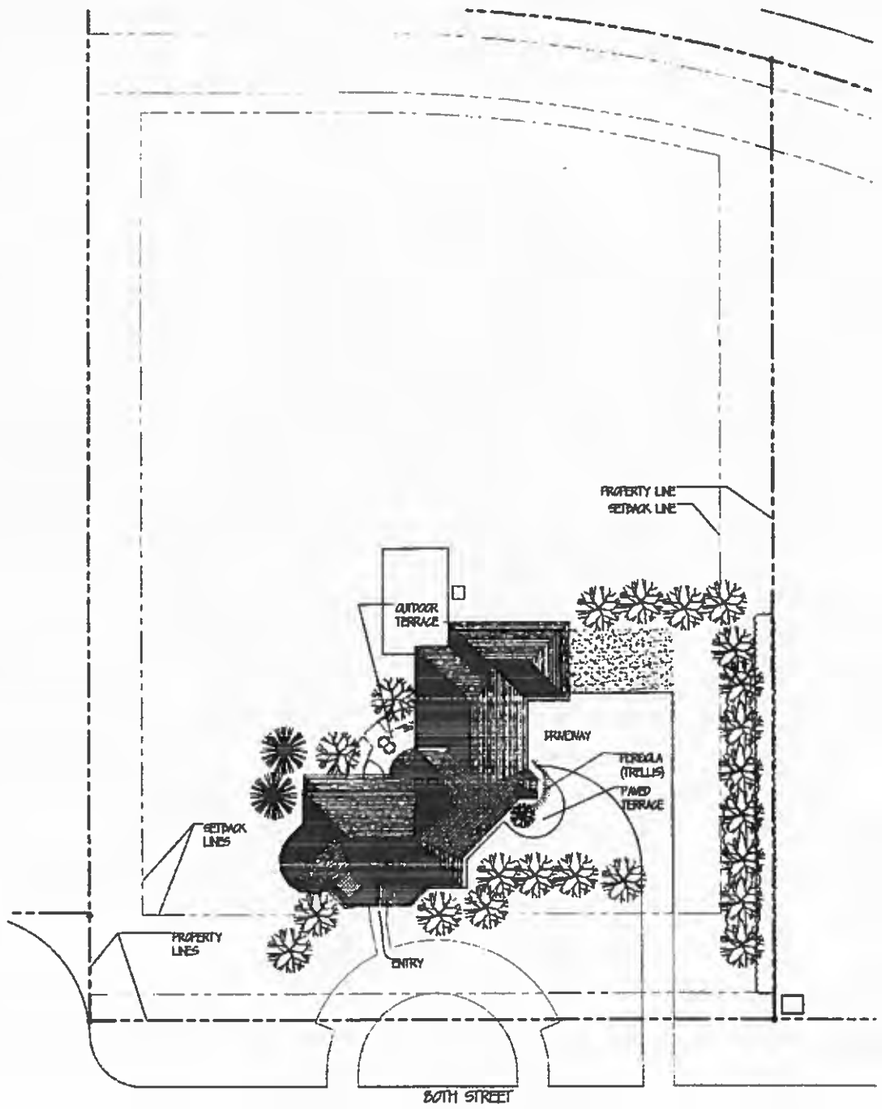
planning
Longmont, Colorado 80501
e-mail: vseleroe@aol.com



1566 S. BOTH ST., LOUISVILLE, CO

SITE PLAN – 02/04/2015 1" = 100' 0"

← North on Site Plan above

This drawing represents the Site Plan of the proposed house that Mrs Nell and Mr Weiss would like to build It is a two story proposal that would require approval of the proposed Planned Unit Development Amendment Design criteria naturally include taking advantage of the views to the west and moving the house to the north in order to create a view corridor between the house under construction on at Lot 2 to the South and this house for the rest of the Copper Hill neighborhood that resides to the east of these properties and east of McCaslin

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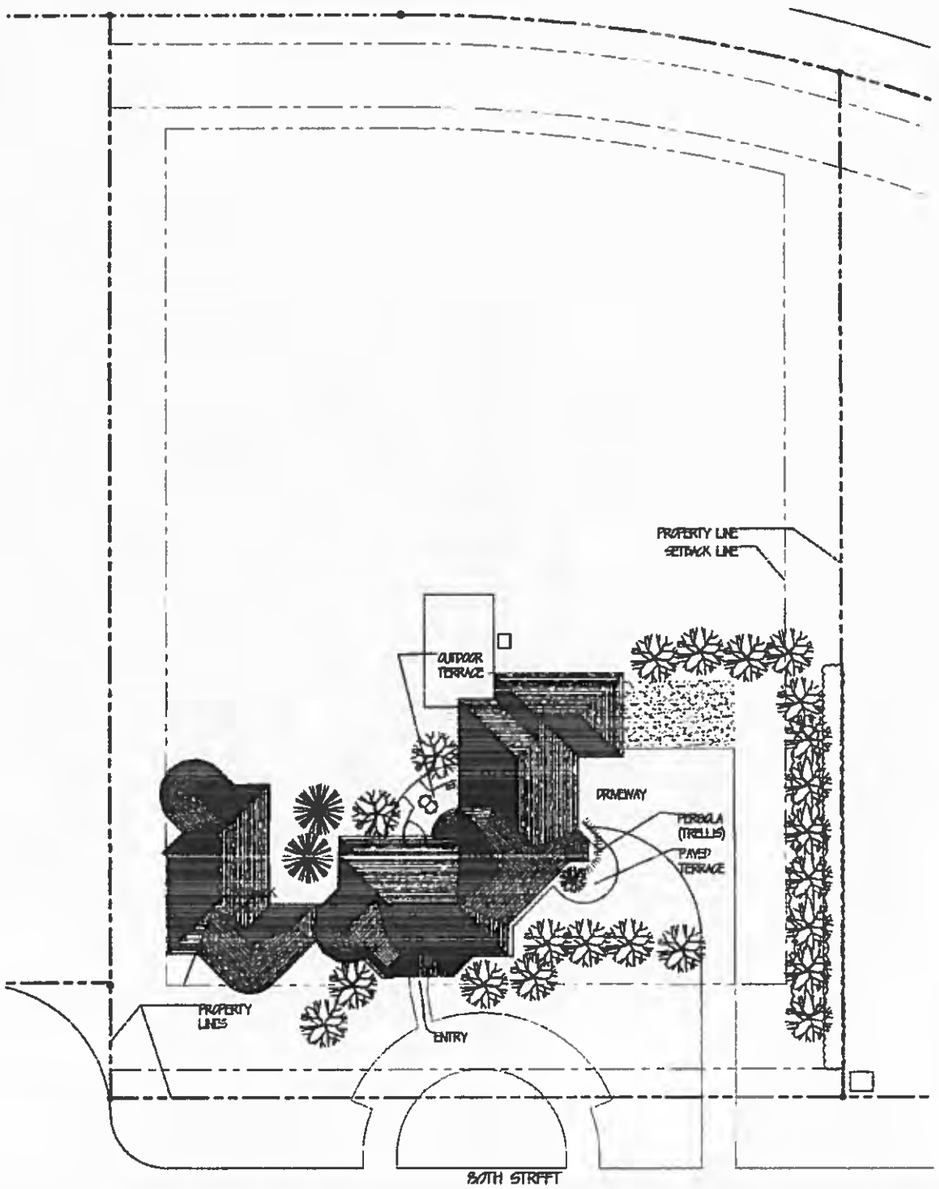
e-mail: vseieroe@aol.com



1566 S. 80TH ST., LOUISVILLE, CO

SITE PLAN – 02/04/2015 1" = 100 0"

← North on Site Plan above

This is a hypothetical plan suggesting how this architect might design a one story residence for Mrs. Nell and Mr. Weiss. The design adheres to the same criteria as in the proposed Site Plan for a two story structure with a significant consideration for the views to the west and the consideration of the views of the Copper Hill neighborhood to the east.

Vern Seieroe
architectural design • planning
office: 417 Vivian Street
telephone: 303 817 1303
Longmont, Colorado 80501
e-mail: vseieroe@aol.com

5. A single story house, being more spread out, may have nearly the same roof height (building height) as a two story because it will be spread out over a greater area causing the roof to be taller and the need for overhead glazing such as clearstories and skylights. Note than no clear stories or skylights are proposed by Mrs. Nell and Mr. Weiss with a two story structure.

6. The house will have a much greater cost to build because it will have a much larger roof area, a much larger foundation, and a much larger excavation though the cost of stairway(s) will be reduced.

7. Further, the house will have a greater use of energy, and associated cost, to heat and cool as it will have a much larger roof area and on grade, floor area. The second floor, as proposed, covers 2,183 square feet of the first floor. Thus, a similar size one story structure will require a 2,183 square larger roof area and thus greater heat loss by the increased square footage. The same is true for the additional floor area on the ground floor, which will result in an increased the ground floor area by 2,183 square feet and therefore a greater area of heat loss for that square footage of area.

8. The resulting one story structure will also require a greater use of building materials, or resources as the result of larger roof area and a large foundation.

9. The increased building footprint will contribute to an increase in storm water runoff, and the resulting increase in storm water retention volume, and a further resulting increase in the impact of storm water runoff beyond the onsite storm water drainage mitigation systems.

10. A one story structure will obstruct a greater portion of the open view to the West for the Copper Hill neighborhood residents. The Copper Hill Design Review Committee has expressed their support for the proposed plan as a two story structure and for this Amendment to the Gateway Planned Unit development that Mrs. Nell and Mr. Weiss bring forward.

+Mrs. Nell and Mr. Weiss are grateful for your consideration of their request for an Amendment to the Gateway Planned Unit Development and for the effort and time expended by staff, the Planning Commission members, and the members of City Council.

On their behalf, I express their appreciation.

Vern Seieroe, architectural design

DESIGN CRITERIA

SETBACK CRITERIA

RESIDENTIAL (BLOCK 1)

Front Yard – 40' Minimum

Side Yard – 20' Minimum (60' Combined Min. Between Principle Buildings.)

Rear Yard – 30' Minimum

From McCoslin Blvd. – 40' Minimum

PROFESSIONAL PLAZA (BLOCK 2)

Front Yard – 50' Minimum

Side Yard Abutting Kennedy Ave. – 50' Minimum

Rear Yard – 50' Minimum

Side Yard Abutting Residential – 50' Minimum

LAND USE SUMMARY

Residential (Block 1)

Total Area – 22.8 Acres
Total Number of Lots – 9

Gross Density – 0.4 Units/Acre

Mean Lot Size – 1.78 Acres

Minimum Lot Size – 1.5 Acres

Maximum Lot Size – 2.34 Acres

Maximum Lot Coverage – 10% of Gross Area

Maximum Building Height – 27' (Lots 3 – 9)
Lots 1 & 2 Block 1 Shall be 1 Story
with 26' Maximum Building Height

Dedicated Open Space – 5.12 Acres (22.5%)

Professional Plaza (Block 2)

Total Area – 6.7 Acres

Building Coverage – 21,000 s.f. (7.2%)

Parking Area – 70,358 s.f.

Buildings: 4 – 6000 s.f. Buildings

1 – 12,000 s.f. Building

Total 36,000 s.f.

Open Space Area – Lot 1 = 2.99 Acres (58.3%)
– Lot 2 = 1.55 Acres (100%)
– Total = 3.18 Acres (67.8%)

Parking Spaces 213

Maximum Building Height – 30'
4 Buildings Shall be Designated as Medical Use
or Professional Office
& 1 Building Shall be For Non–Medical Use –
(One Story Building on West Side of Lot 1 Block 2)

GATEWAY

Final P.U.D.

A Part Of The North Half Of North Half Of
Section 7, Township 1 South, Range 69 West, 6TH Principal Meridan,
City Of Louisville, County Of Boulder, State Of Colorado

LEGAL DESCRIPTION
LOTS 1, 2 & OUTLOT A BLOCK 1

THAT PORTION OF THE NORTH HALF OF THE NORTH HALF OF SECTION 7, TOWNSHIP 1 SOUTH, RANGE 69 WEST, SIXTH PRINCIPAL MERIDIAN, BOULDER COUNTY, COLORADO, DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 7;

THENCE S 00°06'53" E 69.93 FEET ALONG THE WESTERLY BOUNDARY OF SAID NORTH HALF OF THE NORTH HALF OF SECTION 7;
THENCE N 89°53'07" E 70.00 FEET TO THE POINT OF BEGINNING;
THENCE N 89°29'34" E 308.80 FEET ALONG THE SOUTHERLY RIGHT OF WAY OF SOUTH BOULDER ROAD AS DESCRIBED IN A DOCUMENT RECORDED AT RECEPTION NO. 875290;
THENCE ALONG THE WESTERLY RIGHT OF WAY OF McCASLIN BOULEVARD AS DESCRIBED IN A DOCUMENT RECORDED AT RECEPTION NO. 875290 THE FOLLOWING COURSES:

1. S 45°44'14" E 42.92 FEET;
2. S 00°58'38" E 248.16 FEET;
3. ALONG THE ARC OF A CURVE TO THE RIGHT 383.87 FEET, SAID ARC SUBTENDED BY A RADIUS OF 605.62, A CENTRAL ANGLE OF 36°30'22", AND A CHORD BEARING S 17°15'33" W 378.38 FEET;
4. S 35°30'45" W 298.38 FEET;
5. N 54°29'15" W 16.69 FEET;
6. ALONG THE ARC OF A CURVE TO THE RIGHT 189.80 FEET TO THE EASTERLY RIGHT OF WAY OF 80TH STREET, SAID ARC SUBTENDED BY A RADIUS OF 200.00 FEET, A CENTRAL ANGLE OF 54°22'22", AND A CHORD BEARING N 27°18'04" W 182.75 FEET;

THENCE ALONG THE RIGHT OF WAY OF SAID 80TH STREET THE FOLLOWING COURSES:

1. N 00°06'53" W 532.51 FEET PARALLEL WITH AND 30.00 FEET EASTERLY, MEASURED PERPENDICULARLY FROM SAID WESTERLY BOUNDARY OF THE NORTH HALF OF THE NORTH HALF OF SECTION 7;
2. N 89°53'07" E 40.00 FEET;
3. N 00°06'53" W 178.00 FEET TO THE POINT OF BEGINNING, CONTAINING 264480 SQUARE FEET (6.072 ACRES).

TOGETHER WITH:

THAT PORTION OF THE NORTH HALF OF THE NORTH HALF OF SECTION 7, TOWNSHIP 1 SOUTH, RANGE 69 WEST, SIXTH PRINCIPAL MERIDIAN, BOULDER COUNTY, COLORADO, DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 7;

THENCE S 00°06'53" E 1102.32 FEET ALONG THE WESTERLY BOUNDARY OF SAID NORTH HALF OF THE NORTH HALF OF SECTION 7;
THENCE N 89°53'07" E 30.00 TO THE EASTERLY RIGHT OF WAY OF 80TH STREET, THE POINT OF BEGINNING;

THENCE N 00°06'53" W 157.98 FEET ALONG SAID RIGHT OF WAY TO THE RIGHT OF WAY OF McCASLIN BOULEVARD AS DESCRIBED IN A DOCUMENT RECORDED AT RECEPTION NO. 875290;
THENCE ALONG SAID RIGHT OF WAY THE FOLLOWING COURSES:

1. ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT, 66.52 FEET, SAID ARC SUBTENDED BY A RADIUS OF 260.00 FEET, A CENTRAL ANGLE OF 14°38'34", AND A CHORD BEARING S 47°09'28" E 66.34 FEET;
2. S 54°29'15" E 16.69 FEET;
3. S 35°30'44" W 12.00 FEET;
4. ALONG THE ARC OF A CURVE TO THE LEFT 108.51 FEET TO THE POINT OF BEGINNING, SAID ARC SUBTENDED BY A RADIUS OF 615.00 FEET, A CENTRAL ANGLE OF 10°06'34", AND A CHORD BEARING S 30°27'28" W 108.37 FEET;

SAID PARCEL CONTAINS 4511 SQUARE FEET (0.104 ACRES).

LEGAL DESCRIPTION
LOTS 3,4,5,6,7,8,9 & OUTLOTS B & C BLOCK 1

THAT PORTION OF THE NORTH HALF OF THE NORTH HALF OF SECTION 7, TOWNSHIP 1 SOUTH, RANGE 69 WEST, SIXTH PRINCIPAL MERIDIAN, BOULDER COUNTY, COLORADO, DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 7;

THENCE N 89°29'34" E 568.75 FEET ALONG THE NORTH BOUNDARY OF THE NORTHWEST QUARTER OF SAID SECTION 7;
THENCE S 00°30'27" E 60.00 FEET TO THE POINT OF BEGINNING;

THENCE N 89°29'33" E 871.59 FEET ALONG THE SOUTHERLY RIGHT OF WAY OF SOUTH BOULDER ROAD AS DESCRIBED IN A DOCUMENT RECORDED AT RECEPTION NUMBERS 875290 AND 862816;
THENCE S 00°28'37" E 220.81 FEET ALONG THE WESTERLY BOUNDARY OF TRACT D, HILLSBOROUGH WEST SUBDIVISION FILING NO. 1;
THENCE ALONG THE BOUNDARY OF BLOCK 1, SAID HILLSBOROUGH WEST SUBDIVISION FILING NO. 1 THE FOLLOWING COURSES:

1. S 89°31'23" W 22.88 FEET;
2. S 00°28'37" E 338.09 FEET;
3. S 28°48'02" W 261.50 FEET;
4. N 43°35'10" W 63.62 FEET;
5. S 89°31'23" W 830.82 FEET;

THENCE ALONG THE EASTERLY RIGHT OF WAY OF McCASLIN BOULEVARD AS DESCRIBED IN A DOCUMENT RECORDED AT RECEPTION NO. 875290 THE FOLLOWING COURSES:

1. ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT 462.33 FEET, SAID ARC SUBTENDED BY A RADIUS OF 725.62 FEET, A CENTRAL ANGLE OF 36°30'22" AND A CHORD BEARING N 17°15'33" E 454.55 FEET;
2. N 00°58'38" W 257.08 FEET;
3. N 44°15'53" E 42.65 FEET TO THE POINT OF BEGINNING, CONTAINING 723856 SQUARE FEET, (16.62 ACRES).

LEGAL DESCRIPTION
LOT 1 BLOCK 2

THAT PORTION OF THE NORTH HALF OF THE NORTH HALF OF SECTION 7, TOWNSHIP 1 SOUTH, RANGE 69 WEST, SIXTH PRINCIPAL MERIDIAN, BOULDER COUNTY, COLORADO, DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 7;

THENCE N 89°29'34" E 1678.49 FEET ALONG THE NORTHERLY LINE OF SAID NORTH HALF OF THE NORTH HALF OF SECTION 7;
THENCE S 00°28'37" E 60.00 FEET TO THE POINT OF BEGINNING;

THENCE N 89°29'33" E 1010.81 FEET ALONG THE SOUTHERLY RIGHT OF WAY OF SOUTH BOULDER ROAD AS DESCRIBED IN A DOCUMENT RECORDED AT RECEPTION NO. 862816;
THENCE S 00°06'48" E 221.43 FEET ALONG THE EASTERLY BOUNDARY OF THE NORTHWEST QUARTER OF SECTION 7 TO THE NORTHERLY BOUNDARY OF BLOCK 3 HILLSBOROUGH WEST SUBDIVISION FILING NO. 1;
THENCE S 89°31'23" W 1008.41 FEET ALONG SAID NORTHERLY BOUNDARY TO THE EASTERLY RIGHT OF WAY OF KENNEDY AVENUE;
THENCE N 00°28'37" W 220.89 FEET ALONG SAID RIGHT OF WAY TO THE POINT OF BEGINNING, CONTAINING 223385 SQUARE FEET (5.128 ACRES).

LEGAL DESCRIPTION
LOT 2 BLOCK 2

THAT PORTION OF THE NORTH HALF OF THE NORTH HALF OF SECTION 7, TOWNSHIP 1 SOUTH, RANGE 69 WEST, SIXTH PRINCIPAL MERIDIAN, BOULDER COUNTY, COLORADO, DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 7;

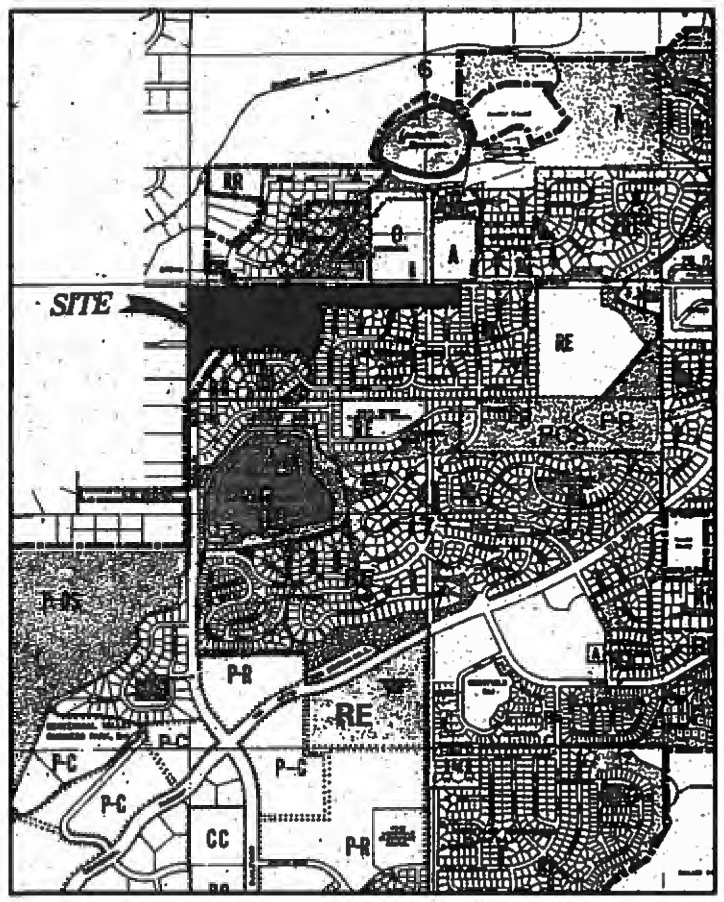
THENCE S 00°06'48" E 60.00 FEET ALONG THE NORTH-SOUTH CENTERLINE OF SAID SECTION 7;
THENCE N 89°33'13" E 75.00 FEET ALONG THE SOUTHERLY RIGHT OF WAY OF SOUTH BOULDER ROAD, AS DESCRIBED IN A DOCUMENT RECORDED AT RECEPTION NO. 862816, TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID SOUTHERLY RIGHT OF WAY N 89°33'13" E 304.11 FEET;
THENCE S 00°28'37" E 221.23 FEET ALONG THE WESTERLY BOUNDARY OF LOTS 47 THROUGH 50, BLOCK 3, HILLSBOROUGH WEST SUBDIVISION FILING NO. 1;
THENCE S 89°31'25" W 305.51 ALONG THE NORTHERLY BOUNDARY OF LOTS 34 & 35, BLOCK 3, SAID HILLSBOROUGH WEST SUBDIVISION FILING NO. 1 TO THE EASTERLY BOUNDARY OF THAT TRACT OF LAND DESCRIBED IN A DOCUMENT RECORDED AT RECEPTION NO. 862881;
THENCE ALONG SAID EASTERLY BOUNDARY N 00°06'48" W 221.38 FEET TO THE POINT OF BEGINNING, CONTAINING 67458 SQUARE FEET (1.5486 ACRES).

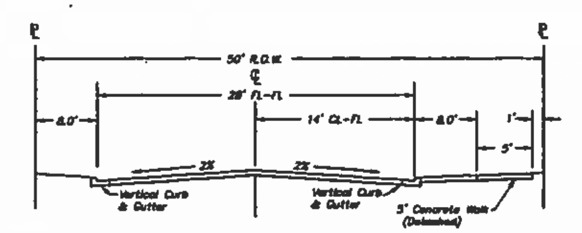
NOTES:

1. 80TH STREET IS OWNED BY BOULDER COUNTY AND WILL NOT BE MAINTAINED BY THE CITY OF LOUISVILLE.
2. NO DECIDUOUS TREES SHALL BE PLANTED WITHIN FIVE FEET OR CONIFEROUS TREES WITHIN TEN FEET OF A PUBLIC UTILITY OR SIDEWALK.
3. ACCESS TO THE SITE FROM McCASLIN BOULEVARD AND/OR SOUTH BOULDER ROAD MAY BE MODIFIED IN THE FUTURE BY THE CITY.

   IF, AT ANY TIME IN THE FUTURE, IT IS DETERMINED BY THE CITY THAT SUCH MODIFICATION IS APPROPRIATE TO ENHANCE TRAFFIC FLOW ON ONE OR MORE SURROUNDING STREETS, OR TO MITIGATE AN UNSAFE SITUATION, UPON NOTIFICATION FROM THE CITY, PROPERTY OWNERS ON LOT 1, BLOCK 2 (COMMERCIAL OFFICE) AGREE TO MAKE SUCH MODIFICATIONS ON AND ADJOINING SOUTH BOULDER ROAD, AS MAY BE REASONABLY REQUIRED BY THE CITY, AND AGREE TO PAY FOR THE COST THEREOF, AS REASONABLY ALLOCATED AMONG PROPERTY OWNERS BY THE CITY. EACH PRESENT AND FUTURE PROPERTY OWNER SHALL ACKNOWLEDGE IN WRITING THE FOREGOING AUTHORITY OF THE CITY.
4. THE OUTLOTS A & B & C WILL BE DEDICATED FOR OPEN SPACE TO THE CITY OF LOUISVILLE. THE DEVELOPER OF THIS PROJECT WILL PROVIDE NATIVE SEEDING, ETC. TO CONTRIBUTE A NATURAL LOOK WHICH BLENDS WITH THE CHARACTER AND FUNCTION OF THIS NATURAL GATEWAY AND THE RURAL SITES OF THE AREA. ALTERNATELY, AT THE REQUEST OF THE CITY, THE DEVELOPER IS WILLING TO CONTRIBUTE CASH-IN-LIEU TOWARD THE OPEN SPACE LANDSCAPE DEVELOPMENT OF THESE OUTLOTS.
5. LANDSCAPING WITHIN OUTLOTS A, B & C, SOUTH BOULDER ROAD RIGHT OF WAY AND McCASLIN BOULEVARD RIGHT OF WAY SHALL BE MAINTAINED BY THE CITY OF LOUISVILLE. DETENTION PONDS (OUTLOT D AND LOT 2 BLOCK 2) SHALL BE PRIVATELY MAINTAINED.
6. LANDSCAPING ALONG GATEWAY LANE SHALL BE MAINTAINED BY ADJACENT LOT OWNERS.
7. PUBLIC IMPROVEMENTS SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE CITY OF LOUISVILLE DESIGN AND CONSTRUCTION STANDARDS, LATEST EDITION.
8. ALL RESIDENTIAL HOMES SHALL BE REQUIRED TO HAVE SPRINKLER SYSTEMS FOR FIRE PROTECTION.
9. FOR THE PURPOSES OF CALCULATING PARKING DEMAND THE GROSS LEASABLE SQUARE FOOTAGE SHALL NOT EXCEED 6,000 S.F. OR 12,000 S.F. PER BUILDING.
10. OUTLOT D SHALL BE PRIVATELY OWNED AND MAINTAINED.
11. BLOCK 1 DEVELOPMENT MAY BE CONSTRUCTED IN TWO PHASES. PHASE 1 WOULD BE WEST OF THE LOUISVILLE IRRIGATION LATERAL AND PHASE 2 EAST OF THE LATERAL. A TEMPORARY TURN AROUND WILL BE PROVIDED ON GATEWAY LANE.
12. THE CITY WILL NOT BE RESPONSIBLE FOR REPAIR OR REPLACEMENT TO SURFACE IMPROVEMENTS WITHIN A UTILITY EASEMENT AS A RESULT OF MAINTENANCE ACTIVITIES.
13. THE EXISTING GRADE ON LOT 1, BLOCK 2, THE COMMERICAL OFFICE SITE SHALL BE SUBSTANTIALLY MAINTAINED.



VICINITY MAP



GATEWAY LANE STREET SECTION
Not to Scale

DESIGN CRITERIA

SETBACK CRITERIA

RESIDENTIAL (BLOCK 1)
- Front Yard – 40' Minimum
- Side Yard – 20' Minimum (60' Combined Min. Between Principle Buildings.)
- Rear Yard – 30' Minimum
- From McCaslin Blvd. – 40' Minimum

PROFESSIONAL PLAZA (BLOCK 2)
- Front Yard – 50' Minimum
- Side Yard Abutting Kennedy Ave. – 50' Minimum
- Rear Yard – 50' Minimum
- Side Yard Abutting Residential – 50' Minimum

LAND USE SUMMARY

Residential (Block 1)
- Total Area – 22.8 Acres
- Total Number of Lots – 9
- Gross Density – 0.4 Units/Acre
- Mean Lot Size – 1.78 Acres
- Minimum Lot Size – 1.5 Acres
- Maximum Lot Size – 2.34 Acres
- Maximum Lot Coverage – 10% of Gross Area
- Maximum Building Height – 27' (Lots 3 – 9) Lots 1 & 2 Block 1 Shall be 1 Story with 25' Maximum Building Height
- Dedicated Open Space – 5.12 Acres (22.5%)

Professional Plaza (Block 2)
- Total Area – 6.7 Acres
- Building Coverage – 21,000 s.f. (7.2%)
- Parking Area – 70,358 s.f.
- Buildings: 4 – 6000 s.f. Buildings
  1 – 12,000 s.f. Building
  Total 36,000 s.f.
- Open Space Area – Lot 1 = 2.98 Acres (58.3%)
  – Lot 2 = 1.53 Acres (100%)
  – Total = 3.18 Acres (67.8%)
- Parking Spaces 213
- Maximum Building Height – 30'
  4 Buildings Shall be Designated as Medical Use or Professional Office
  & 1 Building Shall be For Non-Medical Use – (One Story Building on West Side of Lot 1 Block 2)

See 8 1/2" x 11" sheet of this area.

PLANNING COMMISSION CERTIFICATE

APPROVED THIS 10th DAY OF September 1996 BY THE PLANNING COMMISSION OF THE CITY OF LOUISVILLE, COLORADO.
RESOLUTION NO. 21 SERIES 1996

[signature] CHAIRMAN — [signature] SECRETARY

CITY COUNCIL CERTIFICATE

APPROVED THIS 15th DAY OF October 1996 BY THE CITY COUNCIL OF THE CITY OF LOUISVILLE, COLORADO.
RESOLUTION NO. 65 SERIES 1996

[signature] MAYOR — [signature] CITY CLERK

CLERK AND RECORDER CERTIFICATE

COUNTY OF BOULDER)
STATE OF COLORADO)

I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED IN MY OFFICE AT [illegible] O'CLOCK A.M. THIS [illegible] DAY OF [illegible] 1997, AND IS DULY RECORDED IN PLAN FILE P-39 F-3 #8,9,10,11,12,13,14,15-16
FEE $91.00 PAID ——
FILM NO. 2194 RECEPTION NO. 1682446

[signature] RECORDER — [signature] DEPUTY

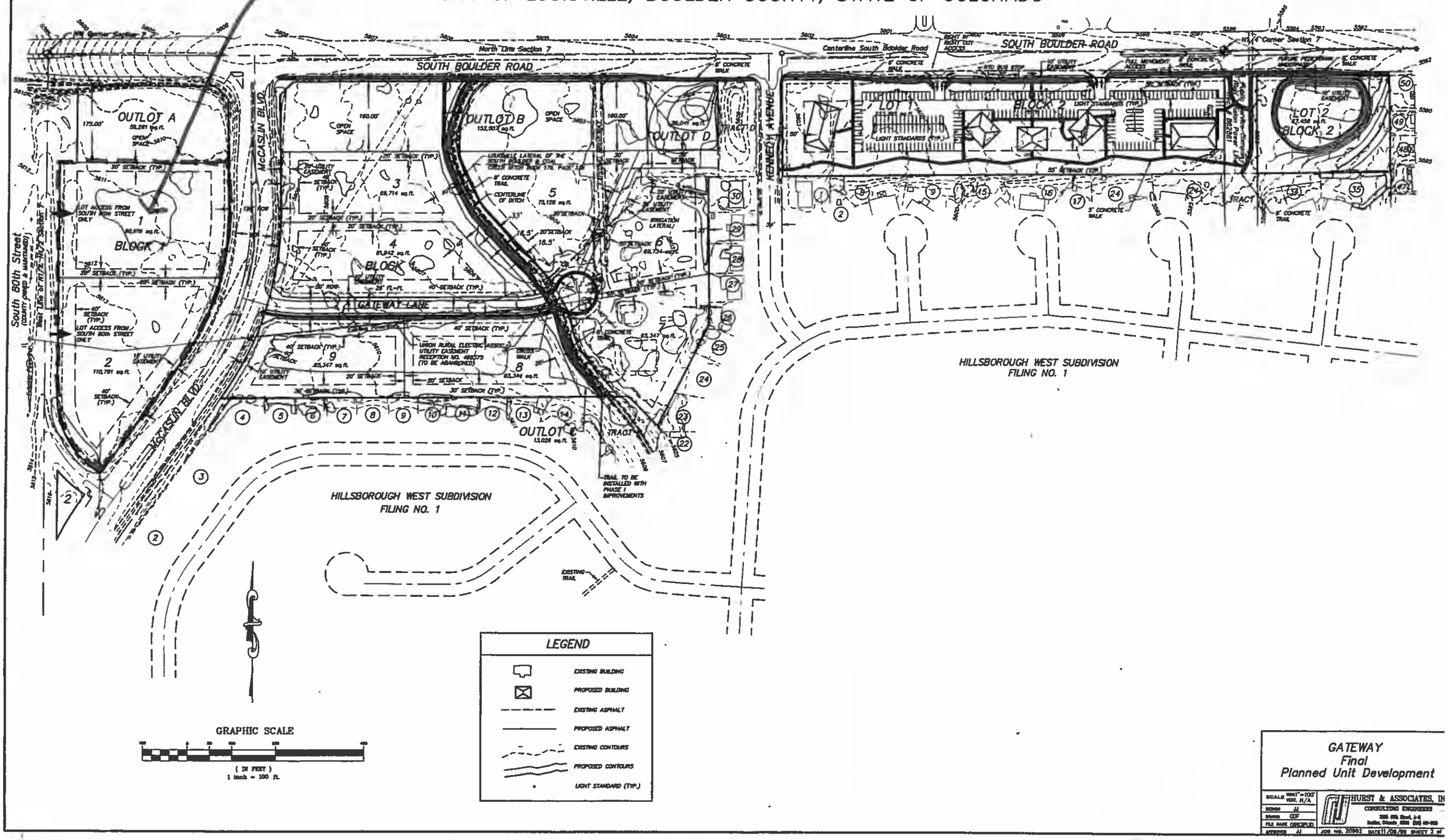
GATEWAY
Final
Planned Unit Development

SCALE HOR. N/A VER. N/A	HURST & ASSOCIATES, INC. CONSULTING ENGINEERS
DESIGN JJ	
DRAWN CDF	
FILE NAME BCPUDCV	
APPROVED JJ	JOB NO. 20802 DATE 11/09/96 SHEET 1 of 8

Block 1, Lot 1 & 2

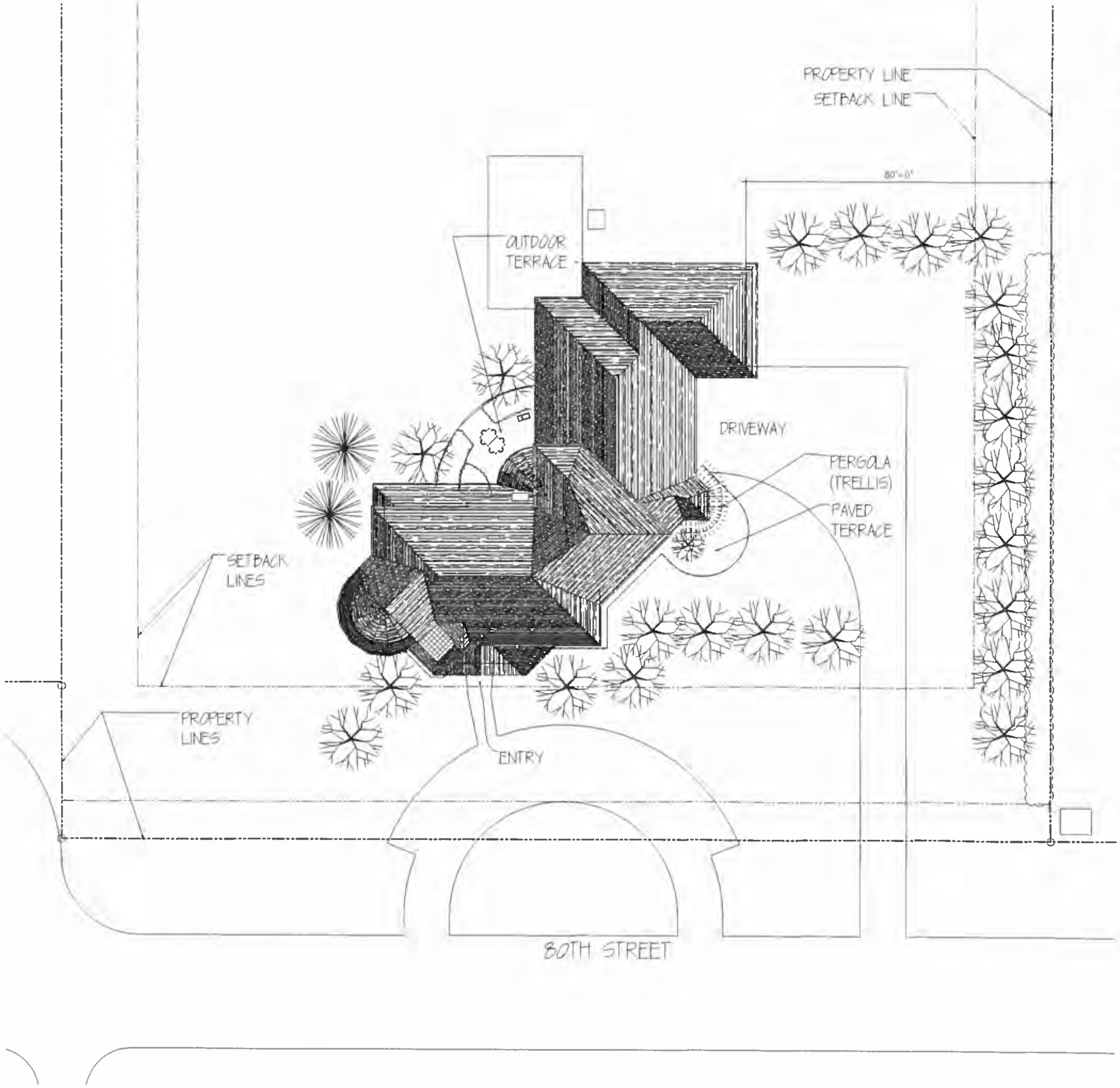
Gateway
Final P.U.D.

A PART OF THE NORTH HALF OF THE NORTH HALF OF
SECTION 7, TOWNSHIP 1 SOUTH, RANGE 69 WEST, 6TH P.M.
CITY OF LOUISVILLE, BOULDER COUNTY, STATE OF COLORADO

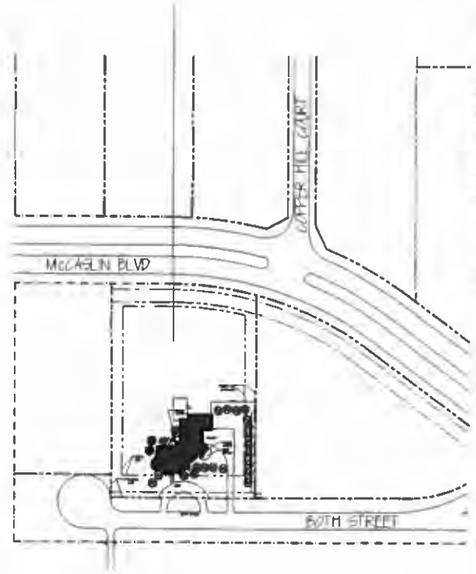


GATEWAY
Final
Planned Unit Development

HURST & ASSOCIATES, INC.
CONSULTING ENGINEERS



2 A010 SITE PLAN
1" = 20'-0"



1 A010 AREA SITE PLAN
1" = 100'-0"

471 Vivian Street
Longmont, CO 80501
(303) 817-1303 (office)
(303) 817-1303 (studio)
vsciercie@aol.com
Vern Sciercie Architectural Design
Architecture Design Planning Interior Architecture

Nell / Weiss Residence

new construction
1588 South 80th Street
Louisville, Colorado

CONCEPTUAL DESIGN

SITE PLAN

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job no. 1401
date: 12 JANUARY 2015
drawn: VMS
checked: VMS
revised: 1 01.29.2015
2 REV2
3 REV3
4 REV4
5 REV5
6 REV6
7 REV7

Sheet
A010

2 A200 SOUTH ELEVATION
1/4" = 1'-0"

1 A200 WEST ELEVATION
1/4" = 1'-0"

471 Vivian Street
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(303) 817-1303 (studio)
vseleroe@aol.com
Vern Seleroe Architectural Design
Architecture Design Planning Interior Architecture

Nell / Weiss Residence

new construction
1588 South 80th Street
Louisville, Colorado

CONCEPTUAL DESIGN

WEST + SOUTH ELEVATIONS

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job no.	1401
date:	26 JANUARY 2015
drawn:	VMS
checked:	VMS
revised:	REV1
	REV2
	REV3
	REV4
	REV5
	REV6
	REV7

Sheet
A200

1 A201 EAST ELEVATION
1/4" = 1'-0"

CONCEPTUAL DESIGN

Nell / Weiss Residence

new construction
1588 South 80th Street
Louisville, Colorado

471 Vivian Street
Longmont, CO 80501
(303) 817-1303 (office)
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Vern Seiercoe Architectural Design
Architecture Design Planning Interior Architecture

EAST + NORTH ELEVATIONS

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job no. 1401
date: 26 JANUARY 20 5
drawn: VMS
checked: VMS
revised: REV1
REV2
REV3
REV4
REV5
REV6
REV7

Sheet
A201

5-1

#01587000 02/28/96 03:14 PM REAL ESTATE RECORDS
F2109 CHARLOTTE HOUSTON BOULDER CNTY CO RECORDER

ORDINANCE NO. 1165,
SERIES 1994

26

AN ORDINANCE ANNEXING TO THE CITY OF LOUISVILLE, COLORADO, THE PROPERTY LOCATED IN THE NORTH HALF OF SECTION 7, TOWNSHIP 1 SOUTH, RANGE 69 WEST, SOUTH OF SOUTH BOULDER ROAD AND WEST OF WASHINGTON AVENUE

WHEREAS, the City Council of the City Of Louisville, Colorado, hereby determines that the parcel of real property described below is owned by the Louisview Corporation; and,

WHEREAS, not less than one-sixth (1/6) of the perimeter of the area proposed to be annexed is contiguous with the City limits of the City of Louisville; and,

WHEREAS, a community of interest exists between the territory proposed to be annexed and the City of Louisville; and,

WHEREAS, the territory proposed to be annexed is urban or will be urbanized in the near future and the territory is capable of being integrated into the City of Louisville; and,

WHEREAS, an annexation election of qualified electors is not required for this annexation; and,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOUISVILLE, COLORADO;

Section 1 - That the following described property situated in the County of Boulder, State of Colorado be annexed to the City of Louisville, to wit:

See Attached, Exhibit A

Section 2 - That said territory is hereby annexed to the City of Louisville and included within the corporate boundaries thereof as an integral part of the City;

Section 3 - That said territory shall become, upon annexation to the City, a part of Ward 1;

Section 4 - That this annexation ordinance shall not take effect until the City of Louisville and the Louisview Corporation have approved an Addendum to Annexation Agreement (Item VI, D.1 on the Council Agenda for the October 17, 1995 City Council meeting);

Section 5 - That no more than two single family dwellings may be constructed on the portion of the property located on the west side of McCaslin Boulevard (Parcels Four and Five on Exhibit A). Such dwellings shall be single story and not more than twenty-six (26) feet in height. The final number of such dwellings will be determined through the P.U.D. process and may be one dwelling or two dwellings.

INTRODUCED, READ AND ORDERED PUBLISHED this 18th day of October, 1994.

Tom Davidson, Mayor

ATTEST:

Maj-Lis Kemper, City Clerk

APPROVED AS TO FORM:

Susan Griffiths, City Attorney
Griffiths & Tanoue, P.C.

PASSED AND ADOPTED ON SECOND AND FINAL READING this 17th day of October, 1995.

Tom Davidson, Mayor

ATTEST:

Maj-Lis Kemper, City Clerk

EXHIBIT A

5-3

65

LEGAL DESCRIPTION
PARCEL ONE

THAT PORTION OF THE NORTH HALF OF THE NORTH HALF OF SECTION 7, TOWNSHIP 1 SOUTH, RANGE 69 WEST, SIXTH PRINCIPAL MERIDIAN, BOULDER COUNTY, COLORADO, DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 7,

THENCE S 00°06'49" E 60.00 FEET ALONG THE NORTH-SOUTH CENTERLINE OF SAID SECTION 7;
THENCE N 89°33'13" E 75.00 FEET ALONG THE SOUTHERLY RIGHT OF WAY OF SOUTH BOULDER ROAD, AS DESCRIBED IN A DOCUMENT RECORDED AT RECEPTION NO. 962816, TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID SOUTHERLY RIGHT OF WAY N 89°33'13" E 304.11 FEET;
THENCE S 00°28'37" E 221.23 FEET ALONG THE WESTERLY BOUNDARY OF LOTS 47 THROUGH 50, BLOCK 3, HILLSBOROUGH WEST SUBDIVISION FILING NO. 1;
THENCE S 89°31'25" W 305.51 ALONG THE NORTHERLY BOUNDARY OF LOTS 34 & 35, BLOCK 3, SAID HILLSBOROUGH WEST SUBDIVISION FILING NO. 1 TO THE EASTERLY BOUNDARY OF THAT TRACT OF LAND DESCRIBED IN A DOCUMENT RECORDED AT RECEPTION NO 862861;
THENCE ALONG SAID EASTERLY BOUNDARY N 00°06'49" W 221.39 FEET TO THE POINT OF BEGINNING, CONTAINING 67458 SQUARE FEET (1.5486 ACRES).

LEGAL DESCRIPTION
PARCEL TWO

THAT PORTION OF THE NORTH HALF OF THE NORTH HALF OF SECTION 7, TOWNSHIP 1 SOUTH, RANGE 69 WEST, SIXTH PRINCIPAL MERIDIAN, BOULDER COUNTY, COLORADO, DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 7;

THENCE N 89°29'34" E 1678.49 FEET ALONG THE NORTHERLY LINE OF SAID NORTH HALF OF THE NORTH HALF OF SECTION 7;
THENCE S 00°28'37" E 60.00 FEET TO THE POINT OF BEGINNING;

THENCE N 89°29'33" E 1010.81 FEET ALONG THE SOUTHERLY RIGHT OF WAY OF SOUTH BOULDER ROAD AS DESCRIBED IN A DOCUMENT RECORDED AT RECEPTION NO. 962816;
THENCE S 00°06'49" E 221.43 FEET ALONG THE EASTERLY BOUNDARY OF THE NORTHWEST QUARTER OF SECTION 7 TO THE NORTHERLY BOUNDARY OF BLOCK 3 HILLSBOROUGH WEST SUBDIVISION FILING NO. 1;
THENCE S 89°31'23" W 1009.41 FEET ALONG SAID NORTHERLY BOUNDARY TO THE EASTERLY RIGHT OF WAY OF KENNEDY AVENUE;
THENCE N 00°28'37" W 220.89 FEET ALONG SAID RIGHT OF WAY TO THE POINT OF BEGINNING, CONTAINING 223395 SQUARE FEET (5.128 ACRES).

LEGAL DESCRIPTION
PARCEL THREE

THAT PORTION OF THE NORTH HALF OF THE NORTH HALF OF SECTION 7, TOWNSHIP 1 SOUTH, RANGE 69 WEST, SIXTH PRINCIPAL MERIDIAN, BOULDER COUNTY, COLORADO, DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 7;

THENCE N 89°29'34" E 559.75 FEET ALONG THE NORTH BOUNDARY OF THE NORTHWEST QUARTER OF SAID SECTION 7;
THENCE S 00°30'27" E 60.00 FEET TO THE POINT OF BEGINNING;

THENCE N 89°29'33" E 971.59 FEET ALONG THE SOUTHERLY RIGHT OF WAY OF SOUTH BOULDER ROAD AS DESCRIBED IN A DOCUMENT RECORDED AT RECEPTION NUMBERS 875290 AND 962816;
THENCE S 00°28'37" E 220.81 FEET ALONG THE WESTERLY BOUNDARY OF TRACT D, HILLSBOROUGH WEST SUBDIVISION FILING NO. 1;
THENCE ALONG THE BOUNDARY OF BLOCK 1, SAID HILLSBOROUGH WEST SUBDIVISION FILING NO. 1 THE FOLLOWING COURSES:

1. S 89°31'23" W 22.88 FEET;
2. S 00°28'37" E 336.09 FEET;
3. S 26°48'02" W 261.50 FEET;
4. N 43°35'10" W 93.82 FEET;
5. S 89°31'23" W 930.92 FEET;

THENCE ALONG THE EASTERLY RIGHT OF WAY OF McCASLIN BOULEVARD AS DESCRIBED IN A DOCUMENT RECORDED AT RECEPTION NO. 875290 THE FOLLOWING COURSES:

1. ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT 462.33 FEET, SAID ARC SUBTENDED BY A RADIUS OF 725.62 FEET, A CENTRAL ANGLE OF 36°30'22" AND A CHORD BEARING N 17°15'33" E 454.55 FEET;
2. N 00°59'38" W 257.08 FEET;
3. N 44°15'53" E 42.65 FEET TO THE POINT OF BEGINNING.

CONTAINING 723855 SQUARE FEET, (16.62 ACRES).

LEGAL DESCRIPTION
PARCEL FOUR

THAT PORTION OF THE NORTH HALF OF THE NORTH HALF OF SECTION 7, TOWNSHIP 1 SOUTH, RANGE 69 WEST, SIXTH PRINCIPAL MERIDIAN, BOULDER COUNTY, COLORADO, DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 7;

THENCE S 00°06'53" E 69.93 FEET ALONG THE WESTERLY BOUNDARY OF SAID NORTH HALF OF THE NORTH HALF OF SECTION 7;
THENCE N 89°33'07" E 70.00 FEET TO THE POINT OF BEGINNING.
THENCE N 89°29'34" E 309.80 FEET ALONG THE SOUTHERLY RIGHT OF WAY OF SOUTH BOULDER ROAD AS DESCRIBED IN A DOCUMENT RECORDED AT RECEPTION NO. 875290;
THENCE ALONG THE WESTERLY RIGHT OF WAY OF McCASLIN BOULEVARD AS DESCRIBED IN A DOCUMENT RECORDED AT RECEPTION NO. 875290 THE FOLLOWING COURSES:

1. S 45°44'14" E 42.92 FEET;
2. S 00°59'38" E 248.16 FEET;
3. ALONG THE ARC OF A CURVE TO THE RIGHT 385.87 FEET, SAID ARC SUBTENDED BY A RADIUS OF 605.62, A CENTRAL ANGLE OF 36°30'22", AND A CHORD BEARING S 17°15'33" W 379.38 FEET;
4. S 35°30'45" W 298.59 FEET;
5. N 54°29'15" W 16.69 FEET;
6. ALONG THE ARC OF A CURVE TO THE RIGHT 189.80 FEET TO THE EASTERLY RIGHT OF WAY OF 80TH STREET, SAID ARC SUBTEDED BY A RADIUS OF 200.00 FEET, A CENTRAL ANGLE OF 54°22'22", AND A CHORD BEARING N 27°18'04" W 182.75 FEET;

THENCE ALONG THE RIGHT OF WAY OF SAID 80TH STREET THE FOLLOWING COURSES:

1. N 00°06'53" W 532.51 FEET PARALLEL WITH AND 30.00 FEET EASTERLY, MEASURED PERPENDICULARLY FROM SAID WESTERLY BOUNDARY OF THE NORTH HALF OF THE NORTH HALF OF SECTION 7,
2. N 89°53'07" E 40.00 FEET;
3. N 00°06'53" W 176.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 264480 SQUARE FEET (6.072 ACRES).

LEGAL DESCRIPTION
PARCEL FIVE

THAT PORTION OF THE NORTH HALF OF THE NORTH HALF OF SECTION 7, TOWNSHIP 1 SOUTH, RANGE 69 WEST, SIXTH PRINCIPAL MERIDIAN, BOULDER COUNTY, COLORADO, DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 7,

THENCE S 00°06'53" E 1102.32 FEET ALONG THE WESTERLY BOUNDARY OF SAID NORTH HALF OF THE NORTH HALF OF SECTION 7,
THENCE N 89°33'07" E 30.00 TO THE EASTERLY RIGHT OF WAY OF 80TH STREET, THE POINT OF BEGINNING;

THENCE N 00°06'53" W 157.98 FEET ALONG SAID RIGHT OF WAY TO THE RIGHT OF WAY OF McCASLIN BOULEVARD AS DESCRIBED IN A DOCUMENT RECORDED AT RECEPTION NO. 875290,
THENCE ALONG SAID RIGHT OF WAY THE FOLLOWING COURSES:

1. ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT, 66.52 FEET, SAID ARC SUBTENDED BY A RADIUS OF 260.00 FEET, A CENTRAL ANGLE OF 14°39'34", AND A CHORD BEARING S 47°09'28" E 66.34 FEET;
2. S 54°29'15" E 16.68 FEET;
3. S 35°30'44" W 12.00 FEET;
4. ALONG THE ARC OF A CURVE TO THE LEFT 108.51 FEET TO THE POINT OF BEGINNING, SAID ARC SUBTENDED BY A RADIUS OF 615.00 FEET, A CENTRAL ANGLE OF 10°06'34", AND A CHORD BEARING S 30°27'28" W 108.37 FEET;

SAID PARCEL CONTAING 4511 SQUARE FEET (0.104 ACRES).

#01587001 02/28/96 03:14 PM REAL ESTATE RECORDS
F2109 CHARLOTTE HOUSTON BOULDER CNTY CO RECORDER

5-1

ORDINANCE NO. 1166,
SERIES 1994

AN ORDINANCE AMENDING TITLE 17 OF THE LOUISVILLE MUNICIPAL CODE ENTITLED "ZONING" BY ZONING PROPERTY OWNED BY THE LOUISVIEW CORPORATION KNOWN AS THE GATEWAY ANNEXATION

26

WHEREAS, the City of Louisville has annexed certain real property, by adopting Ordinance No. 1166, Series 1994; and,

WHEREAS, it is necessary that the zoning thereof be determined;

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

Section 1. That Section 17.04.050 of the Louisville Municipal Code, entitled "Zoning Map -District Boundaries Established", shall be amended to include the following described property, and that the parcel shall be zoned in accordance with the zoning indicated after the description below:

See Attached Exhibit A,

"AO-T" - ADMINISTRATIVE OFFICE - TRANSITION

See Attached Exhibit B,

"SF-R" - SINGLE FAMILY, RURAL, on Parcel Three as described on Exhibit B;

See Attached Exhibit C,

"R-RR" - RESTRICTED RURAL RESIDENTIAL, on Parcels Four and Five on Exhibit C.

Section 2. This Ordinance shall take effect immediately after Ordinance No. 1165, Series 1994, takes effect.

Section 3. No more than two single family dwellings may be constructed on the portion of the property located on the west side of McCaslin Boulevard (Parcels Four and Five on Exhibit B). Such dwellings shall be single story and not more than twenty-six (26) feet in height. The final number of such dwellings will be determined through the P.U.D. process and may be one dwelling or two dwellings.

5-2

INTRODUCED, READ AND ORDERED PUBLISHED this 18th day of October, 1994.

BY:

Tom Davidson, Mayor

ATTEST:

CITY OF LOUISVILLE SEAL COLORADO

Maj-Lis Kemper, City Clerk

APPROVED AS TO FORM:

Susan Griffiths, City Attorney
Griffiths & Tanoue, P.C.

PASSED AND ADOPTED ON SECOND AND FINAL READING this 17th day of October, 1995.

BY:

Tom Davidson, Mayor

ATTEST:

By: Maj-Lis Kemper, City Clerk

CITY OF LOUISVILLE COLORADO

EXHIBIT A

5-3

LEGAL DESCRIPTION
PARCEL ONE

THAT PORTION OF THE NORTH HALF OF THE NORTH HALF OF SECTION 7, TOWNSHIP 1 SOUTH, RANGE 69 WEST, SIXTH PRINCIPAL MERIDIAN, BOULDER COUNTY, COLORADO, DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 7,

THENCE S 00°06'49" E 60.00 FEET ALONG THE NORTH-SOUTH CENTERLINE OF SAID SECTION 7;
THENCE N 89°33'13" E 75.00 FEET ALONG THE SOUTHERLY RIGHT OF WAY OF SOUTH BOULDER ROAD, AS DESCRIBED IN A DOCUMENT RECORDED AT RECEPTION NO. 962816, TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID SOUTHERLY RIGHT OF WAY N 89°33'13" E 304.11 FEET;
THENCE S 00°28'37" E 221.23 FEET ALONG THE WESTERLY BOUNDARY OF LOTS 47 THROUGH 50, BLOCK 3, HILLSBOROUGH WEST SUBDIVISION FILING NO. 1;
THENCE S 89°31'25" W 305.51 ALONG THE NORTHERLY BOUNDARY OF LOTS 34 & 35, BLOCK 3, SAID HILLSBOROUGH WEST SUBDIVISION FILING NO. 1 TO THE EASTERLY BOUNDARY OF THAT TRACT OF LAND DESCRIBED IN A DOCUMENT RECORDED AT RECEPTION NO 862861;
THENCE ALONG SAID EASTERLY BOUNDARY N 00°06'49" W 221.39 FEET TO THE POINT OF BEGINNING, CONTAINING 67458 SQUARE FEET (1.5486 ACRES).

LEGAL DESCRIPTION
PARCEL TWO

THAT PORTION OF THE NORTH HALF OF THE NORTH HALF OF SECTION 7, TOWNSHIP 1 SOUTH, RANGE 69 WEST, SIXTH PRINCIPAL MERIDIAN, BOULDER COUNTY, COLORADO, DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 7;

THENCE N 89°29'34" E 1678.49 FEET ALONG THE NORTHERLY LINE OF SAID NORTH HALF OF THE NORTH HALF OF SECTION 7;
THENCE S 00°28'37" E 60.00 FEET TO THE POINT OF BEGINNING;

THENCE N 89°29'33" E 1010.81 FEET ALONG THE SOUTHERLY RIGHT OF WAY OF SOUTH BOULDER ROAD AS DESCRIBED IN A DOCUMENT RECORDED AT RECEPTION NO. 962816;
THENCE S 00°06'49" E 221.43 FEET ALONG THE EASTERLY BOUNDARY OF THE NORTHWEST QUARTER OF SECTION 7 TO THE NORTHERLY BOUNDARY OF BLOCK 3 HILLSBOROUGH WEST SUBDIVISION FILING NO. 1;
THENCE S 89°31'23" W 1009.41 FEET ALONG SAID NORTHERLY BOUNDARY TO THE EASTERLY RIGHT OF WAY OF KENNEDY AVENUE;
THENCE N 00°28'37" W 220.89 FEET ALONG SAID RIGHT OF WAY TO THE POINT OF BEGINNING, CONTAINING 223395 SQUARE FEET (5.128 ACRES).

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EXHIBIT B

LEGAL DESCRIPTION
PARCEL THREE

THAT PORTION OF THE NORTH HALF OF THE NORTH HALF OF SECTION 7, TOWNSHIP 1 SOUTH, RANGE 69 WEST, SIXTH PRINCIPAL MERIDIAN, BOULDER COUNTY, COLORADO, DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 7;

THENCE N 89°29'34" E 559.75 FEET ALONG THE NORTH BOUNDARY OF THE NORTHWEST QUARTER OF SAID SECTION 7;
THENCE S 00°30'27" E 60.00 FEET TO THE POINT OF BEGINNING;

THENCE N 89°29'33" E 971.59 FEET ALONG THE SOUTHERLY RIGHT OF WAY OF SOUTH BOULDER ROAD AS DESCRIBED IN A DOCUMENT RECORDED AT RECEPTION NUMBERS 875290 AND 962816;
THENCE S 00°28'37" E 220.81 FEET ALONG THE WESTERLY BOUNDARY OF TRACT D, HILLSBOROUGH WEST SUBDIVISION FILING NO. 1;
THENCE ALONG THE BOUNDARY OF BLOCK 1, SAID HILLSBOROUGH WEST SUBDIVISION FILING NO. 1 THE FOLLOWING COURSES:

1. S 89°31'23" W 22.88 FEET;
2. S 00°28'37" E 336.09 FEET;
3. S 26°48'02" W 261.50 FEET;
4. N 43°35'10" W 93.82 FEET;
5. S 89°31'23" W 930.92 FEET;

THENCE ALONG THE EASTERLY RIGHT OF WAY OF McCASLIN BOULEVARD AS DESCRIBED IN A DOCUMENT RECORDED AT RECEPTION NO. 875290 THE FOLLOWING COURSES:

1. ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT 462.33 FEET, SAID ARC SUBTENDED BY A RADIUS OF 725.62 FEET, A CENTRAL ANGLE OF 36°30'22" AND A CHORD BEARING N 17°15'33" E 454.55 FEET;
2. N 00°59'38" W 257.08 FEET;
3. N 44°15'53" E 42.65 FEET TO THE POINT OF BEGINNING, CONTAINING 723855 SQUARE FEET, (16.62 ACRES).

EXHIBIT C

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LEGAL DESCRIPTION
PARCEL FOUR

THAT PORTION OF THE NORTH HALF OF THE NORTH HALF OF SECTION 7, TOWNSHIP 1 SOUTH, RANGE 69 WEST, SIXTH PRINCIPAL MERIDIAN, BOULDER COUNTY, COLORADO, DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 7;

THENCE S 00°06'53" E 69.93 FEET ALONG THE WESTERLY BOUNDARY OF SAID NORTH HALF OF THE NORTH HALF OF SECTION 7;
THENCE N 89°33'07" E 70.00 FEET TO THE POINT OF BEGINNING,
THENCE N 89°29'34" E 309.80 FEET ALONG THE SOUTHERLY RIGHT OF WAY OF SOUTH BOULDER ROAD AS DESCRIBED IN A DOCUMENT RECORDED AT RECEPTION NO. 875290;
THENCE ALONG THE WESTERLY RIGHT OF WAY OF McCASLIN BOULEVARD AS DESCRIBED IN A DOCUMENT RECORDED AT RECEPTION NO. 875290 THE FOLLOWING COURSES:

1. S 45°44'14" E 42.92 FEET;
2. S 00°59'38" E 248.16 FEET;
3. ALONG THE ARC OF A CURVE TO THE RIGHT 385.87 FEET, SAID ARC SUBTENDED BY A RADIUS OF 605.62, A CENTRAL ANGLE OF 36°30'22", AND A CHORD BEARING S 17°15'33" W 379.38 FEET;
4. S 35°30'45" W 298.59 FEET;
5. N 54°29'15" W 16.69 FEET;
6. ALONG THE ARC OF A CURVE TO THE RIGHT 189.80 FEET TO THE EASTERLY RIGHT OF WAY OF 80TH STREET, SAID ARC SUBTEDED BY A RADIUS OF 200.00 FEET, A CENTRAL ANGLE OF 54°22'22", AND A CHORD BEARING N 27°18'04" W 182.75 FEET;

THENCE ALONG THE RIGHT OF WAY OF SAID 80TH STREET THE FOLLOWING COURSES.

1. N 00°06'53" W 532.51 FEET PARALLEL WITH AND 30.00 FEET EASTERLY, MEASURED PERPENDICULARLY FROM SAID WESTERLY BOUNDARY OF THE NORTH HALF OF THE NORTH HALF OF SECTION 7,
2. N 89°53'07" E 40.00 FEET;
3. N 00°06'53" W 176.00 FEET TO THE POINT OF BEGINNING, CONTAINING 264480 SQUARE FEET (6.072 ACRES).

LEGAL DESCRIPTION
PARCEL FIVE

THAT PORTION OF THE NORTH HALF OF THE NORTH HALF OF SECTION 7, TOWNSHIP 1 SOUTH, RANGE 69 WEST, SIXTH PRINCIPAL MERIDIAN, BOULDER COUNTY, COLORADO, DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 7.

THENCE S 00°06'53" E 1102.32 FEET ALONG THE WESTERLY BOUNDARY OF SAID NORTH HALF OF THE NORTH HALF OF SECTION 7,
THENCE N 89°33'07" E 30.00 TO THE EASTERLY RIGHT OF WAY OF 80TH STREET, THE POINT OF BEGINNING;

THENCE N 00°06'53" W 157.98 FEET ALONG SAID RIGHT OF WAY TO THE RIGHT OF WAY OF McCASLIN BOULEVARD AS DESCRIBED IN A DOCUMENT RECORDED AT RECEPTION NO. 875290;
THENCE ALONG SAID RIGHT OF WAY THE FOLLOWING COURSES.

1. ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT, 66.52 FEET, SAID ARC SUBTENDED BY A RADIUS OF 260.00 FEET, A CENTRAL ANGLE OF 14°39'34", AND A CHORD BEARING S 47°09'28" E 66.34 FEET;
2. S 54°29'15" E 16.68 FEET;
3. S 35°30'44" W 12.00 FEET;
4. ALONG THE ARC OF A CURVE TO THE LEFT 108.51 FEET TO THE POINT OF BEGINNING, SAID ARC SUBTENDED BY A RADIUS OF 615.00 FEET, A CENTRAL ANGLE OF 10°06'34", AND A CHORD BEARING S 30°27'28" W 108.37 FEET;

SAID PARCEL CONTAING 4511 SQUARE FEET (0.104 ACRES).

#01588413 03/04/96 02:41 PM REAL ESTATE RECORDS
F2110 CHARLOTTE HOUSTON BOULDER CNTY CO RECORDER

H-1

ADDENDUM TO
ANNEXATION AGREEMENT

THIS ADDENDUM is made and entered into this 5TH day of DEC, 1995, by and between LOUISVIEW CORPORATION, herein referred to as the "Owner", and the "CITY OF LOUISVILLE", a municipal corporation of the State of Colorado, hereinafter referred to as "Louisville" or "City".

WITNESSETH:

WHEREAS, the Owner and Louisville have entered into an Annexation Agreement with respect to certain property described therein ("property"), a copy of which is attached hereto; and

WHEREAS, the Owner has executed a petition to annex the property, a copy of which petition is attached hereto, incorporated herein, and made a part hereof; and

WHEREAS, it is to the mutual benefit of the parties hereto to enter into this Addendum to govern the rights and obligations of the parties subsequent to the annexation.

NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE PREMISES AND THE COVENANTS AS HEREINAFTER SET FORTH, IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. Owner agrees to execute and promptly submit a preliminary P.U.D. on the property for prompt consideration by the City of Louisville.

2. Owner agrees to provide the documents, surveys, engineering work, maps, reports, and the other documents necessary for the City to act upon a preliminary P.U.D. relating to the property and agrees to pay all fees connected therewith.

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3. Louisville shall act upon the preliminary P.U.D., following the process described in the City ordinances, no later than 180 days from the date of submission. Owner may thereafter submit a final P.U.D. proposal for the property, including all documents and the payment of all fees related thereto. If so, the City shall act upon the final P.U.D., following the process described in the City ordinances, no later than 180 days from the date of submission of the final P.U.D. proposal.

4. The parties recognize that it is the intent and desire of Owner to develop the property in a manner consistent with the zoning requested and that the granting of zoning by the City of SF-R for the residential portion and AO-T for the commercial portion is a condition to maintaining the annexation of the property to the City of Louisville. The Owner and Louisville agree that if the preliminary or final P.U.D., submitted by the Owner is not approved to the satisfaction of the City and the Owner within 180 days from the date of submission, then this annexation shall be null and void and all things of value returned to each of the parties, except that the City will retain all fees paid by the Owner related to the preliminary and final P.U.D. proposal.

5. The City agrees upon disconnection of the property from the City that all rights-of-way dedicated and all water rights held in escrow shall be ~~turned~~ returned to the Owner.

6. All water rights listed on Exhibit C to the Annexation Agreement shall be held in escrow by a person or entity approved by the Owner and the City until approval of the final P.U.D. and the time for filing any referendum on the P.U.D. has lapsed or any referendum on the P.U.D. has failed, at which time the water rights shall be transferred to the City in accordance with paragraph 13 of the Annexation Agreement. If the final P.U.D. is not approved to the satisfaction of the City and the Owner and the Owner withdraws the annexation, all water rights held in escrow shall be returned to the Owner.

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7. This agreement embodies the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein and this agreement supersedes all previous communications, representations, or agreements, either verbal or written between the parties.

8. This Agreement shall be binding upon an enure to the benefit of the heirs, transferees, successors, and assigns hereof and shall constitute covenants running with the land.

9. This Addendum may be recorded with the County Clerk of Boulder County, Colorado at the Owner's expense.

10. Subject to the conditions precedent herein, this Agreement may be enforced in any court of competent jurisdiction.

11. The parties acknowledge that the zoning of and P.U.D. action relating to the property is subject to the legislative discretion of the City Council and the rights of initiative and referendum reserved to the citizens of Louisville. No assurance of zoning or P.U.D. approval has been made or relied upon by the Owner. In the event that in the exercise of its legislative discretion, the City's action on the zoning or P.U.D. proposal for the property is not satisfactory to the Owner, then the sole and exclusive remedy of the Owner shall be disconnecting the property from the City and the return to the Owner of all dedicated rights-of-way and escrowed water rights, as described above.

12. The parties agree to cooperate and provide/sign all documents and take all actions necessary to achieve any disconnection of the property from the City pursuant to this Agreement.

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13. The parties agree that if any part, term, portion or provision of this Addendum conflicts with the Annexation Agreement that the Addendum shall take precedent.

14. No more than two single family dwellings may be constructed on the portion of the property located on the west side of McCaslin Boulevard, Parcels No. 4 and No. 5 on the approved Annexation plat. Such dwellings shall be single story and not more than twenty-six (26) feet in height. The final number of such dwellings will be determined through the P.U.D. process and may be one dwelling or two dwellings. If a final P.U.D. for the property is approved to the satisfaction of the City and the Owner, the Owner shall place the restrictions of this paragraph 14 in the deeds for the parcels of the property located on the west side of McCaslin Boulevard, Parcels No. 4 and No. 5.

OWNER: LOUISVIEW CORPORATION

By: _____
PRESIDENT

CITY OF LOUISVILLE

By: _____
Tom Davidson, Mayor

ATTEST:

By: _____
Maj-Lis Kemper, City Clerk

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F2110 CHARLOTTE HOUSTON BOULDER CNTY CO RECORDER

9-1

Revised 11/07/95

ANNEXATION AGREEMENT

THIS AGREEMENT is made and entered into this 5TH day of DECEMBER, 1995 by and between LOUISVIEW CORPORATION, hereinafter referred to as the "Owner," and the CITY OF LOUISVILLE, a municipal corporation of the State of Colorado, hereinafter referred to as "Louisville" or "City".

WITNESSETH:

WHEREAS, the Owner desires to annex to Louisville the property more particularly described on Exhibit "A," which is attached hereto, incorporated herein, and made a part hereof (such property is hereinafter referred to as "the property"); and

WHEREAS, Owner has executed a petition to annex the property, a copy of which petition is attached hereto as Exhibit "B," and incorporated herein and made a part hereof; and

WHEREAS, it is to the mutual benefit of the parties hereto to enter into the following Agreement; and

WHEREAS, Owner acknowledges that upon annexation, the property will be subject to all ordinances, resolutions, and other regulations of the City of Louisville, as they may be amended from time to time.

WHEREAS, Owner acknowledges that the need for conveyances and dedication of certain property, including but not limited to property for ways and easements to Louisville as contemplated in this Agreement, are directly related to and generated by development intended to occur within the property and that no taking thereby will occur requiring any compensation.

RECORDER'S NOTE: Document lacks a legal description

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NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE PREMISES AND THE COVENANTS AS HEREINAFTER SET FORTH, IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. Owner agrees to execute, promptly upon request of Louisville, any and all surveys and other documents necessary to effect the annexation of the property and the other provisions of this Agreement. Owner agrees to not sign any other petition for annexation of the property or any petition for an annexation election relating to the property, except upon request of Louisville.

2. Owner agrees to provide legal documents, surveys, engineering work, newspaper publication, maps, and reports determined by Louisville to be necessary to accomplish the annexation, and has paid to the City of Louisville an annexation fee in the amount of Three Hundred Dollars ($300.00) plus Sixty Dollars ($60.00) per acre annexed.

3. Louisville shall act upon Exhibit "B" within six months of the date of filing thereof with the City Clerk, unless Owner consents to later action.

4. The parties recognize that it is the intent and desire of Owner to develop the property in a manner generally consistent with the zoning requested and that the granting of such zoning by the City of Louisville is a condition to annexation of the property. Owner shall take all action necessary to permit zoning by Louisville of the annexed property within the time prescribed by state statutes.

5. Owner agrees to dedicate by General Warranty Deed or appropriate instrument of conveyance acceptable to the City easements and rights-of-way for streets and other public ways and for other public purposes, as required by City ordinances and

A-3

resolutions. Such dedications shall occur immediately upon request of the City except that internal rights-of-way shall be dedicated at the time of subdivision platting, unless the City specifies another time.

6. Owner agrees to design, improve, and provide signage, lighting, and signalization for, all public streets and other public ways within or adjacent to the property in accordance with City ordinances and resolutions and other applicable standards, subject to any reimbursement which may be provided for in such ordinances, resolutions, and standards, and to make such other improvements as required by City ordinances and resolutions, to guarantee construction of all required improvements, and, if requested by Louisville, to dedicate to Louisville any or all other required improvements. Owner agrees to enter into an agreement pertaining to such improvements and other matters prior to any development of the property.

7. If requested by Louisville, Owner agrees to include the property in one or more special improvement districts or other mechanisms established by Louisville for making improvements to streets and other public ways, or for making other public improvements authorized by law, and Owner hereby appoints the City Administrator of Louisville as Owner's attorney-in-fact for the purpose of executing all documents determined by Louisville to be necessary for such inclusion. If requested by Owner, Louisville agrees to consider the establishment of one or more special improvement districts for making such improvements.

8. Owner agrees that the design, improvement, construction, development, and use of the property shall be in conformance with, and that Owner shall comply with, all City ordinances and resolutions including, without limitation, ordinances and resolutions pertaining to subdivision, zoning, storm drainage, utilities, and flood control.

A-2

9. Nothing contained in this Agreement shall constitute or be interpreted as a repeal of the City's ordinances or resolutions, or as a waiver of the City's legislative, governmental, or police powers to promote and protect the health, safety, and welfare of the City and its inhabitants; nor shall this Agreement prohibit the enactment or increase by the City of any tax or fee.

10. No right or remedy of disconnection of the property from the City shall accrue from this Agreement, other than that provided by applicable state laws. In the event the property or any portion thereof is disconnected at Owner's request, Louisville shall have no obligation to serve the disconnected property or portion thereof and this Agreement shall be void and of no further force and effect as to such property or portion thereof.

11. The parties agree that if any part, term, portion, or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining parts, terms, portions, or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, portion, or provision held to be invalid.

12. Louisville agrees to make available to the property all of the usual municipal services in accordance with the ordinances and policies of the City which services include, but are not limited to, police protection and water and sewer services. Owner acknowledges that City services do not include, as of the date of the execution of this Agreement, fire protection or emergency medical services, but the property is presently included within the boundaries of and is entitled to receive such services from the Louisville or Cherryvale Fire Protection District.

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13. Owner represents to the City that the water rights listed on Exhibit "C", attached hereto and incorporated herein by this reference, constitute all of the water rights appurtenant to the Subject Property. In accordance with Section 16.32.030(G) of the Louisville Municipal Code, as amended, and existing City policy as set forth in Resolution No. 52, Series 1988, and as amended by Resolution No. 9, Series 1989, Owner agrees to convey to the City, upon annexation of the Subject Property, all water rights listed on Exhibit "C", and any related stock certificates evidencing ownership of the water rights, free and clear of all encumbrances and with all taxes and assessments related thereto and paid in full, unless the City in writing rejects any or all such water rights.

Owner hereby acknowledges its receipt of a copy of City of Louisville Resolution No. 52, Series 1988, and Resolution No. 9, Series 1989, concerning City Policy with respect to the dedication of water rights to the City in connection with annexations, and agrees to comply with such Resolutions and with any amendments thereto, including any applicable amendments adopted subsequent to the annexation of the Subject Property.

14. The parties agree that they will cooperate with one another in accomplishing the terms, conditions, and provisions of the Agreement, and will execute such additional documents as necessary to effectuate the same.

15. This Agreement may be amended by the City and any Owner without the consent of any other Owner as long as such amendment affects only that Owner's portion of the property. Such amendments shall be in writing, shall be recorded with the County Clerk of Boulder County, Colorado, shall be covenants running with the land, and shall be binding upon all persons or entities having an

9-b

interest in the property subject to the amendment unless otherwise specified in the amendment. Except as otherwise provided herein, this Agreement shall not be amended unless approved in writing by all parties hereto.

16. This Agreement embodies the entire agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement supersedes all previous communications, representations, or agreements, either verbal or written, between the parties.

17. Owner agrees to indemnify and hold harmless the City and the City's officers, employees, agents, and contractors, from and against all liability, claims, and demands, including attorney's fees and court costs, which arise out of or are in any manner connected with the annexation of the property, or with any other annexation or other action determined necessary or desirable by the City in order to effectuate the annexation of the property, or which are in any manner connected with Louisville's enforcement of this Agreement. Owner further agrees to investigate, handle, respond to, and to provide defense for and defend against or at the City's option to pay the attorney's fees for defense counsel of the City's choice for, any such liability, claims, or demands.

18. As used in this Agreement, the term "Owner" shall include any of the heirs, transferees, successors, or assigns of Owner, and all such parties shall have the right to enforce this Agreement, and shall be subject to the terms of this Agreement, as if they were the original parties thereto.

19. As used in this Agreement, unless otherwise specifically provided herein, any reference to any provision of any City ordinance, resolution, or policy is intended to refer to any

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subsequent amendments or revisions to such ordinance, resolution, or policy, and the parties agree that such amendments or revisions shall be binding upon Owner.

20. This Agreement shall be binding upon and inure to the benefit of the heirs, transferees, successors, and assigns hereof, and shall constitute covenants running with the land. This Agreement shall be recorded with the County Clerk of Boulder County, Colorado, at Owner's expense. Subject to the conditions precedent herein, this Agreement may be enforced in any court of competent jurisdiction.

21. This Agreement shall be null and void if the City fails to approve the annexation of the property.

22. The Owner acknowledges that the annexation and zoning of the property are subject to the legislative discretion of the City Council of the City of Louisville. No assurances of annexation or zoning have been made or relied upon by Owner. In the event that, in the exercise of its legislative discretion, any action with respect to the property herein contemplated is not taken, then the sole and exclusive remedy for the breach hereof accompanied by the exercise of such discretion shall be the withdrawal of the petition for annexation by the Owner, or disconnection from the City in accordance with state law, as may be appropriate.

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OWNER:
LOUISVIEW CORPORATION

ATTEST:

By: Carol A. Zyrenek

By: Edwin D. Hyman
PRESIDENT

CITY OF LOUISVILLE

By: Tom Davidson
Mayor Tom Davidson

ATTEST:

By: Linda Salas
~~Mary-Lis Kempf~~ DEPUTY, City Clerk

ACKNOWLEDGEMENT

STATE OF COLORADO)
)ss
COUNTY OF Denver)

The above and foregoing signature of Edwin D. Hyman, was subscribed and sworn to before me this 5th day of December, 1995.

Witness my hand and official seal.

Carol A. Zyrenek
NOTARY SIGNATURE

My commission expires on: _____

My Commission Expires June 16, 1999

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EXHIBIT "C"

(_____ Annexation Agreement)

Water Rights Appurtenant to Property.

Water Rights Number(s)	Number of Shares	Certificate
_____	_____	_____
_____	_____	_____
_____	_____	_____

Lathrop moved that Council approve Ordinance No. 1165, Series 1994, on second and final reading contingent upon approval of item D4, Annexation Agreement and Addendum, and with the condition that the Annexation Agreement include a restriction on the height of the two residential properties west of McCaslin to not exceed 26'. Such restriction shall also become part of any approved PUD.

Davidson offered a friendly amendment that they also be single story.

Lathrop agreed. Seconded by Howard.

Griffiths stated that she understood the motion was not to amend the ordinance, but to make the ordinances approval conditional upon the approval of an annexation agreement and inclusion in the annexation agreement the various limitations.

Lathrop clarified that it was contingent upon item D4, the Addendum, and to include in the annexation agreement the height restriction.

Roll call was taken. Motion passed by a 6 - 1 vote with Mayer voting against.

ORDINANCE NO. 1166, SERIES 1994 - AMENDING TITLE 17 OF THE LOUISVILLE MUNICIPAL CODE ENTITLED "ZONING" BY ZONING PROPERTY OWNED BY THE LOUISVIEW CORPORATION KNOWN AS THE GATEWAY ANNEXATION - 2ND READING - CONTINUED PUBLIC HEARING FROM DECEMBER 20, 1994 (RE-PUBL. LSVL. TIMES W/FULL ORDINANCE 9/6/95)

Griffiths read by title only Ordinance No. 1166, Series 1994, "An ordinance amending Title 17 of the Louisville Municipal Code entitled "Zoning" by zoning property owned by the Louisview Corporation known as the Gateway Annexation."

Davidson noted that there had already been staff presentation and the applicant did not wish to make any further presentation..

Davidson opened the public hearing calling for anyone wishing to speak on this ordinance.

NONE

Davidson closed the public hearing and called for Council comments, questions, or motions.

Lathrop moved that Council approve Ordinance No. 1166, Series 1994, zoning of annexed land, Gateway Annexation, second reading with the following amendments: That it be contingent upon approval of item D4, Annexation Agreement and Addendum; That the zoning ordinance also include the restriction on the height of single family homes west of McCaslin to be 26'; That the number of homes west of McCaslin are not to exceed two and that they be single story. Seconded by Howard.

Lathrop amended his motion to change the zoning designation from RR-R to SF-R. Seconder, Howard, accepted that.

Davidson moved to amend Lathrop's motion to zone 6.1 acres south of South Boulder Road between 80th Street and McCaslin Boulevard and the .1 acre between west of McCaslin Boulevard and south of 80th Street as RR-R. Seconded by Sisk. Roll call was taken on the amendment. Motion passed by a 4 - 3 vote with Howard, Lathrop, and Levihn voting against.

Davidson called for a roll call on the original amended Ordinance No. 1166. To clarify, Davidson stated that Council was now voting on Ordinance No. 1166 with his amendment and all of the amendments that Lathrop originally added. Motion passed by a 7 - 0 vote.

Davidson told the applicant that his amendment did not imply in any way that he would not necessarily vote for a PUD that would allow two homes on that land.

ANNEXATION AGREEMENT AND ADDENDUM (tabled from prior discussion)

Sisk moved that Council bring this back for discussion now, that Ordinances No. 1165 and 1166 had been approved including all of the restrictions from Lathrop on the annexation and on the zoning. He added another restriction that if the PUD is approved, the restrictive language on the deeds to the properties located west of McCaslin would be included on any deeds conveying those properties. Seconded by Howard.

Levihn wanted to make sure the applicant understood how the previous amendment affects this now.

Barry Morris and Mr. Ostrander, his attorney, thought it was okay with them.

Susan Griffiths, City Attorney, stated that Mr. Ostrander had suggested a revision to the Agreement regarding the time of how long the water rights would be held in escrow. She suggested that the language in paragraph No. 6, first sentence be changed to "All water rights listed on Exhibit C to the Annexation Agreement shall be held in escrow by a person or entity approved by the Owner and the City until approval of the final PUD and the time for any referendum of the PUD has lapsed or any referendum has failed, at which time the water rights shall be transferred to the City....".

Sisk and Howard, seconder, accepted that. Roll call was taken. Motion passed by a 7 - 0 vote.

BREAK

Davidson called for a five minute break.

Council returned from break.

RESOLUTION NO. 65
SERIES 1996

A RESOLUTION APPROVING
A FINAL SUBDIVISION PLAT AND PUD DEVELOPMENT PLAN FOR GATEWAY

WHEREAS, there has been submitted to the Louisville City Council by Louisview Corporation a Final Subdivision Plat and PUD Development Plan for Gateway; and

WHEREAS, all materials related to the Final Subdivision Plat PUD Development Plan have been reviewed by City Staff and the Planning Commission and found to be in compliance with the Louisville zoning ordinances, subdivision regulations, and related policies; and

WHEREAS, after a properly advertised public hearing concerning said Final Subdivision Plat PUD Development Plan, the Planning Commission recommended to the City Council approval; and

WHEREAS, the City Council finds that said Final Subdivision Plat PUD Development Plan should be approved, subject to the following conditions:

1. The applicant shall provide notice to the City of water rights escrow compliance.

2. A note should be added to the PUD stating that the existing grade on the office portion of the development shall be substantially maintained.

3. A fence notations and graphics shall be removed from the Final PUD site plan (sheet two of the PUD submittal).

4. Note No. 2 on the fence plan shall be revised to state, "No solid privacy fencing is allowed within the front setback as measured as the actual distance between the front of structure and the property line."

5. Note No. 3 on the fence plan shall be modified to reflect a minimum setback for a privacy fence from McCaslin Blvd. as 80 feet rather than 50 feet.

6. Note No. 3 on the cover sheet of the PUD concerning access shall be modified as follows: "ACCESS TO THE SITE FROM MCCASLIN BLVD. AND/OR SOUTH BOULDER ROAD MAY BE MODIFIED IN THE FUTURE BY THE CITY. IF, AT ANY TIME IN THE FUTURE, IT IS DETERMINED BY THE CITY THAT SUCH MODIFICATION IS APPROPRIATE TO ENHANCE TRAFFIC FLOW ON ONE OR MORE SURROUNDING STREETS, OR TO MITIGATE AN UNSAFE SITUATION, UPON NOTIFICATION FROM THE CITY, PROPERTY OWNERS ON LOT 1, BLOCK 2 (COMMERCIAL OFFICE) AGREE TO MAKE SUCH MODIFICATIONS ON AND ADJOINING SOUTH BOULDER ROAD, AS MAY BE REASONABLY REQUIRED BY THE CITY, AND AGREE TO PAY FOR THE COST THEREOF, AS REASONABLY ALLOCATED AMONG PROPERTY OWNERS BY THE CITY. EACH

PRESENT AND FUTURE PROPERTY OWNER SHALL ACKNOWLEDGE IN WRITING THE FOREGOING AUTHORITY OF THE CITY."

7. The subdivider shall pay a cash-in-lieu of landscape fee in the amount of twenty-five thousand ($25,000) dollars. The cash payment shall be paid prior to the issuance of the first building permit within the Gateway development.

8. The overall separation of the homes located on Lots 1 and 2, Block 1 (west of McCaslin Blvd.) shall be maximized to maintain view corridors from McCaslin Blvd. Prior to issuance of a building permit for either Lot 1, or Lot 2, Block 1 staff will review the building plan for adequate building separation.

9. The commercial office (AO-T) site lighting levels shall be reduced after business hours, as directed by staff.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Louisville, Colorado does hereby approve the Final Subdivision Plat and PUD Development Plan for Gateway. A copy of the Final PUD Development Plan is attached hereto.

PASSED AND ADOPTED this 15th day of October, 1996.

By: Tom Davidson

Tom Davidson, Mayor
City of Louisville, Colorado

ATTEST:

Dave Clabots, City Clerk

Howard moved that Council approve Ordinance No 1231, Series 1996, Owen Annexation on second reading, seconded by Keany. Roll call was taken. Motion passed by a 6 - 0 vote with Sisk being excused.

ORDINANCE NO. 1232, SERIES 1996 - ZONING PROPERTY ANNEXED TO THE CITY OF LOUISVILLE KNOWN AS THE OWEN ANNEXATION - 22.46 ACRES - 2ND READING - PUBLIC HEARING (PUBL. LSVL. TIMES 9/11, 9/18, 9/25, & 10/2/96)

Tanoue read by title only Ordinance No. 1232, Series 1996, "An ordinance zoning property annexed to the City of Louisville and known as the Owen Annexation."

Davidson opened the public hearing calling for anyone wishing to speak on this ordinance.

NONE

Davidson closed the public hearing.

Howard moved that Council approve Ordinance No. 1232, Series 1996, on second and final hearing. Seconded by Keany. Roll call was taken. Motion passed by a 6 - 0 vote with Sisk being excused.

RESOLUTION NO. 65, SERIES 1996 - FINAL SUBDIVISION REPLAT AND FINAL PUD DEVELOPMENT PLAN FOR GATEWAY

Paul Wood, Planning Director, stated that this property is located at McCaslin Boulevard and South Boulder Road. Conditions 1, 2, and 3 reflected the conditions that had not been met on Planning Commission's Resolution No. 21. The proposed Street continued to reflect a 28' rather than 36' with a 5' sidewalk on one side. The width of the right-of-way had been revised to reflect 50' as opposed to 45'. The plat proposed dedication of Outlots A, B, and C to the City for open space. Outlot D is to be a privately owned and maintained as a second detention facility. A note had been added to the PUD requiring that each home have an interior sprinkler system in lieu of secondary access into the development as required by the Louisville Fire Protection District. A total of five office buildings totaling 36,000 s.f. were proposed within the AO-T zone district, Lot 1 Block 2, with 213 off-street parking spaces.

Davidson called for the applicant's presentation.

John C. Durham, Norris Dullea Company, 243 East Nineteenth Avenue, Suite 1(X), Denver, Colorado 80203, reviewed the project. He asked that two lots be allowed west of McCaslin rather than one to help make the project financially feasible. He also asked for a variance on the fencing, because of the intersection of two arterials, to do privacy fences with a minimum setback of 50' rather than 80'.

Mike Stroh, Knudson Gloss, architects and planners, 4820 Riverbend Road, Boulder, Colorado 80301, reviewed the details of the office buildings.

Bill Boulet, Chairman of the Planning Commission, 728 Grant, Louisville, Colorado, stated that the Planning Commission voted against two houses west of McCaslin as they felt it was not justified. He pointed out that the Planning Commission approved one more house than would be justified by the SF-R zoning on the east side of McCaslin, which balanced this out.

Davidson called for Council comments and questions.

Lathrop was concerned about the fencing in relation to protection from McCaslin Boulevard. He did not have a problem with the two lots on the west side of McCaslin.

Keany and Howard were concerned about the fencing.

Sisk wanted the exterior pole lighting reduced at night on the AO-T. He wanted a specific time put on the PUD for the lighting to be turned off /dimmed.

Lathrop asked staff if note No. 3 on the PUD would be changed.

Tom Phare, Public Works Director, stated that the fourth and fifth lines should be struck. Staff had originally crafted some language with the City Attorney when the City was looking at the Parcel L access and they had been using that standard language since then on access issues.

Lathrop felt that by changing that note the City was opening a liability that was not determined today.

Howard liked the project, particularly compared to its initial concept six years ago.

Mayer wanted just one house west of McCaslin as it would preserve the low density development west of McCaslin and preserve the skyline. He pointed out that when Barry Morris bought the land the zoning only allowed one house and now its up to five commercial buildings and eight residential lots which greatly increases the value of the property.

Levihn did not have a problem with two homes on the west side of McCaslin.

Sisk did not mind the two homes, but was concerned with the placements of the homes and that they be minimal as far as blocking the views. He wanted the placement of the homes on the west side to be subject to the discretion of City staff. He wanted to know the trade-off for having the two lots.

Howard asked about the quantity of the donation to the underpass and also about the placement of the homes on the west side of McCaslin.

Barry Morris, Louisview Corporation, 2991 Pearl Street, Boulder, Colorado 80301, stated that they had changed all of their drainage for the buildings so they would be compatible with the area that would go into their detention ponds. He stated that he would be willing to donate $25,000. He would also be willing to work with staff as to the placement of the homes west of McCaslin.

Davidson asked the City Attorney to read the language on the access to South Boulder Road.

Tami Tanoue, Griffiths & Tanoue, stated that note No. 3 on the PUD would read "Access to the site from McCaslin Boulevard and/or South Boulder Road may be modified in the future by the City. If at any time in the future it is determined by the City that change is appropriate to enhance traffic flow on one or more surrounding streets or to mitigate an unsafe condition, upon notification from the City, property owners on Lot 1, Block 2 (commercial office) agree to such changes on an adjoining South Boulder Road as may be reasonably required by the City and agree to pay for the cost thereof, as reasonably allocated among the property owners by the City. Each present and future property owner shall acknowledge in writing the forgoing authority of the City."

Lathrop took exception to the fact that Council would take a $25,000 in exchange for a vote.

Sisk responded that Mr. Morris made a comment that he was willing to contribute money and all Sisk was trying to do was to quantify that amount. He took great offense to the suggestion that it would extract a positive vote. Morris made the proposal and Sisk was trying to get it on the table.

Howard moved that Council approve Resolution No. 65, Series 1996, the Final Subdivision Replat and PUD Development Plan for Gateway with the following conditions: Conditions No. 1, 2, 4, 5, and 6; and the added/modified language from the City Attorney; and two additional conditions that the developer work with staff in defining the separation of the footprints and that there be a $25,000 contribution to be credited to the City of Louisville's appropriation for the new underpass, seconded by Levihn.

Keany offered a friendly amendment that the exterior and parking lighting be reduced to 25% after business hours, whatever percent and hour staff recommended.

Howard and seconder Levihn accepted that. Roll call was taken. Motion passed by a 4 - 2 vote with Sisk abstaining and Mayer and Davidson voting against.

RESOLUTION NO. 66, SERIES 1996 - APPROVING AN AMENDMENT TO A FINAL PUD DEVELOPMENT PLAN FOR CHRISTOPHER PLAZA

Paul Wood, Planning Director, stated that this is to clarify the area and type of signage. The Planning Commission and applicant agreed to the following criteria:

City Council - Public Hearing

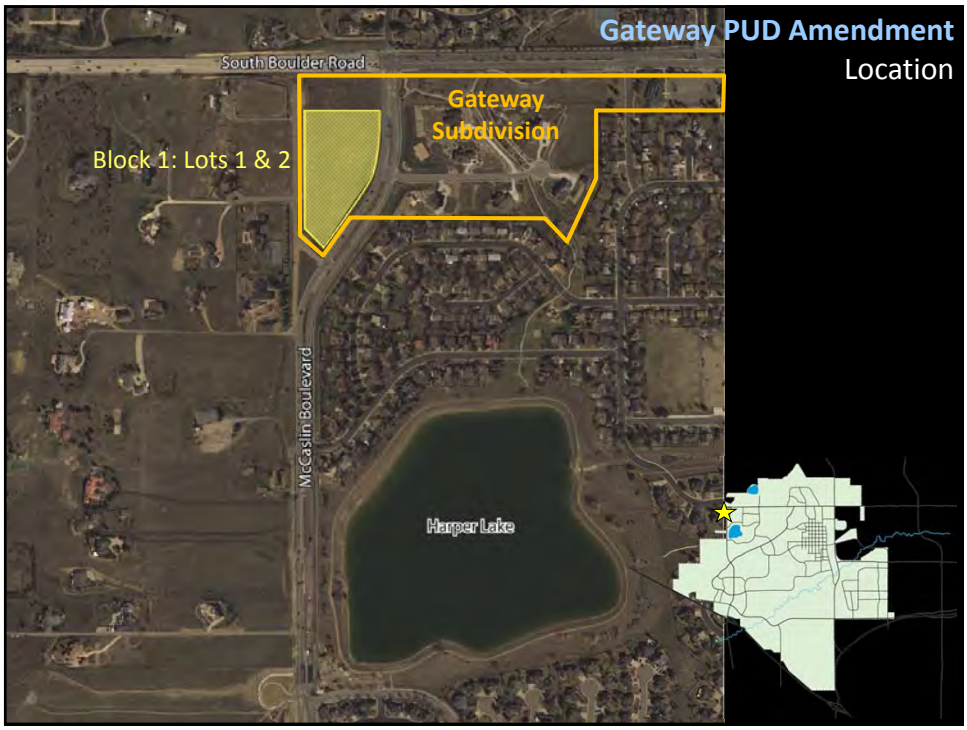
Gateway Planned Unit Development

Amendment

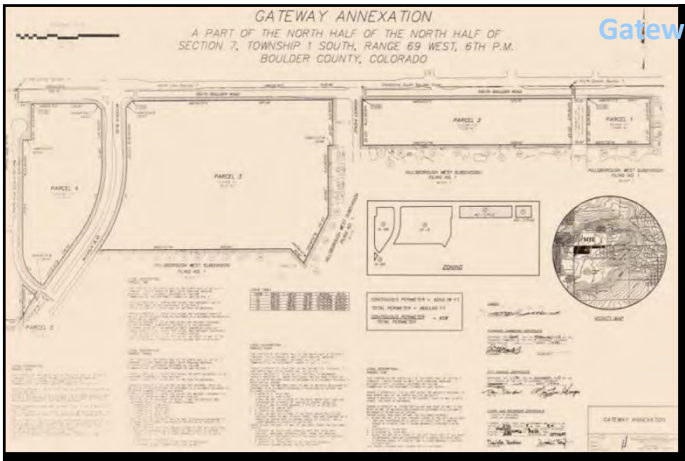
ORDINANCE NO. 1687, SERIES 2015 – AN ORDINANCE AMENDING ORDINANCE NOS. 1165 AND 1166, SERIES 1994 CONCERNING THE GATEWAY ANNEXATION AND APPROVING AN AMENDMENT TO AN ADDENDUM TO ANNEXATION AGREEMENT – 2ND Reading

RESOLUTION NO. 22, SERIES 2015 – A RESOLUTION APPROVING AN AMENDMENT TO THE GATEWAY FINAL PLANNED UNIT DEVELOPMENT (PUD) TO MODIFY THE HEIGHT ALLOWANCE LANGUAGE ON LOTS 1 AND 2, BLOCK 1 FROM "1 STORY WITH A 26 FEET MAXIMUM BUILDING HEIGHT" TO "1 OR 2 STORIES WITH A MAXIMUM BUILDING HEIGHT OF 26 FEET.

Prepared by
Planning and Building Safety Department



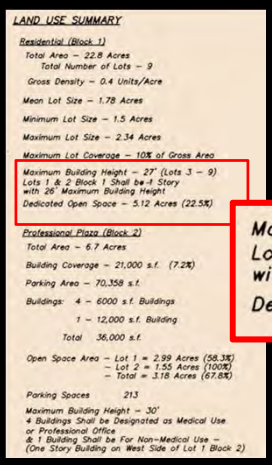
Gateway PUD Amendment
Background



Annexation – Ordinances 1165 and 1166, Series 1994

"No more than two single family dwellings may be constructed on the portion of the property located on the west side of McCaslin Boulevard (Parcels Four and Five on Exhibit B). Such dwellings shall be single story and not more than twenty-six (26) feet in height. The final number of such dwellings will be determined through the P.U.D. process and may be one dwelling or two dwellings."

Gateway PUD Amendment
Background



LAND USE SUMMARY

Residential (Block 1)
Total Area – 22.8 Acres
Total Number of Lots – 9
Gross Density – 0.4 Units/Acre
Mean Lot Size – 1.78 Acres
Minimum Lot Size – 1.5 Acres
Maximum Lot Size – 2.34 Acres
Maximum Lot Coverage – 10% of Gross Area
Maximum Building Height – 27' (Lots 3 – 9)
Lots 1 & 2 Block 1 Shall be 1 Story
with 26' Maximum Building Height
Dedicated Open Space – 5.12 Acres (22.5%)

Professional Plaza (Block 2)
Total Area – 6.7 Acres
Building Coverage – 21,000 s.f. (7.2%)
Parking Area – 70,358 s.f.
Buildings: 4 – 6000 s.f. Buildings
1 – 12,000 s.f. Building
Total 36,000 s.f.
Open Space Area – Lot 1 = 2.99 Acres (58.3%)
– Lot 2 = 1.55 Acres (100%)
– Total = 3.18 Acres (67.8%)
Parking Spaces 213
Maximum Building Height – 30'
4 Buildings Shall be Designated as Medical Use or Professional Office
& 1 Building Shall be For Non-Medical Use –
(One Story Building on West Side of Lot 1 Block 2)

Sheet 1

Maximum Building Height – 27' (Lots 3 – 9)
Lots 1 & 2 Block 1 Shall be 1 Story
with 26' Maximum Building Height
Dedicated Open Space – 5.12 Acres (22.5%)

Planned Unit Development approved - Resolution 65, Series 1996

Gateway PUD Amendment
View from McCaslin

Note the building under construction is located on Lot 1.
It is a 26 foot tall one story structure.

Gateway PUD Amendment
Staff Analysis

Maximum Building Height – 27' (Lots 3 – 9)
Lots 1 & 2 Block 1 Shall be 1 Story
with 26' Maximum Building Height
Dedicated Open Space – 5.12 Acres (22.5%)

The PUD uses limited view preservation tools:

1. 26 foot height limit;
2. 1 Story; and
3. A 10% lot coverage (underlying RR-R District). Lot is 98,000 sf, translating to a 9,800 sf footprint.

No minimum roof pitch;
No unique setback requirements; and
No Landscape controls.

Gateway PUD Amendment
Staff Analysis

PUD uses limited view preservation tools:

1. 26 foot height limit;
2. 1 Story; and
3. A 10% lot coverage (Lot is 98,000 sf)

No minimum roof pitch; and
No unique setback requirements.
Approved landscape plan will eventually block the view.

Staff observations

1) The allowed 26 foot, one story, structure will limit the existing unencumbered view;
2) A 26-foot, two story, structure will not worsen the impact on the view shed beyond what is allowed.
3) A two story structure within the allowed 26-feet would likely minimize view impacts by allowing a smaller building foot print (lot coverage).

Gateway PUD Amendment
HOA Design Review Committee

2 Feb 2015

TO: Vern Seieroe

FROM: Copper Hill Homeowners Association Design Review Committee

SUBJECT: Approval of Lot No 1, Block No. 1, PUD Amendment

The Copper Hill Homeowners Association Design Review Committee members have reviewed the proposal submitted by Vern Seieroe, architect for Tiera Nell/Jeremy Weiss. We do support the construction of a two-story house that does not exceed 26' maximum in height.

If you have any questions regarding this approval feel free to contact Kim Langley at 303-905-9936 or kim.langley01@gmail.com.

Regards,

Kim Langley, Phil Prine, and Katie Bell
Copper Hill Homeowners Association
Design Review Committee

Gateway PUD Amendment
Recommendation

Staff recommends City Council approve Ordinance No. 1687, Series 2015 and Resolution No. 22, Series 2015

SUBJECT: **RENEWAL OF COMCAST CABLE FRANCHISE**

1. **ORDINANCE NO. 1685, SERIES 2015, AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE BY THE CITY OF LOUISVILLE TO COMCAST OF COLORADO I, LLC AND ITS LAWFUL SUCCESSORS, TRANSFEREES AND ASSIGNS, FOR THE RIGHT TO MAKE REASONABLE AND LAWFUL USE OF RIGHTS-OF-WAY WITHIN THE CITY TO CONSTRUCT, OPERATE, MAINTAIN, RECONSTRUCT, REPAIR, AND UPGRADE A CABLE SYSTEM FOR THE PURPOSE OF PROVIDING CABLE SERVICES WITHIN THE CITY – 2nd Reading, Public Hearing (advertised *Daily Camera* 04/12/2015)**

2. **ORDINANCE NO. 1686, SERIES 2015, AN ORDINANCE ESTABLISHING CITY OF LOUISVILLE CABLE TELEVISION CUSTOMER SERVICE STANDARDS – 2nd Reading, Public Hearing (advertised *Daily Camera* 04/12/2015)**

3. **LETTER OF AGREEMENT BETWEEN THE CITY OF LOUISVILLE AND COMCAST**

DATE: **MAY 5, 2015**

PRESENTED BY: **MEREDYTH MUTH, PUBLIC RELATIONS MANAGER**
HANK DALTON, MAYOR PRO TEM

BACKGROUND:
Comcast Cable is currently the only source of cable television services in Louisville, serving approximately 4,500 subscribers. They currently operate in Louisville under a non-exclusive franchise agreement effective since April 2006. The agreement allows Comcast to use the City's ROW in return for the payment of certain rental fees - known as franchise fees. Until a new franchise is approved, the City is currently working under a month-to-month agreement with Comcast to abide by the 2006 franchise.

The proposed ordinances renew the City's non-exclusive franchise with Comcast Cable and establish customer services standards for that service. Staff is readily aware the proposed franchise and the customer service standards are not going to solve the majority of the problems some Louisville residents have complained about regarding cable service. The negotiating committee worked hard to address as best we could the issues residents raised while balancing cost and impacts.

Franchises are non-exclusive. Should another cable provider want to offer cable service in Louisville the City would offer that company the same franchise opportunity Comcast now has. To date, no other service providers have asked for a franchise.

Items of Note:

- The City cannot negotiate the content of cable package offerings, nor under the current finding of "effective competition" can we negotiate the pricing of those offerings under existing Federal law.
- We can negotiate the fees we charge Comcast for the use of the City's right of way (5% of gross revenue in the proposed franchise), but Comcast is allowed to and typically does pass those on to the customers.
- Although Comcast provides Broadband internet access, under the Federal regulations governing these franchise agreements, broadband service is not eligible for negotiation under the franchise agreement.

Public Input

At the beginning of the negotiation process, City staff asked for public input from residents related to their Comcast Cable. Staff asked for public input via the City newsletter, with two postcard mailings sent to all addresses in Louisville, posted a survey on the City's web site, and hosted two public open houses. A total of 187 people responded to the website survey. Of those, 156 said they currently subscribed to cable TV through Comcast. The results of the survey are available **here**. The results indicate on page 5 of the survey that when asked about their satisfaction with various aspects of Comcast's customer service over the past year, 43% of respondents said they were "Satisfied" or "Very Satisfied", 40% said they were "Dissatisfied" or "Very Dissatisfied" with the remaining 17% saying that the specific service or issues was "Not Applicable".

Of the public comments concerning complaints, the most numerous complaints concerned the following:

- Comcast Storefront: residents want the Comcast store back in Louisville. They don't like to drive to Boulder to the new Xfinity store, feel it is too far away, and that the wait times are inordinately long.
- Customer Service: most complaints relate to poor service from the call center staff, missed service calls, and poor treatment from staff.
- Unclear Billing: residents complained that bills are unclear and change month-to-month even when no service changes are made.
- Rates: residents complained that their rates continually go up and there is no rate for low income residents or seniors.

Staff also received many of the same complaints relating to Comcast's broadband service, which is not addressed in this franchise.

Proposed New Franchise and Customer Service Standards:
The City's negotiating team included Public Relations Manager Meredyth Muth, legal counsel Nancy Rodgers, and Mayor Pro Tem Dalton. The negotiating team began the process using the model franchise for the Denver metro area but also included the following items for Comcast's consideration. Final solution or response from Comcast is shown in red.

- A Louisville customer service office to replace the one that was closed when Comcast consolidated into the Boulder office.
  Comcast response: The City would not agree to maintain the confidentiality of Comcast's financial figures, so Comcast would only respond generally. The costs of a City-mandated store in Louisville would be passed on to Louisville subscribers, and the resulting fee would nearly double a subscriber's average monthly bill of roughly $100/mo. Today, Louisville customers have a wide variety of options to address equipment returns and bill payments – two transactions that represent nearly 100% of the previous store's traffic. Comcast direct ships equipment to/from its customers upon request, and also, the company announced in October a partnership with UPS Stores, where customers can now drop off Comcast equipment at no charge. One UPS location is in Superior, 3.5 miles from City Hall. Also, customers can pay their bills at any Western Union location, on the Xfininty My Account app, over the phone, or online at any time. Finally, Comcast's full service Xfinity Store on Baseline road is within 8 miles of City Hall.

  The negotiating team did not pursue the service center issue further, reasoning that without getting into the credibility of the numbers, Comcast's service centers have changed from the type that existed in Louisville (a small store front with minimal staff) to the Xfinity type store now in Boulder. Such stores cost considerably more to build, staff, and equip, and the cost of such a center just to serve Louisville would necessarily be charged to Louisville customers. With respect to the additional options available for equipment returns and bill payments, Comcast will provide a description of the means by which they will keep its customers advised of those measures and any changes thereto.

- Improved and more detailed reporting of customer complaints by Comcast.
  The negotiating team asked Comcast for additional detail and continuous tracking of complaints so staff could assess if service was getting better or worse over time. Comcast was unwilling to provide Louisville with more detailed reporting, agreeing only to continue the existing level of reporting. Staff will work to track complaints month-to-month and compile the details as Comcast would not agree to new reporting details.

- Continued use of Channel 8, 22, and 54 for government, education, and public access use and the option for a high-definition channel 8 in the future.
  Agreed

- Two hours window for service calls rather than a four hour window
  Comcast would only agree to a four-hour window, however, currently Comcast is advertising a two-hour window for service calls. Local Comcast staff would not agree to make the two-hour window the permanent language as the current practice may change. That said, if a resident makes a service call request and Comcast does not respond in the delineated time frame, Comcast shall provide a refund, credit (for example, as of the date of approval of these Standards, Comcast's provides a $20 credit or a free premium channel for three (3) months for missed or out-of-time service responses) rebate, or other remedy for the customer within thirty (30) days of the missed request for service date.

- Requiring a higher amount for the letter of credit which the City can garnish for service infractions. The City asked for a $100,000 letter of credit, other franchises in the area have a $25,000 letter of credit.
  The City and Comcast settled on a $50,000 letter of credit.

Redlined versions comparing the 2006 franchise with the proposed franchise are attached. The proposed versions include:

- Term of franchise is ten years, June 5, 2015 through June 5, 2025
- Franchise fee is an amount equal to five percent (5%)of Comcast's Gross Revenues from Louisville residents' payments and will be paid quarterly
- The continuation of three (3) PEG Channels, one each for public access channel (Channel 54), educational access channel (channel 54), and government access channel (channel 8).
- Option for high-definition channel 8 in the next 3-5 years.
- A PEG Fee paid to the City equal to 50¢ per customer. Comcast passes this charge to the customer.

Should this franchise be approved staff will advertise to residents the option of asking the franchise authority (the City) for help to address customer service issues if they have not been addressed by Comcast. Customers can call the phone number on their bill and ask City staff for help in getting the problem resolved. If the issue in question is one addressed by the Customer Service Standards, the City is able to help get it resolved.

Whether this franchise lasts 10 years or not may be dependent on factors outside of the City's control such as changes in technology and in law.

Should the City choose not approve the franchise it would trigger a formal procedure established by Federal law. There are multiple steps involved in that process. Legal Counsel can elaborate on those issues at the meeting if Council would like more details.

FISCAL IMPACT:
In 2014 franchise fees from Comcast were approximately $260,000. That money goes into the General Fund. That should stay consistent assuming Comcast's Louisville subscriber numbers do not change drastically.

2014 PEG fees totaled approximately $25,000. Those funds are dedicated to capital costs for Channel 8.

RECOMMENDATION:
Hold public hearing and approve Ordinance Nos. 1685 and 1686, Series 2015.

ATTACHMENT(S):
1. Ordinance No. 1685, Series 2015
2. Ordinance No. 1686, Series 2015 – Proposed Customer Service Standards
3. Letter of Agreement
4. Proposed Franchise Agreement
5. Link to Proposed Franchise Agreement Redlined from 2006 Version
6. Link to Proposed Customer Service Standards Redlined from 2006 Version
7. Chart of Cable Franchise provisions
8. Link to Frequently Asked Questions about Cable Franchising
9. Link to Survey Results & Public Comments
10. Presentation
11. Public Comments Received since 1st Reading

ORDINANCE NO. 1685
SERIES 2015

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE BY THE CITY OF LOUISVILLE TO COMCAST OF COLORADO I, LLC AND ITS LAWFUL SUCCESSORS, TRANSFEREES AND ASSIGNS, FOR THE RIGHT TO MAKE REASONABLE AND LAWFUL USE OF RIGHTS-OF-WAY WITHIN THE CITY TO CONSTRUCT, OPERATE, MAINTAIN, RECONSTRUCT, REPAIR AND UPGRADE A CABLE SYSTEM FOR THE PURPOSE OF PROVIDING CABLE SERVICES TO CITIZENS WITHIN THE CITY

WHEREAS, Comcast of Colorado I, LLC ("Comcast"), currently holds a cable television franchise with the City of Louisville ("City"), granted by Ordinance No. 1488, Series 2006; and

WHEREAS, by Ordinance No. 1626, Series 2013 and Ordinance No. 1659, Series 2014, the term of such cable television franchise was extended from its original expiration date of April 11, 2013 until October 11, 2014; and

WHEREAS, the City and Comcast have been operating under the existing franchise pursuant to a month-to-month agreement since October 11, 2014; and

WHEREAS, Comcast and the City have been involved in negotiations related to the granting of a new cable franchise agreement to Comcast; and

WHEREAS, these negotiations have resulted in a proposed Franchise Agreement that is being presented to City Council for its consideration and approval (the "Franchise Agreement"), a copy of which Franchise Agreement accompanies this ordinance and is on file with the City Clerk; and

WHEREAS, the Franchise Agreement includes the following major terms and conditions: (1) a term of ten years (2) a requirement that Comcast pay to the City a franchise fee of five percent (5%) of the gross revenues that Comcast or an affiliated entity derives, directly or indirectly, from the operation of the cable system used to provide cable services within the City; (3) provision of and funding for public, educational and governmental access channels; and (4) a requirement that Comcast comply with customer service standards that are adopted and may be modified by the City consistent with applicable law; and

WHEREAS, Section 14-1 of the City Charter provides that the granting, renewal or amendment of any franchise shall be by ordinance of the City Council; and

WHEREAS, the City Council finds that the City's grant of a cable franchise to Comcast in accordance with the terms and conditions of the Franchise Agreement is in the best interests of the City and its citizens, and will meet the future cable related needs of the community.

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

Section 1. The City Council hereby approves the proposed Franchise Agreement by and between Comcast of Colorado I, LLC and the City of Louisville, Colorado in the form of such Franchise Agreement accompanying this ordinance, and hereby authorizes the grant of franchise therein contained subject to and upon the terms and conditions of said Franchise Agreement.

Section 2. The Mayor is authorized to execute the Franchise Agreement on behalf of the City, such execution to be on or after the effective date of this ordinance and subject to the requirement that Comcast shall have first executed the same.

Section 3. The term of the current franchise between Comcast and the City, as granted by Ordinance No. 1488, Series 2006; and further extended from its original expiration date of April 11, 2013 until October 11, 2014 is hereby further extended to the effective date of the Franchise Agreement, or until such date that the current franchise is otherwise terminated, but in no event shall the extension set forth herein extend past November 30, 2015.

Section 4. If any portion of this ordinance is held to be invalid for any reason, such decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part be declared invalid.

Section 5. The repeal or modification of any provision of any ordinance or of the Municipal Code of the City of Louisville by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Section 6. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

INTRODUCED, READ, PASSED ON FIRST READING, AND ORDERED PUBLISHED this 7th day of April, 2015.

_____
Robert P. Muckle, Mayor

ATTEST:

_____
Nancy Varra, City Clerk

APPROVED AS TO FORM:

_____
Light Kelly, P.C.
City Attorney

PASSED AND ADOPTED ON SECOND AND FINAL READING, this 5th day of May, 2015.

_____
Robert P. Muckle, Mayor

ATTEST:

_____
Nancy Varra, City Clerk

ORDINANCE NO. 1686
SERIES 2015

AN ORDINANCE ESTABLISHING CITY OF LOUISVILLE CABLE TELEVISION CUSTOMER SERVICE STANDARDS

WHEREAS, the City has recently completed negotiations for granting a franchise to a cable television operator and has adopted Ordinance No. 1685, Series 2015, approving a new cable franchise agreement; and

WHEREAS, in order to ensure the provision of quality customer service under such franchise agreement, as well as under other potential franchises, the City desires to adopt cable television customer service standards, as permitted by law; and

WHEREAS, the City Council continues to see the need for a comprehensive set of customer service standards to address such matters as the period of time within which cable service must be installed, the handling of customer complaints, the availability of customer service representatives, customer privacy, and other matters; and

WHEREAS, the customer service standards adopted herein are based upon existing standards which have been in use by the City since original adoption in 2006; and

WHEREAS, the City Council finds and determines that establishment of cable television customer service standards will aid in the handling of citizen complaints regarding the provision of cable television services in the City and desires to amend the Louisville Municipal Code to adopt the updated set of customer service standards set forth herein.

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

Section 1. Chapter 5.22 of the Louisville Municipal Code is hereby repealed and reenacted to read as follows:

Chapter 5.22

CABLE TELEVISION CUSTOMER SERVICE STANDARDS

Sec. 5.22.010 Short title.
Sec. 5.22.020 Purpose.
Sec. 5.22.030 Policy for customer service standards.
Sec. 5.22.040 Definitions.
Sec. 5.22.050 Customer service.
Sec. 5.22.060 Complaint procedure.
Sec. 5.22.070 Miscellaneous.

Sec. 5.22.010. Short title.

The ordinance codified in this chapter shall be known as the Louisville cable television customer service standards ordinance.

Sec. 5.22.020 Purpose.

A. The purpose of the customer service standards (the "Standards") set forth in this chapter is to establish uniform requirements for the quality of service cable operators are expected to offer their customers in the metropolitan area. The Standards are subject to change from time to time.

B. The Franchising Authority encourages the Cable Operator to exceed these Standards in their day-to-day operations and as such, understands that the Cable Operator may modify their operations in exceeding these Standards.

C. The Standards incorporate the Customer Service Obligations published by the Federal Communications Commission (Section 76.309), April, 1993 and customer service standards of cable television service providers operating in the metro area.

D. The Standards require the cable operator to post a security fund or letter of credit ensuring Customer Service. The security fund is to be used when the cable company fails to respond to a citizen complaint that the franchising authority determines is valid, and to provide a mechanism by which to impose remedies for noncompliance. It is the sincere hope and intention of the Franchising Authority that the security fund will never need to be drawn upon; however, the Franchising Authority believes that some enforcement measures are necessary.

Sec. 5.22.030. Policy for customer service standards.

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

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

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

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

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

Sec. 5.22.040. Definitions.

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

"Adoption" shall mean the process necessary to formally enact the Standards within the Franchising Authority's jurisdiction under applicable ordinances and laws.

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

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

"Cable Operator" shall mean any person or group of persons (A) who provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System. Source: 47 U.S.C. § 522(5).

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

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

"City" shall mean the City of Louisville, Colorado.

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

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

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

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

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

"Franchising Authority" shall mean the City.

"Necessary" shall mean required or indispensable.

"Non-cable-related purpose" shall mean any purpose that is not necessary to render or conduct a legitimate business activity related to a Cable Service or Other Service provided by a Cable Operator to a Customer. Market research, telemarketing, and other marketing of services or products that are not related to a Cable Service or Other Service provided by a Cable Operator to a Customer shall be considered Non-cable-related purposes.

“Normal business hours” shall mean those hours during which most similar businesses in the community are open to serve customers. In all cases, “normal business hours” must include at least some evening hours one night per week, and include some weekend hours. Source: 47 C.F.R. § 76.309.

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

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

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

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

"Service outage" or "outage" shall mean a loss or substantial impairment in reception on all channels.

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

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

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

Sec. 5.22.050. Customer Service.

A. Courtesy

Cable Operator employees, contractors and subcontractors shall be courteous, knowledgeable and helpful and shall provide effective and satisfactory service in all contacts with customers.

B. Accessibility

1. A Cable Operator shall provide customer service centers/business offices ("Service Centers") which are conveniently located, and which are open during Normal Business Hours. Service Centers shall be fully staffed with Customer Service Representatives offering the following services to Customers who come to the Service Center: bill payment, equipment exchange, processing of change of service requests, and response to Customer inquiries and request. During Normal Business Hours, a Cable Operator shall retain sufficient customer service representatives at the Service Center to ensure that customers' inquiries are answered by a customer service representative within a reasonable amount of time from the time a customer arrives at the Service Center.

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

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

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

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

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

5. Under normal operating conditions, a customer shall not receive a busy signal more than three percent (3%) of the time. This standard shall be met ninety (90) percent or more of the time, measured quarterly.

C. Responsiveness

1. <u>Guaranteed Seven-Day Residential Installation</u>

a. A Cable Operator shall complete all standard residential installations or modifications to service requested by customers within seven (7) business days after the order is placed, unless a later date for installation is requested. "Standard" residential installations are those located up

to one hundred twenty five (125) feet from the existing distribution system. If the customer requests a nonstandard residential installation, or the Cable Operator determines that a nonstandard residential installation is required, the Cable Operator shall provide the customer in advance with a total installation cost estimate and an estimated date of completion.

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

2. Residential Installation and Service Appointments

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

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

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

d. A Cable Operator shall be deemed to have responded to a request for service under the provisions of this section when a technician arrives within the agreed upon time, and, if the customer is absent when the technician arrives, the technician leaves written notification of arrival and return time, and a copy of that notification is kept by the Cable Operator. In such circumstances, the Cable Operator shall contact the customer within forty-eight (48) hours.

e. If a Cable Operator did not respond to a request for service in accordance with this provision, then the Cable Operator shall provide, upon verification of the missed service appointment, a refund, credit (for example, as of the date of approval of these Standards, Comcast provides a $20 credit or a free premium channel for three (3) months for missed or out-of-time service responses) or rebate (the "Remedy") for the customer. The Cable Operator shall notify customers of the offered Remedy, in clear, concise written form provided to the customer either in a customer billing statement, in introductory materials, or in a separate mail, and shall

provide the information on Cable Operator's website in an easily accessible place. Customers shall be notified of any changes to the Remedy within 30 days of such change in the same manner. This provision does not limit any other remedy the City or a customer may have with regard to a Cable Operator's failure to respond to a request for service under this provision.

3. Residential Service Interruptions

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

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

c. Records of Service Interruptions and Outages. A Cable Operator shall maintain records of all outages and reported service interruptions. Such records shall indicate the type of cable service interrupted, including the reasons for the interruptions. A log of all service interruptions shall be maintained and provided to the Franchising Authority quarterly, upon written request, within fifteen (15) days after the end of each quarter. Such records shall be submitted to the Franchising Authority with the records identified in subsection 5.22.050.C.4.b if so requested in writing, and shall be retained by the Cable Operator for a period of three (3) years.

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

4. Records of Complaints.

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

b. The Cable Operator shall provide the Franchising Authority an executive summary quarterly, which shall include information concerning customer complaints referred by the Franchising Authority to the Grantee and any other requirements of a Franchise Agreement but no personally identifiable information. These summaries shall be provided within fifteen (15) days after the end of each quarter. Once a request is made, it need not be repeated and quarterly executive summaries shall be provided by the Cable Operator until notified in writing by the Franchising Authority that such summaries are no longer required.

c. A summary of service requests, identifying the number and nature of the requests and their disposition, shall also be completed by the Cable Operator for each quarter and submitted to the Franchising Authority by the fifteenth (15th) day of the month after each

calendar quarter. Complaints shall be broken out by the nature of the complaint and the type of Cable service subject to the complaint.

5. TV Reception

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

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

i. Assess the problem within one (1) day of notification;

ii. Communicate with the customer regarding the nature of the problem and the expected time for repair;

iii. Complete the repair within two (2) days of assessing the problem unless circumstances exist that reasonably require additional time.

c. If an appointment is necessary to address any video or audio reception problem, the customer may choose a block of time described in subsection 5.22.050. At the customer's request, the Cable Operator shall repair the problem at a later time convenient to the customer, during Normal Business Hours or at such other time as may be agreed to by the customer and Cable Operator. A Cable Operator shall maintain periodic communications with a customer during the time period in which problem ascertainment and repair are ongoing, so that the customer is advised of the status of the Cable Operator’s efforts to address the problem.

6. Problem Resolution

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

7. Billing, Credits, and Refunds

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

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

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

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

e. Bills shall be clear, concise and understandable.

8. Treatment of Property

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

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

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

c. Except in the case of an emergency involving public safety or service interruption to a large number of customers, a Cable Operator shall give reasonable notice to property owners or

legal tenants prior to entering upon private premises, and the notice shall specify the work to be performed; provided that in the case of construction operations such notice shall be delivered or provided at least twenty-four (24) hours prior to entry, unless such notice is waived by the customer. For purposes of this subsection, “reasonable notice” shall be considered:

i. For pedestal installation or similar major construction, seven (7) days.

ii. For routine maintenance, such as adding or dropping service, tree trimming and the like, reasonable notice given the circumstances. Unless a Franchise Agreement has a different requirement, reasonable notice shall require, at a minimum, prior notice to a property owner or tenant, before entry is made onto that person’s property.

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

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

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

D. Services for Customers with Disabilities

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

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

3. A Cable Operator shall provide free use of a remote control unit to mobility-impaired (if disabled, in accordance with subsection 5.22.050.D.4) customers.

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

E. Cable Services Information

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

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

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

c. The Cable Operator's billing, collection and disconnection policies;

d. Privacy rights of customers;

e. All applicable complaint procedures, including complaint forms and the telephone numbers and mailing addresses of the Cable Operator, and the FCC;

f. Use and availability of parental control/lock out device;

g. Special services for customers with disabilities;

h. Days, times of operation, and locations of the service centers;

2. At a Customer's request, a Cable Operator shall make available either a complete copy of these Standards and any other applicable customer service standards, or a summary of these Standards, in a format to be approved by CCUA and the Franchising Authority, which shall include at a minimum, the URL address of a website containing these Standards in their entirety; provided however, that if the CCUA or Franchising Authority does not maintain a website with a complete copy of these Standards, a Cable Operator shall be under no obligation to do so;

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

3. Upon written request, a Cable Operator shall meet annually with the Franchising Authority to review the format of the Cable Operator's bills to customers. Whenever the Cable Operator makes substantial changes to its billing format, it will contact the Franchising Authority at least thirty (30) days prior to the time such changes are to be effective, in order to inform the Franchising Authority of such changes.

4. Copies of notices provided to the customer in accordance with subsection 5.22.050.E.5 shall be filed (by fax or email acceptable) concurrently with the Franchising Authority and the CCUA.

5. A Cable Operator shall provide customers with written notification of any change in rates for nondiscretionary cable services, and for service tier changes that result in a deletion of

programming from a customer's service tier, at least thirty (30) days before the effective date of change. For purposes of this section, "nondiscretionary" means the subscribed tier and any other Cable Services that a customer has subscribed to, at the time the change in rates are announced by the Cable Operator.

6. All officers, agents, and employees of the Cable Operator or its contractors or subcontractors who are in personal contact with customers and/or when working on public property, shall wear on their outer clothing identification cards bearing their name and photograph and identifying them as representatives of the Cable Operator. The Cable Operator shall account for all identification cards at all times. Every vehicle of the Cable Operator shall be clearly visually identified to the public as working for the Cable Operator. Whenever a Cable Operator work crew is in personal contact with customers or public employees, a supervisor must be able to communicate clearly with the customer or public employee. Every vehicle of a subcontractor or contractor shall be labeled with the name of the contractor and further identified as contracting or subcontracting for the Cable Operator.

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

F. Customer Privacy

1. Cable Customer Privacy. In addition to complying with the requirements in this subsection, a Cable Operator shall fully comply with all obligations under 47 U.S.C. Section 551.

2. Collection and Use of Personally Identifiable Information.

a. A Cable Operator shall not use the Cable System to collect, monitor or observe Personally Identifiable Information without the prior affirmative written or electronic consent of the Customer unless, and only to the extent that such information is: (i) used to detect unauthorized reception of cable communications, or (ii) necessary to render a Cable Service or Other Service provided by the Cable Operator to the Customer and as otherwise authorized by applicable law.

b. A Cable Operator shall take such actions as are necessary using then-current industry standard practices to prevent any Affiliate from using the facilities of the Cable Operator in any manner, including, but not limited to, sending data or other signals through such facilities, to the extent such use will permit an Affiliate unauthorized access to Personally Identifiable Information on equipment of a Customer (regardless of whether such equipment is owned or leased by the Customer or provided by a Cable Operator) or on any of the facilities of the Cable Operator that are used in the provision of Cable Service. This subsection 5.22.050.F.2 shall not be interpreted to prohibit an Affiliate from obtaining access to Personally Identifiable Information to the extent otherwise permitted by this subsection.

c. A Cable Operator shall take such actions as are necessary using then-current industry standard practices to prevent a person or entity (other than an Affiliate) from using the facilities of the Cable Operator in any manner, including, but not limited to, sending data or other signals through such facilities, to the extent such use will permit such person or entity unauthorized access to Personally Identifiable Information on equipment of a Customer (regardless of whether such equipment is owned or leased by the Customer or provided by a Cable Operator) or on any of the facilities of the Cable Operator that are used in the provision of Cable Service.

3. Disclosure of Personally Identifiable Information. A Cable Operator shall not disclose Personally Identifiable Information without the prior affirmative written or electronic consent of the Customer, unless otherwise authorized by applicable law.

a. A minimum of thirty (30) days prior to making any disclosure of Personally Identifiable Information of any Customer for any Non-Cable related purpose as provided in this subsection 5.22.050.F.3.a, where such Customer has not previously been provided the notice and choice provided for in subsection 5.22.050.F.9, the Cable Operator shall notify each Customer (that the Cable Operator intends to disclose information about) of the Customer's right to prohibit the disclosure of such information for Non-cable related purposes. The notice to Customers may reference the Customer to his or her options to state a preference for disclosure or non-disclosure of certain information, as provided in subsection 5.22.050.F.9.

b. A Cable Operator may disclose Personally Identifiable Information only to the extent that it is necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other Service provided by the Cable Operator to the Customer.

c. To the extent authorized by applicable law, a Cable Operator may disclose Personally Identifiable Information pursuant to a subpoena, court order, warrant or other valid legal process authorizing such disclosure.

4. Access to Information. Any Personally Identifiable Information collected and maintained by a Cable Operator shall be made available for Customer examination within thirty (30) days of receiving a request by a Customer to examine such information about himself or herself at the local offices of the Cable Operator or other convenient place within the City designated by the Cable Operator, or electronically, such as over a website. Upon a reasonable showing by the Customer that such Personally Identifiable Information is inaccurate, a Cable Operator shall correct such information.

5. Privacy Notice to Customers

a. A Cable Operator shall annually mail or provide a separate, written or electronic copy of the privacy statement to Customers consistent with 47 U.S.C. Section 551(a)(1), and shall provide a Customer a copy of such statement at the time the Cable Operator enters into an agreement with the Customer to provide Cable Service. The written notice shall be in a clear and conspicuous format, which at a minimum, shall be in a comparable font size to other general

information provided to Customers about their account as it appears on either paper or electronic Customer communications.

b. In or accompanying the statement required by subsection 5.22.050.F.5.a, a Cable Operator shall state substantially the following message regarding the disclosure of Customer information: "Unless a Customer affirmatively consents electronically or in writing to the disclosure of personally identifiable information, any disclosure of personally identifiable information for purposes other than to the extent necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other Service, is limited to:

i. Disclosure pursuant to valid legal process authorized by applicable law.

ii. Disclosure of the name and address of a Customer subscribing to any general programming tiers of service and other categories of Cable Services provided by the Cable Operator that do not directly or indirectly disclose: (A) A Customer's extent of viewing of a Cable Service or Other Service provided by the Cable Operator; (B) The extent of any other use by a Customer of a Cable Service; (C) The nature of any transactions made by a Customer over the Cable System; or (D) The nature of programming or websites that a Customer subscribes to or views (i.e., a Cable Operator may only disclose the fact that a person subscribes to a general tier of service, or a package of channels with the same type of programming), provided that with respect to the nature of websites subscribed to or viewed, these are limited to websites accessed by a Customer in connection with programming available from their account for Cable Services."

The notice shall also inform the Customers of their right to prohibit the disclosure of their names and addresses in accordance with subsection 5.22.050.F.3.a. If a Customer exercises his or her right to prohibit the disclosure of name and address as provided in subsection 5.22.050.F.3.a or this subsection, such prohibition against disclosure shall remain in effect, unless and until the Customer subsequently changes their disclosure preferences as described in subsection 5.22.050.F.9.

6. Privacy Reporting Requirements. The Cable Operator shall include in its regular periodic reports to the Franchising Authority required by its Franchise Agreement information summarizing:

a. The type of Personally Identifiable Information that was actually collected or disclosed by Cable Operator during the reporting period;

b. For each type of Personally Identifiable Information collected or disclosed, a statement from an authorized representative of the Cable Operator certifying that the Personally Identifiable Information collected or disclosed was: (A) collected or disclosed to the extent Necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other Service provided by the Cable Operator; (B) used to the extent Necessary to detect unauthorized reception of cable communications: (C) disclosed pursuant to valid legal process authorized by applicable law; or (D) a disclosure of Personally Identifiable Information of particular

subscribers, but only to the extent affirmatively consented to by such subscribers in writing or electronically, or as otherwise authorized by applicable law.

c. The standard industrial classification (SIC) codes or comparable identifiers pertaining to any entities to whom such Personally Identifiable Information was disclosed, except that a Cable Operator need not provide the name of any court or governmental entity to which such disclosure was made pursuant to valid legal process authorized by applicable law;

d. The general measures that have been taken to prevent the unauthorized access to Personally Identifiable Information by a person other than the Customer or the Cable Operator. A Cable Operator shall meet with Franchising Authority if requested to discuss technology used to prohibit unauthorized access to Personally Identifiable Information by any means.

7. Nothing in this subsection 5.22.050..F shall be construed to prevent the Franchising Authority from obtaining Personally Identifiable Information to the extent not prohibited by Section 631 of the Communications Act, 47 U.S.C. Section 551 and applicable laws.

8. Destruction of Personally Identifiable Information. A Cable Operator shall destroy any Personally Identifiable Information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsection 5.22.050.F.4 of this chpater, pursuant to a court order or other valid legal process, or pursuant to applicable law.

9. Notice and Choice for Customers. The Cable Operator shall at all times make available to Customers one or more methods for Customers to use to prohibit or limit disclosures, or permit or release disclosures, as provided for in this subsection 5.22.050.F. These methods may include, for example, online website "preference center" features, automated toll-free telephone systems, live toll-free telephone interactions with customer service agents, in-person interactions with customer service personnel, regular mail methods such as a postage paid, self-addressed post card, an insert included with the Customer's monthly bill for Cable Service, the privacy notice specified in subsection 5.22.050.F.5, or such other comparable methods as may be provided by the Cable Operator. Website "preference center" features shall be easily identifiable and navigable by Customers, and shall be in a comparable size font as other billing information provided to Customers on a Cable Operator's website. A Customer who provides the Cable Operator with permission to disclose Personally Identifiable Information through any of the methods offered by a Cable Operator shall be provided follow-up notice, no less than annually, of the Customer's right to prohibit these disclosures and the options for the Customer to express his or her preference regarding disclosures. Such notice shall, at a minimum, be provided by an insert in the Cable Operator's bill (or other direct mail piece) to the Customer or a notice or message printed on the Cable Operator's bill to the Customer, and on the Cable Operator's website when a Customer logs in to view his or her Cable Service account options. The form of such notice shall also be provided on an annual basis to the Franchising Authority. These methods of notification to Customers may also include other comparable methods as submitted by the Cable Operator and approved by the Franchising Authority in its reasonable discretion.

G. Safety

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

H. Cancellation of New Services

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

Sec. 5.22.060. Complaint Procedure.

A. Complaints to a Cable Operator

1. A Cable Operator shall establish written procedures for receiving, acting upon, and resolving customer complaints, and crediting customer accounts and shall have such procedures printed and disseminated at the Cable Operator's sole expense, consistent with subsection 5.22.050.E.1.e of these Standards.

2. Said written procedures shall prescribe a simple manner in which any customer may submit a complaint by telephone, in writing, or online, to a Cable Operator that it has violated any provision of these Customer Service Standards, any terms or conditions of the customer's contract with the Cable Operator, or reasonable business practices. If a representative of the Franchising Authority notifies the Cable Operator of a customer complaint that has not previously been made by the customer to the Cable Operator, the complaint shall be deemed to have been made by the customer as of the date of the Franchising Authority's notice to the Cable Operator.

3. At the conclusion of the Cable Operator's investigation of a customer complaint, but in no more than ten (10) calendar days after receiving the complaint, the Cable Operator shall notify the customer of the results of its investigation and its proposed action or credit.

4. A Cable Operator shall also notify the customer of the customer's right to file a complaint with the Franchising Authority in the event the customer is dissatisfied with the Cable Operator's decision, and shall thoroughly explain the necessary procedures for filing such complaint with the Franchising Authority.

5. A Cable Operator shall immediately report all customer Escalated complaints that it does not find valid to the Franchising Authority.

6. A Cable Operator's complaint procedures shall be filed with the Franchising Authority prior to implementation.

B. Complaints to the Franchising Authority

1. Any customer who is dissatisfied with any proposed decision of the Cable Operator or who has not received a decision within the time period set forth below shall be entitled to have the complaint reviewed by the Franchising Authority.

2. The customer may initiate the review either by calling the Franchising Authority or by filing a written complaint together with the Cable Operator's written decision, if any, with the Franchising Authority.

3. The customer shall make such filing and notification within twenty (20) days of receipt of the Cable Operator's decision or, if no decision has been provided, within thirty (30) days after filing the original complaint with the Cable Operator.

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

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

6. The Franchising Authority shall issue a determination within fifteen (15) days of receiving the customer complaint, or after examining the materials submitted, setting forth its basis for the determination.

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

C. Security Fund or Letter of Credit

A Cable operator shall comply with any Franchise Agreement regarding Letters of Credit. If a Franchise Agreement is silent on Letter of Credit the following shall apply:

1. Within thirty (30) days of the written notification to a Cable Operator by the Franchising Authority that an alleged Franchise violation exists, a Cable Operator shall deposit with an escrow agent approved by the Franchising Authority fifty thousand dollars ($50,000) or, in the sole discretion of the Franchising Authority, such lesser amount as the Franchising Authority deems reasonable to protect subscribers within its jurisdiction. Alternatively, at the Cable Operator's discretion, it may provide to the Franchising Authority an irrevocable letter of credit in the same amount.

The escrowed funds or letter of credit shall constitute the "Security Fund" for ensuring compliance with these Standards for the benefit of the Franchising Authority. The escrowed funds or letter of credit shall be maintained by a Cable Operator at the amount initially required, even if amounts are withdrawn pursuant to any provision of these Standards, until any claims related to the alleged Franchise violation(s) are paid in full.

2. The Franchising Authority may require the Cable Operator to increase the amount of the Security Fund, if it finds that new risk factors exist which necessitate such an increase.

3. The Security Fund shall serve as security for the payment of any penalties, fees, charges or credits as provided for herein and for the performance by a Cable Operator of all its obligations under these Customer Service Standards.

4. The rights reserved to the Franchising Authority with respect to the Security Fund are in addition to all other rights of the Franchising Authority, whether reserved by any applicable franchise agreement or authorized by law, and no action, proceeding or exercise of a right with respect to same shall in any way affect, or diminish, any other right the Franchising Authority may otherwise have.

D. Verification of Compliance

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

E. Procedure for Remedying Violations

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

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

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

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

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

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

e. Except for in emergency situations, withhold licenses and permits for work by the Cable Operator or its subcontractors in accordance with applicable law.

Sec. 5.22.070 Miscellaneous.

A. Severability

Should any section, subsection, paragraph, term, or provision of these Standards be determined to be illegal, invalid, or unconstitutional by any court or agency of competent jurisdiction with regard thereto, such determination shall have no effect on the validity of any other section, subsection, paragraph, term, or provision of these Standards, each of the latter of which shall remain in full force and effect.

B. Non-Waiver

Failure to enforce any provision of these Standards shall not operate as a waiver of the obligations or responsibilities of a Cable Operator under said provision, or any other provision of these Standards.

Section 2. If any portion of this ordinance is held to be invalid for any reason, such decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part be declared invalid.

Section 3. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

INTRODUCED, READ, PASSED ON FIRST READING, AND ORDERED PUBLISHED this 7th day of April, 2015.

_____
Robert P. Muckle, Mayor

ATTEST:

_____
Nancy Varra, City Clerk

APPROVED AS TO FORM:

_____
Light Kelly, P.C.
City Attorney

PASSED AND ADOPTED ON SECOND AND FINAL READING, this 5th day of May, 2015.

_____
Robert P. Muckle, Mayor

ATTEST:

_____
Nancy Varra, City Clerk

1899 Wynkoop St.
Suite 550
Denver, CO 80202

Robert Muckle, Mayor
City of Louisville
749 Main Street
Louisville, CO 80027

Dear Mayor Muckle:

The purpose of this letter agreement is to set forth certain commitments between Comcast of Colorado I, LLC (hereinafter, "Comcast") and the City of Louisville, Colorado (hereinafter, "the City") that are in addition to the Franchise Agreement to be adopted by Ordinance (hereinafter, "the Franchise"). These items have been negotiated in good faith and agreed to as part of the informal franchise renewal process pursuant to 47 U.S.C. § 546(h), and specifically relate to the unique community needs that exist in the City.

A. **Service to 739 S. 104th Street:** Per the City's request, Comcast agrees to extend its network to reach the new City Service Facility at 739 S. 104th St, with no charge to the City for the construction costs necessary to reach the facility.

B. **Service Appointment "Window":** As provided for in Section 5.22.050.C.2.a of the City's "Cable Television Customer Service Standards," the "appointment window" for specific installations, service calls and/or other installation activities will be either at a specific time, or at a maximum, a four (4) hour time block. Comcast, as a general and voluntary business practice, currently offers in the City and surrounding jurisdictions a two (2) hour appointment window time block. For the convenience of its customers in the City, Comcast will continue offering the same two (2) hour or similar appointment window in the City, and will offer to its customers in the City any more convenient appointment window that it makes generally available in other jurisdictions in the Denver Metro area in the future for so long that appointment window remains commercially practicable, taking into account changes in technology, the competitive environment, and other factors.

C. **Billing Clarity.** Section 5.22.050.C.7.e of the City's Cable Television Customer Service Standards requires Comcast's bills to be "clear, concise, and understandable." The City emphasized in the negotiation of the Customer Service Standards that this is a priority issue for the City. Comcast is committed to enhancing and improving its customers' experience, and providing clear, understandable billing information is part of that effort.

Comcast currently provides a variety of tools to help its customers understand their billing statements and to make account transactions even more convenient. For example, Comcast

offers a billing video tutorial (also known as a "video bill") available online and on its video on-demand system. The video walks customers through a Comcast bill line-by-line and explains each charge. Comcast has recently started rolling out customized billing videos for new customers, and it is in the process of making a customized video available to current customers when they make significant changes to their services to explain how such changes will impact the format and content of their bill. Comcast also provides tools that offer convenient access to billing information like its "My Account" app, which enables customers to access and pay their bill from their smartphones.

The City acknowledges Comcast's bills are standardized across the region and country, that the format of the billing is not managed at the local level, and Comcast is unable to generate subscriber bills that are specifically tailored to local community requirements. Comcast appreciates the City's input and opinions in regard to further enhancements that could be made to its customers' billing format. As Comcast continues to enhance its customer service and experience, it will share any information with the City staff regarding any changes that are made to billing clarity and/or format. It is the mutual understanding of both parties that, as of the effective date of this letter, the City has not initiated and has not stated an intent to initiate a complaint or violation proceeding under the new "clear, concise and understandable" standard.

The terms and conditions of this letter agreement are binding upon the City and Comcast and their successors and assigns. It is understood that fulfillment of these obligations is necessary and part of the consideration to secure the renewed Franchise.

Sincerely,
Comcast of Colorado I, LLC

By:_____
Its:_____
Date:_____

Acknowledged and agreed to this ___ day of _____, 2015.

City of Louisville, Colorado

By:_____
Mayor Robert P. Muckle

Date:_____

COMCAST OF COLORADO I, LLC AND
THE CITY OF LOUISVILLE, COLORADO

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COMCAST OF COLORADO I, LLC AND
CITY OF LOUISVILLE, COLORADO

CABLE FRANCHISE AGREEMENT

SECTION 1. DEFINITIONS AND EXHIBITS

(A) DEFINITIONS

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

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

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

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

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

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

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

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

1.5 "Applicable Law" means any statute, ordinance, judicial decision, executive order or

regulation having the force and effect of law, that determines the legal standing of a case or issue.

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

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

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

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

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

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

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

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

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

1.15 "City" is the City of Louisville, Colorado, a body politic and corporate under the laws of the State of Colorado.

1.16 "City Council" means the Louisville City Council, or its successor, the governing body of the City of Louisville, Colorado.

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

1.18 "Commercial Subscribers" means any Subscribers other than Residential Subscribers.

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

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

1.21 "Downstream" means carrying a transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.

1.22 "Dwelling Unit" means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy. Buildings with more than one set of facilities for cooking shall be considered Multiple Dwelling Units unless the additional facilities are clearly accessory.

1.23 "FCC" means the Federal Communications Commission.

1.24 "Fiber Optic" means a transmission medium of optical fiber cable, along with all associated electronics and equipment, capable of carrying Cable Service by means of electric lightwave impulses.

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

1.26 "Franchise Area" means the area within the jurisdictional boundaries of the City,

including any areas annexed by the City during the term of this Franchise.

1.27 "Franchise Fee" means that fee payable to the City described in subsection 3.1 (A).

1.28 "Grantee" means Comcast of Colorado I, LLC or its lawful successor, transferee or assignee.

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

- monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event and video-on-demand Cable Services);

- installation, reconnection, downgrade, upgrade or similar charges associated with changes in subscriber Cable Service levels;

- fees paid to Grantee for channels designated for commercial/leased access use and shall be allocated on a pro rata basis using total Cable Service subscribers within the City;

- converter, remote control, and other Cable Service equipment rentals, leases, or sales;

- Advertising Revenues as defined herein;

- late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the City;

- revenues from program guides;

- Franchise Fees;

- FCC Regulatory Fees; and,

- commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service subscribers within the City.

(A) "Advertising Revenues" shall mean revenues derived from sales of advertising that are made available to Grantee's Cable System subscribers within the City and shall be allocated on a pro rata basis using total Cable Service subscribers reached by the advertising. Additionally, Grantee agrees that Gross Revenues subject to franchise fees shall include all

commissions, rep fees, Affiliated Entity fees, or rebates paid to National Cable Communications ("NCC") and Comcast Spotlight ("Spotlight") or their successors associated with sales of advertising on the Cable System within the City allocated according to this paragraph using total Cable Service subscribers reached by the advertising.

(B) "Gross Revenues" shall not include:

- actual bad debt write-offs, except any portion which is subsequently collected which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total subscriber revenues within the City;

- any taxes and/or fees on services furnished by Grantee imposed by any municipality, state or other governmental unit, provided that Franchise Fees and the FCC regulatory fee shall not be regarded as such a tax or fee;

- fees imposed by any municipality, state or other governmental unit on Grantee including but not limited to Public, Educational and Governmental (PEG) Fees;

- launch fees and marketing co-op fees; and,

- unaffiliated third party advertising sales agency fees which are reflected as a deduction from revenues.

(C) To the extent revenues are received by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a *pro rata* basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the City. The City reserves its right to review and to challenge Grantee's calculations.

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

(E) Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles ("GAAP") as promulgated

and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Notwithstanding the forgoing, the City reserves its right to challenge Grantee's calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

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

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

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

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

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

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

1.36 "Right-of-Way" means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the City: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements, rights-of-way and similar public property and areas.

1.37 "State" means the State of Colorado.

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

1.39 "Subscriber Network" means that portion of the Cable System used primarily by Grantee in the transmission of Cable Services to Residential Subscribers.

1.40 "Telecommunications" means the transmission, between or among points specified by

the user, of information of the user's choosing, without change in the form or content of the information as sent and received (as provided in 47 U.S.C. Section 153(43)).

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

1.42 "Tier" means a group of Channels for which a single periodic subscription fee is charged.

1.43 "Two-Way" means that the Cable System is capable of providing both Upstream and Downstream transmissions.

1.44 "Upstream" means carrying a transmission to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

(B) EXHIBITS

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

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

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

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

(A) The City hereby grants to Grantee a nonexclusive authorization to make reasonable and lawful use of the Rights-of-Way within the City to construct, operate, maintain, reconstruct and rebuild a Cable System for the purpose of providing Cable Service subject to the terms and conditions set forth in this Franchise and in any prior utility or use agreements entered into by Grantee with regard to any individual property. This Franchise shall constitute both a right and an obligation to provide the Cable Services required by, and to fulfill the obligations set forth in, the provisions of this Franchise.

(B) Nothing in this Franchise shall be deemed to waive the lawful requirements of any generally applicable City ordinance existing as of the Effective Date, as defined in subsection 2.3.

(C) Each and every term, provision or condition herein is subject to the provisions of State law, federal law, the Charter of the City, and the ordinances and regulations enacted pursuant thereto. The Charter and Municipal Code of the City, as the same may be amended from time to time, are hereby expressly incorporated into this Franchise as if fully set out herein by this reference. Notwithstanding the foregoing, the City may not unilaterally alter the material

rights and obligations of Grantee under this Franchise.

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

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

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

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

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

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

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

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

2.2 Use of Rights-of-Way

(A) Subject to the City's supervision and control, Grantee may erect, install, construct,

repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Rights-of-Way within the City such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the City. Grantee, through this Franchise, is granted extensive and valuable rights to operate its Cable System for profit using the City's Rights-of-Way in compliance with all applicable City construction codes and procedures. As trustee for the public, the City is entitled to fair compensation as provided for in Section 3 of this Franchise to be paid for these valuable rights throughout the term of the Franchise.

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

2.3 Effective Date and Term of Franchise

This Franchise and the rights, privileges and authority granted hereunder shall take effect on June 5, 2015 (the "Effective Date"), and shall terminate on June 5, 2025 unless terminated sooner as hereinafter provided.

2.4 Franchise Nonexclusive

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements or licenses granted by the City to any Person to use any property, Right-of-Way, right, interest or license for any purpose whatsoever, including the right of the City to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. The City may at any time grant authorization to use the Rights-of-Way for any purpose not incompatible with Grantee's authority under this Franchise and for such additional franchises for Cable Systems as the City deems appropriate.

2.5 Police Powers

Grantee's rights hereunder are subject to the police powers of the City to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all laws and ordinances of general applicability enacted, or hereafter enacted, by the City or any other legally constituted governmental unit having lawful jurisdiction over the

subject matter hereof. The City shall have the right to adopt, from time to time, such ordinances as may be deemed necessary in the exercise of its police power; provided that such hereinafter enacted ordinances shall be reasonable and not materially modify the terms of this Franchise. Any conflict between the provisions of this Franchise and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

2.6 Competitive Equity

(A) The Grantee acknowledges and agrees that the City reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Cable Services within the City. If the City grants such an additional franchise or other similar lawful authorization containing material terms and conditions that differ from Grantee's material obligations under this Franchise, then the City agrees that the obligations in this Franchise will, pursuant to the process set forth in this Section, be amended to include any material terms or conditions that it imposes upon the new entrant, or provide relief from existing material terms or conditions, so as to insure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: Franchise Fees and Gross Revenues; insurance; System build-out requirements; security instruments; Public, Education and Government Access Channels and support; customer service standards; required reports and related record keeping; competitive equity (or its equivalent); audits; dispute resolution; remedies; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are materially equivalent. Video programming services (as defined in the Cable Act) delivered over wireless broadband networks are specifically exempted from the requirements of this Section.

(B) The modification process of this Franchise as provided for in Section 2.6 (A) shall only be initiated by written notice by the Grantee to the City regarding specified franchise obligations. Grantee's notice shall address the following: (1) identifying the specific terms or conditions in the competitive cable services franchise which are materially different from Grantee's obligations under this Franchise; (2) identifying the Franchise terms and conditions for which Grantee is seeking amendments; (3) providing text for any proposed Franchise amendments to the City, with a written explanation of why the proposed amendments are necessary and consistent.

(C) Upon receipt of Grantee's written notice as provided in Section 2.6 (B), the City and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed Franchise modifications, and that such negotiation will proceed and conclude within a ninety (90) day time period, unless that time period is reduced or extended by mutual agreement of the parties. If the City and Grantee reach agreement on the Franchise modifications pursuant to such negotiations, then the City shall amend this Franchise to include the modifications.

(D) In the alternative to Franchise modification negotiations as provided for in Section 2.6 (C), or if the City and Grantee fail to reach agreement in such negotiations, Grantee may, at its option, elect to replace this Franchise by opting into the franchise or other similar

lawful authorization that the City grants to another provider of Cable Services, so as to insure that the regulatory and financial burdens on each entity are equivalent. If Grantee so elects, the City shall immediately commence proceedings to replace this Franchise with the franchise issued to the other Cable Services provider.

(E) Notwithstanding anything contained in this Section 2.6(A) through (D) to the contrary, the City shall not be obligated to amend or replace this Franchise unless the new entrant makes Cable Services available for purchase by Subscribers or customers under its franchise agreement with the City.

(F) Notwithstanding any provision to the contrary, at any time that non-wireless facilities based entity, legally authorized by state or federal law, makes available for purchase by Subscribers or customers, Cable Services or multiple Channels of video programming within the Franchise Area without a franchise or other similar lawful authorization granted by the City, then:

(1) Grantee may negotiate with the City to seek Franchise modifications as per Section 2.6(C) above; or

(a) the term of Grantee's Franchise shall, upon ninety (90) days written notice from Grantee, be shortened so that the Franchise shall be deemed to expire on a date eighteen (18) months from the first day of the month following the date of Grantee's notice; or,

(b) Grantee may assert, at Grantee's option, that this Franchise is rendered "commercially impracticable," and invoke the modification procedures set forth in Section 625 of the Cable Act.

2.7 Familiarity with Franchise

The Grantee acknowledges and warrants by acceptance of the rights, privileges and agreements granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all lawful and reasonable risks of the meaning of the provisions, terms and conditions herein. The Grantee further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise, and finds that the same are commercially practicable at this time, and consistent with all local, State and federal laws and regulations currently in effect, including the Cable Act.

2.8 Effect of Acceptance

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the City's legal right to issue and enforce the Franchise; (2) accepts and agrees to comply with each and every provision of this Franchise subject to Applicable Law; and (3) agrees that the Franchise was granted pursuant to processes and procedures consistent with Applicable Law, and that it will not raise any claim to the contrary.

SECTION 3. FRANCHISE FEE PAYMENT AND FINANCIAL CONTROLS

3.1 Franchise Fee

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

3.2 Payments

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

3.3 Acceptance of Payment and Recomputation

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

3.4 Quarterly Franchise Fee Reports

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

3.5 Annual Franchise Fee Reports

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

3.6 Audits

On an annual basis, upon thirty (30) days prior written notice, the City, including the City’s Auditor or his/her authorized representative, shall have the right to conduct an independent audit/review of Grantee's records reasonably related to the administration or enforcement of this Franchise. Pursuant to subsection 1.29, as part of the Franchise Fee audit/review the City shall specifically have the right to review relevant data related to the allocation of revenue to Cable Services in the event Grantee offers Cable Services bundled with

non-Cable Services. For purposes of this section, "relevant data" shall include, at a minimum, Grantee's records, produced and maintained in the ordinary course of business, showing the subscriber counts per package and the revenue allocation per package for each package that was available for City subscribers during the audit period. To the extent that the City does not believe that the relevant data supplied is sufficient for the City to complete its audit/review, the City may require other relevant data. For purposes of this Section 3.6, the "other relevant data" shall generally mean all: (1) billing reports, (2) financial reports (such as General Ledgers) and (3) sample customer bills used by Grantee to determine Gross Revenues for the Franchise Area that would allow the City to recompute the Gross Revenue determination. If the audit/review shows that Franchise Fee payments have been underpaid by five percent (5%) or more (or such other contract underpayment threshold as set forth in a generally applicable and enforceable regulation or policy of the City related to audits), Grantee shall pay the total cost of the audit/review, such cost not to exceed five thousand dollars ($5,000.00) for each year of the audit period. The City's right to audit/review and the Grantee's obligation to retain records related to this subsection shall expire three (3) years after each Franchise Fee payment has been made to the City.

3.7 Late Payments

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

3.8 Underpayments

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

3.9 Alternative Compensation

In the event the obligation of Grantee to compensate the City through Franchise Fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall pay to the City compensation equivalent to the compensation paid to the City by other similarly situated users of the City's Rights-of-Way for Grantee's use of the City's Rights-of-Way, provided that in no event shall such payments exceed the equivalent of five percent (5%) of Grantee's Gross Revenues (subject to the other provisions contained in this Franchise), to the extent consistent with Applicable Law.

3.10 Maximum Legal Compensation

The parties acknowledge that, at present, applicable federal law limits the City to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In

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

3.11 Additional Commitments Not Franchise Fee Payments

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

3.12 Tax Liability

The Franchise Fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the City, the State or the United States including, without limitation, sales, use and other taxes, business license fees or other payments. Payment of the Franchise Fees under this Franchise shall not exempt Grantee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by the City. Any other license fees, taxes or charges shall be of general applicability in nature and shall not be levied against Grantee solely because of its status as a Cable Operator, or against Subscribers, solely because of their status as such.

3.13 Financial Records

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

3.14 Payment on Termination

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

SECTION 4. ADMINISTRATION AND REGULATION

4.1 Authority

(A) The City shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under Federal, State and local law, to any agent including, but not limited to, the CCUA, in its sole discretion.

(B) Nothing in this Franchise shall limit nor expand the City's right of eminent domain under State law.

4.2 Rates and Charges

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

4.3 Rate Discrimination

All of Grantee's rates and charges shall be published (in the form of a publicly-available rate card) and be non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with Applicable Law, with identical rates and charges for all Subscribers receiving identical Cable Services, without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability or geographic location within the City. Grantee shall offer the same Cable Services to all Residential Subscribers at identical rates to the extent required by Applicable Law and to Multiple Dwelling Unit Subscribers to the extent authorized by FCC rules or applicable Federal law. Grantee shall permit Subscribers to make any lawful in-residence connections the Subscriber chooses without additional charge nor penalizing the Subscriber therefor. However, if any in-home connection requires service from Grantee due to signal quality, signal leakage or other factors, caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the Subscriber may be charged reasonable service charges by Grantee. Nothing herein shall be construed to prohibit:

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

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

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

(D) The Grantee from establishing different and nondiscriminatory rates and charges

and classes of service for Commercial Subscribers, as allowable by federal law and regulations.

4.4 Filing of Rates and Charges

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

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

4.5 Cross Subsidization

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

4.6 Reserved Authority

Both Grantee and the City reserve all rights they may have under the Cable Act and any other relevant provisions of federal, State, or local law.

4.7 Time Limits Strictly Construed

Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a breach of this Franchise, and sufficient grounds for the City to invoke any relevant remedy in accordance with Section 13.1 of this Franchise.

4.8 Franchise Amendment Procedure

Either party may at any time seek an amendment of this Franchise by so notifying the other party in writing. Within thirty (30) days of receipt of notice, the City and Grantee shall meet to discuss the proposed amendment(s). If the parties reach a mutual agreement upon the suggested amendment(s), such amendment(s) shall be submitted to the City Council for its approval. If so approved by the City Council and the Grantee, then such amendment(s) shall be deemed part of this Franchise. If mutual agreement is not reached, there shall be no amendment.

4.9 Performance Evaluations

(A) The City may hold performance evaluation sessions upon ninety (90) days written notice, provided that such evaluation sessions shall be held no more frequently than once every

two (2) years. All such evaluation sessions shall be conducted by the City.

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

(C) All regular evaluation sessions shall be open to the public and announced at least two (2) weeks in advance in any manner within the discretion of the City. Grantee shall also include with or on the Subscriber billing statements for the billing period immediately preceding the commencement of the session, written notification of the date, time, and place of the regular performance evaluation session, and any special evaluation session as required by the City, provided Grantee receives appropriate advance notice.

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

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

4.10 Late Fees

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

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

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

4.11 Force Majeure

In the event Grantee is prevented or delayed in the performance of any of its obligations

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

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

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Indemnification

(A) General Indemnification. Grantee shall indemnify, defend and hold the City, its officers, officials, boards, commissions, agents and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses, arising from any casualty or accident to Person or property, including, without limitation, copyright infringement, defamation, and all other damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, or any other act done under this Franchise, by or for Grantee, its agents, or its employees, or by reason of any neglect or omission of Grantee. Grantee shall consult and cooperate with the City while conducting its defense of the City.

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

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

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

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

or prohibited by this Franchise.

(D) Procedures and Defense. If a claim or action arises, the City or any other indemnified party shall promptly tender the defense of the claim to Grantee, which defense shall be at Grantee's expense. The City may participate in the defense of a claim, but if Grantee provides a defense at Grantee's expense then Grantee shall not be liable for any attorneys' fees, expenses or other costs that City may incur if it chooses to participate in the defense of a claim, unless and until separate representation as described below in Paragraph 5.1(F) is required. In that event the provisions of Paragraph 5.1(F) shall govern Grantee's responsibility for City's/County's/Town's attorney's fees, expenses or other costs. In any event, Grantee may not agree to any settlement of claims affecting the City without the City's approval.

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

(F) Expenses. If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest between the City and the counsel selected by Grantee to represent the City, Grantee shall pay, from the date such separate representation is required forward, all reasonable expenses incurred by the City in defending itself with regard to any action, suit or proceeding indemnified by Grantee. Provided, however, that in the event that such separate representation is or becomes necessary, and City desires to hire counsel or any other outside experts or consultants and desires Grantee to pay those expenses, then City shall be required to obtain Grantee's consent to the engagement of such counsel, experts or consultants, such consent not to be unreasonably withheld. The City's expenses shall include all reasonable out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by the City Attorney or his/her assistants or any employees of the City or its agents but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Grantee.

5.2 Insurance

(A) Grantee shall maintain in full force and effect at its own cost and expense each of the following policies of insurance:

(1) Commercial General Liability insurance with limits of no less than one million dollars ($1,000,000.00) per occurrence and one million dollars ($1,000,000.00) general aggregate. Coverage shall be at least as broad as that provided by ISO CG 00 01 1/96 or its equivalent and include severability of interests. Such insurance shall name the City, its officers, officials and employees as additional insureds per ISO CG 2026 or its equivalent. There shall be a waiver of subrogation and rights of recovery against the City, its officers, officials and employees. Coverage shall apply as to claims between insureds on the policy, if applicable.

(2) Commercial Automobile Liability insurance with minimum combined

single limits of one million dollars ($1,000,000.00) each occurrence with respect to each of Grantee's owned, hired and non-owned vehicles assigned to or used in the operation of the Cable System in the City. The policy shall contain a severability of interests provision.

(B) The insurance shall not be canceled or materially changed so as to be out of compliance with these requirements without thirty (30) days' written notice first provided to the City, via certified mail, and ten (10) days' notice for nonpayment of premium. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this subsection within the term of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, for the duration of this Franchise and, in the case of the Commercial General Liability, for at least one (1) year after expiration of this Franchise.

5.3 Deductibles / Certificate of Insurance

Any deductible of the policies shall not in any way limit Grantee's liability to the City.

(A) Endorsements.

(1) All policies shall contain, or shall be endorsed so that:

(a) The City, its officers, officials, boards, commissions, employees and agents are to be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by, or on behalf of, Grantee under this Franchise or Applicable Law, or in the construction, operation or repair, or ownership of the Cable System;

(b) Grantee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, boards, commissions, employees and agents. Any insurance or self-insurance maintained by the City, its officers, officials, boards, commissions, employees and agents shall be in excess of the Grantee's insurance and shall not contribute to it; and

(c) Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

(B) Acceptability of Insurers. The insurance obtained by Grantee shall be placed with insurers with a Best's rating of no less than "A VII."

(C) Verification of Coverage. The Grantee shall furnish the City with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and

endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices.

(D) Self-Insurance In the alternative to providing a certificate of insurance to the City certifying insurance coverage as required above, Grantee may provide self-insurance in the same amount and level of protection for Grantee and City, its officers, agents and employees as otherwise required under this Section. The adequacy of self-insurance shall be subject to the periodic review and approval of the City.

5.4 Letter of Credit

(A) If there is a claim by the City of an uncured breach by Grantee of a material provision of this Franchise or pattern of repeated violations of any provision(s) of this Franchise, then the City may require and Grantee shall establish and provide within thirty (30) days from receiving notice from the City, to the City as security for the faithful performance by Grantee of all of the provisions of this Franchise, a letter of credit from a financial institution satisfactory to the City in the amount of fifty thousand dollars ($50,000.00).

(1) "Material provision of this Franchise" as used in this Section 5.4 shall include, but is not limited to the following sections:

2.2: Grant of Franchise
3.1: Franchise Fees
4.3: Rate Discrimination
5.1: Indemnification
5.2 and 5.3: Insurance
6.1: Customer service standards
7.4: Annual reports
8.2: Deletion or reduction of programming categories/channels
9.2: PEG channel capacity and use

(B) In the event that Grantee establishes a letter of credit pursuant to the procedures of this Section, then the letter of credit shall be maintained at fifty thousand dollars ($50,000.00) until the allegations of the uncured breach have been resolved.

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

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

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

(3) Monetary remedies or damages assessed against Grantee due to default or breach of Franchise requirements; and,

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

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

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

SECTION 6. CUSTOMER SERVICE

6.1 Customer Service Standards

Grantee shall comply with Customer Service Standards of the City, as the same may be amended from time to time by the City Council in its sole discretion, acting by ordinance. Any requirement in Customer Service Standards for a "local" telephone number may be met by the provision of a toll-free number. The Customer Services Standards in effect as of the Effective Date of this Franchise are attached as Exhibit A. Grantee reserves the right to challenge any customer service ordinance which it believes is inconsistent with its contractual rights under this Franchise.

6.2 Subscriber Privacy

Grantee shall fully comply with any provisions regarding the privacy rights of Subscribers contained in federal, State, or local law.

6.3 Subscriber Contracts

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

6.4 Advance Notice to City

The Grantee shall use reasonable efforts to furnish information provided to Subscribers or

the media in the normal course of business to the City in advance.

6.5 Identification of Local Franchise Authority on Subscriber Bills

Within sixty (60) days after written request from the City, Grantee shall place the City's phone number on its Subscriber bills, to identify where a Subscriber may call to address escalated complaints.

SECTION 7. REPORTS AND RECORDS

7.1 Open Records

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

7.2 Confidentiality

The City agrees to treat as confidential any books or records that constitute proprietary or confidential information under federal or State law, to the extent Grantee makes the City aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under State or federal law. If the City believes it must release any such confidential books and records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If the City receives a demand from any Person for disclosure of any information designated by Grantee as confidential, the City shall, so far as consistent with Applicable Law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, the City agrees that, to the extent permitted by State and federal law, it shall deny access to any of

Grantee's books and records marked confidential as set forth above to any Person. Grantee shall reimburse the City for all reasonable costs and attorneys fees incurred in any legal proceedings pursued under this Section.

7.3 Records Required

(A) Grantee shall at all times maintain, and shall furnish to the City upon 30 days written request and subject to Applicable Law:

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

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

(3) Current Subscriber Records and information;

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

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

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

7.4 Annual Reports

Within sixty (60) days of the City's written request, Grantee shall submit to the City a written report, in a form acceptable to the City, which shall include, but not necessarily be limited to, the following information for the City:

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

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

(C) The number of homes passed, beginning and ending plant miles, any services added or dropped, and any technological changes occurring in the Cable System;

(D) A statement of planned construction, if any, for the next year; and,

(E) A copy of the most recent annual report Grantee filed with the SEC or other governing body.

The parties agree that the City's request for these annual reports shall remain effective, and need only be made once. Such a request shall require the Grantee to continue to provide the reports annually, until further written notice from the City to the contrary.

7.5 Copies of Federal and State Reports

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

7.6 Complaint File and Reports

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

(B) Quarterly, Grantee shall provide the City a quarterly executive summary in the forms attached hereto as Exhibit B, which shall include the following information from the preceding quarter:

(1) A summary of service calls, identifying the number and nature of the requests and their disposition;

(2) A summary of service call information identifying the number and nature of the requests;

(3) A log of all service interruptions;

(4) A summary of customer complaints referred by the City to Grantee;

(5) Such other information as reasonably requested by the City.

The parties agree that the City's request for these summary reports shall remain effective, and need only be made once. Such a request shall require the Grantee to continue to provide the reports quarterly, until further written notice from the City to the contrary.

7.7 Failure to Report

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

7.8 False Statements

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

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories

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

(A) Educational programming;

(B) Colorado news, weather & information;

(C) Sports;

(D) General entertainment (including movies);

(E) Children/family-oriented;

(F) Arts, culture and performing arts;

(G) Foreign language;

(H) Science/documentary;

(I) National news, weather and information; and,

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

8.2 Deletion or Reduction of Broad Programming Categories

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

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

8.3 Obscenity

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

8.4 Parental Control Device

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

8.5 Continuity of Service Mandatory

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

(B) In the event of a change of grantee, or in the event a new Cable Operator acquires the Cable System in accordance with this Franchise, Grantee shall cooperate with the City, new franchisee or Cable Operator in maintaining continuity of Cable Service to all Subscribers. During any transition period, Grantee shall be entitled to the revenues for any period during which it operates the Cable System, and shall be entitled to reasonable costs for its services when it no longer operates the Cable System.

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

8.6 Services for the Disabled

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

SECTION 9. ACCESS

9.1 Designated Access Providers

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

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

9.2 Channel Capacity and Use

(A) Grantee shall make available to City three (3) Downstream Channels for PEG use as provided for in this Section.

(B) Grantee shall have the right to temporarily use any Channel, or portion thereof, which is allocated under this Section for Public, Educational, or Governmental Access use, within sixty (60) days after a written request for such use is submitted to City, if such Channel is not "fully utilized" as defined herein. A Channel shall be considered fully utilized if substantially unduplicated programming is delivered over it more than an average of 38 hours per week over a six (6) month period. Programming that is repeated on an Access Channel up to two times per day shall be considered "unduplicated programming." Character-generated programming shall be included for purposes of this subsection, but may be counted towards the total average hours only with respect to three (3) Channels provided to City. If a Channel allocated for Public, Educational, or Governmental Access use will be used by Grantee in accordance with the terms of this subsection, the institution to which the Channel has been

allocated shall have the right to require the return of the Channel or portion thereof. City shall request return of such Channel space by delivering written notice to Grantee stating that the institution is prepared to fully utilize the Channel, or portion thereof, in accordance with this subsection. In such event, the Channel or portion thereof shall be returned to such institution within sixty (60) days after receipt by Grantee of such written notice.

(C) Standard Definition ("SD") Digital Access Channels.

(1) Grantee shall provide three (3) Activated Downstream Channels for PEG Access use in a standard definition ("SD") digital format in Grantee's Basic Service ("SD Access Channel"). Grantee shall carry all components of the SD Access Channel Signals provided by a Designated Access Provider including, but not limited to, closed captioning, stereo audio and other elements associated with the Programming. A Designated Access Provider shall be responsible for providing the SD Access Channel Signal in an SD format to the demarcation point at the designated point of origination for the SD Access Channel. Grantee shall transport and distribute the SD Access Channel signal on its Cable System and shall not unreasonably discriminate against SD Access Channels with respect to accessibility, functionality and to the application of any applicable Federal Communications Commission Rules & Regulations, including without limitation Subpart K Channel signal standards.

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

(3) Grantee shall be responsible for costs associated with the transmission of SD Access signals on its side of the demarcation point which for the purposes of this Section 9.2 (C)(3), shall mean up to and including the modulator where the City signal is converted into a format to be transmitted over a fiber connection to Grantee. The City or Designated Access Provider shall be responsible for costs associated with SD Access signal transmission on its side of the demarcation point.

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

(D) High Definition ("HD") Digital Access Channels.

(1) After the Effective Date and with at least 120 days' written notice to Grantee, Grantee shall activate one (1) High Definition digital format ("HD") Access Channel, for which

the City may provide Access Channel signals in HD format to the demarcation point at the designated point of origination for the Access Channel ("HD Access Channel"). Activation of such HD Access Channel shall only occur after the following conditions are satisfied:

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

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

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

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

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

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

(6) Grantee shall cooperate with the City to procure and provide, at City's cost, all necessary transmission equipment from the Designated Access Provider channel origination point, at Grantee's headend and through Grantee's distribution system, in order to deliver the HD Access Channels. The City shall be responsible for the costs of all transmission equipment,

including HD modulator and demodulator, and encoder or decoder equipment, and multiplex equipment, required in order for Grantee to receive and distribute the HD Access Channel signal, or for the cost of any resulting upgrades to the video return line. The City and Grantee agree that such expense of acquiring and installing the transmission equipment or upgrades to the video return line qualifies as a capital cost for PEG Facilities within the meaning of the Cable Act 47 U.S.C.A. Section 542(g)(20)(C), and therefore is an appropriate use of revenues derived from those PEG Capital fees provided for in this Franchise.

(E) Grantee shall simultaneously carry the one (1) HD Access Channels provided for in Section 9.2(D) in high definition format on the Cable System, in addition to simultaneously carrying in standard definition format the SD Access Channels provided pursuant to Subsection 9.2(C). At such time as Grantee activates the one HD Access Channel, the number of SD Access Channels Grantee is obligated to provide in Section 9.2(C) shall be reduced from three (3) to two (2).

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

9.3 Access Channel Assignments

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

9.4 Relocation of Access Channels

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

9.5 Support for Access Costs

During the term of this Franchise Agreement, Grantee shall provide fifty cents ($0.50)

per month per Residential Subscriber (the "PEG Contribution") to be used solely for capital costs related to Public, Educational and Governmental Access and the web based on demand Access programming described in Section 9.5, or as may be permitted by Applicable Law. To address inflationary impacts on capital equipment or to evaluate whether the City's PEG Access capital costs have reduced with time, the City and Grantee may meet no more than three times after the Effective Date to discuss whether to increase or to decrease the PEG Contribution. The primary purpose of such meetings will be for the parties to review prior expenditures and future capital plans to determine if the current PEG Contribution is reasonably appropriate to meet future needs. The City and Grantee may suggest to each other, based upon their own assessments of reasonable past practices and future anticipated needs, whether the current level of PEG Contribution is appropriate. If either party believes that the PEG Contribution should be modified in a reasonable amount to address such future needs the parties shall share all relevant information supporting their positions and negotiate in good faith to determine if the PEG Contribution should be increased or decreased, and if so, in what amount. Such discussions regarding potential adjustment to the PEG Contribution will be conducted pursuant to the Franchise amendment procedures in Section 4.8 of this Franchise. Grantee shall make PEG Contribution payments quarterly, following the effective date of this Franchise Agreement for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than thirty (30) days following the end of the quarter. City shall have sole discretion to allocate the expenditure of such payments for any capital costs related to PEG Access. The parties agree that this Franchise shall provide City discretion to utilize Access payments for new internal network connections and enhancements to the City's existing network.

9.6 Access Support Not Franchise Fees

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

9.7 Access Channels On Basic Service or Lowest Priced HD Service Tier

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

9.8 Change In Technology

In the event Grantee makes any change in the Cable System and related equipment and

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

9.9 Technical Quality

Grantee shall maintain all upstream and downstream Access services and Channels on its side of the demarcation point at the same level of technical quality and reliability required by this Franchise Agreement and all other applicable laws, rules and regulations for Residential Subscriber Channels. Grantee shall provide routine maintenance for all transmission equipment on its side of the demarcation point, including modulators, decoders, multiplex equipment, and associated cable and equipment necessary to carry a quality signal to and from City's facilities for the Access Channels provided under this Franchise Agreement, including the business class broadband equipment and services necessary for the video on demand and streaming service described in Section 9.5. Grantee shall also provide, if requested in advance by the City, advice and technical expertise regarding the proper operation and maintenance of transmission equipment on the City's side of the demarcation point. The City shall be responsible for all initial and replacement costs of all HD modulator and demodulator equipment, web-based video on demand servers and web-based video streaming servers. The City shall also be responsible, at its own expense, to replace any of the Grantee's equipment that is damaged by the gross negligence or intentional acts of City staff. The Grantee shall be responsible, at its own expense, to replace any of the Grantee's equipment that is damaged by the gross negligence or intentional acts of Grantee's staff. The City will be responsible for the cost of repairing and/or replacing any HD PEG Access and web-based video on demand transmission equipment that Grantee maintains that is used exclusively for transmission of the City's and/or its Designated Access Providers' HD Access programming.

9.10 Access Cooperation

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

9.11 Return Lines/Access Origination

(A) Grantee shall continuously maintain the return lines previously constructed to the City Hall at 749 Main Street, the City Police Department at 992 West Via Appia, the City's Recreation Center at 900 West Via Appia, and the City Library Building at 951 Spruce Street throughout the Term of the Franchise, in order to enable the distribution of Access programming to Residential Subscribers on the Access Channels; provided however that Grantee's maintenance obligations with respect to either of these locations shall cease if a location is no longer used in the future by the City to originate Access programming.

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

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

10.1 Right to Construct

Subject to Applicable Law, regulations, rules, resolutions and ordinances of the City and the provisions of this Franchise, Grantee may perform all construction in the Rights-of-Way for any facility needed for the maintenance or extension of Grantee's Cable System.

10.2 Right-of-Way Meetings

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

10.3 Joint Trenching/Boring Meetings

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

10.4 General Standard

All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. All installations of equipment shall be permanent in nature, durable and

installed in accordance with good engineering practices.

10.5 Permits Required for Construction

Prior to doing any work in the Right-of Way or other public property, Grantee shall apply for, and obtain, appropriate permits from the City. As part of the permitting process, the City may impose such conditions and regulations as are necessary for the purpose of protecting any structures in such Rights-of-Way, proper restoration of such Rights-of-Way and structures, the protection of the public, and the continuity of pedestrian or vehicular traffic. Such conditions may also include the provision of a construction schedule and maps showing the location of the facilities to be installed in the Right-of-Way. Grantee shall pay all applicable fees for the requisite City permits received by Grantee.

10.6 Emergency Permits

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

10.7 Compliance with Applicable Codes

(A) City Construction Codes. Grantee shall comply with all applicable City construction codes, including, without limitation, the Uniform Building Code and other building codes, the Uniform Fire Code, the Uniform Mechanical Code, the Electronic Industries Association Standard for Physical Location and Protection of Below-Ground Fiber Optic Cable Plant, and zoning codes and regulations.

(B) Tower Specifications. Antenna supporting structures (towers) shall be designed for the proper loading as specified by the Electronics Industries Association (EIA), as those specifications may be amended from time to time. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable federal, State, and local codes or regulations.

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

10.8 GIS Mapping

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

10.9 Minimal Interference

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

10.10 Prevent Injury/Safety

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

10.11 Hazardous Substances

(A) Grantee shall comply with any and all Applicable Laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's Cable System in the Rights-of-Way.

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

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

10.12 Locates

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

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

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

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

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

10.13 Notice to Private Property Owners

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

10.14 Underground Construction and Use of Poles

(A) When required by general ordinances, resolutions, regulations or rules of the City or applicable State or federal law, Grantee's Cable System shall be placed underground at Grantee's expense unless funding is generally available for such relocation to all users of the Rights-of-Way. Placing facilities underground does not preclude the use of ground-mounted appurtenances.

(B) Where electric, telephone, and other above-ground utilities are installed underground at the time of Cable System construction, or when all such wiring is subsequently placed underground, all Cable System lines shall also be placed underground with other wireline service at no expense to the City or Subscribers unless funding is generally available for such relocation to all users of the Rights-of-Way. Related Cable System equipment, such as pedestals, must be placed in accordance with the City's applicable code requirements and rules. In areas where either electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

(C) The Grantee shall utilize existing poles and conduit wherever possible.

(D) In the event Grantee cannot obtain the necessary poles and related facilities pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for

Grantee to make all needed excavations in the Rights-of-Way for the purpose of placing, erecting, laying, maintaining, repairing, and removing poles, supports for wires and conductors, and any other facility needed for the maintenance or extension of Grantee's Cable System. All poles of Grantee shall be located as designated by the proper City authorities.

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

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

10.15 Undergrounding of Multiple Dwelling Unit Drops

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

10.16 Burial Standards

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

> Underground cable drops from the curb shall be buried at a minimum depth of twelve (12) inches, unless a sprinkler system or other construction concerns preclude it, in which case, underground cable drops shall be buried at a depth of at least six (6) inches.
>
> Feeder lines shall be buried at a minimum depth of eighteen (18) inches.
>
> Trunk lines shall be buried at a minimum depth of thirty-six (36) inches.

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

In the event of a conflict between this subsection and the provisions of any customer service standard, this subsection shall control.

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

10.17 Cable Drop Bonding

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

10.18 Prewiring

Any ordinance or resolution of the City which requires prewiring of subdivisions or other developments for electrical and telephone service shall be construed to include wiring for Cable Systems.

10.19 Repair and Restoration of Property

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

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

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

(D) Private Property. Upon completion of the work which caused any disturbance or

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

10.20 Use of Conduits by the City

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

10.21 Common Users

(A) For the purposes of this subsection:

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

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

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

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

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

(B) Grantee acknowledges that the Rights-of-Way have a finite capacity for containing Conduits. Therefore, Grantee agrees that whenever the City determines it is

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

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

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

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

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

(3) Vacate the needed Ducts or Conduit; or

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

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

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

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

10.22 Acquisition of Facilities

Upon Grantee's acquisition of Cable System-related facilities in any City Right-of-Way,

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

10.23 Discontinuing Use/Abandonment of Cable System Facilities

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

10.24 Movement of Cable System Facilities For City Purposes

The City shall have the right to require Grantee to relocate, remove, replace, modify or disconnect Grantee's facilities and equipment located in the Rights-of-Way or on any other property of the City for public purposes, in the event of an emergency, or when the public health, safety or welfare requires such change (for example, without limitation, by reason of traffic conditions, public safety, Right-of-Way vacation, Right-of-Way construction, change or establishment of Right-of-Way grade, installation of sewers, drains, gas or water pipes, or any other types of structures or improvements by the City for public purposes). Such work shall be performed at the Grantee’s expense. Except during an emergency, the City shall provide reasonable notice to Grantee, not to be less than five (5) business days, and allow Grantee with the opportunity to perform such action. In the event of any capital improvement project exceeding $500,000 in expenditures by the City which requires the removal, replacement, modification or disconnection of Grantee's facilities or equipment, the City shall provide at least sixty (60) days' written notice to Grantee. Following notice by the City, Grantee shall relocate, remove, replace, modify or disconnect any of its facilities or equipment within any Right-of-Way, or on any other property of the City. If the City requires Grantee to relocate its facilities located within the Rights-of-Way, the City shall make a reasonable effort to provide Grantee with an alternate location within the Rights-of-Way. If funds are generally made available to users of the Rights-of-Way for such relocation, Grantee shall be entitled to its pro rata share of

such funds.

If the Grantee fails to complete this work within the time prescribed and to the City's satisfaction, the City may cause such work to be done and bill the cost of the work to the Grantee, including all costs and expenses incurred by the City due to Grantee's delay. In such event, the City shall not be liable for any damage to any portion of Grantee's Cable System. Within thirty (30) days of receipt of an itemized list of those costs, the Grantee shall pay the City.

10.25 Movement of Cable System Facilities for Other Franchise Holders

If any removal, replacement, modification or disconnection of the Cable System is required to accommodate the construction, operation or repair of the facilities or equipment of another City franchise holder, Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantee may require that the costs associated with the removal or relocation be paid by the benefited party.

10.26 Temporary Changes for Other Permittees

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

10.27 Reservation of City Use of Right-of-Way

Nothing in this Franchise shall prevent the City or public utilities owned, maintained or operated by public entities other than the City from constructing sewers; grading, paving, repairing or altering any Right-of-Way; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System.

10.28 Tree Trimming

Grantee may prune or cause to be pruned, using proper pruning practices, any tree in the City's Rights-of-Way which interferes with Grantee's Cable System. Grantee shall comply with any general ordinance or regulations of the City regarding tree trimming. Except in emergencies, Grantee may not prune trees at a point below thirty (30) feet above sidewalk grade until one (1) week written notice has been given to the owner or occupant of the premises abutting the Right-of-Way in or over which the tree is growing. The owner or occupant of the abutting premises may prune such tree at his or her own expense during this one (1) week period. If the owner or occupant fails to do so, Grantee may prune such tree at its own expense. For purposes of this

subsection, emergencies exist when it is necessary to prune to protect the public or Grantee's facilities from imminent danger only.

10.29 Inspection of Construction and Facilities

The City may inspect any of Grantee's facilities, equipment or construction at any time upon at least twenty-four (24) hours notice, or, in case of emergency, upon demand without prior notice. The City shall have the right to charge generally applicable inspection fees therefore. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under Applicable Law, may order Grantee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the City establishes. The City has the right to correct, inspect, administer and repair the unsafe condition if Grantee fails to do so, and to charge Grantee therefore.

10.30 Stop Work

(A) On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City.

(B) The stop work order shall:

(1) Be in writing;

(2) Be given to the Person doing the work, or posted on the work site;

(3) Be sent to Grantee by overnight delivery at the address given herein;

(4) Indicate the nature of the alleged violation or unsafe condition; and

(5) Establish conditions under which work may be resumed.

10.31 Work of Contractors and Subcontractors

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

SECTION 11. CABLE SYSTEM, TECHNICAL STANDARDS AND TESTING

11.1 Subscriber Network

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

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

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

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

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

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

11.2 Technology Assessment

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

(B) Grantee shall cooperate with the City to provide necessary non-confidential and proprietary information upon the City's reasonable request as part of the technology assessment.

(C) At the discretion of the City, findings from the technology assessment may be

included in any proceeding commenced for the purpose of identifying future cable-related community needs and interests undertaken by the City pursuant to 47 U.S.C. §546.

11.3 Standby Power

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

11.4 Emergency Alert Capability

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

11.5 Technical Performance

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

11.6 Cable System Performance Testing

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

(1) All tests required by the FCC;

(2) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Franchise; and

(3) All other tests as otherwise specified in this Franchise.

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

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

(2) Semi-annual compliance and proof of performance tests in conformance

with generally accepted industry guidelines;

(3) Tests in response to Subscriber complaints;

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

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

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

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

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

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

11.7 Additional Tests

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

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

(B) the Cable System component tested;

(C) the equipment used and procedures employed in testing;

(D) the method, if any, in which such complaint or problem was resolved; and

(E) any other information pertinent to said tests and analysis which may be required.

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

12.1 Service Availability

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

(1) With no line extension charge except as specifically authorized elsewhere in this Franchise Agreement.

(2) At a non-discriminatory installation charge for a standard installation, consisting of a 125 foot drop connecting to an inside wall for Residential Subscribers, with additional charges for non standard installations computed according to a non discriminatory methodology for such installations, adopted by Grantee and provided in writing to the City;

(3) At non discriminatory monthly rates for Residential Subscribers.

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

(C) Customer Charges for Extensions of Service. Grantee agrees to extend its Cable System to all persons living in areas with a residential density of thirty-five (35) residences per mile of Cable System plant. If the residential density is less than thirty-five (35) residences per 5,280 cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the

Grantee and customers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per 5,280 cable-bearing strand feet of its trunk or distribution cable and whose denominator equals thirty-five (35). Customers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential customers be paid in advance.

12.2 Connection of Public Facilities

Grantee shall, at no cost to the City, provide one outlet of Basic Service and Digital Starter Service to all City owned and occupied buildings, schools and public libraries located in areas where Grantee provides Cable Service, so long as these facilities are already served or are located within 150 feet of its Cable System. For purposes of this subsection, "school" means all State-accredited K-12 public and private schools. Such obligation to provide free Cable Service shall not extend to areas of City buildings where the Grantee would normally enter into a commercial contract to provide such Cable Service (*e.g.*, golf courses, airport restaurants and concourses, and recreation center work out facilities). Outlets of Basic and Digital Starter Service provided in accordance with this subsection may be used to distribute Cable Services throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Such outlets may only be used for lawful purposes. The Cable Service provided shall not be distributed beyond the originally installed outlets without authorization from Grantee, which shall not be unreasonably withheld.

SECTION 13. FRANCHISE VIOLATIONS

13.1 Procedure for Remedying Franchise Violations

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

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

(2) cure the default; or,

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

specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.

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

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

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

(2) Recommend the revocation of this Franchise pursuant to the procedures in subsection 13.2; or,

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

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

13.2 Revocation

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

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

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

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

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

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

(B) Following the procedures set forth in subsection 13.1 and prior to forfeiture or termination of the Franchise, the City shall give written notice to the Grantee of its intent to revoke the Franchise and set a date for a revocation proceeding. The notice shall set forth the exact nature of the noncompliance.

(C) Any proceeding under the paragraph above shall be conducted by the City Council and open to the public. Grantee shall be afforded at least forty-five (45) days prior written notice of such proceeding.

(1) At such proceeding, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of such proceeding and the cost shall be shared equally between the parties. The City Council shall hear any Persons interested in the revocation, and shall allow Grantee, in particular, an opportunity to state its position on the matter.

(2) Within ninety (90) days after the hearing, the City Council shall determine whether to revoke the Franchise and declare that the Franchise is revoked and the letter of credit forfeited; or if the breach at issue is capable of being cured by Grantee, direct Grantee to take appropriate remedial action within the time and in the manner and on the terms and conditions that the City Council determines are reasonable under the circumstances. If the City determines that the Franchise is to be revoked, the City shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Grantee. Grantee shall be bound by the City's decision to revoke the Franchise unless it appeals the decision to a court of competent jurisdiction within fifteen (15) days of the date of the decision.

(3) Grantee shall be entitled to such relief as the Court may deem appropriate.

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

13.3 Procedures in the Event of Termination or Revocation

(A) If this Franchise expires without renewal after completion of all processes available under this Franchise and federal law or is otherwise lawfully terminated or revoked, the City may, subject to Applicable Law:

(1) Allow Grantee to maintain and operate its Cable System on a month-to-month basis or short-term extension of this Franchise for not less than six (6) months, unless a sale of the Cable System can be closed sooner or Grantee demonstrates to the City's satisfaction that it needs additional time to complete the sale; or

(2) Purchase Grantee's Cable System in accordance with the procedures set forth in subsection 13.4, below.

(B) In the event that a sale has not been completed in accordance with subsections (A)(1) and/or (A)(2) above, the City may order the removal of the above-ground Cable System facilities and such underground facilities from the City at Grantee's sole expense within a reasonable period of time as determined by the City. In removing its plant, structures and equipment, Grantee shall refill, at is own expense, any excavation that is made by it and shall leave all Rights-of-Way, public places and private property in as good condition as that prevailing prior to Grantee's removal of its equipment without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions and the letter of credit shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefore.

(C) If Grantee fails to complete any removal required by subsection 13.3 (B) to the City’s satisfaction, after written notice to Grantee, the City may cause the work to be done and Grantee shall reimburse the City for the costs incurred within thirty (30) days after receipt of an itemized list of the costs, or the City may recover the costs through the letter of credit provided by Grantee.

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

13.4 Purchase of Cable System

(A) If at any time this Franchise is revoked, terminated, or not renewed upon expiration in accordance with the provisions of federal law, the City shall have the option to purchase the Cable System.

(B) The City may, at any time thereafter, offer in writing to purchase Grantee's Cable System. Grantee shall have thirty (30) days from receipt of a written offer from the City within which to accept or reject the offer.

(C) In any case where the City elects to purchase the Cable System, the purchase shall be closed within one hundred twenty (120) days of the date of the City's audit of a current profit and loss statement of Grantee. The City shall pay for the Cable System in cash or certified funds, and Grantee shall deliver appropriate bills of sale and other instruments of conveyance.

(D) For the purposes of this subsection, the price for the Cable System shall be determined as follows:

(1) In the case of the expiration of the Franchise without renewal, at fair market value determined on the basis of Grantee's Cable System valued as a going concern, but with no value allocated to the Franchise itself. In order to obtain the fair market value, this valuation shall be reduced by the amount of any lien, encumbrance, or other obligation of Grantee which the City would assume.

(2) In the case of revocation for cause, the equitable price of Grantee's Cable System.

13.5 Receivership and Foreclosure

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

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

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

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

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

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

13.6 No Monetary Recourse Against the City

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

federal, State or local law.

13.7 Alternative Remedies

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

13.8 Assessment of Monetary Damages

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

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

13.9 Effect of Abandonment

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

13.10 What Constitutes Abandonment

The City shall be entitled to exercise its options in subsection 13.9 if:

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

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

SECTION 14. FRANCHISE RENEWAL AND TRANSFER

14.1 Renewal

(A) The City and Grantee agree that any proceedings undertaken by the City that relate to the renewal of the Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or State law.

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

14.2 Transfer of Ownership or Control

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

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

(C) The parties to the sale or transfer shall make a written request to the City for its

approval of a sale or transfer and furnish all information required by law and the City.

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

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

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

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

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

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

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

(F) Within thirty (30) days of any transfer or sale, if approved or deemed granted by the City, Grantee shall file with the City a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee, and the transferee shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to Applicable Law. In the event of a change in control, in which the Grantee is not replaced by another entity, the Grantee will continue to be bound by all of the provisions of the Franchise, subject to Applicable Law, and will not be required to file an additional written acceptance.

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

(H) Notwithstanding anything to the contrary in this subsection, the prior approval of the City shall not be required for any sale, assignment or transfer of the Franchise or Cable

System to an entity controlling, controlled by or under the same common control as Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the City and must agree in writing to comply with all of the provisions of the Franchise. Further, Grantee may pledge the assets of the Cable System for the purpose of financing without the consent of the City; provided that such pledge of assets shall not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

SECTION 15. SEVERABILITY

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

SECTION 16. MISCELLANEOUS PROVISIONS

16.1 Preferential or Discriminatory Practices Prohibited

NO DISCRIMINATION IN EMPLOYMENT. In connection with the performance of work under this Franchise, the Grantee agrees not to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any Person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Grantee further agrees to insert the foregoing provision in all subcontracts hereunder. Throughout the term of this Franchise, Grantee shall fully comply with all equal employment or non-discrimination provisions and requirements of federal, State and local laws, and in particular, FCC rules and regulations relating thereto.

16.2 Notices

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

Grantee's address shall be:

Comcast of Colorado I, LLC
1899 Wynkoop St., Suite 550
Denver, CO 80202
Attn: Government Affairs

The City's address shall be:

City of Louisville
749 Main Street
Louisville, CO 80027
Attn: City Manager

16.3 Descriptive Headings

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

16.4 Publication Costs to be Borne by Grantee

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

16.5 Binding Effect

This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.

16.6 No Joint Venture

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

16.7 Waiver

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

16.8 Reasonableness of Consent or Approval

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

16.9 Entire Agreement

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

negotiations between the parties.

16.10 Jurisdiction

Venue for any judicial dispute between the City and Grantee arising under or out of this Franchise shall be in Boulder County District Court, Colorado, or in the United States District Court in Denver.

IN WITNESS WHEREOF, this Franchise is signed in the name of the City of Louisville, Colorado, this 5th day of June, 2015.

ATTEST:

CITY OF LOUISVILLE, COLORADO:

_____
City Clerk

_____
Mayor

APPROVED AS TO FORM:

_____
City Attorney

Accepted and approved this _____ day of _____, 2015.

ATTEST:

COMCAST OF COLORADO I, LLC

_____
Public Notary

_____
Name/Title: _____

EXHIBIT A:
CUSTOMER SERVICE STANDARDS

EXHIBIT B-1

Report Form

Comcast
Quarterly Executive Summary – Escalated Complaints
Section 7.6 (B) of our Franchise Agreement
Quarter Ending _____, Year
CITY OF LOUISVILLE

Type of Complaint	Number of Escalated Complaints
Accessibility	0
Billing, Credit and Refunds	0
Courtesy	0
Drop Bury	0
Installation	0
Notices/Easement Issues (Non-Rebuild)	0
Pedestal	0
Problem Resolution	0
Programming	0
Property Damage (Non-Rebuild)	0
Rates	0
Rebuild/Upgrade Damage	0
Rebuild/Upgrade Notices/Easement Issues	0
Reception/Signal Quality	0
Safety	0
Service and Install Appointments	0
Service Interruptions	0
Serviceability	0
TOTAL	**0**

Compliments	

CABLE FRANCHISE AGREEMENT – WHAT IS REGULATED IN THE FRANCHISE AGREEMENT?

TOPIC	REGULATED IN FRANCHISE?		NOTES
	Yes	No	
RATES			
Rates for Cable Services		X	Because of a finding of "Effective Completion" by the Federal Communications Commission in 2006, the City is not permitted to regulate cable rates.
Promotions		X	Similar to rate regulations, the City may not mandate how and who promotions are offered to, as this would be a type of rate regulation.
Rate Discrimination	X		There can be no rate discrimination based on age, race, disability and other legally protected status or geographic location in the City. However, Comcast is allowed to provide rate discounts to senior citizens or economically disadvantaged individuals. Comcast can also temporarily reduce rates as part of a promotion campaign.
OTHER SERVICES/OTHER CABLE COMPANIES			
Internet Service		X	Franchises can, by law, regulate cable services. Internet services, even though bundled with cable services, cannot be regulated in the Franchise.
Telephone/Voice Service		X	Telephone services, even though bundled with cable services, cannot be regulated in the Franchise.
Non-Exclusive Grant	X		The City may grant additional franchises to other companies willing to provide cable services in the City. Per federal law, the material terms and conditions of any new franchise must be the same as the Comcast Franchise.
PROGRAMMING			
Channel Placement		X	The City cannot mandate where Comcast places a channel. The City can require Comcast to provide notice when a service tier change results in a deletion of programming.
Carry Specific Channels		X	The City cannot require Comcast to provide specific channels.
Programming Categories	X		The City can require Comcast provide certain broad levels of programming: educational, Colorado news, sports, general entertainment, children/family, arts, foreign language, science/documentary, national news, PEG Access.
PEG (public, educ., and govt access programming)	X		In the current franchise, Comcast agreed to provide 2 channels for Public or Governmental programming (in addition to the 1 channel provided to BVSD for educational programming) and $.50/month per subscriber as the PEG contribution for capital expenses. The City can negotiate for a high definition (HD) channel and for a change in the number of channels, if there is a community need and want for more channels. Other communities have also worked with Comcast, in their franchise agreements, to provide videos on their websites.

CSS = Customer Service Standards

Nov. 2013

CUSTOMER SERVICE			
Customer Service	X		Comcast must comply with the City's adopted Customer Service Standards (CSS). The CSS are adopted pursuant to Louisville's police power, and are similar to other ordinances passed by the City. Reference to the CSS is typically made in the franchise agreement. Louisville's current CSS are codified in Chapter 5.22 of the Municipal Code. The City may, but is not required to, modify its existing CSS as part of this franchise negotiation.
Service Center	X		The current CSS requires Comcast provide a service center within 10 miles of a Louisville customer. In the current proposed customer service standards, which may be approved along with the Franchise, the service center must be "conveniently located."
Service Hours and Response	X		The CSS addresses 24-7 service dispatchers and technicians; specific response times and reporting requirements; service appointment window of 4 hours.
Residential Service Interruptions	X		Comcast must ensure subscribers receive continuous, uninterrupted cable service. Comcast must correct any failure in the Cable System caused by equipment failure with 2 hours after the 3rd customer calls. The Franchise provides for remedies if Comcast does not adhere to the requirements of the franchise and CSS. Following a notice and opportunity to cure, the City may assess monetary damages, order rebates or credits or customers, withhold permits, and in extreme situations take over the cable system.
Complaint Files/Reports	X		Comcast shall keep an accurate and comprehensive file of any complaints regarding the cable system. Upon request, Comcast shall provide an executive summary to the City re: service calls, service interruptions, customer complaints, etc.
Performance Evaluations	X		The Franchise provides for a performance evaluation of the cable system once every 2 years; open to the public; topics can include rate structures, new technologies, cable system performance, programming, etc.
CABLE SYSTEM PERFORMANCE			
Technical Standards	X		The City may require an upgrade of the cable system to provide certain cable services and may require that Comcast meet the technical standards that have been endorsed by the FCC. The proposed Franchise provides for a technology assessment after 5 years and requires Comcast to conduct and keep records of system tests.
Performance Evaluations	X		Both the current and the proposed Franchise provides for a performance evaluation of the system once every 2 years; open to the public. Topics at the performance evaluation can include rate structures, new technologies, cable system performance, programming, etc.
FRANCHISE FEES			
Franchise Fees	X		The City may require compensation paid to the City by Comcast for use of the grant of the Franchise (the franchise fee). The franchise fee has been and is proposed to stay at 5% of Comcast's Gross Revenues for cable services. A financial audit may be done to ensure that Comcast has complied with its franchise fee payments. Under federal law, Comcast has the right to pass-through the amount of the franchise fee to subscribers.
OTHER			
Service to Schools and Public Buildings	X		The Franchise provides that Comcast will provide one free basic service subscription to all City-owned and occupied buildings, schools, and public libraries.
Construction in the City	X		Comcast must adhere to the City's applicable codes, must provide notices to homeowners, must cause minimal interference to property, must repair and restore of property, and must following tree trimming standards.

CSS = Customer Service Standards

Nov. 2013

City of Louisville
COLORADO • SINCE 1878

Renewal of Comcast Cable Franchise & Customer Service Standards

Meredyth Muth, Public Relations Manager
Hank Dalton, Mayor Pro Tem

Comcast Cable Franchise & Customer Service Standards

- Comcast Cable is the only provider in Louisville with approximately 4,500 subscribers.
- Currently working under a month-to-month agreement based on the 2006 franchise.
- Non-exclusive franchise. The City is open to other providers.

Slide 2

H1 only
HANK, 3/19/2015

Comcast Cable Franchise & Customer Service Standards

- **Franchise does NOT cover:**
  - Rates
  - Cable packages
  - Broadband

- **Franchise does cover:**
  - Use of the right-of-way
  - Access Channels (Public, Educational, Government)
  - Franchise & PEG fees

Comcast Cable Franchise & Customer Service Standards

- Proposed agreement is unlikely to resolve most of the issues resident's have with Comcast.

- Negotiating team tried to address what they could under current law while balancing cost and impacts.

Comcast Cable Franchise & Customer Service Standards

- **Public Input** – Most of the complaints staff received related to Comcast fell into these categories:
  - Comcast storefront: residents want a Comcast store back in Louisville.
  - Customer Service reports of poor service from the call center staff, missed service calls, and poor treatment from staff.
  - Unclear billing: complaints bills were unclear and changed month-to-month even when no service changes were made.
  - Rates: complaints rates continually go up and there is no rate for low income residents or seniors.

Comcast Cable Franchise & Customer Service Standards

- **Negotiated Items**
  - Asked for store to be opened in Louisville;
  - Asked for improved reporting of complaints;
  - Continued PEG Channels
  - Two-hour window for service calls
  - Larger letter of credit for service infractions

Comcast Cable Franchise & Customer Service Standards

- **Some proposal specifics**
  - 10 year franchise
  - Franchise fees equal to 5% gross revenue
  - Option for high definition Channel 8 within three years
  - PEG fees equal to 50¢ per customer

Comcast Cable Franchise & Customer Service Standards

- **Fiscal Impact**
  - Franchise fees equaled approximately $260,000 in 2014.
  - PEG fees totaled approximately $25,000 in 2014
- **Unknowns**
  - Changes in Technology
  - Changes in Federal law

Comcast Cable Franchise & Customer Service Standards

- **Side Agreement** - included for consideration is a side agreement with Comcast that covers the following issues:
  - Service will be proved to the new City Services Facility in CTC.
  - Comcast volunteers to adhere the two-hour service window as long as that is company practice (it cannot go longer than four hours under the CSS).
  - Billing Clarity – Comcast agrees to the billing clarity language in the CSS and the City recognizes it has no current intent to initiate a complaint related to this.

Comcast Cable Franchise & Customer Service Standards

- **Recommendation**
  Staff recommends approval of the renewed franchise with Comcast Cable and the reestablishment of Customer Service Standards.

Meredyth Muth

From: Alan Sobel <alansobel@earthnet.net>
Sent: Monday, April 13, 2015 12:16 PM
To: neighbors@lists.riseup.net; louisvillecolorado2@yahoogroups.com; cctv@lists.riseup.net; City Council; Planning
Subject: Cable Franchise Update: Nothing

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No Nothing.

All in favor?

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That approval from the city is usually incorporated in a contract between the city and the cable company called a Cable Franchise Agreement (or just 'franchise').

Typically a franchise will contain a number of provisions which compensate the city for the use of its rights of way, and some provisions which attempt to protect the city's residents from unseemly cable company practices.

The length of a franchise will extend for several years, typically eight or ten, after which it must be renewed. This franchise renewal provides an opportunity for both the cable company and the city to adjust the terms of the franchise.

The new franchise is developed over time in what is called a 'franchise renewal process.' The process allows time for negotiation between the City and cable company, and inputs from residents regarding their experience with cable service and prices. The final steps of Louisville's cable renewal process began at last Tuesday's City Council meeting with the approval of the franchise on first reading.

For many years, cable companies have earned very bad reputations for customer service and excessive charges for both cable and internet. Cable companies are now the largest providers of internet service in the country.

Cable companies are well aware of their poor reputation and would prefer not to have much resident input, if any, into the renewal process, thinking that that input would be in large part negative.

Cable customers, on the other hand, would like a chance to vent their grievances and frustrations, and seek some action and remedy from their city officials.

On Friday, April 3, 2015, the City of Louisville released 200 pages of documents pertaining to the new franchise agreement and scheduled a first vote on approving the new franchise for 4 days later. (This time period included the Easter and Passover holidays.)

In the City of Louisville, a new franchise needs to be approved by the City Council as an ordinance of the City.

Louisville approves city ordinances in a two-step process: a 'first reading' and vote, and then a 'second reading' and vote at some later date. An approval on the second reading would constitute a final approval by the city and the matter would be completed.

The documents released by Louisville constitute over 200 pages of mostly legalese: a new franchise agreement, a new customer service agreement, so-called 'redline' versions of these two documents, two ordinances covering these documents, and a letter of agreement.

You might think the next step in the process after releasing 200 pages of documents would be to have a town hall style public meeting for city officials to explain and discuss the provisions of the new franchise with Louisville residents.

This would provide city residents an opportunity to ask questions about and understand the provisions of the new franchise in an informal setting, and perhaps send the city negotiators to get additional information or back to the bargaining table to address an issue or issues residents found troubling.

If you thought that was how the City of Louisville would be doing it, you would be wrong.

The City has set a date of May 5, 2015, for the second reading and City Council consideration of the franchise in what is called a 'public hearing.' In such a hearing, any customer or resident will have 3 minutes to speak on the 200 pages of legal documents.

Louisville City Council members reserve the right to remain silent during a public hearing, and not respond to any questions from residents. Mayor Muckle has repeatedly stated that such a public hearing is "not an appropriate forum" for discussions or conversations between council members and residents.

So, Louisville's residents and cable customers will have had no opportunity to discuss the new franchise in public with council members and city officials before Louisville City Council members cast their final vote on whether or not to approve the new franchise. Apparently, the City envisages only individual private communications between residents and City Council members.

There is obviously something missing here.

There is no opportunity to question City officials regarding provisions (included or excluded) of the documents, and to hear their responses and the questions of other Louisville residents. There is no opportunity for Louisville residents to then take time to discuss amongst themselves the responses of City officials. There is no opportunity to publicly suggest informed alternatives and gauge the interest of other Louisville residents to those suggestions.

These are all characteristics of town hall style public meetings. But there is no town hall style public meeting scheduled before the final vote on the new franchise by City Council.

In fact, during the two years since the old franchise expired, and despite the promises of Mayor Muckle that there would be public meetings as apart of the cable renewal process, there have been no town hall style public meetings at all to discuss the franchise.

In short, there has been no opportunity for a democratic process to unfold.

Just the way the cable company likes it.

The members of the Louisville City Council have failed in their legal and moral obligation to represent the interests of the people who elected them, the residents of Louisville.

Instead, what they have done, is to ensure that the cable company has been able to dictate the terms of the new franchise, and the voice of cable customers in Louisville (there are about 4,500 cable customers in Louisville) will not be heard.

(As usual, the Boulder Daily Camera (a small cog in a large hedge fund media conglomerate), sees no evil, hears no evil, and reports no evil.)

Since there is no other public forum available to discuss this matter, I will use subsequent posts in this forum to raise important questions about the new franchise.

Alan Sobel
Louisville, Colorado

Meredyth Muth

From: Lawrence Crowley <magic@ecentral.com>
Sent: Monday, April 13, 2015 12:25 PM
To: Alan Sobel
Cc: neighbors@lists.riseup.net; louisvillecolorado2@yahoogroups.com; cctv@lists.riseup.net; City Council; Planning
Subject: Re: [cctv] Cable Franchise Update: Nothing

Thank you Alan for your perceptive and welcome comments.

On behalf of our community I have to say, "Baa!"

Larry

On Apr 13, 2015, at 12:16 PM, Alan Sobel wrote:

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Alan Sobel
Louisville, Colorado

Meredyth Muth

From: sdasdona@juno.com
Sent: Tuesday, April 14, 2015 8:44 AM
To: louisvillecolorado2@yahoogroups.com
Cc: neighbors@lists.riseup.net; louisvillecolorado2@yahoogroups.com; cctv@lists.riseup.net; City Council; Planning
Subject: Re: [Louisville Colorado] Cable Franchise Update: Nothing
Attachments: [Louisville Colorado] Cable Franchise Update: Nothing

It is for the most part a sad commentary, There is a little light as my councilman Hank Dalton did (at my request) get the cable company to extend its service to my home built in 1916 which to date has not had service and when asked to hook up required an expensive fee to extend the line. Since my home is not a new development it should have been part of the original sevice area. The Cable company was non responsive. Thanks to Hank I will not have to pay the extension fee.

Its time to order Maroons a Human Epic. Go to Amazon.com and enter ISB no 1-4392-4275-5 visit site http://Maroons.yolasite.com Or just call me 303=665=4995

"Rightful liberty is unobstructed action according to our will within limits drawn around us by the equal rights of others. I do not add 'within the limits of the law,' because the law is often but the tyrant's will, and always so when it violates the rights of the individual."
Thomas Jefferson

Please note: message attached

From: "Alan Sobel alansobel@earthnet.net [louisvillecolorado2]" <louisvillecolorado2@yahoogroups.com>
To: neighbors@lists.riseup.net, louisvillecolorado2@yahoogroups.com, cctv@lists.riseup.net, citycouncil@louisvilleco.gov, planning@louisvilleco.gov
Subject: [Louisville Colorado] Cable Franchise Update: Nothing
Date: Mon, 13 Apr 2015 12:16:26 -0600

Meredyth Muth

From: Open Records
Subject: FW: Cable Franchise Update: Nothing

From: Alan Sobel [mailto:alansobel@earthnet.net]
Sent: Tuesday, April 14, 2015 9:42 AM
To: Robert Muckle
Cc: neighbors@lists.riseup.net; louisvillecolorado2@yahoogroups.com; cctv@lists.riseup.net; City Council; Planning
Subject: Re: Cable Franchise Update: Nothing

A Clarification of the Mayor's Clarification

Mayor Muckle, in an email response to the post below, states as follows:

"As a point of clarification the purpose of passing an ordinance on first reading is to set and publish the date of the public hearing. Occasionally a council person will request a particular piece of information be available on the date of public hearing. All ordinances are handled this rapid way on first reading so there's nothing at all unusual about this handling of the cable agreement."

In an effort at further clarification, here is some relevant text from the Louisville City Charter:

Section 4-10. Ordinances - Public Hearing Required.

(a) No ordinance shall be adopted without first holding at least one (1) public hearing on the ordinance.

(b)The procedure for the hearing, the timing of the hearing, and other matters pertaining to the hearing, shall be established in the Council's rules of procedure. The procedure shall:

(1) Specify whether the public hearing will be held prior to Council action on first reading, prior to Council action on second reading, or both;

(2) Provide at least one (1) opportunity for public comments on the ordinance prior to the initial Council discussion of the ordinance; and

(3) Provide at least one (1) additional opportunity for public comments on the ordinance following the initial Council discussion but before Council action on the ordinance.

Source: http://www.louisvilleco.gov/home/showdocument?id=64

Louisville does not actually have any City Council Rules of Procedure, as referenced above in section 4-10(b) of the City Charter. City Council's procedures in these matters are unwritten and ad hoc.

So City Council has considerable flexibility in these matters and could have easily recognized the difficulty and unreasonableness of trying to make sense of 200 pages of legal documents in its “rapid way” and done things differently.

But instead the City Council chose to proceed as follows:

- to release the documents 4 days before the first reading,
- to have no discussion or comment of any kind at the first reading,
- to leave any public consideration of the documentation until the last minute before the final vote is taken at the second reading, and
- to allow each resident 3 minutes at the last minute to address the 200 pages.

These choices are consistent with the lack of any public meetings during the franchise renewal process, as well as City Council’s refusal to appoint a Tech Committee of tech-savvy local residents to advise it on cable, internet and other related matters.

The City Council’s actions work to minimize informed consideration and discussion of cable and internet matters in Louisville.

The City Council’s actions work directly to protect and benefit the cable company, rather than Louisville residents.

Alan

On Apr 13, 2015, at 2:35 PM, Robert Muckle <bobm@Louisvilleco.gov> wrote:

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Sent from my iPhone

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Louisville City Council members reserve the right to remain silent during a public hearing, and not respond to any questions from residents. Mayor Muckle has repeatedly stated that such a public hearing is "not an appropriate forum" for discussions or conversations between council members and residents.

So, Louisville's residents and cable customers will have had no opportunity to discuss the new

franchise in public with council members and city officials before Louisville City Council members cast their final vote on whether or not to approve the new franchise. Apparently, the City envisages only individual private communications between residents and City Council members.

There is obviously something missing here.

There is no opportunity to question City officials regarding provisions (included or excluded) of the documents, and to hear their responses and the questions of other Louisville residents. There is no opportunity for Louisville residents to then take time to discuss amongst themselves the responses of City officials. There is no opportunity to publicly suggest informed alternatives and gauge the interest of other Louisville residents to those suggestions.

These are all characteristics of town hall style public meetings. But there is no town hall style public meeting scheduled before the final vote on the new franchise by City Council.

In fact, during the two years since the old franchise expired, and despite the promises of Mayor Muckle that there would be public meetings as apart of the cable renewal process, there have been no town hall style public meetings at all to discuss the franchise.

In short, there has been no opportunity for a democratic process to unfold.

Just the way the cable company likes it.

The members of the Louisville City Council have failed in their legal and moral obligation to represent the interests of the people who elected them, the residents of Louisville.

Instead, what they have done, is to ensure that the cable company has been able to dictate the terms of the new franchise, and the voice of cable customers in Louisville (there are about 4,500 cable customers in Louisville) will not be heard.

(As usual, the Boulder Daily Camera (a small cog in a large hedge fund media conglomerate), sees no evil, hears no evil, and reports no evil.)

Since there is no other public forum available to discuss this matter, I will use subsequent posts in this forum to raise important questions about the new franchise.

Alan Sobel
Louisville, Colorado

Meredyth Muth

From: Open Records
Subject: FW: [neighbors] Cable Franchise Update: Nothing

From: Lawrence Crowley [mailto:magic@ecentral.com]
Sent: Tuesday, April 14, 2015 11:01 AM
To: Alan Sobel
Cc: Robert Muckle; neighbors@lists.riseup.net; louisvillecolorado2@yahoogroups.com; cctv@lists.riseup.net; City Council; Planning
Subject: Re: [neighbors] Cable Franchise Update: Nothing

Once more, thank you Alan for pointing out the elephant in the room that seems to make little impression on us citizens.

Larry

On Apr 14, 2015, at 9:42 AM, Alan Sobel wrote:

A Clarification of the Mayor's Clarification

Mayor Muckle, in an email response to the post below, states as follows:

"As a point of clarification the purpose of passing an ordinance on first reading is to set and publish the date of the public hearing. Occasionally a council person will request a particular piece of information be available on the date of public hearing. All ordinances are handled this rapid way on first reading so there's nothing at all unusual about this handling of the cable agreement."

In an effort at further clarification, here is some relevant text from the Louisville City Charter:

Section 4-10. Ordinances - Public Hearing Required.

(a) No ordinance shall be adopted without first holding at least one (1) public hearing on the ordinance.

(b)The procedure for the hearing, the timing of the hearing, and other matters pertaining to the hearing, shall be established in the Council's rules of procedure. The procedure shall:

(1) Specify whether the public hearing will be held prior to Council action on first reading, prior to Council action on second reading, or both;

(2) Provide at least one (1) opportunity for public comments on the ordinance prior to the initial Council discussion of the ordinance; and

(3) Provide at least one (1) additional opportunity for public comments on the ordinance following the initial Council discussion but before Council action on the ordinance.

Source: http://www.louisvilleco.gov/home/showdocument?id=64

Louisville does not actually have any City Council Rules of Procedure, as referenced above in section 4-10(b) of the City Charter. City Council's procedures in these matters are unwritten and ad hoc.

So City Council has considerable flexibility in these matters and could have easily recognized the difficulty and unreasonableness of trying to make sense of 200 pages of legal documents in its "rapid way" and done things differently.

But instead the City Council chose to proceed as follows:

- to release the documents 4 days before the first reading,
- to have no discussion or comment of any kind at the first reading,
- to leave any public consideration of the documentation until the last minute before the final vote is taken at the second reading, and
- to allow each resident 3 minutes at the last minute to address the 200 pages.

These choices are consistent with the lack of any public meetings during the franchise renewal process, as well as City Council's refusal to appoint a Tech Committee of tech-savvy local residents to advise it on cable, internet and other related matters.

The City Council's actions work to minimize informed consideration and discussion of cable and internet matters in Louisville.

The City Council's actions work directly to protect and benefit the cable company, rather than Louisville residents.

Alan

On Apr 13, 2015, at 2:35 PM, Robert Muckle <bobm@Louisvilleco.gov> wrote:

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Sent from my iPhone

On Apr 13, 2015, at 12:17 PM, "Alan Sobel" <alansobel@earthnet.net> wrote:

Friends & Neighbors,
Folks who sent email cable comments to the city (your names have been bcc'd to protect your identities),
Daily Camera Editors,

Last Tuesday evening (April 7, 2015) the Louisville City Council unanimously passed on first

reading two ordinances approving a new cable franchise agreement.

It took them less than 3 minutes to do so.

No staff presentation.

No discussion.

No public comments.

No Nothing.

All in favor?

Done.

The next item on the agenda is . . . .

Presumably there is some reasonable purpose in having a first reading for an ordinance.

Provide a forum for initial discussion of the agreement. Perhaps raise some issues that needed additional information or clarification. Perhaps raise some objections to provisions in the agreement. Facilitate understanding of the agreement among council members and residents. Provide a solid groundwork for the final vote.

Not for cable matters in Louisville.

The first reading for the cable franchise agreement was a less-than-3-minute-Nothing.

Just the way the cable company likes it.

Here's a little background for this:

In order for a cable company to operate in a city it needs to get the approval of city officials to string its cable lines through a city's rights of way.

That approval from the city is usually incorporated in a contract between the city and the cable company called a Cable Franchise Agreement (or just 'franchise').

Typically a franchise will contain a number of provisions which compensate the city for the use of its rights of way, and some provisions which attempt to protect the city's residents from unseemly cable company practices.

The length of a franchise will extend for several years, typically eight or ten, after which it must be renewed. This franchise renewal provides an opportunity for both the cable company and the city to adjust the terms of the franchise.

The new franchise is developed over time in what is called a 'franchise renewal process.' The process allows time for negotiation between the City and cable company, and inputs from residents regarding their experience with cable service and prices. The final steps of Louisville's cable renewal process began at last Tuesday's City Council meeting with the approval of the franchise on first reading.

For many years, cable companies have earned very bad reputations for customer service and excessive charges for both cable and internet. Cable companies are now the largest providers of internet service in the country.

Cable companies are well aware of their poor reputation and would prefer not to have much resident input, if any, into the renewal process, thinking that that input would be in large part negative.

Cable customers, on the other hand, would like a chance to vent their grievances and frustrations, and seek some action and remedy from their city officials.

On Friday, April 3, 2015, the City of Louisville released 200 pages of documents pertaining to the new franchise agreement and scheduled a first vote on approving the new franchise for 4 days later. (This time period included the Easter and Passover holidays.)

In the City of Louisville, a new franchise needs to be approved by the City Council as an ordinance of the City.

Louisville approves city ordinances in a two-step process: a 'first reading' and vote, and then a 'second reading' and vote at some later date. An approval on the second reading would constitute a final approval by the city and the matter would be completed.

The documents released by Louisville constitute over 200 pages of mostly legalese: a new franchise agreement, a new customer service agreement, so-called 'redline' versions of these two documents, two ordinances covering these documents, and a letter of agreement.

You might think the next step in the process after releasing 200 pages of documents would be to have a town hall style public meeting for city officials to explain and discuss the provisions of the new franchise with Louisville residents.

This would provide city residents an opportunity to ask questions about and understand the provisions of the new franchise in an informal setting, and perhaps send the city negotiators to get additional information or back to the bargaining table to address an issue or issues residents found troubling.

If you thought that was how the City of Louisville would be doing it, you would be wrong.

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Alan Sobel
Louisville, Colorado

Meredyth Muth

From: Open Records
Subject: FW: [neighbors] Cable Franchise Update: Nothing
Attachments: Re: [neighbors] Cable Franchise Update: Nothing

-----Original Message-----
From: sdasdona@juno.com [mailto:sdasdona@juno.com]
Sent: Tuesday, April 14, 2015 1:46 PM
To: alansobel@earthnet.net
Cc: Robert Muckle; neighbors@lists.riseup.net; louisvillecolorado2@yahoogroups.com; cctv@lists.riseup.net; City Council; Planning
Subject: Re: [neighbors] Cable Franchise Update: Nothing

There is a little light as my councilman Hank Dalton did (at my request) get the cable company to extend its service to my home built in 1916 which to date has not had service and when asked to hook up required an expensive fee to extend the line. Since my home is not a new development it should have
been part of the original sevice area. The Cable company was non responsive. Thanks to
Hank I will not have to pay the extension fee.

Its time to order Maroons a Human Epic. Go to Amazon.com and enter ISB no 1-4392-4275-5 visit site
http://Maroons.yolasite.com Or just call me 303=665=4995

"Rightful liberty is unobstructed action according to our will within limits drawn around us by the equal rights of others. I do not add 'within the limits of the law,' because the law is often but the tyrant's will, and always so when it violates the rights of the individual."
Thomas Jefferson

Please note: message attached

From: Alan Sobel <alansobel@earthnet.net>
To: Robert Muckle <bobm@Louisvilleco.gov>
Cc: "neighbors@lists.riseup.net" <neighbors@lists.riseup.net>, "louisvillecolorado2@yahoogroups.com" <louisvillecolorado2@yahoogroups.com>, "cctv@lists.riseup.net" <cctv@lists.riseup.net>, City Council <Council@louisvilleco.gov>, Planning <planning@Louisvilleco.gov>
Subject: Re: [neighbors] Cable Franchise Update: Nothing
Date: Tue, 14 Apr 2015 09:42:21 -0600

Meredyth Muth

Subject: FW: Cable Franchise Update: Privatizing Public Decision-Making

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From: Alan Sobel [mailto:alansobel@earthnet.net]
Sent: Tuesday, April 21, 2015 11:19 AM
To: neighbors@lists.riseup.net; louisvillecolorado2@yahoogroups.com; cctv@lists.riseup.net; City Council; Planning
Subject: Cable Franchise Update: Privatizing Public Decision-Making

Friends & Neighbors,

[Since the City Council will not hold any public town hall style meetings for the franchise, will not appoint a Tech Advisory Committee, and will only allow Louisville residents 3 minutes to speak at the last minute before it votes on 200 pages of legal documents, I will take the opportunity of this forum to bring up some issues regarding the proposed franchise.]

Privatizing Public Decision-Making

A paragraph of the proposed Customer Service Standards reads as follows:

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

([Proposed] ORDINANCE NO. 1686 SERIES 2015, AN ORDINANCE ESTABLISHING CITY OF LOUISVILLE CABLE TELEVISION CUSTOMER SERVICE STANDARDS, Section 1. Chapter 5.22 of the Louisville Municipal Code is hereby repealed and reenacted to read as follows: Chapter 5.22 CABLE TELEVISION CUSTOMER SERVICE STANDARDS, Sec. 5.22.040.
Definitions. http://www.louisvilleco.gov/home/showdocument?id=3606)

[Note: the City apparently does not have a link directly to the proposed Customer Service Standards document; the link above is to a 104-page document which contains several franchise-related documents; there are no links within the document to provide easy access among the documents; you must search around in the document to find what you are looking for; the Cable Customer Service Standards Ordinance actually begins on page 9 of the document; the above CCUA paragraph is on page 12]

A paragraph of the Cable Franchise Agreement makes a similar assertion:

"The City shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under Federal, State and local law, to any agent including, but not limited to, the CCUA, in its

sole discretion." (CABLE FRANCHISE AGREEMENT, SECTION 4. ADMINISTRATION AND REGULATION, 4.1 Authority (A), http://www.louisvilleco.gov/home/showdocument?id=3606, p. 50)

These paragraphs are very troubling.

They are troubling because the CCUA (http://coloradocua.org/) is a private organization.

And it is a private organization with a long history of acting for the benefit of the cable company (see history below).

Some quick facts about the CCUA as a private organization:

- None of the delegates or officers of the organization are elected officials.

- The organization does not publish its charter or bylaws or operating procedures.

- The CCUA is not required to respond to Colorado Open Records Act requests.

- The CCUA is not accountable to the public in any way.

- There is no recourse to CCUA decisions or actions.

For the City Council to delegate authority to this private group to "review, investigate or otherwise take some related role in the administration and/or enforcement of any functions under these Standards" is for the City Council to abandon and abdicate its obligations to the residents of Louisville as a publicly elected entity.

A little history here:

The CCUA is the successor organization to the Greater Metro Telecommunications Consortium ("GMTC", no existing web site).

The GMTC was a public, governmental watchdog organization founded in 1992 and made up of about 30 cities and counties in the greater Denver area.

It's purpose was for the various cities and counties to act together as a unified public body to address anti-consumer practices of the dominant cable television company in the area (there has always been a dominant cable company in the area; for many years it was TCI).

The GMTC, however, was a textbook example of a phenomenon called 'regulatory capture.'

The idea of regulatory capture is that a body which is supposed to act as a regulator or watchdog over an industry actually acts to promote the interests of that industry, instead of somehow keeping it in check.

This phenomenon can occur for at least a couple reasons.

The people appointed to the entity may have political or ideological reasons for not wanting to keep the industry in check.

Another reason for regulatory capture could be the private ambitions of those appointed to the entity, for example wanting to get a well-paying job with industry after serving on the entity.

We see this kind of influence on the national level, so its not a surprise that we see it at the local level as well.

For example, the National Cable and Telecommunications Associations ("NCTA", http://www.ncta.com) is the prime lobbying group for the cable tv industry. The current head of the NCTA is a former head of the FCC. The current head of the FCC is a former head of the NCTA.

Also, a couple years ago the FCC voted to approve the purchase by Comcast of the NBC-Universal company. Four months after that approval, one of the FCC commissioners who voted to approve Comcast's purchase, was appointed a Vice President of Comcast.

The Louisville City Council, astonishingly, voted to privatize the GMTC a couple years ago and turn it into the CCUA.

It is not at all clear why one public entity would vote in favor of privatizing another public entity.

Privatizing the GMTC removed any public obligations the organization may have had.

For example, as mentioned above, the CCUA is no longer required to be transparent, can act in as secretive a manner as it chooses, and need not reveal any information about it's operations, activities or decisions, or the rationales for those actions. It is private.

Some additional background:

In April of 2005, a Louisville resident was concerned about some of the practices of Comcast in Louisville. The resident sent an email to a member of the Louisville City Council asking the City to look into the practices.

The council member refused to do this, and instead sent this response:

"These are reasonable business decisions and policies that I believe Comcast has every right to ask for. I will not ask the city attorney or consultant to review the [practices]."

This turns out to be a reasonable summary of the views of the City Council on Comcast for the last ten years.

To judge by the actions (and non-actions) of the Louisville City Council over the past ten years, they seem to believe that Comcast's actions are "reasonable business decisions," that Comcast should have a free hand to operate in Louisville ("Comcast has every right"), and that the interests, rights and concerns of Louisville residents take on a distinctly second fiddle status to Comcast's business decisions.

Alan Sobel

Meredyth Muth

Subject: FW: jacbec@jbholland.com

From: John Holland [mailto:jacbec@jbholland.com]
Sent: Friday, April 24, 2015 10:36 AM
To: Malcolm Fleming
Subject: jacbec@jbholland.com

Mr.Fleming,

I just wanted to vent on how displeased I am with Comcast as our TV provider. I have had their service for a decade and have come to the conclusion that they are one of the most sleazy companies I have ever dealt with. I have recently resolved my latest issue with them so I don't have any outstanding problems, I just wish we had another choice for cable.

Sincerely,

John Holland
424 Fairfield Lane
Louisville, CO 80027
303-249-6443

Meredyth Muth

From: Alan Sobel <alansobel@earthnet.net>
Sent: Saturday, April 25, 2015 1:04 PM
To: neighbors@lists.riseup.net; louisvillecolorado2@yahoogroups.com; cctv@lists.riseup.net; City Council; Planning
Subject: Cable Franchise Update: "issues we cannot address"

Friends & Neighbors,

[Since the City Council will not hold any public town hall style meetings for the franchise, will not appoint a Tech Advisory Committee, and will only allow Louisville residents 3 minutes to speak at the last minute before it votes on 200 pages of legal documents, I will take the opportunity of this forum to bring up some issues regarding the proposed franchise.]

I received the following email from a Louisville resident in response to the cable franchise update post a couple weeks ago about "Nothing." I've removed the names to protect privacy.

It illustrates a really important point about how the City Council handles cable matters in Louisville.

Hi [city spokesperson],

I see you're running a survey of Comcast pre-renewal, but we can't comment on rates, fees, channels, internet, broadband, or phone.

Now that all the issues that I care about are eliminated, what's left to survey?

Thanks

[Louisville resident]

[to Louisville resident]:

Thank you for the input. Fees, channels, broadband and phone service rules are regulated by Federal Law and we do not have any ability to change those. We do have some ability to discuss customer service issues related to your cable which is why we are taking input. I know it is frustrating when you may have other issues we cannot address. I do thank you for taking the time.

[from City spokesperson]

[comment on this exchange by Louisville resident:]

3 weeks to respond by saying, "Um, na, that's right: everything that matters is off the table, but we welcome your opinion of everything that doesn't."

If those items are federally regulated, why run the survey?

Personally, I would have preferred to use the opportunity not to rubber-stamp federal regulations (don't get me started...,) but rather to tell Comcast what their captive audience of monopolized customers really wants...

There is a difference between a court of law and an elected deliberative body.

In a court of law, the law is pretty much (not always) taken as a given. If you tell a judge you don't like a law, the judge will (usually) tell you to go talk to your elected representatives.

Your elected representatives, assembled in a deliberative body, is where you go to say 'I don't like this law. We should change it.' Granted, a local city council cannot directly change a state or federal law.

But the Louisville City Council is not a court of law, it is an elected deliberative body. It is one place to begin to engage in the democratic deliberative process of getting laws made or changed.

At a minimum, Louisville City Council members can respond to residents and express their views on issues that residents bring up. Additionally, council members can provide one way of communicating the views of Louisville residents up to state and federal officials.

For Louisville City Council members to assert there are "issues we cannot address" is to arbitrarily constrain and deny the rights of Louisville residents to express their views in an open deliberative process.

This is another instance of the Louisville City Council abandoning its public obligations to listen to and represent the views of Louisville residents.

This is simply yet another way in which the Louisville City Council protects the cable company.

Louisville residents who are rightly concerned about cable company practices have a right to express their views to their representatives and not be told there are "issues we cannot address."

Alan Sobel

Meredyth Muth

From: Elizabeth Gilpatrick <liz.gilp@gmail.com>
Sent: Saturday, April 25, 2015 1:37 PM
To: Alan Sobel
Cc: neighbors@lists.riseup.net; louisvillecolorado2@yahoogroups.com; cctv@lists.riseup.net; City Council; Planning
Subject: Re: Cable Franchise Update: "issues we cannot address"

It's a Brave New World in Louisville, folks. What's left to comment about? Perhaps whether or not I'll cancel my Comcast service...

On Apr 25, 2015, at 1:03 PM, Alan Sobel <alansobel@earthnet.net> wrote:

Friends & Neighbors,

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Alan Sobel

Meredyth Muth

From: Ellen Bracchi <ebracchi@comcast.net>
Sent: Sunday, April 26, 2015 7:55 AM
To: 'Alan Sobel'; neighbors@lists.riseup.net; louisvillecolorado2@yahoogroups.com; cctv@lists.riseup.net; City Council; Planning
Subject: RE: Cable Franchise Update: "issues we cannot address"

Hi Alan (and sorry to "reply all" but I feel it's time to chime in so it is not assumed that we all share the same sentiment),

I appreciate you standing up for a cause in which you believe and your dedication to sharing your message. I don't think anyone would begrudge you your right to voice your opinion to your government representatives.

Naturally, I believe residents should have a voice in local decisions but all of this is starting to feel like a lot of finger-pointing with no real point and the cable decision is not an issue that has me up in arms. I believe I asked a question about the Comcast cable franchise, which is likely how I got on your email list. It is obviously your right to continue the battle and you are clearly passionate about it. I, however, am not. Please remove me from your email list.

Thanks,

Ellen

From: Alan Sobel [mailto:alansobel@earthnet.net]
Sent: Saturday, April 25, 2015 1:04 PM
To: neighbors@lists.riseup.net; louisvillecolorado2@yahoogroups.com; cctv@lists.riseup.net; City Council; Planning
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Alan Sobel

Meredyth Muth

From: Alan Sobel <alansobel@earthnet.net>
Sent: Monday, April 27, 2015 10:49 AM
To: neighbors@lists.riseup.net; louisvillecolorado2@yahoogroups.com; cctv@lists.riseup.net; City Council; Planning
Subject: Re: Cable Franchise Update: "issues we cannot address"

Hi Ellen,

There is a point and it is that for many years, and in many ways, the Louisville City Council has aligned itself with the interests of the cable company, and against the interests of the residents of Louisville. I don't believe that's the proper role for the council to take. The issues here are both cable and the Internet, the most transformative innovation of our time. The cable company and the council depend on people not being aware of what they are doing to be able to continue their activities. The absence of local watchdog journalism in this matter is conspicuous. I have tried to address that by providing detailed and factual information about what the council and cable company are doing.

Thank you for participating in the discussion. I have taken your name off the list and apologize for the hassle.

Alan

> On Apr 26, 2015, at 7:55 AM, Ellen Bracchi <ebracchi@comcast.net> wrote:
>
> Hi Alan (and sorry to "reply all" but I feel it's time to chime in so it is not assumed that we all share the same sentiment),
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> I appreciate you standing up for a cause in which you believe and your dedication to sharing your message. I don't think anyone would begrudge you your right to voice your opinion to your government representatives.
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> Naturally, I believe residents should have a voice in local decisions but all of this is starting to feel like a lot of finger-pointing with no real point and the cable decision is not an issue that has me up in arms. I believe I asked a question about the Comcast cable franchise, which is likely how I got on your email list. It is obviously your right to continue the battle and you are clearly passionate about it. I, however, am not. Please remove me from your email list.
>
> Thanks,
> Ellen
>
> **From:** Alan Sobel [mailto:alansobel@earthnet.net]
> **Sent:** Saturday, April 25, 2015 1:04 PM
> **To:** neighbors@lists.riseup.net; louisvillecolorado2@yahoogroups.com; cctv@lists.riseup.net; City Council; Planning
> **Subject:** Cable Franchise Update: "issues we cannot address"
>
> Friends & Neighbors,

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It illustrates a really important point about how the City Council handles cable matters in Louisville.

Hi [city spokesperson],

I see you're running a survey of Comcast pre-renewal, but we can't comment on rates, fees, channels, internet, broadband, or phone.

Now that all the issues that I care about are eliminated, what's left to survey?

Thanks

[Louisville resident]

[to Louisville resident]:

Thank you for the input. Fees, channels, broadband and phone service rules are regulated by Federal Law and we do not have any ability to change those. We do have some ability to discuss customer service issues related to your cable which is why we are taking input. I know it is frustrating when you may have other issues we cannot address. I do thank you for taking the time.

[from City spokesperson]

[comment on this exchange by Louisville resident:]

3 weeks to respond by saying, "Um, na, that's right: everything that matters is off the table, but we welcome your opinion of everything that doesn't."

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Alan Sobel

Meredyth Muth

From: Lawrence Crowley <magic@ecentral.com>
Sent: Monday, April 27, 2015 4:29 PM
To: Alan Sobel
Cc: neighbors@lists.riseup.net; louisvillecolorado2@yahoogroups.com; cctv@lists.riseup.net; City Council; Planning
Subject: Re: [cctv] Cable Franchise Update: "issues we cannot address"

Hi Alan,

Just wanted to chime in that in the absence of any local news outlet, I particularly appreciate your shining a light on our council and how they are catering to the big corporation at our expense. We literally have no say when they refuse to allow any input to the process. Comcast has been jerking us around for years, and our council is complicit. Personally, over the time I have had TV via Comcast, my selection of programming has been repeatedly changed and cut back, while my monthly costs have tripled. I hate monopolies, especially those which have their hands in the manipulation of our City Council. For the life of me, I cannot understand the apparent apathy your letters have provoked from we the people.

Thank you, Alan.

Larry

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Alan Sobel

Meredyth Muth

From: sdasdona@juno.com
Sent: Tuesday, April 28, 2015 8:37 AM
To: alansobel@earthnet.net
Cc: neighbors@lists.riseup.net; louisvillecolorado2@yahoogroups.com; cctv@lists.riseup.net; City Council; Planning
Subject: Re: [neighbors] Cable Franchise Update: "issueswe cannot address"
Attachments: [neighbors] Cable Franchise Update: "issues we cannot address"

And don't forget in a court of law the judge can rule based on their feelings and not on law. You have no recourse except to appeal to a higher court. Judges cannot be sued and the disciplinary process for unjust judges is run by judges

Its time to order Maroons a Human Epic. Go to Amazon.com and enter ISB no 1-4392-4275-5 visit site http://Maroons.yolasite.com Or just call me 303=665=4995

"Rightful liberty is unobstructed action according to our will within limits drawn around us by the equal rights of others. I do not add 'within the limits of the law,' because the law is often but the tyrant's will, and always so when it violates the rights of the individual."
Thomas Jefferson

Please note: message attached

From: Alan Sobel <alansobel@earthnet.net>
To: neighbors@lists.riseup.net, louisvillecolorado2@yahoogroups.com, cctv@lists.riseup.net, City Council <council@louisvilleco.gov>, Planning <planning@louisvilleco.gov>
Subject: [neighbors] Cable Franchise Update: â€œissueswe cannot addressâ€
Date: Sat, 25 Apr 2015 13:03:45 -0600

City of Louisville
COLORADO • SINCE 1878

CITY COUNCIL COMMUNICATION
AGENDA ITEM 8E

SUBJECT: **RESOLUTION NO. 26, SERIES 2015 – A RESOLUTION APPROVING A CONSTRUCTION AND MAINTENANCE AGREEMENT WITH BNSF RAILWAY COMPANY FOR THE SOUTH STREET PEDESTRIAN/BIKE UNDERPASS**

DATE: **MAY 5, 2015**

PRESENTED BY: **KURT KOWAR, PUBLIC WORKS**

SUMMARY:
The attached resolution approves the Construction and Maintenance Agreement with BNSF railroad in order to begin work on the South Street Gateway Underpass (a pedestrian and bicycle connection under the BNSF railroad). The conceptual design for this project was approved by City Council in the 42 Gateway Corridor Project. The project will create an eastern gateway to the City connecting downtown to the Highway 42 Revitalization Area and providing a key missing link in the City's multipurpose trail network. The South Street Gateway Underpass will be well lit, aesthetically pleasing, and will enable pedestrians and cyclists traveling down the Goodhue ditch trail through the South Street trail improvements, to safely access the revitalization area, the future FastTracks Commuter Rail Station, the Harney Lastoka Open Space, and the Coal Creek Trail.

The City selected Atkins North American, Inc. ("Atkins") in 2013 to design the underpass and work with the BNSF to achieve permitting. To date, the design of the underpass has been presented to the public, to Council and to the Louisville Revitalization District and has received several reviews by BNSF staff. In May of 2014, City staff submitted an application to the Public Utilities Commission for approval of the project. The application was approved in July of 2014 pending the submission of a signed Construction and Maintenance Agreement for Pedestrian/Bike Underpass ("CM Agreement") with the BNSF.

Additional documents required for project completion are attached to the CM Agreement as exhibits. These include a Memorandum of Easement for Recreational Trail Pedestrian/Bike Underpass, a Permanent Easement Agreement for Recreational Trail Pedestrian/Bike Underpass and an Indefinite Term Lease for parking within the BNSF Right-of-Way. The exact parking area to be memorialized in the lease agreement has not been determined but is shown generally on the fence exhibit. The City Manager and City staff will continue to work with BNSF to finalize these documents as well. The City Attorney has reviewed the CM Agreement and approved as to form. The City Manager and City Attorney will continue to review any additional minor modifications that may be needed prior to submission to the Public Utilities Commission.

The CM Agreement will allow BNSF to schedule the construction of the bridge structure. The City will advertise for bids and contract separately with a contractor to build the aesthetic improvements.

FISCAL IMPACT:
The project is being funded in partnership between the City of Louisville and the Louisville Revitalization District. The Louisville Revitalization District will contribute approximately half of the project costs over time.

The Budget includes the following funds:

042-499-55310-52 South Street Underpass (95%)	$2,470,000.00
053-499-55310-52 South Street Underpass (5%)	$ 130,000.00
	$2,600,000.00

Previously Approved Consultant Design Fee (Atkins).	$ 300,000.00
BNSF CM Agreement Railroad Work Cost Est.	$ 804,518.00
BNSF Permanent Easement Cost	$ 47,900.00
BNSF Flagging and Inspection Coordinator	$ 173,250.00
BNSF Processing Easement Processing Fee	$ 2,000.00
Remaining Budget	$1,272,332.00

Based on BNSF's preliminary estimates of cost for BNSF's portion of the Gateway Underpass (the bridge), and providing for reasonable contingencies at this point in the project, staff estimates that the total project will exceed currently budgeted funding in the range of $500,000-$750,000. BNSF has not finalized when construction will occur or when payment will be required. Should project completion occur in 2015 this will require a budget amendment to complete the project as currently designed. Staff will prepare options to address this issue for Council to consider during the Council's June 9th budget retreat.

RECOMMENDATION:
Staff recommends the City Council approve Resolution No. 26, Series 2015 approving the CM Agreement with BNSF. This will allow the project to move forward while staff develops funding options for Council to consider.

ATTACHMENT(S):
1. Resolution No. 26, Series 2015
2. CM Agreement

RESOLUTION NO. 26
SERIES 2015

A RESOLUTION APPROVING A CONSTRUCTION AND MAINTENANCE AGREEMENT WITH BNSF RAILWAY COMPANY FOR THE SOUTH STREET PEDESTRIAN/BIKE UNDERPASS

WHEREAS, the BNSF Railway Company, a Delaware Corporation (hereinafter called "Railroad" or "BNSF") owns and operates a railroad line in and through the City of Louisville; and

WHEREAS, the City intends to construct and maintain an underpass structure and related work to carry a multi-use, non-motorized pedestrian/bike trail for recreational use by the public without charge (hereinafter "the Project" or "South Street Gateway") under the Railroad's track at Line Segment 476, Mile Post 19.91, located on the Powder River Division, Front Range Subdivision in the City of Louisville, which location is at the intersection of the railroad line and South Street; and

WHEREAS, in connection with the Project, it will be necessary for the City to perform certain work on, under and in proximity to the Railroad right-of-way and tracks; and

WHEREAS, for the Project to proceed, BNSF will be constructing a 43'4" railroad truss plate girder structure ("Pedestrian/Bike Underpass") for pedestrians and bicycles to cross under the BNSF tracks; and

WHEREAS, the City will be constructing the pedestrian/bike trail underneath the Pedestrian/Bike Underpass, and will also be constructing the approaches to the Pedestrian/Bike Underpass, and related South Street Gateway improvements, including fencing; and

WHEREAS, the City will undertake the Project at its expense, and Railroad is willing to consent to the construction of the Project upon the terms and conditions of an agreement between the City and BNSF; and

WHEREAS, a Construction and Maintenance Agreement between the City and BNSF has been proposed for such purpose; and

WHEREAS, in conjunction with the Construction and Maintenance Agreement, BNSF will grant to the City, its agents and contractors a non-exclusive perpetual easement agreement for the construction, use, operation, maintenance and repair of the City's South Street Gateway improvements located within BNSF right-of-way, and will lease to the City for an indefinite term portions of the right-of-way for the sole and exclusive use of public parking; and

WHEREAS, the City Council by this resolution desires to approve the Construction and Maintenance Agreement and authorize its execution;

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

1. The proposed Construction and Maintenance Agreement for Pedestrian/Bike Underpass between the City of Louisville and BNSF Railway Company to construct and maintain an underpass structure and related work for recreational use by the public under the Railroad's track at the BNSF line at South Street (Line Segment 476, Mile Post 19.91), is hereby approved in essentially the same form as the copy of such Agreement accompanying this Resolution (the "Agreement").

2. The Mayor is authorized to execute the Agreement on behalf of the City, except that the Mayor is hereby further granted authority to negotiate and approve such revisions to said Agreement as the Mayor determines are necessary or desirable for the protection of the City, so long as the essential terms and conditions of the Agreement are not altered.

3. The Mayor, City Manager and City staff are hereby authorized to execute and deliver all documents and do all other things necessary on behalf of the City to carry out the provisions of the Agreement and perform the obligations of the City under the Agreement, including without limitation that the Mayor and the City Manager, or either of them, is hereby authorized to execute and deliver the easement agreement and indefinite term lease agreement that are Exhibits to the Agreement.

PASSED AND ADOPTED this _____ day of _____, 2015.

_____
Robert P. Muckle, Mayor

ATTEST:

_____
Nancy Varra, City Clerk

CONSTRUCTION AND MAINTENANCE AGREEMENT FOR PEDESTRIAN/BIKE UNDERPASS

This Agreement made and entered into in duplicate as of the ____ day of _____, 2015 by and between the **BNSF RAILWAY COMPANY**, a Delaware Corporation, hereinafter called "Railroad" or "BNSF", and the **CITY OF LOUISVILLE**, a Colorado home rule municipal corporation, hereinafter called "City".

WHEREAS, the Railroad owns and operates a line of railroad in and through the City of Louisville;

WHEREAS, the City proposes to construct and maintain an underpass structure and related work to carry a multi-use, non-motorized pedestrian/bike trail for recreational use by the public without charge (hereinafter "the Project") under the Railroad's track at Line Segment 476, Mile Post 19.91, located on the Powder River Division, Front Range Subdivision (hereinafter "the Premises"), in the City of Louisville, Boulder County, Colorado, as shown on **Exhibit A**, attached hereto and made a part hereof;

WHEREAS, in connection with the Project, it will be necessary for the City to perform certain work on, under and in proximity to the Railroad right-of-way and tracks;

WHEREAS, BNSF will be constructing a 43'4" railroad truss plate girder structure ("Pedestrian/Bike Underpass") for pedestrians and bicycles to cross under the BNSF tracks;

WHEREAS, the City will be constructing the pedestrian/bike trail underneath the Pedestrian/Bike Underpass, the approaches to the Pedestrian/Bike Underpass, and related improvements, including fencing;

WHEREAS, the City is willing to undertake the Project with its Contractor at the sole expense of the City, and Railroad is willing to consent to the construction of the Improvements upon the terms and conditions herein stated and not otherwise; and

WHEREAS, the parties desire to set forth in this instrument an agreement relating to the construction, ownership, operation, use, maintenance, repair and replacement of the Pedestrian/Bike Underpass, upon the terms and conditions herein stated and payment of any Railroad charges made necessary in connection therewith;

NOW, THEREFORE, in consideration of the premises and the mutual dependent promises hereinafter contained, the parties agree as follows:

ARTICLE I – DEFINITIONS

The term "Pedestrian/Bike Underpass" as used in this Agreement, refers to the 43'4" railroad truss plate girder bridge that will span the pedestrian/bike underpass and the pedestrian/bike path that will pass under the BNSF tracks along with all associated improvements and appurtenances as shown on the plans attached hereto and incorporated

herein as **Exhibit B** (the "Plans") in the general detail and location on the Property as described in **Exhibit A**.

ARTICLE II – EXHIBITS

The Exhibits listed below are attached hereto and made a part of this Contract:

Exhibit A	Map showing location of Pedestrian/Bike Underpass
Exhibit B	Construction Plans for the Pedestrian/Bike Underpass
Exhibit C	Contractor's Requirements
Exhibit C-1	Contractor's Agreement
Exhibit D	Easement Agreement for Recreational Trail Pedestrian/Bike Underpass
Exhibit E	Indefinite Term Lease
Exhibit F	Estimate for Railroad Work

ARTICLE III – RAILROAD OBLIGATIONS

In consideration of covenants and conditions to be fulfilled by the City as hereinafter set forth, Railroad agrees:

1. By separate agreement in the form of **Exhibit D** and for the consideration stated therein, BNSF shall grant to the City, its agents and contractors a non-exclusive perpetual Easement upon the Premises as shown on **Exhibit A** for the construction, use, operation, maintenance, repair and replacement of the Recreational Trail Pedestrian/Bike Underpass ("Easement Purpose"). Said Easement is granted pursuant to the Colorado Recreational Liability Act, C.R.S. § 33-41-101, et. seq., with the intent that Railroad be entitled to the protection and benefits thereof.

2. Railroad will construct for the City a 43'4" railroad truss plate girder bridge for pedestrians and bicyclists to cross under the BNSF tracks. Railroad will provide flaggers for the portion of the Project to be constructed by the City and an onsite inspector/representative. Such Railroad work shall be performed by Railroad employees at the sole cost and expense of the City. The Railroad's estimate for such work is attached as **Exhibit F**.

3. Railroad will present insofar as possible a final detailed and itemized statement for work performed by Railroad at expense of the City within one hundred twenty (120) days after completion thereof. The Railroad may present periodic itemized progress bills to the City for work as completed. Final payment will be made in the

amount of the difference between the sum of the periodic payments made and the itemized statement for the total amount of the work performed by the Railroad upon completion of the work. In the event of overpayment, Railroad shall refund to the City such excess.

ARTICLE IV – CITY'S OBLIGATIONS

In consideration of the covenants and conditions to be fulfilled by Railroad as herein set forth, the City agrees:

1. To furnish all plans, specifications, engineering supervision, labor, materials, supplies, and equipment necessary to construct the Pedestrian/Bike Underpass. Plans and specifications for work to be done on, over, under or adjacent to Railroad's right-of-way and tracks shall be submitted to Railroad's Manager of Public Projects Bentley Tomlin in Kansas City, Kansas for review and comments or approval prior to construction. Approval by Railroad shall not be construed or deemed to be a ratification or an adoption by Railroad of said plans and specifications. The Railroad shall not be liable or responsible in any manner for the structural design, details or construction of the Pedestrian/Bike Underpass. The final plans and specifications as approved by the parties are attached hereto as **Exhibit B** and incorporated herein by reference. All construction and work done by the City shall be in accordance with the approved plans and specifications.

2. Pay the consideration stated in **Exhibit D** for the easements and a $2000 administrative fee before the commencement of the work on the Pedestrian/Bike Underpass.

2a. Upon City's payment to BNSF of the initial lease sum of $_____ and No/100 Dollars ($_____), such payment to be made within thirty (30) days of issuing the Notice to Proceed, and provided further that the City is in compliance with the term and conditions of this Agreement, BNSF will grant to City, its successors and assigns, an indefinite term lease (hereinafter called, the "lease") to enter upon and use that portion of BNSF's right-of-way as is necessary to use and maintain the fencing and parking areas, substantially in the form of **Exhibit E**. If City fails to pay BNSF within the thirty day time period set forth in the preceding sentence, BNSF may stop construction of the Project until full payment is received by BNSF.

3. Advertise the project, solicit bids and enter into a construction contract for the Pedestrian/Bike Underpass in accordance with the terms of this Agreement.

4. Construct or cause to be constructed in a manner acceptable to the Railroad the pedestrian/bike path under the Pedestrian/Bike Underpass, the approaches thereto and the other improvements shown on the Plans ("City's Work") in accordance with **Exhibit B, Exhibit C Exhibit C-1, and Exhibit E** attached hereto and incorporated herein by reference.

4a. Construct or cause to be constructed and maintained in a manner acceptable to the Railroad and the City and in a location acceptable to Railroad, six (6) foot high fencing as shown on **Exhibit B,** extending North from South Street; the fencing will be located on both sides of the BNSF right of way and will extend all the way to Griffith Street. And then the fencing will be extended South from South Street, and will be located on both sides of the BNSF right of way and it will extend all the way to 600' south of Pine Street. Some sections of the fencing will have to be placed within the BNSF right of way due to existing street right of ways and existing parking as shown on **Exhibit B**. The location of the fence shall be as shown on **Exhibit A** to **Exhibit E** to this Agreement. Any change to the clearances between the centerline of BNSF's track and the fence as shown on **Exhibit A** to **Exhibit E** must be approved in writing in advance of any such change by BNSF in BNSF's sole discretion.

5. Arrange for relocation of any utility facilities that may be affected by this Pedestrian/Bike Underpass. Construction shall not interfere with any fiber optic lines or other use of the Premises by the BNSF or its permittees. Before the City's contractor begins any excavation, the contractor shall telephone BNSF at 1-800-533-2891 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the affected BNSF premises and confer with BNSF with regard to any other overhead or underground utilities or services which may be on or near the site of the work. If any utilities are impacted by the work, the City's contractor, at its expense, shall telephone the telecommunications and utility companies involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable or other utility prior to beginning any work on the Premises. Any such location or relocation shall be at the sole cost and expense of the City.

6. To furnish or cause to be furnished all labor, materials, tools and equipment and to perform the City's Work, in accordance with **Exhibit B** or such plans and specifications as approved by the PUC.

7. Prior to commencement of any work on Railroad's property, the City shall require its contractor to sign and return to Railroad **Exhibit "C-1"** and comply with all terms in **Exhibit "C"** and all work on said project to be performed in a manner that will not endanger the safety of the Railroad or interfere with the operation thereof other than as described in Article III, Paragraph 3 above. If, in the opinion of the Railroad, the operation of the City's contractor is endangering the safety of the Railroad's operation, Railroad may immediately order the termination of further work on Railroad's premises, until the dangerous condition has been corrected, without liability on the Railroad's part.

8. To reimburse the Railroad within forty five (45) days after receipt of properly computed and compiled statements for costs incurred for work done by the Railroad in accordance with the provisions of this Agreement. Notwithstanding the foregoing, the City shall not have any liability for or obligation to pay for any work done by Railroad unless statement therefore is presented to and received by the City before the expiration of one year after the day of completion of all work done by the Railroad in accordance with the provisions of this Agreement.

9. City agrees to reimburse BNSF for work of an emergency nature caused by City or City's contractor in connection with the Project which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of City and City agrees to fully reimburse BNSF for all such emergency work.

10. In the event that City shall fail to pay any monies due to Railroad within forty five (45) days after receipt of the invoice, then City shall pay interest at the rate of one percent (1%) per month of the outstanding balance of monies owed subject to the requirements and restrictions of the Prompt Payment ordinance.

11. Upon completion of construction of the Pedestrian/Bike Underpass, the City will own and maintain and repair at its sole cost and expense the Pedestrian/Bike Underpass, including but not limited to graffiti removal, snow removal, fence repair and sign repair/replacement. BNSF will have no maintenance responsibilities with respect to the Pedestrian/Bike Underpass whatsoever. The City will have no maintenance responsibilities with respect to BNSF's tracks and track infrastructure. Prior to any maintenance work or repair of the pedestrian/bike path that requires the City or its contractors to be on, over or within the Railroad right-of-way or the Premises other than on the pedestrian/bike path or at any time when the City desires to enter upon the Premises outside the pedestrian/bike path with any vehicle or equipment for any purpose whatsoever, five (5) days advance notice must be given to Railroad's Roadmaster, currently _Hayley Brown_, telephone number (303) 480-6251. Said notice shall inform Railroad's Roadmaster of the date(s) of the proposed maintenance, repair or desired vehicular or equipment access, the nature of the maintenance, repair or access to be performed and the manner in which the maintenance, repair and access shall be performed. Upon receipt of such notice, Railroad's Roadmaster will determine and inform the City whether a flagman need be present and whether the City need implement any special protective or safety measures. If any flagmen or other special protective or safety measures are required or performed by the Railroad, such services will be provided at the City's expense. No maintenance performed by the City shall cause any interference with the constant, continuous and uninterrupted use of the trains, property and facilities of Railroad or those using Railroad's facilities with its permission. The City agrees that any contractor retained to perform maintenance or repair on, over or within the Railroad's right-of-way or the Property will have in place for the duration of such maintenance the insurance required in **Exhibit C-1** and comply with all terms of **Exhibit C-1 and C**. If the City undertakes such maintenance or repair with its own forces or equipment, the City will at all times comply with the requirements of **Exhibit C**. This notice requirement shall not apply to routine maintenance of the trail including snow removal where the vehicles, equipment and workers will remain on the pedestrian/bike path.

ARTICLE V – CONSTRUCTION ACTIVITIES

1. All work herein provided for, to be done by the City's contractor (the "Contractor") on, above or adjacent to the Premises and/or Railroad's right-of-way and tracks, shall be performed in a manner reasonably satisfactory to the Railroad and shall be performed at such time and in such manner as not to interfere with the movement of trains or traffic upon the tracks of Railroad. The Contractor or its subcontractors as part of any contract for work to be performed on or about the Railroad's right-of-way shall be totally responsible for all damage to the Railroad as a result of work on the Pedestrian/Bike Underpass, which shall include but not be limited to interference with the normal movement of trains. Should the Contractor's operations result in damage to Railroad property or train delays, the Contractor shall reimburse the Railroad for such damage or delays within thirty (30) days of receipt of a bill from Railroad for such damages.

2. The City shall cause its Contractor to prosecute and complete work according to the Contractor's own manner and methods and with and by the Contractor's own means and employees, free from any supervision, inspection, or control whatsoever by Railroad, except as may be necessary to enable Railroad to determine whether work performed complies with the requirements of this Agreement and conforms to the Plans. It is the intent of the parties hereto that the City's Contractor shall be and remain an independent contractor and that nothing herein contained shall be construed as inconsistent with that status.

3. The City shall cause its Contractor to comply with all applicable requirements and regulations of every Federal, State, Local or other governmental authority with respect to the performance of work for the safety of the employees engaged therein and of the public and shall take all necessary precautions for the safety of contractor, subcontractors and the employees and tools of both while engaged in said work. In addition, the City shall cause its Contractor to comply with the Railroad's Contractor Requirements set forth in **Exhibit C**.

4. Railroad's engineer or designee may advise the City's Contractor or Contractor's site supervisor that an agent, servant, or employee of the Contractor or of a subcontractor is working in an unsafe manner or may potentially work in an unsafe manner, in which event, Contractor's work site supervisor shall cause said agent, servant or employee to leave the work site and Railroad's property. The City shall cause its Contractor to assume all responsibility for the safe work methods and practices of its agents, servants, and employees.

5. If the City's Contractor prosecutes the Pedestrian/Bike Underpass contrary to the Plans or if such Contractor shall prosecute said work in a manner deemed hazardous by the Railroad or if the insurance required in **Exhibit C-1** shall be cancelled during the progress of the work, Railroad shall have the right to stop said work until the acts or omissions of such Contractor have been fully rectified to the satisfaction of the Railroad or until additional insurance has been obtained and proof thereof delivered to and accepted by Railroad. Such work stoppage shall not give rise to or impose upon Railroad any liability.

6. The City agrees that it will not permit any contractor to enter upon or perform any work contemplated by this Agreement upon or within 25 feet of the centerline of the Railroad's track unless and until contractor shall have executed and delivered to Railroad the Agreement between BNSF and the Contractor in the form attached hereto as **Exhibit C-1** and obtained Railroad's approval of all railroad required insurance.

7. All of the limitations and obligations imposed upon the City's Contractor by the City and all rights reserved to Railroad by this Agreement shall apply with equal force and effect to any subcontractor(s) performing any work for the City's Contractor upon Railroad property. The City shall provide that its Contractor shall be primarily liable and responsible to Railroad for all acts or omissions of any of the contractor's subcontractors employed upon Railroad property. Nothing herein shall be construed to preclude Railroad from proceeding against the City's Contractor and subcontractors individually or collectively. Only those subcontractors whose operations are covered by the insurance provisions of **Exhibit C-1** hereof will be authorized to work upon Railroad property.

8. The City shall cause its Contractor to provide a lockable master battery disconnect switch on all operated or leased mobile equipment stored or parked at or adjacent to the Premises during construction. The Contractor must verify that the master battery disconnect switch is left in the off or disconnect position and padlocked, when equipment is left unattended. No equipment shall be left unattended within 25 feet of track centerline unless approval is obtained from the Responsible Railroad Project Representative. Under no circumstances is equipment to be left unattended within 8'-6" of track centerline or any other position where it could be struck by a train or on-track equipment. To protect against unauthorized access and/or use, unattended equipment needs to be shut off and left in gear, with brakes set. Remove keys and lock cabs, where so equipped. Buckets and blades need to be lowered to the ground. Where equipment has an enclosed cab, the installation of a lockable hasp on cab access doors is strongly encouraged.

ARTICLE VI – LIABILITY

1. As between the parties hereto, each party hereto shall be responsible for its own negligence and that of its agents, servants, and employees in the performance of this Agreement, consistent with the provisions of the Colorado Governmental Immunity Act, Section 24-10-101 *et seq.*, C.R.S. (the "Act").

2. City shall and will and does hereby agree, insofar as permitted by law and without waiving any defenses it has under the Colorado Governmental Immunity Act to any third party claim, to assume responsibility for any and all claims, liabilities, losses, damages, costs, expenses, judgments, or attorney's fees for or on account of personal injuries to or death of persons or damage to or loss or destruction of property, directly or indirectly caused by, due to, arising out of, or in connection with, the construction, maintenance, operation, use, removal or existence of the Pedestrian/Bike Underpass,

excepting injuries or damages which are not caused by use of the Pedestrian/Bike Underpass, such as derailments caused by defects in the Railroad tracks or equipment.

ARTICLE VII – NOTICE PROVISIONS

1. For the purposes of this Agreement, the individuals named below are hereby designated representatives of the respective parties. Any party may, at any time, designate in writing new or substitute representatives.

For the City
Ms. Joliette Woodson
Engineer II
City of Louisville
749 Main Street
Louisville, CO 80027
(303) 335-4603

with copies to:

City Attorney's Office
City of Louisville
749 Main Street
Louisville, Colorado 80027

For BNSF
Bentley Tomlin
BNSF Railway Company
4515 Kansas Ave
Kansas City, Kansas 66106
(913) 551-4964

ARTICLE VIII - TERMINATION

The City and Railroad mutually agree:

1. In the event the City shall for any reason abandon the construction of the Pedestrian/Bike Underpass before completion, the Railroad shall have the right to terminate this Agreement and the Easement, and the City agrees to pay BNSF to remove the Pedestrian/Bike Underpass and restore the Premises to the condition existing prior to commencement of work at the City's expense. The lease attached as **Exhibit E** will remain in existence according to its terms and the City's obligations for fencing shall survive regardless of termination of this Agreement due to the City's abandonment of the Project. All such work shall be performed in accordance with the terms of this Agreement and **Exhibits C and C-1** attached hereto. Prior to exercising such right, BNSF shall notify the City in writing of its intent to exercise its rights herein giving the

City thirty days to cure the cause of the termination.

2. Railroad may terminate this Agreement for any reasons stated herein, which must amount to a material breach of the terms of this Agreement or persistent failure to comply with the terms hereof. Except as noted elsewhere herein, Railroad shall provide thirty days written notice of its intent to terminate this Agreement to provide the City with an opportunity to cure. If the default or breach is the failure to maintain the insurance required in **Exhibit C-1** or any unsafe condition or construction practice by the City or its contractor, then Railroad shall have the right to stop the work until proof of such insurance is provided and the unsafe condition or construction practice removed. In the event the breach or default is not cured within thirty days, Railroad at its sole option may terminate this Agreement. City may terminate this Agreement upon thirty days written notice to Railroad for any material breach or persistent failure to comply with the terms hereof; however, such termination will not effect a termination of the lease attached as **Exhibit E** unless there is a material breach of the terms of the lease agreement by Railroad as set forth therein

3. If this Agreement is terminated by either party for the reasons set forth herein, the Pedestrian/Bike Underpass shall be permanently sealed shut and the paved trail located on Railroad property shall be removed by the City and the land under the trail restored to its original condition at the sole cost and expense of City and pursuant to the terms hereof including **Exhibits C and C-1**.

4. Notwithstanding any expiration or other termination of this Agreement, all of City's indemnification obligations and any other obligations that have accrued but have not been satisfied under this Agreement prior to the termination date shall survive such termination.

ARTICLE IX – TERM

This Agreement shall become effective as of the date first herein written and shall continue in full force and effect for as long as the Pedestrian/Bike Underpass remains on the Railroad's property and easement described in Article III, Section 1, remains in effect.

ARTICLE X - MISCELLANEOUS

1. It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Colorado or the United States of America, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

2. In no event shall any waiver by the Railroad of the breach by the City of any covenant, stipulation, term or condition of this Agreement impair the right of the Railroad to avail itself of any subsequent breach thereof. In no event shall any waiver by

the City of the breach by the Railroad of any covenant, stipulation, term or condition of this Agreement impair the right of the City to avail itself of any subsequent breach thereof.

3. This Agreement is intended as the complete integration of all understandings between the parties, their successors and assigns. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent notation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other contract executed by the parties and signed by the signatories of this Agreement. This Agreement and any amendments shall be binding upon the parties, their successors and assigns.

4. Each party represents and warrants that it has taken all actions that are necessary or that are required by its procedures, bylaws or applicable law to legally authorize the undersigned signatories to execute this Agreement on behalf of each party and to bind each party to its terms.

5. Appropriation and Funding: Notwithstanding any other term, condition or covenant of this Agreement, it is expressly understood and agreed that any payment obligation of the City under this Agreement, for all or any part of any payment obligations set out herein, whether direct or contingent, shall extend only to payment of monies duly and lawfully appropriated for the purpose of this Agreement by their respective governing bodies. The City has budgeted and appropriated funds to cover the estimated cost of the Project for the year in which this Agreement has been executed by the City. Railroad acknowledges that (i) the City does not by this Agreement irrevocably pledge present cash reserves in this or future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

6. Status of Parties: It is understood and agreed by and between the parties that the status of the parties shall be that of independent contractors and it is not intended, nor shall it be construed, that any agent or employee of one party is an agent or employee of the other for any purpose whatsoever.

7. Examination of Records: Upon reasonable advance request and during regular business hours**,** the Railroad agrees that any duly authorized representative of the City including the City Auditor, shall, until the expiration of three (3) years after the payment by the City to the Railroad under this Agreement, have access to and the right to examine any books, documents, papers and records of the Railroad, which are directly pertinent to transactions related to this Agreement.

8. Subject to Local Laws; Venue: Each and every term, provision or condition herein is subject to and shall be construed in accordance with the provisions of Colorado law, and the ordinances, regulations, Executive Orders, and/or fiscal rules, enacted and/or promulgated pursuant thereto, excepting those laws and ordinances which

have been preempted by federal law. Venue for any action arising hereunder shall be in the District Court, Boulder County, Colorado or the United States District Court for the District of Colorado.

9. Assignment and Subcontracting: The City and Railroad shall not assign this Agreement, or any part hereof, without the prior written consent of the other parties hereto and it is agreed that any transfer or assignment, or attempted transfer or assignment of this Agreement, or any of the rights hereby granted, whether voluntary, by operation of law, or otherwise, without said written consent, shall be absolutely void.

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 Railroad further agrees not to hire or contract for services of any official, officer or employee of the City.

11. Counterparts of this Agreement: This Agreement will be executed in two (2) counterparts, each of which shall be deemed to be an original of this Agreement.

12. Nothing contained in this Agreement shall be deemed or construed by the City and Railroad or by any third party to create the relationship of principal and agent or of any partnership or of joint venture between the City and Railroad.

13. Noting contained in this Agreement is intended or shall be construed to confer upon or give any person other than the parties thereto and their successors and assigns, any rights, benefits or remedies under or by reason of the Agreement.

14. In connection with the performance of work under this Agreement, the parties agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the parties further agree to insert the foregoing provision in all approved subcontracts hereunder.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement in duplicate the day and year first above written.

BNSF RAILWAY COMPANY

By:_____

Title:_____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015 by _____ as _____ of BNSF Railway Company, a Delaware corporation.

WITNESS my hand and official seal.

_____
Notary Public

My Commission
Expires:_____

CITY OF LOUISVILE,
a Colorado home rule municipal corporation

By:_____
Robert P. Muckle, Mayor

Attest:

By:_____
Nancy Varra, City Clerk

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this____ day of _____, 2015, by Robert P. Muckle, Mayor, and Nancy Varra, City Clerk, of the City of Louisville, a Colorado home rule municipal corporation.

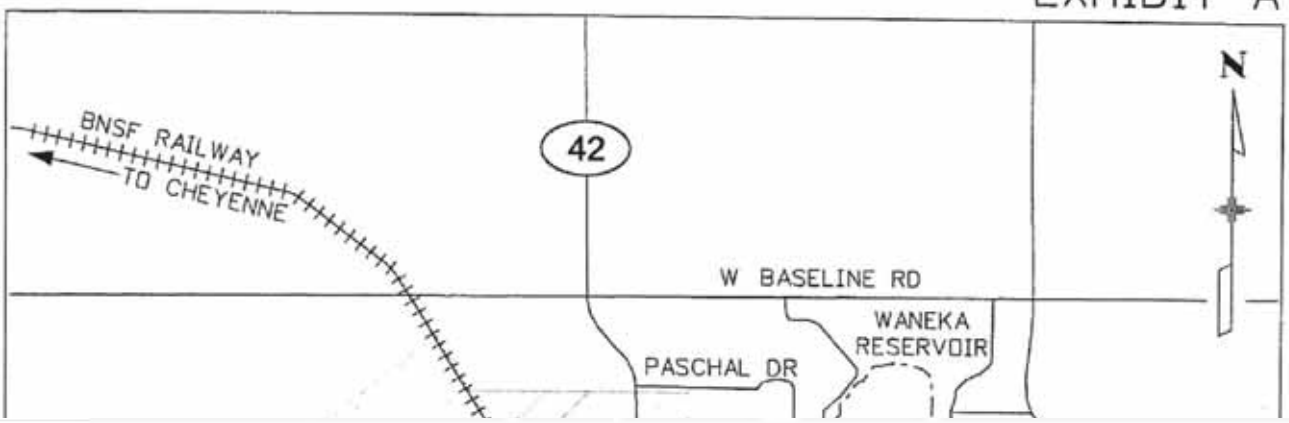
Witness my hand and official seal

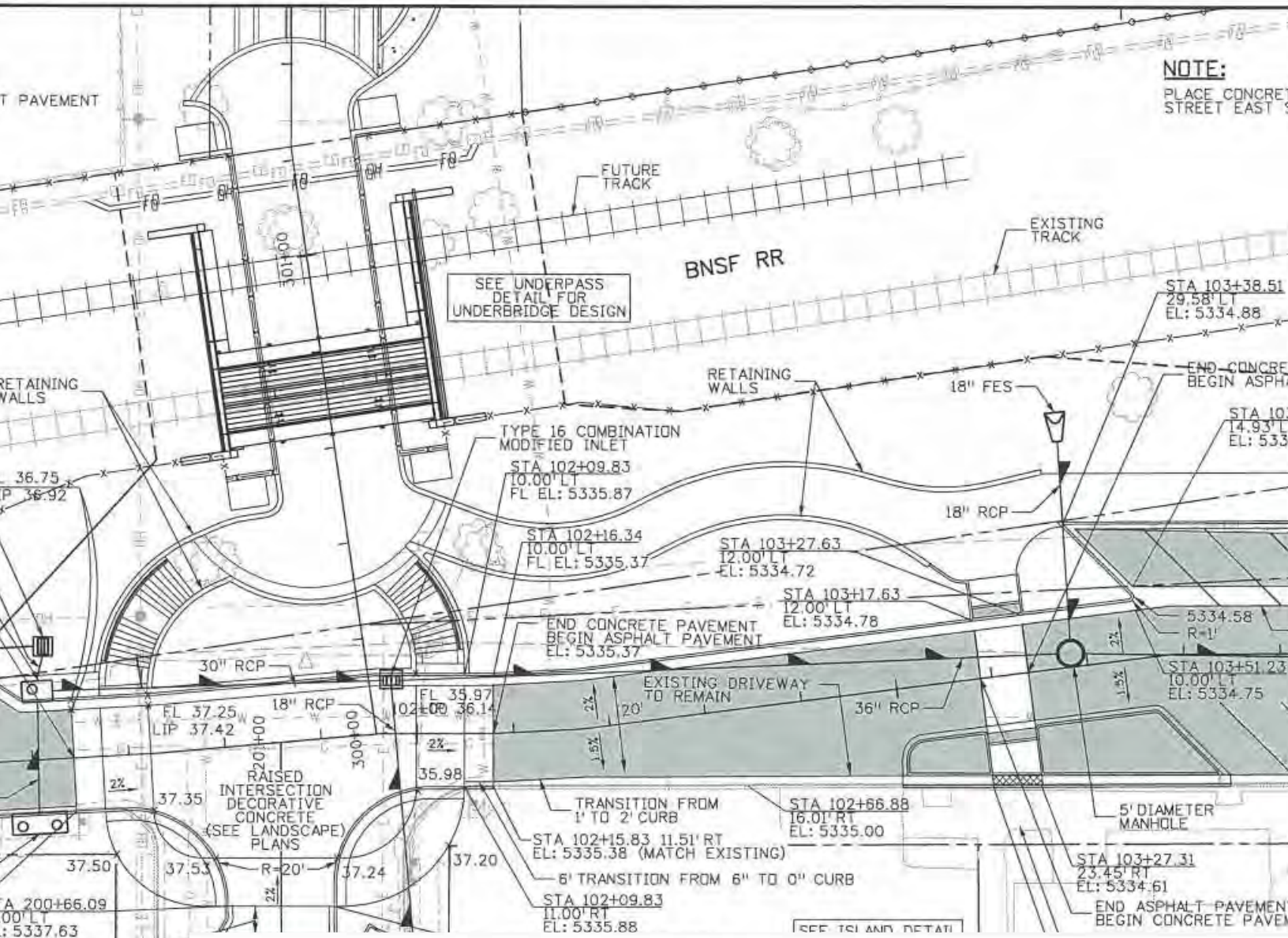
(S E A L)

_____
Notary Public

My Commission Expires: _____

EXHIBIT A





CONSTRUCTION AND MAINTENANCE EASEMENT
PORTION OF EAST 1/2, SECTION 8, TOWNSHIP 1 SOUTH,
RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN
LOUISVILLE, BOULDER COUNTY, COLORADO

EXHIBIT A

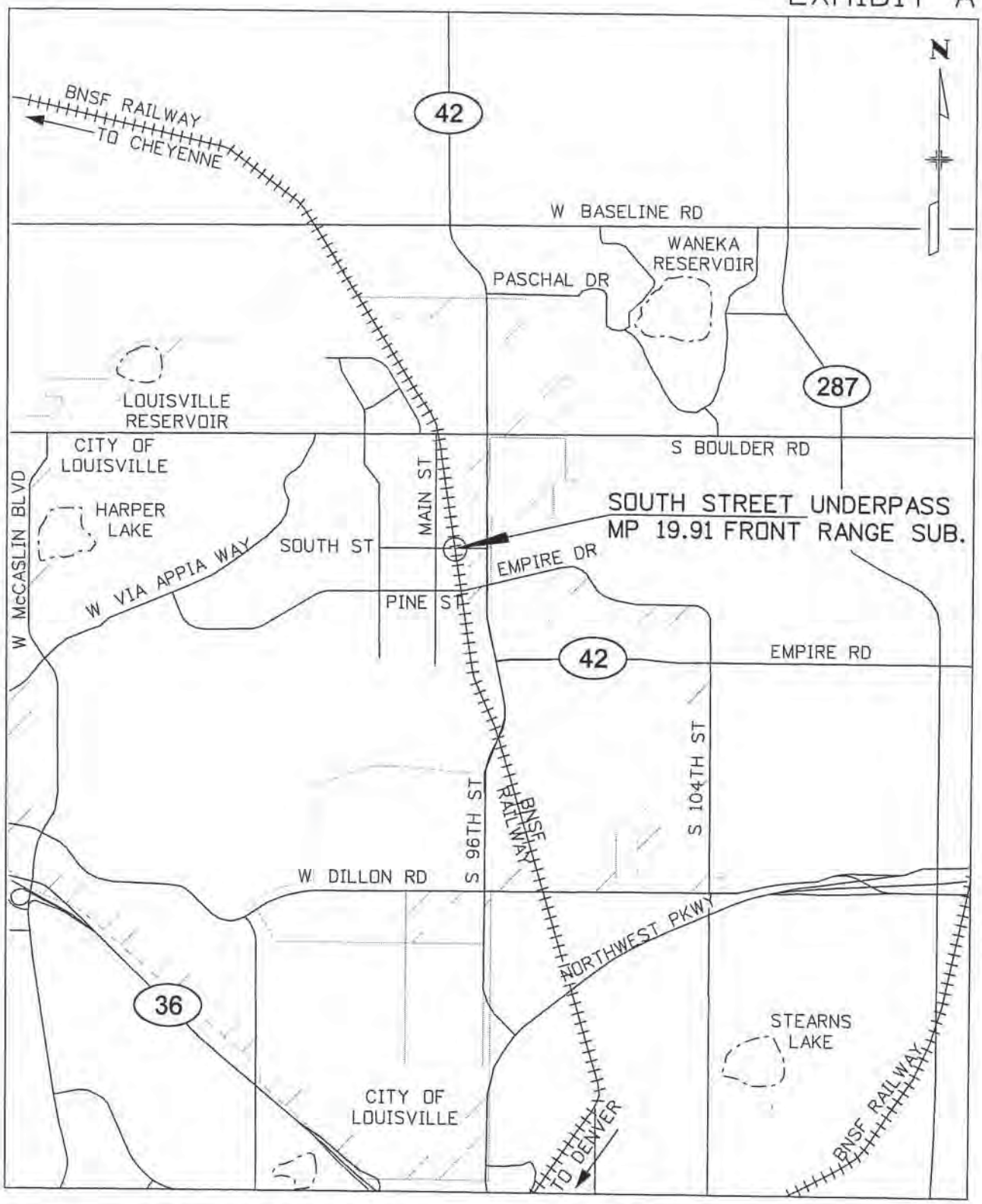
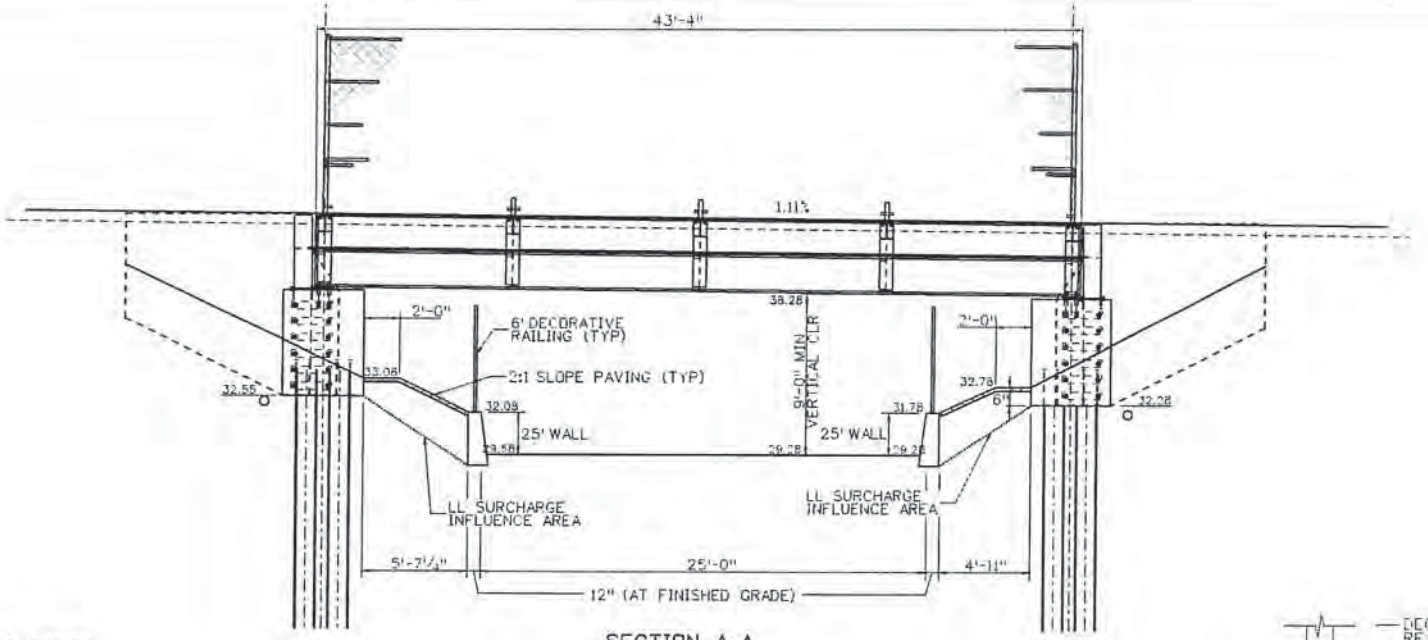


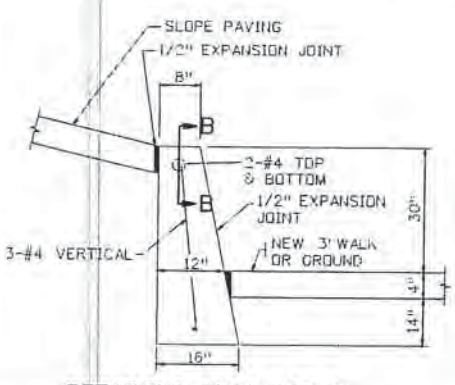
EXHIBIT A: PROJECT LOCATION MAP

0' 0.50 MILES 1.0 MILES 2.0 MILES

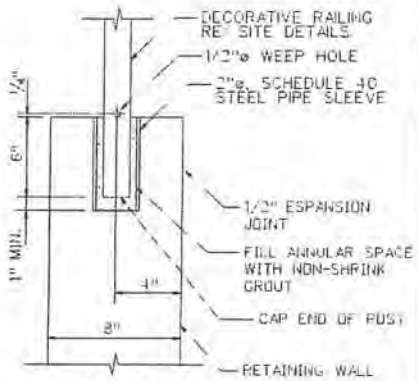
EXHIBIT B



SECTION A-A
(FROM PREVIOUS SHEET)
RAILROAD BRIDGE SECTION



RETAINING WALL DETAIL



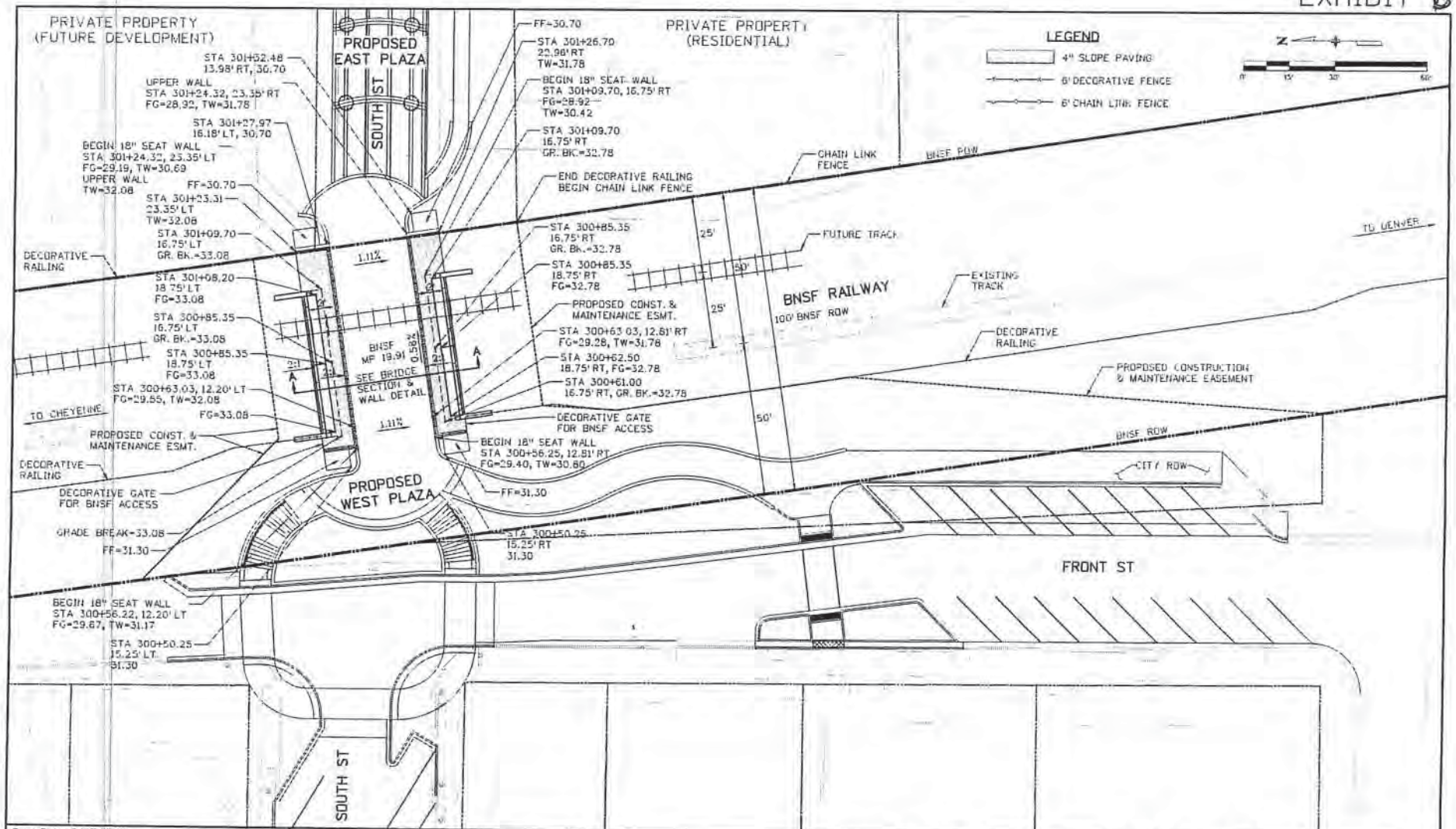
SECTION B-B
RETAINING WALL HANDRAIL FOOTING

Print Date: 2/27/2014		Sheet Revisions			As Constructed	SOUTH STREET UNDERPASS BRIDGE SECTION & WALL DETAILS	Project No./Code
File Name: DES_WALL DETAIL.dgn		Date:	Comments	Init.	No Revisions:		
Horiz. Scale: 1:5	Vert. Scale: As Noted	01/09/14	CITY COMMENTS	FJS	Revised:	Designer: LDL	Line Segment 0476
Unit Information	Unit Leader Initials					Detailer: LDL	Bridge No. 19.91
ATKINS 4601 DTC Boulevard, Suite 700 Denver, CO 80237 Phone: (303) 221-7275 Fax: (303) 221-7276					Void:	Sheet Subset: Rdwy	Subset Sheets: 1 of 1

City of Louisville
749 MAIN STREET
LOUISVILLE, CO 80027
P: 303-666-6565
F: 303-335-4550

Sheet Number

EXHIBIT B



Print Date: 2/27/2014		Sheet Revisions			As Constructed	FRONT RANGE SUBDIVISION BNSF MP 19.91 SOUTH ST UNDERPASS DETAILS	Project No./Code
File Name: Exhibit C - DES_UNDERPASS DETAIL.dgn		Date:	Comments	Init.	No Revisions:	Designer: FJS / Line Segment 0476	
Horiz. Scale: 1:30 / Vert. Scale: As Noted		01/09/14	CITY COMMENTS	FJS	Revised:	Detailer: BR / Bridge No. 19.91	
Unit Information / Unit Leader Initials					Void:	Sheet Subset: Rdwy / Subset Sheets: 1 of 1	Sheet Number
ATKINS 4601 DTC Boulevard, Suite 700 Denver, CO 80237 Phone: (303) 220-7275 Fax: (303) 221-7278	0000				City of Louisville 749 MAIN STREET LOUISVILLE, CO 80027 P: 303-666-6565 F: 303-335-4550		

EXHIBIT C

CONTRACTOR REQUIREMENTS

1.01 General:

≠ **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "**Railway**" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of the pedestrian/bike trail underpass for recreational use at MP 19.91, Front Range Subdivision, in the City of Louisville, Colorado.

≠ **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.

≠ **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.

≠ **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:

Joliette Woodson, P.E.
City of Louisville Department of Public Works
Louisville, CO 80027
(303) 335-4603

≠ **1.01.05** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and

regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.

≠ **1.01.06** The Contractor must notify **City of Louisville** at (303) 335-4603 and Railway's Manager Public Projects, telephone number (913) 551-4964 at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file _____.

≠ **1.01.07** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.

≠ **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

≠ **1.02.01 No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.contractororientation.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.**

1.03 Railway Requirements

≠ **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Contractor.

≠ **1.03.02** The Contractor must notify the Railway's Division Engineer _____ at (303) 480-6393 and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.

≠ **1.03.03** The Contractor must abide by the following temporary clearances during construction:

- 15'-0" Horizontally from centerline of nearest track
- 21'-6" Vertically above top of rail
- 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
- 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
- 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
- 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts

≠ **1.03.04** Upon completion of construction, the following clearances shall be maintained:

- 25' Horizontally from centerline of nearest track
- 23' 6" Vertically above top of rail

≠ **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the **City of Louisville** and must not be undertaken until approved in writing by the Railway, and until the **City of Louisville** has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.

≠ **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Contractor.

≠ **1.03.07** The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by **City of Louisville** for approval before work is undertaken and this work must not be undertaken until approved by the Railway.

≠ **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the

expense of the Contractor.

≠ **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.

≠ **1.03.10** The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan:

≠ **1.04.01** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site **www.contractororientation.com**, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

≠ **1.04.02** Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services for Railroad under this Agreement which are determined by Railroad in its sole discretion **a)** to be on Railroad's property, or **b)** that require access to Railroad Critical Infrastructure, Railroad Critical Information Systems, Railroad's Employees, Hazardous Materials on Railroad's property or is being transported by or otherwise in the custody of Railroad, or Freight in Transit involving Railroad.

The required background screening shall at a minimum meet the rail industry background screening criteria defined by the e-RAILSAFE Program as outlined at http://www.e-railsafe.com, in addition to any other applicable regulatory requirements.

Contractor shall obtain written consent from all its employees, subcontractors or agents screened in compliance with the e-RAILSAFE Program to participate in the Program on their behalf and to release completed background information to Railroad's designee. Contractor shall be subject to periodic audit to ensure compliance.

Contractor subject to the e-RAILSAFE Program hereunder shall not permit any of its employees, subcontractors or agents to perform services hereunder who are not first approved under e-RAILSAFE Program standards. Railroad shall have the right to deny entry onto its premises or access as described in this section above to any of Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards set forth in the e-RAILSAFE Program, or who in Railroad's opinion, which may not be unreasonable, may pose a threat to the safety or security of Railroad's operations, assets or personnel.

Contractors shall be responsible for ensuring that its employees, subcontractors and agents are United States citizens or legally working in the United States under a lawful and appropriate work VISA or other work authorization.

1.05 Railway Flagger Services:

≠ **1.05.01** The Contractor must give Railway's **Roadmaster Hayley Brown (telephone (307) 432-7363)** a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.

≠ **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:

≠ **1.05.02a** When, upon inspection by Railway's Representative, other conditions warrant.

≠ **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.

≠ **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.

≠ **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in

the vicinity.

≠ **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.

≠ **1.05.03** Flagging services will be performed by qualified Railway flaggers.

≠ **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.

≠ **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.

≠ **1.05.03c** The cost of flagger services provided by the Railway will be borne by **City of Louisville**. The estimated cost for one (1) flagger is approximately between $800.00-$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**

≠ **1.05.03d** The average train traffic on this route is 9 freight trains per 24-hour period at a timetable speed of 49 MPH and __0____ passenger trains at a timetable speed of _0_____ MPH.

1.06 Contractor General Safety Requirements

≠ **1.06.01** Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.

≠ **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).

≠ **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.

≠ **1.06.04** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railway's representative in charge of the project must be notified. A minimum of two employees must be present at all times.

≠ **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.

≠ **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.

≠ **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.

≠ **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, **www.contractororientation.com,** however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats; c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**

≠ **1.06.09 THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY'S REPRESENTATIVE.**

≠ **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)

≠ **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.

≠ **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation:

≠ **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact **BNSF's Field Engineering Representative (_____).** All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**

≠ **1.07.02** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.

≠ **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.

≠ **1.07.04** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

1.08 Hazardous Waste, Substances and Material Reporting:

≠ **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties: and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.09 Personal Injury Reporting

≠ **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway’s Project Representative no later than the close of shift on the date of the injury.

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

(If injuries are in connection with rail equipment accident/incident, highway rail grade crossing accident or automobile accident, ensure that appropriate information is obtained, forms completed and that data entry personnel are aware that injuries relate to that specific event.)

Injured Person Type:

- ☐ Passenger on train (C)
- ☐ Non-employee (N) *(i.e., emp of another railroad, or, non-BNSF emp involved in vehicle accident, including company vehicles)*
- ☐ Contractor/safety sensitive (F)
- ☐ Contractor/non-safety sensitive (G)
- ☐ Volunteer/safety sensitive (H)
- ☐ Volunteer/other non-safety sensitive (I)
- ☐ Non-trespasser (D) - to include highway users involved in highway rail grade crossing accidents who did not go around or through gates
- ☐ Trespasser (E) - to include highway users involved in highway rail grade crossing accidents who went around or through gates
- ☐ Non-trespasser (J) - Off railroad property

If train involved, Train ID: _____

Transmit attached information to Accident/Incident Reporting Center by:
Fax 1-817-352-7595 or by Phone 1-800-697-6736 or email to: Accident-Reporting.Center@BNSF.com

Officer Providing Information:

_____ _____ _____
(Name) (Employee No.) (Phone #)

REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND PROTECTED FROM DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IT IS N
INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/St: _____ 2. Date: _____ Time: _____

County: _____ 3. Temperature: _____ 4. Weather: _____
(if non BNSF location)

Mile Post / Line Segment: _____

5. Driver's License No (and state) or other ID: _____ SSN (required): _____

6. Name (last, first, mi): _____

7. Address: _____ City: _____ St: _____ Zip: _____

8. Date of Birth: _____ and/or Age: _____ Gender: _____
(if available)

Phone Number: _____ Employer: _____

9. Injury: _____ 10. Body Part: _____
(i.e., Laceration, etc.) (i.e., Hand, etc.)

11. Description of Accident (To include location, action, result, etc.): _____

_____

_____

_____

12. Treatment:

- ☐ First Aid Only _____
- ☐ Required Medical Treatment _____
- ☐ Other Medical Treatment _____

13. Dr. Name: _____ Date: _____

14. Dr. Address:

Street: _____ City: _____ St: _____ Zip: _____

15. Hospital Name: _____

16. Hospital Address:

Street: _____ City: _____ St: _____ Zip: _____

17. Diagnosis: _____

Form 704CM; Rev. 08/17/11

REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS
AND PROTECTED FROM DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490

EXHIBIT "C-1"

Agreement Between
BNSF RAILWAY COMPANY
and the
CONTRACTOR

BNSF RAILWAY COMPANY
Attention: Manager Public Projects

Railway File: MP 19.91; DOT _____

Agency Project: _____

Gentlemen:

The undersigned (hereinafter called, the "Contractor"), has entered into a contract (the "Contract") dated _____, 201__, with the City of Louisville, Colorado for the performance of certain work in connection with the following project: Pedestrian/bike underpass structure at BNSF MP 19.91, City of Louisville, Colorado. Performance of such work will necessarily require Contractor to enter **BNSF RAILWAY COMPANY** ("Railway") right of way and property ("Railway Property"). The Contract provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Contract, has agreed and does hereby agree with Railway as follows:

Section 1. RELEASE OF LIABILITY AND INDEMNITY

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENSIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE.**

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

Section 2. TERM

This Agreement is effective from the date of the Contract until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

Section 3. INSURANCE

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of $5,000,000 each occurrence and an aggregate limit of at least $10,000,000 but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waver of subrogation in favor of and acceptable to Railway.
- Additional insured endorsement in favor of and acceptable to Railway.
- Separation of insureds.

- The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to ***Railway*** employees.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least $1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage
- Any and all vehicles owned, used or hired

The policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Railway.
- Additional insured endorsement in favor of and acceptable to Railway.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 by disease policy limit, $500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Railway.

D. Railroad Protective Liability insurance naming only the ***Railway*** as the Insured with coverage of at least $5,000,000 per occurrence and $10,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the following:

- Endorsed to include the Pollution Exclusion Amendment
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to the ***Railway*** prior to performing any work or services under this Agreement
- Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured

and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate (if available) in Railway's Blanket Railroad Protective Liability Insurance Policy.

Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

Contractor agrees to waive its right of recovery against ***Railway*** for all claims and suits against ***Railway***. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against ***Railway*** for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against ***Railway*** for loss of its owned or leased property or property under Contractor's care, custody, or control.

Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Contractor is not allowed to self-insure without the prior written consent of ***Railway.*** If granted by ***Railway***, self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all ***Railway*** liabilities that would otherwise, in accordance with the provisions of this ***Agreement***, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, Contractor shall furnish to ***Railway*** an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following addresses:

BNSF Railway Company
c/o CertFocus
P.O. Box 140528
Kansas City, MO 64114
Toll Free: 877-576-2378
Fax number: 817-840-7487
Email: BNSF@certfocus.com
www.certfocus.com

Contractor shall notify ***Railway*** in writing at least 30 days prior to any cancellation, non-renewal, substitution, or material alteration.

Any insurance policy must be written by a reputable insurance company acceptable to ***Railway*** or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provide.

If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this contract. Annually, Contractor agrees to provide evidence of such coverage as required hereunder.

Contractor represents that this ***Agreement*** has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this ***Agreement***.

Not more frequently than once every five years, ***Railway*** may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain the insurance coverage(s) set forth herein, naming ***Railway*** as an additional insured, and shall require that the subcontractor shall release, defend, and indemnify ***Railway*** to the same extent and under the same terms and conditions as Contractor is required to release, defend, and indemnify ***Railway*** herein.

Failure to provide evidence as required by this section shall entitle, but not require, ***Railway*** to terminate this ***Agreement*** immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this ***Agreement***. Damages recoverable by ***Railway*** shall not be limited by the amount of the required insurance coverage.

In the event of a claim or lawsuit involving ***Railway*** arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.

These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

For purposes of this section, ***Railway*** means "Burlington Northern Santa Fe LLC", "BNSF RAILWAY COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

Section 4. EXHIBIT "C" CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Contract, and the Contractor Requirements set forth on Exhibit "C" attached to the Contract and this Agreement, , including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

Section 5. TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay are currently $382.20 per hour per incident. **THE RATE THEN IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF TRAIN DELAY PURSUANT TO THIS AGREEMENT.**

Contractor and its subcontractors must give Railway's representative (_____) _____ (__) weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

Kindly acknowledge receipt of this letter by signing and returning to the Railway two original copies of this letter, which, upon execution by Railway, will constitute an Agreement between us.

_____

Contractor

By: _____

Printed Name: _____

Title: _____

of 20__.

Contact Person: _____

Address: _____

City: _____

State: _____ Zip: _____

Fax: _____

Phone: _____

E-mail: _____

BNSF Railway Company

By: _____

Name: _____

Manager Public Projects

Accepted and effective this _____day

EXHIBIT D
EASEMENT AGREEMENT FOR RECREATIONAL TRAIL PEDESTRIAN/BIKE UNDERPASS

PERMANENT EASEMENT AGREEMENT FOR RECREATIONAL TRAIL PEDESTRIAN/BIKE UNDERPASS

THIS EASEMENT AGREEMENT FOR RECREATIONAL TRAIL PEDESTRIAN/BIKE UNDERPASS ("**Easement Agreement**") is made and entered into as of the _____ day of _____ 2015 ("**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Grantor**"), and the **CITY OF LOUISVILLE, COLORADO**, a Colorado home rule municipal corporation ("**Grantee**").

A. Grantor owns or controls certain real property situated at or near the vicinity of the City of Louisville, County of Boulder, State of Colorado, at Mile Post 19.91, Project # _____, as described or depicted on **Exhibit "A"** attached hereto and made a part hereof (the "**Premises**").

B. Grantor and Grantee have entered into that certain Construction and Maintenance Agreement dated as of _____ concerning improvements on or near the Premises (the "**C&M Agreement**").

C. Grantee has requested that Grantor grant to Grantee an easement over the Premises for the Easement Purpose (as defined below).

D. Grantor has agreed to grant Grantee such easement, subject to the terms and conditions set forth in this Easement and in the C&M Agreement incorporated herein as if fully set forth in this instrument which terms shall be in full force and effect for purposes of this Easement even if the C&M Agreement is, for whatever reason, no longer in effect.

NOW, THEREFORE, for and in consideration of the sum of _____ Dollars ($_____) plus the administrative fee separately set forth in Section 15, the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1 Granting of Easement.

1.1 Easement Purpose. The "**Easement Purpose**" shall be for the purpose set forth in the C&M Agreement. Any improvements to be constructed in connection with the Easement Purpose are referred to herein as "**Improvements**" and shall be constructed, located, configured and maintained by Grantee in strict accordance with the terms of this Easement Agreement and the C&M Agreement.

1.2 Grant. Grantor does hereby grant unto Grantee a non-exclusive easement ("**Easement**") over the Premises for the Easement Purpose and for no other purpose. The Easement is granted subject to any and all restrictions, covenants, easements, licenses, permits, leases and other encumbrances of whatsoever nature whether or not of record, if any, relating to the Premises and subject to all with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) and zoning laws (collectively, "**Laws**"). Grantor may not make any alterations or improvements or perform any maintenance or repair activities within the Premises except in accordance with the terms and conditions of the C&M Agreement.

1.3 Reservations by Grantor. Grantor excepts and reserves the right, to be

exercised by Grantor and any other parties who may obtain written permission or authority from Grantor:

(a) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any existing pipe, power, communication, cable, or utility lines and appurtenances and other facilities or structures of like character (collectively, "**Lines**") upon, over, under or across the Premises so long as they do not unreasonably interfere with the Improvements or Grantee's access for maintenance purposes;

(b) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises so long as they do not unreasonably interfere with the Improvements or Grantee's access for maintenance purposes; and

(c) to use the Premises in any manner as the Grantor in its sole discretion deems appropriate, provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Grantee for the Easement Purpose.

Section 2 **Term of Easement**. The term of the Easement, unless sooner terminated under provisions of this Easement Agreement, shall be perpetual.

Section 3 **No Warranty of Any Conditions of the Premises.** Grantee acknowledges that Grantor has made no representation whatsoever to Grantee concerning the state or condition of the Premises, or any personal property located thereon, or the nature or extent of Grantor's ownership interest in the Premises. Grantee has not relied on any statement or declaration of Grantor, oral or in writing, as an inducement to entering into this Easement Agreement, other than as set forth herein. GRANTOR HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY SUCH PROPERTY, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTOR SHALL NOT BE RESPONSIBLE TO GRANTEE OR ANY OF GRANTEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTEE ACCEPTS ALL RIGHTS GRANTED UNDER THIS EASEMENT AGREEMENT IN THE PREMISES IN AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON GRANTOR'S RIGHTS, INTERESTS AND TITLE TO THE PREMISES. Grantee has inspected or will inspect the Premises, and enters upon Grantor's rail corridor and property with knowledge of its physical condition and the danger inherent in Grantor's rail operations on or near the Premises. Grantee acknowledges that this Easement Agreement does not contain any implied warranties that Grantee or Grantee's Contractors (as hereinafter defined) can successfully construct or operate the Improvements.

Section 4 **Nature of Grantor's Interest in the Premises.** GRANTOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND GRANTEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. In case of the eviction of Grantee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Grantor of the affected rail corridor, Grantor shall not be liable to refund Grantee any compensation paid hereunder.

Section 5 **Improvements**. The Improvements shall be constructed and maintained as set forth in the parties C&M Agreement.

Section 6 **Taxes and Recording Fees**. Grantee shall pay when due any taxes, assessments, or other charges (collectively, "**Taxes**") if levied or assessed upon the Improvements by any governmental or quasi-governmental body or any Taxes levied or assessed against Grantor or the Premises that are solely attributable to the Improvements. Grantee agrees to pay any and all fees incidental to recordation of the Memorandum of Easement. In the event of Grantee's failure to do so, if Grantor shall become obligated to do so, Grantee shall be liable for all costs, expenses and judgments to or against Grantor, including all of Grantor's legal fees and expenses.

Section 7 **Environmental.**

7.1 Compliance with Environmental Laws. Grantee shall strictly comply with all federal, state and local environmental Laws in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Toxic Substances Control Act (collectively referred to as the "**Environmental Laws**"). Grantee shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Premises. Grantee shall not handle, transport (excluding transportation on the public highway portion of the Premises) , release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws.

7.2 Notice of Release. Grantee shall give Grantor immediate notice to Grantor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Grantee's use of the Premises. Grantee shall use its best efforts to promptly respond to any release on or from the Premises. Grantee also shall give Grantor immediate notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure such release or violation.

7.3 Remediation of Release. In the event that Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws which occurred or may occur during the term of this Easement Agreement, Grantor may require Grantee, at Grantee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises.

7.4 Preventative Measures. Grantee shall promptly report to Grantor in writing any conditions or activities upon the Premises known to Grantee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Grantee's reporting to Grantor shall not relieve Grantee of any obligation whatsoever imposed on it by this Easement Agreement. Grantee shall promptly respond to Grantor's request for information regarding said conditions or activities.

7.5 Evidence of Compliance. Grantee agrees to furnish Grantor upon request with a letter to Grantor stating that Grantee is in compliance with this **Section 7**. Should Grantee not comply fully with the above-stated obligations of this **Section 7**, notwithstanding anything contained in any other provision hereof, Grantor may, at its option, if Grantee has not cured any non-compliance within 30 days of receipt of notice from Grantor of such non-compliance, terminate this Easement Agreement by serving five (5) days' notice of termination upon Grantee. Upon termination, Grantee shall remove the Improvements and restore the Premises as provided in **Section 9**.

Section 8 **Default and Termination**.

8.1 The City and Railroad acknowledge that the Railroad's willingness to grant the Easement for the Pedestrian/Bike Underpass and enter into this Agreement is based solely on the protection afforded Railroad by the Colorado Recreational Liability Act, C.R.S. § 33-41-101 et seq. or any replacement or alternative state statute or City ordinance which will afford the Railroad similar protections against liability for the recreational use of the Pedestrian/Bike Underpass. In the event that the Colorado Recreational Liability Act is repealed, without any substantially similar replacement, or amended so it no longer affords substantially the same protection against liability as previously afforded, the Railroad and the City shall endeavor, in good faith, to provide legal protection for the Railroad of a similar nature as previously afforded by enactment of a new state statute, adoption of a City ordinance, or by provision of insurance by the City or its agent reasonably satisfactory to the Railroad. If such new legal protection cannot be secured in a time frame reasonably satisfactory to the Railroad, the Pedestrian/Bike Underpass shall be closed to public access by the City, upon thirty (30) days' written notice by the Railroad to the City and at the City's expense, until such time as legal protection reasonably satisfactory to the Railroad is arranged. If such legal protection is not provided within two (2) years of the City receiving the written notice from the Railroad, upon written request of the Railroad, the Pedestrian/Bike Underpass shall be permanently sealed shut and the paved trail located on Railroad property shall be removed by the City and the land under the trail restored to its original condition until such time as the City can provide legal protection satisfactory to the Railroad.

8.2 Grantor's Performance Rights. If at any time Grantee, or Grantee's Contractors, fails to properly perform its obligations under this Easement Agreement, Grantor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, or (ii) at Grantee's sole cost, may arrange for the performance of such work as Grantor deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any interference with the activities or property of Grantor, or anyone or anything present on the rail corridor or property with the authority or permission of Grantor. Grantee shall promptly reimburse Grantor for all reasonable costs of work performed on Grantee's behalf upon receipt of an invoice for such costs. Grantor's failure to perform any obligations of Grantee or Grantee's Contractors shall not alter the liability allocation set forth in this Easement Agreement.

8.3 Abandonment. Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice in writing upon Grantee if Grantee should abandon or cease to use the Premises for the Easement Purpose. Any waiver by Grantor of any default or defaults shall not constitute a waiver of the right to terminate this Easement Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Grantor's ability to enforce any section of this Easement Agreement.

8.4 Effect of Termination or Expiration. Neither termination nor expiration will release Grantee from any liability or obligation under this Easement, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date the Premises are restored as required by **Section 9**.

8.5 Non-exclusive Remedies. The remedies set forth in this **Section 8** shall be in addition to, and not in limitation of, any other remedies that Grantor may have under the C&M Agreement, at law or in equity.

Section 9 **Surrender of Premises.**

9.1 Removal of Improvements and Restoration. Upon termination of this Easement Agreement, whether by abandonment of the Easement or by the exercise of Grantor's termination rights hereunder, Grantee shall, at its sole cost and expense, immediately perform the following:

(a) remove all or such portion of Grantee's Improvements and all appurtenances thereto from the Premises, as Grantor directs at Grantor's sole discretion;

(b) repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises;

(c) remedy any unsafe conditions on the Premises created or aggravated by Grantee; and

(d) leave the Premises in the condition which existed as of the Effective Date.

9.2 Limited License for Entry. If this Easement Agreement is terminated, Grantor may direct Grantee to undertake one or more of the actions set forth above, at Grantee's sole cost, in which case Grantee shall have a limited license to enter upon the Premises to the extent necessary to undertake the actions directed by Grantor. The terms of this limited license include all of Grantee's obligations under this Easement Agreement. Termination will not release Grantee from any liability or obligation under this Easement Agreement, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Grantee's Improvements are removed and the Premises are restored to the condition that existed as of the Effective Date. If Grantee fails to surrender the Premises to Grantor upon any termination of the Easement, all liabilities and obligations of Grantee hereunder shall continue in effect until the Premises are surrendered.

Section 10 **Liens**. Grantee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Grantee on the Premises or attributable to Taxes that are the responsibility of Grantee pursuant to **Section 6**. Grantor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by Law to prevent the attachment of any such liens to any portion of the Premises; provided, however, that failure of Grantor to take any such action shall not relieve Grantee of any obligation or liability under this **Section 10** or any other section of this Easement Agreement.

Section 11 **Tax Exchange**. Grantor may assign its rights (but not its obligations) under this Easement Agreement to Goldfinch Exchange Company LLC, an exchange intermediary, in order for Grantor to effect an exchange under Section 1031 of the Internal Revenue Code. In such event, Grantor shall provide Grantee with a Notice of Assignment, attached as Exhibit C, and Grantee shall execute an acknowledgement of receipt of such notice.

Section 12 **Notices**. Any notice required or permitted to be given hereunder by one party to the other shall be delivered in the manner set forth in the C&M Agreement. Notices to Grantor under this Easement shall be delivered to the following address: BNSF Railway Company, Real Estate Department, 2500 Lou Menk Drive, Ft. Worth, TX 76131, Attn: Permits, or such other address as Grantor may from time to time direct by notice to Grantee.

Section 13 **Recordation**. It is understood and agreed that this Easement Agreement shall not be in recordable form and shall not be placed on public record and any such recording shall be a breach of this Easement Agreement. Grantor and Grantee shall execute a Memorandum of

Easement in the form attached hereto as **Exhibit "B"** (the "**Memorandum of Easement**") subject to changes required, if any, to conform such form to local recording requirements. *As of the Effective Date, a legal description of the Premises is not available. Grantee and Grantor shall work together in good faith to establish the legal description for the Premises. Once Grantor and Grantee have approved the legal description, Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as* ***Exhibit "B"*** *(the "**Memorandum of Easement**").]* The Memorandum of Easement shall be recorded in the real estate records in the county where the Premises are located. If a Memorandum of Easement is not executed by the parties and recorded as described above within 30 days of the Effective Date, Grantor shall have the right to terminate this Easement Agreement upon notice to Grantee.

Section 14 **Miscellaneous**.

14.1 All questions concerning the interpretation or application of provisions of this Easement Agreement shall be decided according to the substantive Laws of the State of **Colorado** without regard to conflicts of law provisions.

14.2 In the event that Grantee consists of two or more parties, all the covenants and agreements of Grantee herein contained shall be the joint and several covenants and agreements of such parties. This instrument and all of the terms, covenants and provisions hereof shall inure to the benefit of and be binding upon each of the parties hereto and their respective legal representatives, successors and assigns and shall run with and be binding upon the Premises.

14.3 If any action at law or in equity is necessary to enforce or interpret the terms of this Easement Agreement, the prevailing party or parties shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.

14.4 If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future Laws, such provision will be fully severable and this Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Easement Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

14.5 This Easement Agreement, together with the C&M Agreement between Grantor and Grantee are the full and complete agreements between Grantor and Grantee with respect to all matters relating to Grantee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Grantee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Grantee, if any, or Grantee's obligation to defend and hold Grantor harmless in any prior written agreement between the parties, if any.

14.6 Time is of the essence for the performance of this Easement Agreement.

Section 15 **Administrative Fee**. Grantee acknowledges that a material consideration for this agreement, without which it would not be made, is the agreement between Grantee and Grantor that the Grantee shall pay upon return of this Agreement signed by Grantee to Grantor's Broker a processing fee in the amount of $**2,000.00** over and above the agreed upon Acquisition Price. Said fee shall be made payable to BNSF Railway Company by a separate check.

Witness the execution of this Easement Agreement as of the date first set forth above.

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
Name: _____
Title: _____

GRANTEE:

CITY OF LOUISVILLE, a Colorado home rule municipal corporation

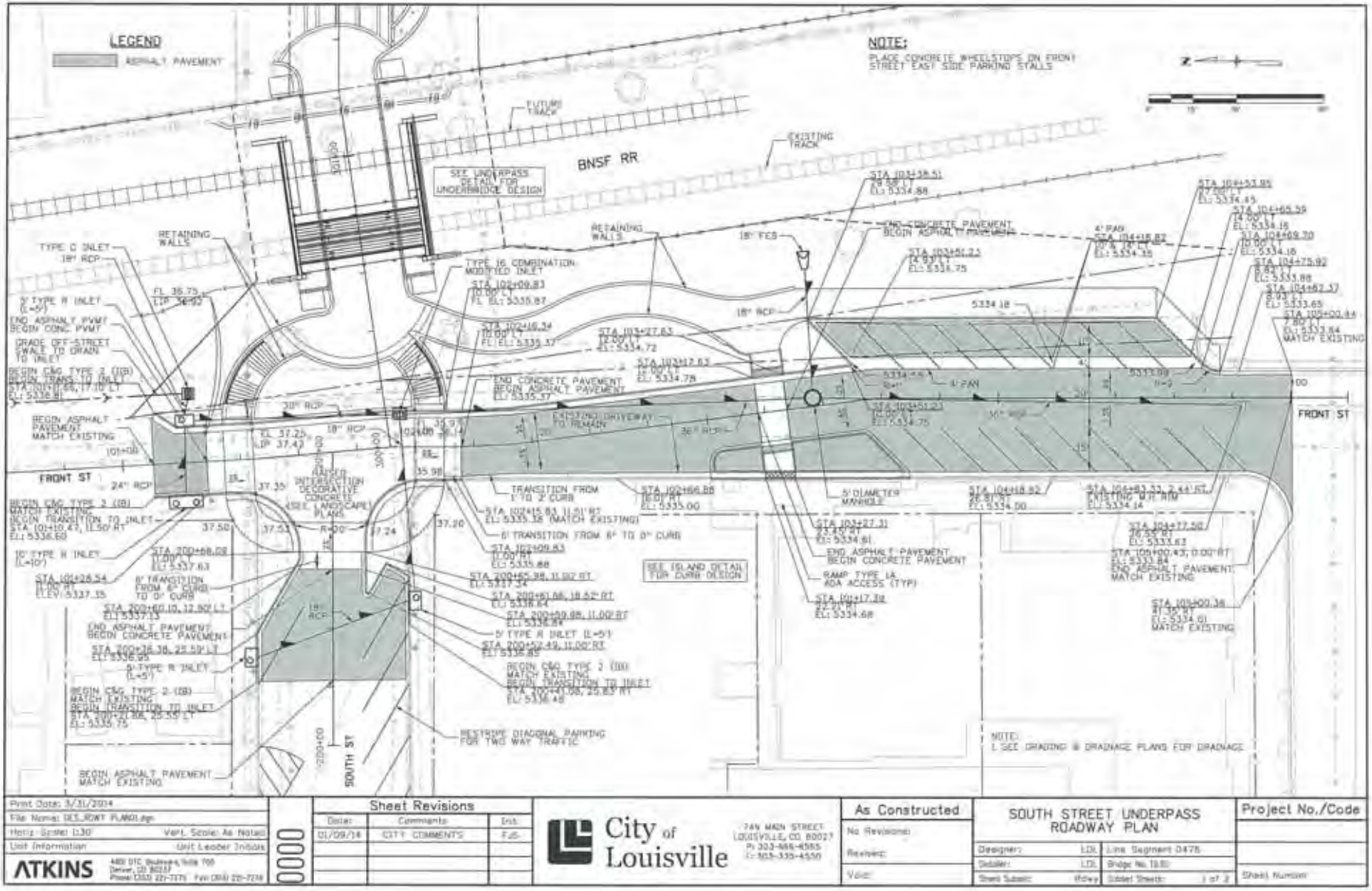
By: _____
Name: _____
Title: _____

Attest:

By: _____
Nancy Varra, City Clerk

EXHIBIT "A"

Premises



Print Date: 3/31/2014
File Name: DES_RDWY PLAN01.dgn
Horiz. Scale: 1:30' Vert. Scale: As Noted
Unit Information: Unit Leader Initials

ATKINS
4601 DTC Boulevard, Suite 700
Denver, CO 80237
Phone: (303) 221-7375 Fax: (303) 220-7238

Sheet Revisions		
Date:	Comments:	Init.
01/09/14	CITY COMMENTS	F.J.S.

City of Louisville
749 MAIN STREET
LOUISVILLE, CO 80027
P: 303-666-6565
F: 303-335-4550

As Constructed
No Revisions:
Reviewed:
Visit:

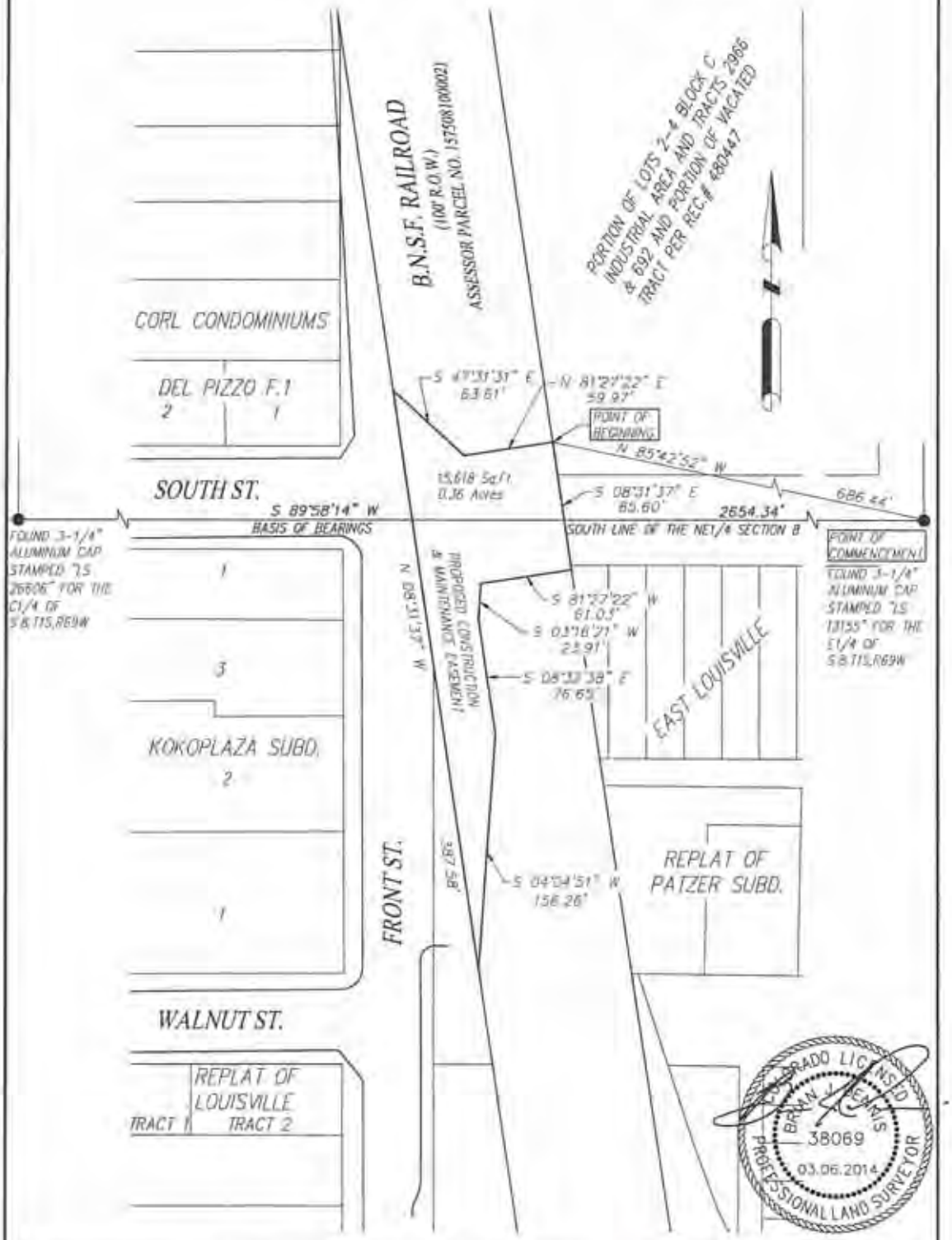
SOUTH STREET UNDERPASS ROADWAY PLAN

Designer:	LDL	Line Segment 0478	
Detailer:	LDL	Bridge No. 19.B	
Sheet Subset:	Rdwy	Detail Sheet:	1 of 2

Project No./Code

Sheet Number

CONSTRUCTION AND MAINTENANCE EASEMENT
PORTION OF EAST 1/2, SECTION 8, TOWNSHIP 1 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN
LOUISVILLE, BOULDER COUNTY, COLORADO



Notice: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

Any underground utilities shown may have been located from field survey information and or existing drawings. The surveyor makes no guarantee either expressed or implied that the underground utilities shown comprise all such utilities in the area, either in service or abandoned. The surveyor further does not warrant that the underground utilities shown are in the exact located depicted although the utilities are located as accurately as possible from the information available at the time of the survey. Utilities shown are based available utility maps and/or above ground utility markings performed by others. This surveyor has not physically located the underground utilities

DAVID EVANS AND ASSOCIATES, INC.
1331 17th Street Suite 1100
Denver, Colorado 80202
Tel: 720-946-0800
Fax: 720-946-0973
Engineers • Surveyors • Planners

Project No.: 470H0000-0002	DATE: 03.06.2014	
Drawn By: BJD	Scale: 1"=60'	Sheet: 2 of 3
Checked By: TGB		

CONSTRUCTION AND MAINTENANCE EASEMENT
PORTION OF EAST 1/2, SECTION 8, TOWNSHIP 1 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN
LOUISVILLE, BOULDER COUNTY, COLORADO

TITLE COMMITMENT/REPORT

THIS MAP DOES NOT REPRESENT A TITLE SEARCH BY DAVID EVANS & ASSOCIATES, INC. TO DETERMINE OWNERSHIP OF THIS TRACT, VERIFY THE DESCRIPTION SHOWN, VERIFY THE COMPATIBILITY OF THIS DESCRIPTION WITH THAT OF ADJACENT TRACTS OR VERIFY EASEMENTS OF RECORD.

NO TITLE REPORT WAS PROVIDED AT THE TIME OF SURVEY. DAVID EVANS & ASSOCIATES, INC. SEARCHED RECORDS AT THE LOCAL MUNICIPALITIES AND RELIED ON THE DOCUMENTS OR MAPS DISCOVERED AT THAT TIME.

GENERAL NOTES

1. FIELD WORK FOR THIS SURVEY WAS COMPLETED ON SEPTEMBER 21, 2013.
2. NOT ALL IMPROVEMENTS WITHIN THE SUBJECT AREA MAY BE SHOWN.
3. THERE MAY BE IMPROVEMENTS ALONG PORTIONS OF THE SUBJECT PROPERTY LINES AS SHOWN HEREON. OWNERSHIP AND/OR MAINTENANCE RESPONSIBILITIES OF SAID IMPROVEMENTS ARE NOT DETERMINED BY THIS SURVEY.
4. ACCESS FOR THE SUBJECT PROPERTY IS OBTAINED DIRECTLY FROM SOUTH STREET.
5. EASEMENTS AND PUBLIC DOCUMENTS SHOWN OR NOTED ON THIS SURVEY WERE EXAMINED AS TO LOCATION AND PURPOSE AND WERE NOT EXAMINED AS TO RESTRICTIONS, EXCLUSIONS, CONDITIONS, OBLIGATIONS, TERMS OR AS THE RIGHT TO GRANT THE SAME.
6. THE BASIS OF BEARING IS A GEODETIC BEARING OF THE SOUTH LINE OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 1 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, AS DETERMINED BY RTK GPS OBSERVATIONS AND SAID BEARING IS S 89°58'14" W AS DEFINED BY A FOUND 3-1/4" ALUMINUM CAP STAMPED "LS 13155" FOR THE EAST END OF THE LINE AND A FOUND 3-1/4" ALUMINUM CAP STAMPED "LS 26606" FOR THE WEST END OF THE LINE DESCRIBED.
7. ALL IMPROVEMENTS SHOWN ARE EXISTING EXCEPT THOSE IMPROVEMENTS LABELED PROPOSED AS OF THE FIELD DATE NOTE ABOVE.
8. THIS IS NOT A BOUNDARY SURVEY. THE PROPERTY LINES SHOWN ARE DERIVED FROM MAP, PLATS OR OTHER INSTRUMENTS EITHER PROVIDED BY THE CLIENT OR OBTAINED BY THE SURVEYOR FROM THE LOCAL MUNICIPALITIES. THE MAP, PLAT OR OTHER INSTRUMENTS MAY NOT BE THE LATEST OR MOST CURRENT DOCUMENT REGARDING THE PROPERTY LINES AND MAY NOT REFLECT ALL OR RECENT CHANGES OR MODIFICATIONS TO THE RECORD LINES.
9. MONUMENTS SHOWN WERE FOUND AND LOCATED AT THE TIME OF SURVEY.

PROPOSED CONSTRUCTION & MAINTENANCE EASEMENT

BEING A PROPOSED CONSTRUCTION & MAINTENANCE EASEMENT AND BEING A PORTION OF RAILROAD RIGHT OF WAY TO BURLINGTON NORTHERN SANTA FE RAILWAY KNOWN AS BOULDER COUNTY ASSESSOR PARCEL NUMBER 157508100002 SITUATED IN THE EAST HALF OF SECTION 8, TOWNSHIP 1 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN AND LOCATED IN LOUISVILLE, BOULDER COUNTY, COLORADO AND SAID CONSTRUCTION & MAINTENANCE EASEMENT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A 3.25" ALUMINUM CAP STAMPED "LS 13155" FOR THE EAST 1/4 CORNER OF SAID SECTION 8 AND ALSO BEING A POINT AT THE INTERSECTION OF SOUTH STREET AND HIGHWAY NO. 42;
THENCE N 85°42'52" W A DISTANCE OF 686.44 FEET TO THE MOST NORTHEASTERLY CORNER OF SAID CONSTRUCTION & MAINTENANCE EASEMENT AND BEING A POINT ALONG THE EASTERLY BNSF RAILROAD RIGHT OF WAY AND BEING THE POINT OF BEGINNING;

THENCE ALONG SAID EASTERLY RAILROAD RIGHT OF WAY S 08°31'37" E A DISTANCE OF 85.60 FEET;
THENCE S 81°27'22" W A DISTANCE OF 61.03 FEET;
THENCE S 03°16'21" W A DISTANCE OF 23.91 FEET;
THENCE S 08°32'38" E A DISTANCE OF 76.65 FEET;
THENCE S 04°04'51" W A DISTANCE OF 150.26 FEET TO A POINT ALONG THE WESTERLY RAILROAD RIGHT OF WAY;
THENCE ALONG SAID WESTERLY RIGHT OF WAY N 08°31'37" W A DISTANCE OF 387.58 FEET;
THENCE S 47°31'31" E A DISTANCE OF 63.61 FEET;
THENCE N 81°27'22" E A DISTANCE OF 59.97 FEET TO THE POINT OF BEGINNING AND CONTAINING 15,618 SQUARE FEET OR 0.36 ACRES MORE OR LESS.

SURVEYOR'S STATEMENT

I, BRIAN J. DENNIS, A REGISTERED LICENSED PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY STATE THAT, TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THIS MAP WAS PREPARED FROM FIELD NOTES TAKEN DURING AN ACTUAL SURVEY MADE BY ME OR UNDER MY DIRECT SUPERVISION AND THAT THIS MAP CORRECTLY SHOWS THE RESULTS OF SAID SURVEY AND THE MONUMENTS FOUND ARE AS SHOWN.

COLORADO LICENSED
BRIAN J. DENNIS
38069
03.06.2014
PROFESSIONAL LAND SURVEYOR

BRIAN J. DENNIS, [illegible] LAND SURVEYOR NO.38069
Project No.: ATKN0000-[illegible]
for and on behalf of DAVID [illegible] ASSOCIATES, INC.

THIS EXHIBIT IS NOT A BOUNDARY SURVEY AND IS ONLY INTENDED TO DEPICT THE LEGAL DESCRIPTIONS ABOVE.

Notice: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

Any underground utilities shown may have been located from field survey information and or existing drawings. The surveyor makes no guarantee either expressed or implied that the underground utilities shown comprise all such utilities in the area, either in service or abandoned. The surveyor further does not warrant that the underground utilities shown are in the exact located depicted although the utilities are located as accurately as possible from the information available at the time of the survey. Utilities shown are based available utility maps and/or above ground utility markings performed by others. This surveyor has not physically located the underground utilities.

DAVID EVANS AND ASSOCIATES, INC.
1331 17th Street, Suite 700
Denver, Colorado 80202
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Engineers • Surveyors • Planners

Project No.: ATKN0000-0002	Date: 03.06.2014	
Drawn By: BJD		Sheet: 1 of 2
Checked By: [illegible]		

EXHIBIT "B"

Memorandum of Easement

MEMORANDUM OF EASEMENT FOR RECREATIONAL TRAIL PEDESTRIAN/BIKE UNDERPASS

THIS MEMORANDUM OF EASEMENT is hereby executed this _____ day of_____, 2015, by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Grantor**"), whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131, and the **CITY OF LOUISVILLE, COLORADO**, a Colorado home rule municipal corporation ("**Grantee**"), whose address for purposes of this instrument is 749 Main Street, Louisville, CO 80027_____, which terms "Grantor" and "Grantee" shall include, wherever the context permits or requires, singular or plural, and the heirs, legal representatives, successors and assigns of the respective parties:

WITNESSETH:

WHEREAS, Grantor owns or controls certain real property situated in BoulderProwers County, Colorado as described or depicted on **Exhibit "A"** attached hereto and incorporated herein by reference (the "**Premises**');

WHEREAS, Grantor and Grantee entered into an Easement Agreement, dated _____, 2015 (the "**Easement Agreement**") which set forth, among other things, the terms of an easement granted by Grantor to Grantee over and across the Premises (the "**Easement**"); and

WHEREAS, Grantor and Grantee desire to memorialize the terms and conditions of the Easement Agreement of record.

For valuable consideration the receipt and sufficiency of which are hereby acknowledged, Grantor does grant unto Grantee and Grantee does hereby accept from Grantor the Easement over and across the Premises.

The term of the Easement, unless sooner terminated under provisions of the Easement Agreement, shall be perpetual.

All the terms, conditions, provisions and covenants of the Easement Agreement are incorporated herein by this reference for all purposes as though written out at length herein, and both the Easement Agreement and this Memorandum of Easement shall be deemed to constitute a single instrument or document. This Memorandum of Easement is not intended to amend, modify, supplement, or supersede any of the provisions of the Easement Agreement and, to the extent there may be any conflict or inconsistency between the Easement Agreement or this Memorandum of Easement, the Easement Agreement shall control.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Memorandum of Easement to as of the date and year first above written.

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
§
COUNTY OF TARRANT §

This instrument was acknowledged before me on the _____ day of _____, 2015, by _____ (name) as _____(title) of **BNSF RAILWAY COMPANY**, a Delaware corporation.

_____
Notary Public

My appointment expires:_____

(Seal)

GRANTEE:
CITY OF LOUISVILLE, a Colorado home rule municipal corporation

By: _____
Name: _____
Title: _____

Attest:

By: _____
Nancy Varra, City Clerk

STATE OF COLORADO **§**
§
COUNTY OF BOULDER_____ **§**

This instrument was acknowledged before me on the _____ day of _____, 2015_, by _____ (name) as _____(title) of _____, a _____.

_____
Notary Public

My appointment expires:_____

(Seal)

INDEFINITE TERM LEASE
LAND

THIS INDEFINITE TERM LEASE FOR LAND ("Lease") is made and entered into to be effective as of the _____ day of _____, 2015 ("Effective Date"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("Lessor") and City of Louisville, Colorado, a Colorado home rule municipal corporation ("Lessee").

RECITALS

A. Lessor is in the railroad transportation business and owns or controls a system of rail tracks ("Lessor's Track(s)") and various real properties associated therewith, including certain Premises as described below which Lessee desires to lease from Lessor.

B. Lessor has agreed to lease to Lessee the Premises, subject to the terms, conditions and limitations provided herein.

AGREEMENTS

In consideration of the mutual covenants herein, Lessor and Lessee hereby agree as follows:

Section 1. <u>Premises and Term</u>.

A. Lessor leases to Lessee and Lessee leases from Lessor, subject to the covenants, agreements, terms, provisions and conditions of this Lease, that certain parcel of real property, situated in the City of Louisville, County of Boulder, State of Colorado_____, along Line Segment 476, Mile Post 19.91 and constituting the shaded area shown upon Print No. _____, dated _____ a copy of which is attached hereto as Exhibit "A" and made a part hereof ("Premises").

B. Lessee leases the Premises from Lessor beginning _____ ("Commencement Date"), and shall continue until terminated by either party as provided in this Section 1(B). This Lease may be terminated by either party, at any time, without cause, for convenience, by serving upon the other party written notice of termination at least thirty (30) days in advance. Upon the expiration of the time specified in such notice, this Lease and all rights of Lessee shall absolutely cease.

C. Upon termination, either (i) Lessor may retain from prepaid rent, as an additional charge for use of the Premises, a sum equal to three (3) months Base Rent (as defined below), and any unearned portion of the annual Base Rent, in excess of such retainage, paid in advance shall be refunded to Lessee or (ii) if Lessor has not been paid sufficient Base Rent to satisfy the above retainage, then Lessee shall pay Lessor a sufficient sum so that, together with sums already held by Lessor, Lessor shall hold a sum equal to three (3) months Base Rent which Lessor shall retain as an

additional charge for use of the Premises, and such additional sum shall be paid by Lessee within thirty (30) days of termination of the Lease.

D. Each consecutive twelve-month period this Lease is in effect, beginning with the Effective Date of this Lease, is herein called a "Lease Year."

E. Lessee acknowledges that it is assuming all risks associated with Lessor's right to terminate this Lease at any time as provided above, and (i) Lessor gives no assurance that Lessor will delay termination of this Lease for any length of time whatsoever, (ii) Lessee may expend money and effort during the term of this Lease which may not ultimately be of any benefit to Lessee if Lessor terminates this Lease, but nonetheless, Lessor shall have the right to terminate the Lease if Lessor determines in its sole and absolute discretion that Lessor desires to terminate, and (iii) in no event shall Lessor be deemed to have any legal obligations to continue to lease the Premises for any length of time.

Section 2. Use and Compliance.

A. Lessee may use the Premises for the sole and exclusive purpose of public parking and for no other purpose without the prior written consent of Lessor. Lessee shall respond to Lessor's reasonable inquiries regarding the use or condition of the Premises.

B. Lessee shall comply with all Laws applicable to Lessee, the Premises, this Lease and Lessee's activities and obligations hereunder, and shall have the sole responsibility for costs, fees, or expenses associated with such compliance. As used herein, the term "Laws" shall mean any and all statutes, laws, ordinances, codes, rules or regulations or any order, decision, injunction, judgment, award or decree of any public body or authority having jurisdiction over Lessee, the Premises, this Lease, and/or Lessee's obligations under this Lease, and shall include all Environmental Laws (as defined in Section 4(A)).

C. If any governmental license or permit is required or desirable for the proper and lawful conduct of Lessee's business or other activity in or on the Premises, or if the failure to secure such a license or permit might in any way affect Lessor, then Lessee, at Lessee's expense, shall procure and thereafter maintain such license or permit and submit the same to inspection by Lessor. Lessee, at Lessee's expense, shall at all times comply with the requirements of each such license or permit.

Section 3. Rent.

A. Lessee shall pay as rental for the Premises, in advance, an amount equal to _____ ($___.___) annually during the term of the Lease, ("Base Rent"). Base Rent shall increase 3% annually during the term of the Lease. Lessor reserves the right to change rental rates as conditions warrant. Billing or acceptance by Lessor of any rental shall not imply a definite term or otherwise restrict either party from canceling this Lease as provided herein. Either party hereto may assign any receivables due it under this Lease; provided, however, such assignments shall not relieve the assignor of any of its rights or obligations under this Lease. All rent and other monetary payments under this Lease from Lessee to Lessor shall be delivered solely to the following address:

BNSF Railway Company
P.O. Box 676160
Dallas, Texas 75267-6160

Lessor shall have the right to designate at any time and from time to time a different address for delivery of such payments by written notice to Lessee pursuant to the notice provisions of Section 36 below. No rent or other payment sent to any other address shall be deemed received by Lessor unless and until Lessor has actually posted such payment as received on the account of Lessee, and Lessee shall be subject to all default provisions hereunder, late fees and other consequences as a result thereof in the same manner as if Lessee had failed or delayed in making any payment.

B. Lessee acknowledges that Lessor utilizes the rental collection system involving direct deposit of monies received through a financial institution selected by Lessor, which precludes Lessor's ability to exercise rejection of a rental payment before Lessee's check is cashed. Lessee agrees that as a condition of Lessor granting this Lease Lessee hereby waives any rights it may have under law to force continuation of this Lease due to Lessor having accepted and cashed Lessee's rental remittance. Lessor shall have the option of rejecting Lessee's payment by refunding to Lessee the rental amount paid by Lessee, adjusted as set forth in this Lease, and enforcing the termination provisions of this Lease.

C. Lessee shall pay the Base Rent and all additional amounts due pursuant to Section 9 as and when the same become due and payable, without demand, set-off, or deduction. Lessee's obligation to pay Base Rent and all amounts due under this Lease is an independent covenant and no act or circumstance, regardless of whether such act or circumstance constitutes a breach under this Lease by Lessor, shall release Lessee of its obligation to pay Base Rent and all amounts due as required by this Lease.

D. If any Base Rent or any payment under Section 9 or any other payment due by Lessee hereunder is not paid within five (5) days after the date the same is due, Lessor may assess Lessee a late fee ("Late Fee") in an amount equal to 5% of the amount which was not paid when due to compensate Lessor for Lessor's administrative burden in connection with such late payment. In addition to said Late Fee, Lessee shall pay interest on the unpaid sum from the due date thereof to the date of payment by Lessee at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in The Wall Street Journal in the preceding December plus two and one-half percent (2 1/2%), and for the period July 1 through December 31, the prime rate last published in The Wall Street Journal in the preceding June plus two and one-half percent (2 1/2%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

Section 4. <u>Environmental</u>.

A. Lessee shall strictly comply with all federal, state and local environmental laws and regulations in its occupation and use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Clean Air Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, and CERCLA (collectively referred to as the “Environmental Laws”). Lessee shall not maintain any treatment, storage, transfer or disposal facility, or

underground storage tank, as defined by Environmental Laws, on the Premises. Lessee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws, on or about the Premises.

B. Lessee shall give Lessor immediate notice to Lessor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises and to Lessor's Manager Environmental Leases at (785) 435-2386 for any violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Lessee's use of the Premises. Lessee shall use its best efforts to promptly respond to any release on or from the Premises. Lessee also shall give Lessor's Manager Environmental Leases immediate notice of all measures undertaken on behalf of Lessee to investigate, remediate, respond to or otherwise cure such release or violation and shall provide to Lessor's Manager Environmental Leases copies of all reports and/or data regarding any investigations or remediations of the Premises.

C. In the event that Lessor has notice from Lessee or otherwise of a release or violation of Environmental Laws on the Premises which occurred or may occur during the term of this Lease, Lessor may require Lessee, at Lessee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Lessor's right-of-way.

D. Lessee shall promptly report to Lessor in writing any conditions or activities upon the Premises which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Lessee's reporting to Lessor shall not relieve Lessee of any obligation whatsoever imposed on it by this Lease. Lessee shall promptly respond to Lessor's request for information regarding said conditions or activities.

E. Hazardous Materials are not permitted on the Premises except as otherwise described herein. Lessee expects to use on the Premises the following Hazardous Materials:_____N/A_____ _____, and to store on the Premises the following Hazardous Materials (as defined in Section 4(F) below): _____N/A_____; provided, however, that Lessee may only use and store the listed Hazardous Materials in such amounts as are necessary and customary in Lessee's industry for the permitted uses hereunder ("Permitted Substances"). All such Permitted Substances shall be placed, used, and stored in strict accordance with all Environmental Laws. Use or storage on the Premises of any Hazardous Materials not disclosed in this Section 4(E) is a breach of this Lease.

F. For purposes of this Section 4, "Hazardous Materials" means all materials, chemicals, compounds, or substances (including without limitation asbestos, petroleum products, and lead-based paint) identified as hazardous or toxic under Environmental Laws.

G. Lessor may, at its option prior to termination of this Lease, require Lessee to conduct an environmental audit of the Premises through an environmental consulting engineer acceptable to Lessor, at Lessee's sole cost and expense, to determine if any noncompliance or environmental damage to the Premises has occurred during Lessee's occupancy thereof. The audit shall be conducted to Lessor's satisfaction and a copy of

the audit report shall promptly be provided to Lessor for its review. Lessee shall pay all expenses for any remedial action that may be required as a result of said audit to correct any noncompliance or environmental damage, and all necessary work shall be performed by Lessee prior to termination of this Lease.

Section 5. Access to Adjacent Property by Lessee.

If access to and from the Premises can be accomplished only through use of Lessor's property adjacent to the Premises, such use is granted for ingress and egress only and on a non-exclusive basis, subject to such restrictions and conditions as Lessor may impose by notice to Lessee. Lessor shall have the right to designate the location or route to be used. Lessee understands and agrees that all of the terms and obligations under this Lease applicable to Lessee shall also be applicable to Lessee with respect to Lessee's use of any property adjacent to the Premises which Lessee may use just as though the property has been specifically described as part of the Premises, including, without limitation, the indemnity provisions of Section 13. Notwithstanding anything to the contrary herein, this Section 5 shall not grant Lessee any right to cross any of Lessor's Tracks. Any such crossing rights may only be granted by a separate written agreement between Lessor and Lessee.

Section 6. Access to Premises by Lessor.

A. Lessor and its contractors, agents and other designated third parties may at all reasonable times and at any time in case of emergency, in such manner as to not unreasonably interfere with Lessee's use of the Premises as allowed hereunder, (i) enter the Premises for inspection of the Premises or to protect the Lessor’s interest in the Premises or to protect from damage any property adjoining the Premises, (ii) enter the Premises to construct, maintain, and operate trackage, fences, pipelines, communication facilities, fiber optic lines, wireless towers, telephone, power or other transmission lines, or appurtenances or facilities of like character, upon, over, across, or beneath the Premises, without payment of any sum for any damage, including damage to growing crops, (iii) take all required materials and equipment onto the Premises, and perform all required work therein, for the purpose of making alterations, repairs, or additions to the Premises as Lessor may elect if Lessee defaults in its obligation to do so, (iv) enter the Premises to show the Premises to holders of encumbrances on the interest of Lessor in the Premises, or to prospective purchasers or mortgagees of the Premises, and all such entries and activities shall be without any rebate of rent to Lessee for any loss of occupancy of the Premises, or damage, injury or inconvenience thereby caused.

B. For purposes stated in this Section 6, Lessor will at all times have keys with which to unlock all of the doors and gates on the Premises, and Lessee will not change or alter any lock thereon without Lessor's permission.

C. In an emergency, Lessor will be entitled to use any and all means that Lessor may deem proper to open doors, gates, and other entrances to obtain entry to the Premises. Any entry to the Premises by Lessor as described in this Section 6 shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or any eviction of Lessee from the Premises, and any damages caused on account thereof will be paid by Lessee.

Section 7. Warranties.

LESSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LESSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. This Lease is made subject to all outstanding rights or interests of others. If the Premises are subsequently found to be subject to prior claim, this Lease shall terminate immediately on notice to that effect from Lessor. Lessee accepts this Lease subject to that possibility and its effect on Lessee's rights and ownership of the Lessee Improvements. In case of eviction of Lessee by anyone other than Lessor, or anyone owning or claiming title to or any interest in the Premises, Lessor shall not be liable to Lessee for damage of any kind (including any loss of ownership right to Lessee's Improvements) or to refund any rent paid hereunder, except to return the unearned portion of any rent paid in advance.

Section 8. Premises Condition; Lessee Improvements.

A. Lessee represents that the Premises, the title thereto, any subsurface conditions thereof, and the present uses thereof have been examined by the Lessee. Lessee accepts the same in the condition in which they now are, without representation or warranty, expressed or implied, in fact or by law, by the Lessor, and without recourse to the Lessor as to the title thereto, the nature, condition or usability thereof, or the uses to which the Premises may be put. By taking possession or commencing use of the Premises, Lessee (i) acknowledges that it is relying on its own inspections of the Premises and not on any representations from Lessor regarding the Premises; (ii) establishes conclusively that the Premises are at such time in satisfactory condition and in conformity with this Lease and all zoning or other governmental requirements in all respects; and (iii) accepts the Premises in its condition as of the Commencement Date on an "AS IS," "WHERE IS," and "WITH ALL FAULTS" basis, subject to all faults and infirmities, whether now or hereafter existing. Nothing contained in this Section 8 affects the commencement of the term of the Lease or the obligation of Lessee to pay rent as provided above. Lessee represents and warrants to Lessor as follows: (i) Lessee does not intend to, and will not, use the Premises for any purpose other than as set forth in Section 2; (ii) Lessee has previously disclosed in writing to Lessor all special requirements (but Lessor shall have no responsibility relative to any such special requirement), if any, which Lessee may have in connection with this intended use; and (iii) Lessee has undertaken and has reasonably and diligently completed all appropriate investigations regarding the suitability of the Premises for Lessee's intended use. Lessee shall comply with any covenants, conditions or restrictions now or hereafter affecting the Premises, and acknowledges that Lessor may place any covenants, conditions or restrictions of record affecting the Premises prior to or during the term of the Lease. In such event, this Lease will be subject and subordinate to all of the same without further action by either party, including, without limitation, the execution of any further instruments. Lessee acknowledges that Lessor has given material concessions for the acknowledgements and provisions contained in this Section 8, and that Lessor is relying on these acknowledgments and agreements and would not have entered into this Lease without such acknowledgements and agreements by Lessee.

B. If improvements are necessary for Lessee's use of the Premises, Lessee, at Lessee's sole cost and expense, shall, on or after the Commencement Date, construct and install such improvements to the Premises which are necessary for Lessee's use of the Premises and are acceptable to Lessor in Lessor's sole discretion ("Lessee Improvements"). The construction and installation of any Lessee Improvements shall be

subject to Lessor's prior written approval of plans and specifications for such Lessee Improvements to be prepared by Lessee and submitted to Lessor for approval as set forth below, such approval to be in Lessor's sole and absolute discretion. Within forty-five (45) days after the Commencement Date, Lessee shall submit detailed plans and specifications, and the identity of Lessee's proposed general contractor for the Lessee Improvements for Lessor's review and approval. Lessor shall either approve or disapprove the plans and specifications and general contractor (in its sole and absolute discretion) by written notice delivered to Lessee within sixty (60) days after receipt of the same from Lessee. In the event of any disapproval, Lessor shall specify the reasons for such non-approval. If Lessor fails to deliver notice to Lessee of Lessor's approval or disapproval of the plans, specifications, and proposed general contractor within the time period discussed above, Lessee's plans, specifications and proposed contractor shall be deemed disapproved. If Lessor specifies objections to the plans and specifications or general contractor as herein provided and Lessor and Lessee are unable to resolve the objections by mutual agreement within a period of thirty (30) days from the date of delivery of written notice thereof, Lessee, as its sole remedy, to be exercised not later than ten (10) days after the expiration of said thirty (30) days period, may terminate this Lease by written notice to Lessor. Upon approval of the plans and specifications by Lessor, Lessor and Lessee shall sign the same, and they shall be deemed a part hereof. All Lessee Improvements shall be constructed and installed in accordance with the terms and conditions of Exhibit "B" attached to the Lease and all applicable terms and conditions of the Lease regarding alterations and improvements. Lessee shall not construct any other alteration or improvement to the Premises without Lessor's prior written consent. The Lessee Improvements constructed pursuant to the above provisions shall be owned by Lessee during the term of the Lease and removed from the Premises or surrendered to the Lessor pursuant to Section 20 below upon termination of this Lease.

Section 9. <u>Taxes and Utilities</u>.

A. In addition to Base Rent, Lessee shall pay all taxes, utilities, and other charges of every kind and character, whether foreseen or unforeseen, ordinary or extraordinary, which are attributable to the term of this Lease and may become due or levied against the Premises, against Lessee, against the business conducted on the Premises or against the Lessee Improvements placed thereon during the term hereof, even though such taxes, utilities or other charges may not become due and payable until after termination of this Lease provided; however, that Lessee shall only be responsible for the payment of property taxes levied against the Premises to the extent such taxes are separately assessed by the applicable taxing authority as a result of this Lease. Lessee agrees that Lessor shall not be required to furnish to Lessee any utility or other services. If this Lease is a transfer of an existing lease, Lessee must make arrangements with the present lessee for payment of any delinquent and current taxes, utilities, and other charges prior to taking possession. If such arrangements are not made, Lessee agrees to pay all such taxes, utilities, and other charges. If Lessor should make any such payments, Lessee shall promptly upon demand reimburse Lessor for all such sums.

B. Should the Premises be subject to special assessment for public improvements in the amount of Five Hundred Dollars ($500.00) or less during any Lease Year, Lessee shall promptly reimburse Lessor the amount in full. Should the assessment exceed Five Hundred Dollars ($500.00) during any Lease Year then such

excess shall be paid by Lessor, but the Base Rent herein shall be increased by an amount equal to twelve percent (12%) of such excess payable for each Lease Year such amounts are payable.

Section 10. Track Clearance.

A. Lessee shall not place, permit to be placed, or allow to remain, any permanent or temporary material, structure, pole, or other obstruction within (i) 8½ feet laterally from the centerline of any of Lessor's Tracks on or about the Premises (nine and one-half (9-1/2) feet on either side of the centerline of any of Lessor's Tracks which are curved) or (ii) 24 feet vertically from the top of the rail of any of Lessor's Tracks on or about the Premises ("Minimal Clearances"); provided that if any law, statute, regulation, ordinance, order, covenant or restriction ("Legal Requirement") requires greater clearances than those provided for in this Section 10, then Lessee shall strictly comply with such Legal Requirement. However, vertical or lateral clearances which are less than the Minimal Clearances but are in compliance with Legal Requirements will not be a violation of this Section 10, so long as Lessee strictly complies with the terms of any such Legal Requirement and posts a sign on the Premises clearly noting the existence of such reduced clearance. Any such sign shall be painted with black and white reflective paint.

B. Lessor's operation over any Lessor's Track on or about the Premises with knowledge of an unauthorized reduced clearance will not be a waiver of the covenants of Lessee contained in this Section 10 or of Lessor's right to recover for and be indemnified and defended against such damages to property, and injury to or death of persons, that may result therefrom.

C. Lessee shall not place or allow to be placed any freight car within 250 feet of either side of any at-grade crossings on Lessor's Tracks.

Section 11. Repairs; Maintenance.

A. Lessee shall, at its sole expense, take good care of the Premises (including all Lessee Improvements) and shall not do or suffer any waste with respect thereto and Lessee shall promptly make all necessary or desirable Repairs to the Premises. The term "Repairs" means all reasonable repair and maintenance necessary to keep the Premises (including all Lessee Improvements) in good condition and includes, without limitation, replacements, restoration and renewals when necessary. Lessee shall keep and maintain any paved areas, sidewalks, curbs, landscaping, and lawn areas in a clean and orderly condition, and free of accumulation of dirt and rubbish.

B. Lessor shall not have any liability or obligation to furnish or pay for any services or facilities of whatsoever nature or to make any Repairs or alterations of whatsoever nature in or to the Premises, including but not limited to structural repairs, or to maintain the Premises in any manner. Lessee acknowledges that Lessor shall have no responsibility for management of the Premises.

Section 12. Safety; Dangerous and Hazardous Conditions.

It is understood by Lessee that the Premises may be in dangerous proximity to railroad tracks, including Lessor's Tracks, and that persons and property, whether real or

personal, on the Premises will be in danger of injury, death or destruction incident to the operation of the railroad, including, without limitation, the risk of derailment, fire, or inadequate clearance (including sight clearance or vision obstruction problems at grade crossings on or adjacent to the Premises), and Lessee accepts this Lease subject to such dangers, and acknowledges that its indemnification obligations hereunder extend to and include all such risks.

Section 13. Indemnity.

A. TO THE FULLEST EXTENT PERMITTED BY LAW, LESSEE SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS LESSOR AND LESSOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

(i) THIS LEASE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS;

(ii) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LEASE;

(iii) LESSEE'S OCCUPATION AND USE OF THE PREMISES;

(iv) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY, AGGRAVATED BY, OR CONTRIBUTED IN WHOLE OR IN PART, BY LESSEE; OR

(v) ANY ACT OR OMISSION OF LESSEE OR LESSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER,

EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH LESSEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE.

B. FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING THE LIMITATION IN SECTION 13(A), LESSEE SHALL NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON STRICT LIABILITY, NEGLIGENCE OR

OTHERWISE, THAT RAILROAD IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE PREMISES FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. LESSEE WILL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. LESSEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS LEASE SHALL NOT IN ANY WAY SUBJECT LESSOR TO CLAIMS THAT LESSOR IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL LESSOR BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

C. TO THE FULLEST EXTENT PERMITTED BY LAW, LESSEE FURTHER AGREES, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, TO INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF LESSEE OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL HEALTH AND SAFETY ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

D. Upon written notice from Lessor, Lessee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this Lease for which Lessee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Lessee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

Section 14. <u>Equal Protection</u>.

It is agreed that the provisions of Sections 10, 12, and 13 are for the equal protection of other railroad companies, including, without limitation, the National Railroad Passenger Corporation (Amtrak), permitted to use Lessor's property, and such railroad companies shall be deemed to be included as Indemnitees under Sections 10, 12, and 13.

Section 15. <u>Assignment and Sublease</u>.

A. Lessee shall not (i) assign or otherwise transfer this Lease or any interest herein, or (ii) sublet the Premises or any part thereof, without, in each instance, obtaining the prior written consent of Lessor, which consent may be withheld in Lessor's sole and absolute discretion. For purposes of this Section 15, in the event that there are aggregate transfers or other changes in the ownership interests of Lessee resulting in a

change of more than 20% of the ownership interests as held on the date hereof, a transfer shall be deemed to have occurred hereunder. Any person or legal representative of Lessee, to whom Lessee's interest under this Lease passes by operation of law, or otherwise, will be bound by the provisions of this Lease.

OPTIONAL[Notwithstanding anything herein to the contrary, and without limitation to Lessor's right to approve or disapprove any transfer of this Lease, in no event shall this Lease or any interest herein be assigned unless the Lessee's entire interest under the Railroad Track Agreement and Railroad Crossing Agreement are assigned at the same time to the same assignee, and any approval by Lessor to such assignment shall be deemed withdrawn if such interests are not simultaneously assigned.]

B. Any assignment, lease, sublease or transfer made pursuant to Section 15(A) may be made only if, and shall not be effective until, the assignee cures all outstanding defaults of Lessee hereunder and executes, acknowledges and delivers to Lessor an agreement, in form and substance satisfactory to Lessor, whereby the assignee assumes the obligations and performance of this Lease and agrees to be personally bound by and upon all of the covenants, agreements, terms, provisions and conditions hereof on the part of Lessee to be performed or observed. Lessee covenants that, notwithstanding any assignment or transfer, whether or not in violation of the provisions of this Lease, and notwithstanding the acceptance of rent by Lessor from an assignee or transferee or any other party, Lessee will remain fully and primarily liable along with the assignee for the payment of the rent due and to become due under this Lease and for the performance of all of the covenants, agreements, terms, provisions, and conditions of this Lease on the part of Lessee to be performed or observed.

Section 16. <u>Liens</u>.

Lessee shall promptly pay, discharge and release of record any and all liens, charges and orders arising out of any construction, alterations or repairs, suffered or permitted to be done by Lessee on the Premises. Lessor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that failure of Lessor to take any such action shall not relieve Lessee of any obligation or liability under this Section 16 or any other Section of this Lease.

Section 17. <u>Insurance</u>.

Lessee shall, at its sole cost and expense, procure and maintain during the life of this Lease the following insurance coverage:

A. All risks property insurance covering all of Lessee's property including property in the care, custody or control of Lessee. Coverage shall include the following:

- ♠ Issued on a replacement cost basis.
- ♠ Shall provide that in respect of the interest of Lessor the insurance shall not be invalidated by any action or inaction of Lessee or any

other person and shall insure the respective interests of Lessor as they appear, regardless of any breach or violation of any warranty, declaration or condition contained in such policies by Lessee or any other person.

- ♠ Include a standard loss payable endorsement naming Lessor as the loss payee as its interests may appear.
- ♠ Include a waiver of subrogation in favor of Lessor.

B. Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of $1,000,000 each occurrence and an aggregate limit of at least $ 2,000,000. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

- ♠ Bodily Injury and Property Damage
- ♠ Personal Injury and Advertising Injury
- ♠ Fire legal liability
- ♠ Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ♠ The employee and workers compensation related exclusions in the above policy shall not apply with respect to claims related to railroad employees.
- ♠ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ♠ Any exclusions related to the explosion, collapse and underground hazards shall be removed.

No other endorsements limiting coverage may be included on the policy.

C. Business Automobile Insurance. This insurance shall contain a combined single limit of at least $1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ♠ Bodily injury and property damage
- ♠ Any and all vehicles owned, used or hired

D. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ♠ Lessee's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ♠ Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 by disease policy limit, $500,000 by disease each employee.

E. If construction is to be performed on the Premises by Lessee, Lessee or Lessee's contractor shall procure Railroad Protective Liability insurance naming only the Lessor as the Insured with coverage of at least $2,000,000 per occurrence and $6,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- ♠ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- ♠ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ♠ Endorsed to include Evacuation Expense Coverage Endorsement.
- ♠ Endorsed to remove any exclusion for punitive damages.
- ♠ No other endorsements restricting coverage may be added.
- ♠ The original policy must be provided to the Lessor prior to performing any work or services under this Lease

Other Requirements:

All policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

Lessee agrees to waive its right of recovery against Railroad for all claims and suits against Railroad. In addition, its insurers, through the terms of the policy or through policy endorsement, waive their right of subrogation against Railroad for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. Lessee further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under Lessee's care, custody, or control.

Lessee's insurance policies through policy endorsement must include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by Railroad. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) shall include a severability of interest endorsement and shall name Railroad and Staubach Global Services - RR, Inc. as additional insureds with respect to work performed under this Lease. Severability of interest and naming Railroad and Staubach Global Services - RR, Inc. as additional insureds shall be indicated on the certificate of insurance.

Lessee is not allowed to self-insure without the prior written consent of Railroad. If granted by Railroad, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Lessee in lieu of insurance. Any and all Railroad liabilities that would otherwise, in accordance with the provisions of this Lease, be covered by Lessee's insurance will be covered as if Lessee elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to accessing the Premises, Lessee shall furnish to Railroad an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation, renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. Upon request from Railroad, a certified duplicate original of any required policy shall be furnished.

Any insurance policy shall be written by a reputable insurance company acceptable to Railroad or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the Premises is located.

Lessee represents that this Lease has been thoroughly reviewed by Lessee's insurance agent(s)/broker(s), who have been instructed by Lessee to procure the insurance coverage required by this Lease. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be contracted by Lessee, Lessee shall require that the contractor shall provide and maintain insurance coverages as set forth herein, naming Railroad as an additional insured, and shall require that the contractor shall release, defend and indemnify Railroad to the same extent and under the same terms and conditions as Lessee is required to release, defend and indemnify Railroad herein.

Failure to provide evidence as required by this Section 17 shall entitle, but not require, Railroad to terminate this Lease immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Lessee's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Lessee shall not be deemed to release or diminish the liability of Lessee including, without limitation, liability under the indemnity provisions of this Lease. Damages recoverable by Railroad shall not be limited by the amount of the required insurance coverage.

For purposes of this Section 17, Railroad shall mean "Burlington Northern Santa Fe Corporation", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

Section 18. <u>Water Rights and Use of Wells</u>.

This Lease does not grant, convey or transfer any right to the use of water under any water right owned or claimed by the Lessor which may be appurtenant to the Premises. All right, title, and interest in and to such water is expressly reserved unto Lessor, and the right to use same or any part thereof may be obtained only by the prior written consent of the Lessor. Lessee shall not use, install or permit to be installed or used any wells on the Premises without the prior written consent of Lessor.

Section 19. <u>Default</u>.

A. An "Event of Default" by Lessee shall have occurred hereunder if any of the following shall occur:

(i) if Lessee violates any safety provision contained in this Lease;

(ii) if Lessee fails to pay rent or any other monetary payment hereunder when due or fails to perform any other obligations under this Lease and such failure continues thirty (30) days after written notice from Lessor to Lessee of Lessee's failure to make such payment or perform such obligations;

(iii) if a decree or order of a court having jurisdiction over the Premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Lessee or over all or a substantial part of the property of Lessee shall be entered; or if Lessee becomes insolvent or makes a transfer in fraud of creditors; or an interim receiver, trustee or other custodian of Lessee or of all or a substantial part of the property of Lessee shall be appointed or a warrant of attachment, execution, or similar process against any substantial part of the property of Lessee shall be issued and any such event shall not be stayed, dismissed, bonded or discharged within thirty (30) days after entry, appointment or issuance;

(iv) if the Premises is abandoned or vacated by Lessee.

B. If an Event of Default occurs as provided above, Lessor may, at its option, (i) terminate this Lease by serving five (5) days notice in writing upon Lessee, in which event Lessee shall immediately surrender possession of the Premises to Lessor, without prejudice to any claim for arrears of rent or breach of covenant, (ii) proceed by appropriate judicial proceedings, either at law or in equity, to enforce performance or observance by Lessee of the applicable provisions of this Lease or to recover damages for a breach thereof, (iii) cure the default by making any such payment or performing any such obligation, as applicable, at Lessee's sole expense, without waiving or releasing Lessee from any obligation, or (iv) enter into and upon the Premises or any part thereof and repossess the same without terminating the Lease and, without obligations to do so relet the Premises or any part thereof as the agent of Lessee and in such event, Lessee shall be immediately liable to Lessor for all costs and expenses of such reletting, the cost of any alterations and repairs deemed necessary by Lessor to effect such reletting and the full amount, if any, by which the rentals reserved in this Lease for the period of such reletting exceeds the amounts agreed to be paid as rent for the Premises for the period of reletting. The foregoing rights and remedies given to Lessor are and shall be deemed to be cumulative and the exercise of any of them shall not be deemed to be an election excluding the exercise by Lessor at any time of a different or inconsistent remedy. If, on account of breach or default by Lessee of any of Lessee's obligations hereunder, it shall become necessary for the Lessor to employ an attorney to enforce or defend any of Lessor's rights or remedies hereunder, then, in any such event, any reasonable amount incurred by Lessor for attorneys' fees shall be paid by Lessee. Any waiver by Lessor of any default or defaults of this Lease or any delay of Lessor in enforcing any remedy set forth herein shall not constitute a waiver of the right to pursue any remedy at a later date or terminate this Lease for any subsequent default or defaults, nor shall any such waiver in any way affect Lessor's ability to enforce any Section of this Lease. The remedies set forth in this Section 19 shall be in addition to, and not in limitation of, any other remedies that Lessor may have at law or in equity, and the applicable statutory period for the enforcement of a remedy will not commence until Lessor has actual knowledge of a breach or default.

Section 20. <u>Termination</u>.

Upon the termination of Lessee's tenancy under this Lease in any manner herein provided, Lessee shall relinquish possession of the Premises and shall remove any Lessee Improvements, and restore the Premises to substantially the state and environmental condition in which it was prior to Lessee's use ("Restoration Obligations"). If Lessee shall fail within thirty (30) days after the date of such termination of its tenancy to complete the Restoration Obligations, then Lessor may, at its election (i) either remove the Lessee Improvements or otherwise restore the Premises, and in such event Lessee shall, within thirty (30) days after receipt of bill therefor, reimburse Lessor for cost incurred, (ii) upon written notice to Lessee may take and hold any Lessee Improvements and personal property as its sole property, without payment or obligation to Lessee therefor, or (iii) specifically enforce Lessee's obligation to restore and/or pursue any remedy at law or in equity against Lessee for failure to so restore. Further, in the event Lessor has consented to Lessee Improvements remaining on the Premises following termination, Lessee shall, upon request by Lessor, provide a Bill of Sale in a form acceptable to Lessor conveying such Lessee Improvements to Lessor.

Section 21. Survival of Obligations.

Notwithstanding any expiration or other termination of this Lease, all of Lessee's indemnification obligations and any other obligations that have accrued but have not been satisfied under this Lease prior to the termination date shall survive such termination.

Section 22. Holding Over.

If Lessee fails to surrender the Premises to Lessor upon the termination of this Lease, and Lessor does not consent in writing to Lessee's holding over, then such holding over will be deemed a month-to-month tenancy. Lessee's holdover will be subject to all provisions of this Lease.

Section 23. Multiple Party Lessee.

In the event that Lessee consists of two or more parties, all the covenants and agreements of Lessee herein contained shall be the joint and several covenants and agreements of such parties.

Section 24. Damage or Destruction.

If at any time during the term of this Lease, the Premises are damaged or destroyed by fire or other casualty, then Lessor may terminate this Lease or repair and reconstruct the Premises to substantially the same condition in which the Premises existed immediately prior to the damage or destruction, except that Lessor is not required to repair or reconstruct any Lessee Improvements, personal property, furniture, trade fixtures, or office equipment located on the Premises and removable by Lessee under the provisions of this Lease.

Section 25. Eminent Domain.

If any part of the Premises is taken by eminent domain, Lessor may either terminate this Lease or continue the Lease in effect. If Lessor elects to continue the Lease, rent will be reduced in proportion to the area of the Premises taken by eminent

domain, and Lessor shall repair any damage to the Premises resulting from the taking. All sums awarded or agreed upon between Lessor and the condemning authority for the taking of the interest of Lessor or Lessee, whether as damages or as compensation, will be the property of Lessor; without prejudice, however, to claims of Lessee against the condemning authority for moving costs and the unamortized cost of leasehold improvements paid for by Lessee taken by the condemning authority. If this Lease is terminated under this Section 25, rent will be payable up to the date that possession is taken by the condemning authority, and Lessor shall refund to Lessee any prepaid unaccrued rent less any sum then owing by Lessee to Lessor.

Section 26. Representations.

Neither Lessor nor Lessor's agents have made any representations or promises with respect to the Premises except as herein expressly set forth.

Section 27. Signs.

No signs are to be placed on the Premises without the prior written approval of Lessor of the size, design, and content thereof.

Section 28. Consents and Approvals.

Whenever in this Lease Lessor's consent or approval is required, such consent or approval shall be in Lessor's sole and absolute discretion. If Lessor delays or refuses such consent or approval, such consent or approval shall be deemed denied, and Lessee in no event will be entitled to make, nor will Lessee make, any claim, and Lessee hereby waives any claim, for money damages (nor will Lessee claim any money damages by way of set-off counterclaim or defense) based upon any claim or assertion by Lessee that Lessor unreasonably withheld or unreasonably delayed its consent or approval.

Section 29. Captions.

The captions are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Lease nor the intent of any provision thereof.

Section 30. Public Record.

It is understood and agreed that this Lease shall not be placed of public record.

Section 31. Governing Law.

All questions concerning the interpretation or application of provisions of this Lease shall be decided according to the laws of the state in which the Premises are located.

Section 32. No Waiver.

One or more waivers of any covenant, term, or condition of this Lease by Lessor shall not be construed as a waiver of a subsequent breach of the same covenant, term,

or condition. The consent or approval by Lessor to or of any act by Lessee requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

Section 33. Binding Effect.

All provisions contained in this Lease shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Lessor and Lessee to the same extent as if each such successor and assign was named a party to this Lease.

Section 34. Force Majeure.

Except as may be elsewhere specifically provided in this Lease, if either party is delayed or hindered in, or prevented from the performance required under this Lease (except for payment of monetary obligations) by reason of earthquakes, landslides, strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God or other reason of the like nature not the fault of the party delayed in performance of its obligation, such party is excused from such performance for the period of delay. The period for the performance of any such act will then be extended for the period of such delay.

Section 35. Entire Agreement/Modification.

This Lease is the full and complete agreement between Lessor and Lessee with respect to all matters relating to lease of the Premises and supersedes any and all other agreements between the parties hereto relating to lease of the Premises. If this Lease is a reissue of an existing agreement held by Lessee, it shall supersede and cancel the previous lease or leases, without prejudice to any liability accrued prior to cancellation. This Lease may be modified only by a written agreement signed by Lessor and Lessee.

Section 36. Notices.

Any notice or documents required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given or shall be deemed to have been served and given if (i) delivered in person to the address hereinafter set forth for the party to whom the notice is given, (ii) placed in the United States mail, certified - return receipt requested, addressed to such party at the address hereinafter set forth, or (iii) deposited into the custody of any reputable overnight carrier for next day delivery, addressed to such party at the address hereinafter set forth. Any notice mailed as above shall be effective upon its deposit into the custody of the U. S. Postal Service or such reputable overnight carrier, as applicable; all other notices shall be effective upon receipt. All rent and other payments due to Lessor hereunder shall also be made as provided in Section 3(A) above, and delivery of such rental and other payments shall only be effective upon actual receipt by Lessor. From time to time either party may designate another address or telecopy number within the 48 contiguous states of the United States of America for all purposes of this Lease by giving the other party not less than fifteen (15) days' advance written notice of such change of address in accordance with the provisions hereof.

If to Lessee:

City of Louisville
Attn.: City Manager
749 Main Street
Louisville, Colorado 80027

If to Lessor:

BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, Texas 76131-2828
Attn: Corporate Real Estate

With a copy to:

JLL Brokerage, Inc.
4300 Amon Carter Blvd, Ste 100
Fort Worth, Texas 76155
Attn: Lease Manager

Section 37. Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this Agreement may also be exchanged via electronic facsimile machines and any electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

Section 38. Relationship.

Notwithstanding anything else herein to the contrary, neither party hereto shall be construed or held, by virtue of this Lease, to be the agent, partner, joint venturer, or associate of the other party hereto, it being expressly understood and agreed that the relationship between the parties hereto is and at all times during the term of this Lease, shall remain that of Lessor and Lessee.

Section 39. Severability.

If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the term of this Lease, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

Section 40. Transferability; Release of Lessor.

Lessor shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this Lease and in the Premises, and upon such transfer, Lessor shall be released from any further obligations hereunder, and Lessee agrees to look solely to the successor in interest of Lessor for the performance of such obligations.

Section 41. Tax Waiver.

Lessee waives all rights pursuant to all Laws to protest appraised values or receive notice of reappraisal regarding the Premises (including Lessor's personalty), irrespective of whether Lessor contests the same.

Section 42. Attorneys' Fees.

If any action at law or in equity is necessary to enforce or interpret the terms of this Lease, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any relief to which it may be entitled.

Executed by the parties to be effective as of the Effective Date above.

LESSOR

BNSF Railway Company

By: _____
Name: _____
Title: _____

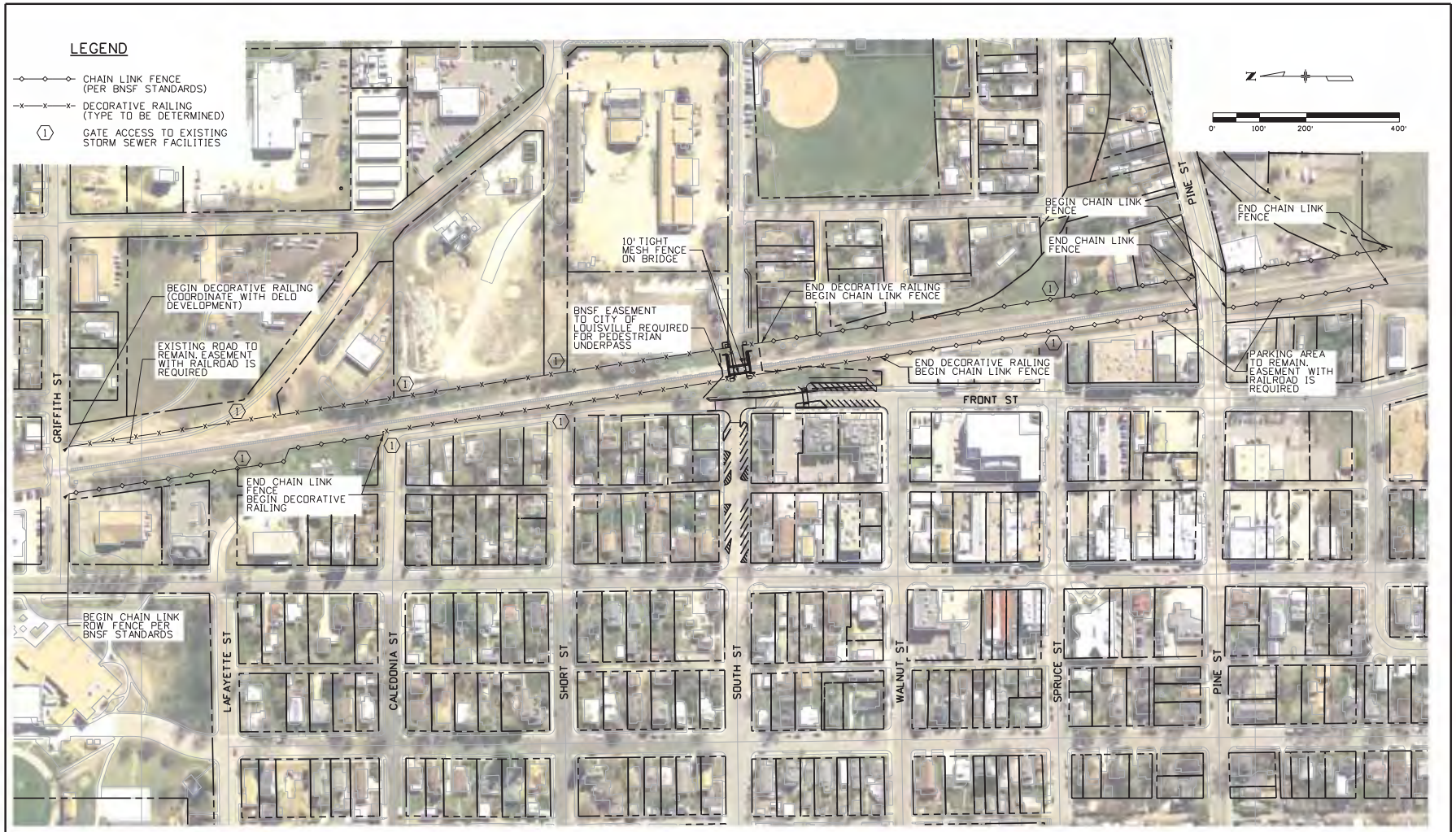
LESSEE

_____

By: _____
Name: _____
Title: _____

EXHIBIT "A"

PREMISES



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File Name: DES_FENCE LAYOUT.dgn			
Horiz. Scale: 1:216.692	Vert. Scale: As Noted		
Unit Information	Unit Leader Initials		

ATKINS
4601 DTC Boulevard, Suite 700
Denver, CO 80237
Phone: (303) 221-7275 Fax: (303) 221-7276

Sheet Revisions

Date:	Comments	Init.
01/09/14	CITY COMMENTS	FJS
05/30/14	BNSF 60% COMMENTS	FJS

City of Louisville
749 MAIN STREET
LOUISVILLE, CO 80027
P: 303-666-6565
F: 303-335-4550

As Constructed
No Revisions:
Revised:
Void:

SOUTH STREET UNDERPASS
OVERALL FENCE LAYOUT

Designer:	LDL	Line Segment 0476	
Detailer:	LDL	Bridge No. 19.91	
Sheet Subset:	Fence	Subset Sheets:	1 of 6

Project No./Code

Sheet Number

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Print Date: 3/30/2015			
File Name: DES_FENCE PLAN01.dgn			
Horiz. Scale: 1:50	Vert. Scale: As Noted		
Unit Information	Unit Leader Initials		

ATKINS
4601 DTC Boulevard, Suite 700
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Sheet Revisions

Date:	Comments	Init.
01/09/14	CITY COMMENTS	FJS
05/30/14	BNSF 60% COMMENTS	FJS

City of Louisville
749 MAIN STREET
LOUISVILLE, CO 80027
P: 303-666-6565
F: 303-335-4550

As Constructed
No Revisions:
Revised:
Void:

SOUTH STREET UNDERPASS
FENCE PLAN

Designer:	LDL	Line Segment 0476	
Detailer:	LDL	Bridge No. 19.91	
Sheet Subset:	Fence	Subset Sheets:	2 of 6

Project No./Code

Sheet Number

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Print Date: 3/30/2015		Sheet Revisions			
File Name: DES_FENCE PLAN02.dgn		Date:	Comments	Init.	
Horiz. Scale: 1:50 Vert. Scale: As Noted		01/09/14	CITY COMMENTS	FJS	
Unit Information Unit Leader Initials		05/30/14	BNSF 60% COMMENTS	FJS	
ATKINS 4601 DTC Boulevard, Suite 700 Denver, CO 80237 Phone: (303) 221-7275 Fax: (303) 221-7276					

City of Louisville
749 MAIN STREET
LOUISVILLE, CO 80027
P: 303-666-6565
F: 303-335-4550

As Constructed	SOUTH STREET UNDERPASS FENCE PLAN			Project No./Code
No Revisions:				
Revised:	Designer: LDL	Line Segment 0476		
	Detailer: LDL	Bridge No. 19.91		
Void:	Sheet Subset: Fence	Subset Sheets: 3 of 6		Sheet Number

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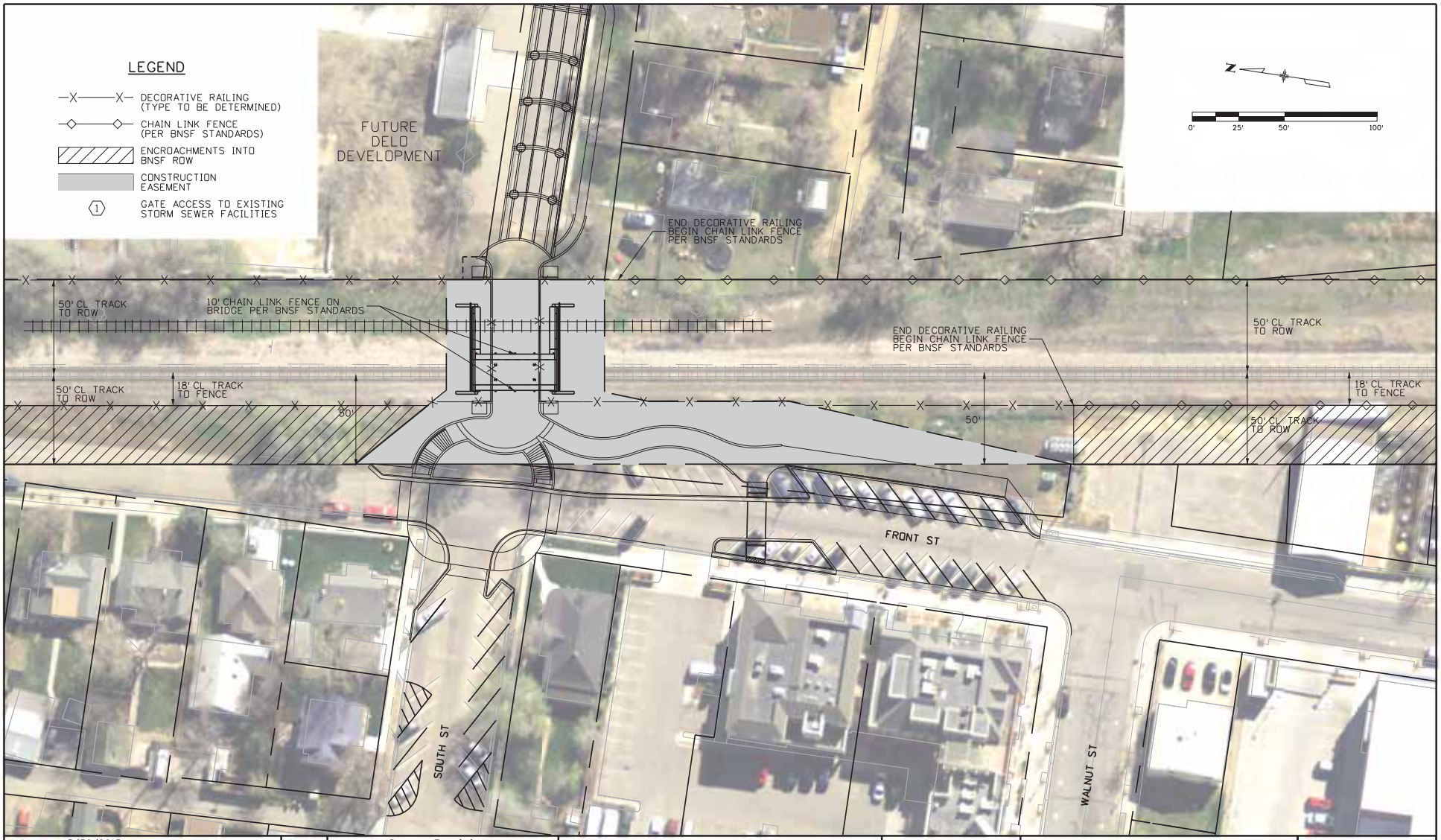

Print Date: 3/30/2015			
File Name: DES_FENCE PLAN03.dgn			
Horiz. Scale: 1:50	Vert. Scale: As Noted		
Unit Information	Unit Leader Initials		

ATKINS
4601 DTC Boulevard, Suite 700
Denver, CO 80237
Phone: (303) 221-7275 Fax: (303) 221-7276

Sheet Revisions

Date:	Comments	Init.
01/09/14	CITY COMMENTS	FJS
05/30/14	BNSF 60% COMMENTS	FJS

City of Louisville
749 MAIN STREET
LOUISVILLE, CO 80027
P: 303-666-6565
F: 303-335-4550

As Constructed
No Revisions:
Revised:
Void:

SOUTH STREET UNDERPASS
FENCE PLAN

Designer:	LDL	Line Segment 0476	
Detailer:	LDL	Bridge No. 19.91	
Sheet Subset:	Fence	Subset Sheets:	4 of 6

Project No./Code

Sheet Number

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Print Date: 3/30/2015			
File Name: DES_FENCE PLAN04.dgn			
Horiz. Scale: 1:50	Vert. Scale: As Noted		
Unit Information	Unit Leader Initials		

ATKINS
4601 DTC Boulevard, Suite 700
Denver, CO 80237
Phone: (303) 221-7275 Fax: (303) 221-7276

Sheet Revisions		
Date:	Comments	Init.
01/09/14	CITY COMMENTS	FJS
05/30/14	BNSF 60% COMMENTS	FJS

City of Louisville
749 MAIN STREET
LOUISVILLE, CO 80027
P: 303-666-6565
F: 303-335-4550

As Constructed
No Revisions:
Revised:
Void:

SOUTH STREET UNDERPASS
FENCE PLAN

Designer:	LDL	Line Segment 0476	
Detailer:	LDL	Bridge No. 19.91	
Sheet Subset:	Fence	Subset Sheets:	5 of 6

Project No./Code

Sheet Number

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Print Date: 3/30/2015			
File Name: DES_FENCE PLAN05.dgn			
Horiz. Scale: 1:50	Vert. Scale: As Noted		
Unit Information	Unit Leader Initials		
ATKINS	4601 DTC Boulevard, Suite 700 Denver, CO 80237 Phone: (303) 221-7275 Fax: (303) 221-7276		

Sheet Revisions

Date:	Comments	Init.
01/09/14	CITY COMMENTS	FJS
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City of Louisville
749 MAIN STREET
LOUISVILLE, CO 80027
P: 303-666-6565
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No Revisions:
Revised:
Void:

SOUTH STREET UNDERPASS
FENCE PLAN

Designer:	LDL	Line Segment 0476	
Detailer:	LDL	Bridge No. 19.91	
Sheet Subset:	Fence	Subset Sheets:	6 of 6

Project No./Code

Sheet Number

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EXHIBIT "B"

WORK LETTER AGREEMENT

THIS WORK LETTER AGREEMENT (the "Agreement") supplements that certain Indefinite Term Lease for Land ("Lease") dated _____, _____ by and between **BNSF Railway Company**, a Delaware corporation ("Lessor") and _____, a(n) _____ ("Lessee"). In the event of any conflict between the provisions of this Agreement and the provisions of the Lease, the provisions of this Agreement shall control. Unless the context otherwise requires, capitalized terms not defined herein shall have the meaning assigned to such terms in the Lease.

In the event Lessee uses one or more general contractors or subcontractors ("Contractor(s)") for any improvements, alterations, build out, finish out, or other similar work on the Premises ("Work"), Lessee agrees to and accepts the following:

1. Prior to performing any Work, Lessee shall obtain Lessor's approval of each Contractor and any Work to be performed by such Contractor shall be performed pursuant to a written contract between Lessee and the Contractor ("Work Contract") approved in advance by Lessor.

2. Prior to commencing any Work, Lessee shall submit for Lessor's review and approval Lessee's plans, specifications and/or drawings for such Work (collectively, "Plans") in accordance with the procedure set forth in the Lease.

3. All Work must be performed at Lessee's sole cost and expense and in accordance with the Plans which have previously been approved by Lessor.

4. Lessee shall cause its Contractors to meet all insurance and indemnification requirements required of Lessee under the Lease and shall obtain indemnification and insurance provisions from its Contractors in favor of Lessor and in the same form as set forth in the Lease.

5. Prior to the commencement of the Work, all required local building, fire, health and other departments must approve all Plans requiring approval by local building codes. In addition, the Work shall be performed, installed and/or constructed in accordance with all applicable federal, state and local laws, codes, ordinances, rules and regulations, including without limitation, the Americans With Disabilities Act of 1990, 42 U.S.C.A. 12101 et seq.

6. Lessee shall be responsible for obtaining all municipal and other governmental licenses or permits for the Work with copies furnished to Lessor prior to commencement of any construction.

7. Lessee shall furnish Lessor, for Lessor's approval, a copy of its schedule of the Work. Lessee shall perform the Work in accordance with the schedule approved by Lessor, and any changes in such schedule must be approved by Lessor in writing in advance.

8. Notwithstanding the status of the completion of the Work, Lessee's obligation for payment of Base Rent and other amounts due under the Lease shall commence on the Commencement Date provided in the Lease. Notwithstanding anything herein to the contrary, Lessor may, in Lessor's sole discretion, permit Lessee and Lessee's Contractors to enter the Premises prior to the Commencement Date in order to commence Work; provided, however, that Lessee agrees that such early entry or occupation of the Premises shall be governed by all of the terms and conditions of the Lease and this Agreement (including the insurance and indemnity requirements therein), as such terms and conditions are more specifically set forth in the Lease and this Agreement.

9. During construction, Lessor reserves the right to inspect the Work at any time upon reasonable notice to Lessee.

10. Lessee's Contractors shall keep the Premises reasonably clean at all times during the performance of the Work.

11. All Work must be performed in a good and workmanlike manner, free from defects in materials and workmanship.

12. If any materialman's, mechanic's, laborer's or any other liens for any work claimed to have been undertaken for Lessee or at Lessee's request is filed against the Premises, Lessee shall indemnify, defend and hold harmless Lessor from any such liens filed during the term of the Lease and shall, at Lessee's own expense, cause all such liens to be removed within ten (10) days after written notice from Lessor to Lessee of the filing thereof.

13. Lessee must obtain Lessor's reasonable approval that the Work has been completed in substantial accordance with the approved plans and specifications. Lessor shall receive copies of all Certificates of Occupancy and as-built drawings (electrical, mechanical, fire and architectural) prior to approving the Work.

14 All guarantees and warranties provided by Lessee's Contractors shall be issued to Lessee and, for Work which is or will at the termination of this Lease be Lessor's property, also to Lessor.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first set forth above.

LESSOR:

BNSF Railway Company

By: _____

Name: _____
Title: _____

LESSEE:

Sample

_____

By: _____
Name: _____
Title: _____

EXHIBIT F
BRIDGE COST ONLY – ADDITIONAL COSTS AS OUTLINED IN CITY COUNCIL COMMUNICATION

AUTHORITY FOR EXPENDITURE

LOCATION :	NSS BROOMFIELD	LINE SEGMENT :	476	AFE NUMBER :	
PLANITEM NUMBER :	000257230	MILEPOST :	19.91	RFA NUMBER :	5917515
PROPERTY OF :	BNSF RAILWAY COMPANY	DIVISION :	PR	CPAR NUMBER :	CB960015
OPERATED BY :	BNSF RAILWAY COMPANY	SUBDIVISION :	FRONT RANGE	BUDGET YEAR :	2015
JOINT FACILITY :	CITY OF LOUISVILLE	TRACK TYPE :	1	BUDGET CLASS :	6
% BILLABLE (+/-) :	100.0	TAX STATE :	CO	REPORTING OFFICE :	111
		SPONSOR :	VP ENGINEERING	CENTER/ROLLUP :	POWSW

PURPOSE, JUSTIFICATION AND DESCRIPTION

PIP PRS DIV FRONT RANGE SUB LS 476 MP 19.91 - 100% BILLABLE TO CITY OF LOUISVILLE CO

PRIMARY FUNDING SOURCE IS CITY FUNDS

PLAN ITEM	LINE SEG	BEG MP	END MP	TRK NBR	BEGIN STATION	END STATION	PROJECT TYPE	BUD YEAR
000257230	476	19.91	19.91	1	NSS	NSS BROOMFIELD	PUBLIC IMPROVEMENT PROJECT	2015

	CASH CAPITAL	NONCASH CAPITAL	OPERATING EXP	REMOVAL COSTS	BILLABLE	TOTALS
LABOR COSTS	0	0	0	0	269,313	269,313
MATERIAL COSTS	0	0	0	0	308,885	308,885
OTHER COSTS	0	0	0	0	226,320	226,320
TOTALS	0	0	0	0	804,518	804,518

SYSTEM MAINTENANCE AND PLANNING

ESTIMATE REF. NUMBER: 5917515

COSTING DATE: 02/03/2015

PRINTED ON: 02/03/2015

ESTIMATED BY: Elkins

PRINTED BY: Elkins

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

BNSF RAILWAY COMPANY
FHPM ESTIMATE FOR
CITY OF LOUISVILLE

LOCATION NSS BROOMFIELD | DETAILS OF ESTIMATE | PLAN ITEM : 000257230 | VERSION : 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

PIP PRS DIV FRONT RANGE SUB LS 476 MP 19.91 - 100% BILLABLE TO CITY OF LOUISVILLE CO

REQUESTOR: BENTLEY TOMLIN 2/2/15
PRIMARY FUNDING SOURCE IS CITY FUNDS

DESCRIPTION	QUANTITY	U/M	COST	TOTAL $
**********				
LABOR				
**********				
DRIVE PILES	760.0	MH	21,923	
FINALIZE PROJECT	267.0	MH	7,702	
PLACE CAPS	244.0	MH	7,039	
PLACE FIELD WELDS - CAP	70.4	MH	2,065	
PLACE SPANS	1320.9	MH	38,102	
PLACE TRACK PANELS - ADDITION - CAP	48.0	MH	1,320	
PREPARE FOR STRUCTURE CHANGOUT	138.8	MH	4,004	
REMOVE/REPLACE TRACK	17.2	MH	473	
REPLACE CROSS TIES - CAP	52.0	MH	1,430	
SIGNAL FIELD LABOR - CAP	20.0	MH	621	
UNLOAD BALLAST - REPLACEMENT - CAP	20.6	MH	567	
UNLOAD MATERIAL	87.1	MH	2,513	
PAYROLL ASSOCIATED COSTS			57,889	
DA OVERHEADS			61,282	
EQUIPMENT EXPENSES			47,654	
INSURANCE EXPENSES			14,729	
TOTAL LABOR COST			269,313	269,313
**********				
MATERIAL				
**********				
BALLAST, FOR GENERIC USE ONLY	172.0	NT **	1,507	
TRACK PANEL, 136 STANDARD RAIL, 40 FT- 10 FT TIES-	3.0	EA **	14,457	
RAIL, TRANSN,BE,40 FT,136 - 1/4 WORN 132	4.0	EA **	5,124	
TIE, TRK,10FT,PRE-PLATED, PANDROL, 6IN, ROUND	20.0	EA **	2,684	
WELDKIT, GENERIC FOR ALL RAIL WEIGHTS	8.0	KT X	543	
BRIDGE MATERIAL	1.0	LS **	247,060	
SIGNAL MATERIAL	2.0	DAY **	440	
MATERIAL HANDLING			13,589	
ONLINE TRANSPORTATION			2,706	
USE TAX			17,406	
OFFLINE TRANSPORTATION			3,369	
TOTAL MATERIAL COST			308,885	308,885
**********				
OTHER				
**********				
CONTRACTED SERVICES	1.0	LS	150,000	
EQUIPMENT RENTAL	1.0	LS	1,500	
SIGNAL LEASED VEHICLE	2.0	DAY	100	
TOTAL OTHER ITEMS COST			151,600	151,600
PROJECT SUBTOTAL				729,798
CONTINGENCIES				66,754
BILL PREPARATION FEE				7,966
GROSS PROJECT COST				804,518
LESS COST PAID BY BNSF				0
TOTAL BILLABLE COST				804,518

SUBJECT: **CITY-WIDE MARGINAL COST FISCAL MODEL**

DATE: **MAY 5, 2015**

PRESENTED BY: **TROY P. RUSS, AICP, AND SCOTT ROBINSON, AICP, PLANNING AND BUILDING SAFETY DEPARTMENT**

SUMMARY:
The City contracted TischlerBise, Inc. to create a new marginal cost fiscal impact model to replace the City's current average cost model. The fiscal model is used to estimate the fiscal impacts of proposed development. The fiscal model takes proposed development by land use type (retail, office, residential, etc.) and other inputs and computes projected tax and other revenues and projected operational and capital expenditures.

The proposed fiscal model will be used by City staff in three areas:

1. Estimating City-wide fiscal impacts associated with various land use scenarios developed as part of any Comprehensive Plan Update, or Small Area Planning process;
2. Evaluating the municipal fiscal impacts anticipated with various proposed individual land development applications;
3. Clarifying the City's levels of service during City Council goal setting, budgeting, and long-range staffing analysis.

The consultant has agreed to create two models, one marginal cost model for City-wide planning and budgeting, and one average cost hybrid model for evaluating individual development proposals. During the May 5th meeting Carson Bise, from TischlerBise will discuss key features of the new city-wide marginal cost fiscal impact model. If Council is satisfied with the marginal cost model, the Consultant will finalize an average cost hybrid version of the fiscal model for individual development review and initiate staff training. The two models use the same assumptions of capacity and levels of service. A draft copy of the model's user's manual is attached to this report.

THE MODEL:
City Council directed staff to create a new marginal cost model for three reasons. First, a marginal cost model would more accurately reflect the true costs and benefits to the City of future development, particularly for infill development, than an average cost model. Second, the City's current model is several years old, and it would benefit the City to reevaluate the revenue and cost assumptions embedded in the model to reflect changes in the City and the market. Third, the proposed model would be more detailed and flexible than the existing model, including additional data and the ability to model scenarios not contemplated by the existing model.

The development and implementation of the model is occurring through five interactive tasks between the consultant and staff. Three specific "check-ins" occurred with City Council's Finance Committee, including:

- Project expectations and initial model design;
- Draft model assumptions, outputs and operations; and,
- Draft model working version review.

The Finance Committee reviewed the model on January 26, 2015 and then discussed additional work and updates to the model on March 16, 2015. Since the last review by the Finance Committee, the consultant has worked with each City Department and adjusted the department and facility capacity default measures from a general 50% to specific capacities as determined by each Department Director.

The City-wide marginal cost model is now complete and staff is requesting City Council approve the finished model.

Following City Council adoption, staff and the consultant will finalize the average cost hybrid version of the fiscal model and initiate staff training and implementation. Staff will use the approved marginal cost City-wide model to evaluate the fiscal impacts associated with alternative land use scenarios emerging from the South Boulder Road Small area plan in the next few weeks.

FISCAL IMPACT:
The contract included a fixed fee of $48,580.

RECOMMENDATION:
Staff recommends City Council approve the City-wide marginal cost fiscal impact model.

ATTACHMENT(S):
1. TischlerBise's PowerPoint Presentation of the New Model
2. **DRAFT** Fiscal Impact Model User's Manual

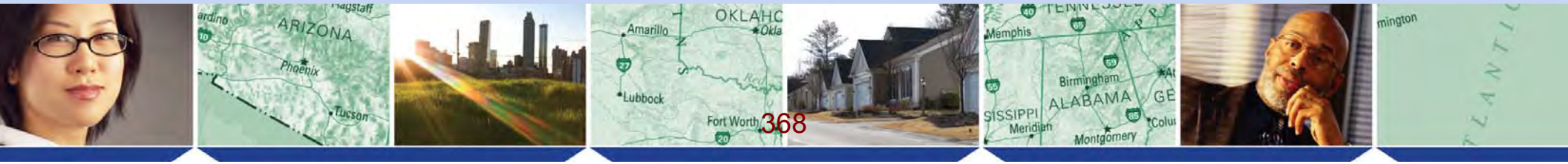
Fiscal Model Overview

Finance Committee Presentation

May 5, 2015

TischlerBise

Fiscal, Economic & Planning Consultants



City's Objective

- Develop a marginal-cost fiscal impact model to demonstrate the impact of land development applications
- City will use to model land use and development scenarios
- Should reflect current capacities of City departments
- Account for different financing scenarios
- Easy to update

Fiscal Impact Models

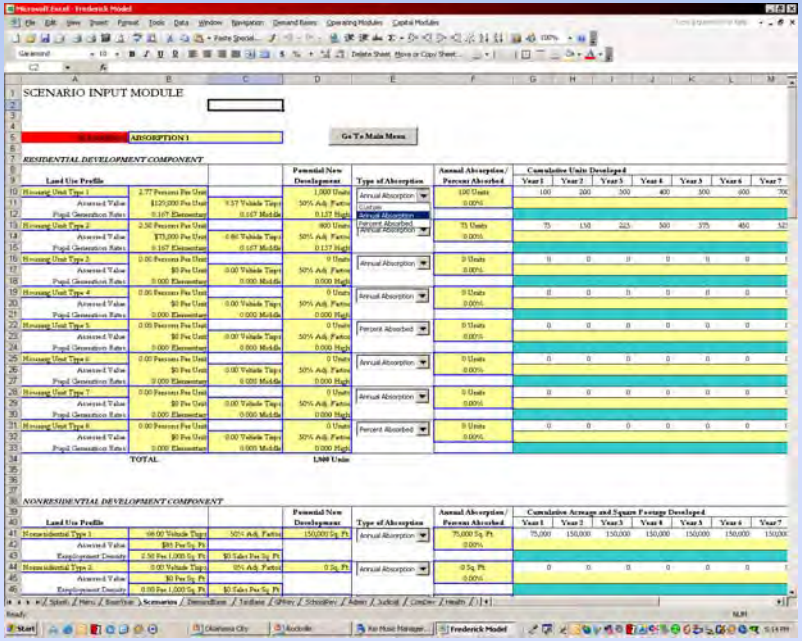
- Project Based Fiscal Impact Model *(Average Cost Hybrid Approach)*
  - Geographic location
  - Timing/phasing of new development
  - Density
  - Physical development pattern
  - Road network (curvilinear vs. grid)
  - Transportation choices
- Citywide Fiscal Impact Model *(Case Study Marginal Approach)*
  - All of the above, plus….
  - Intervention strategies
  - Cumulative effect of development decisions

Application Design

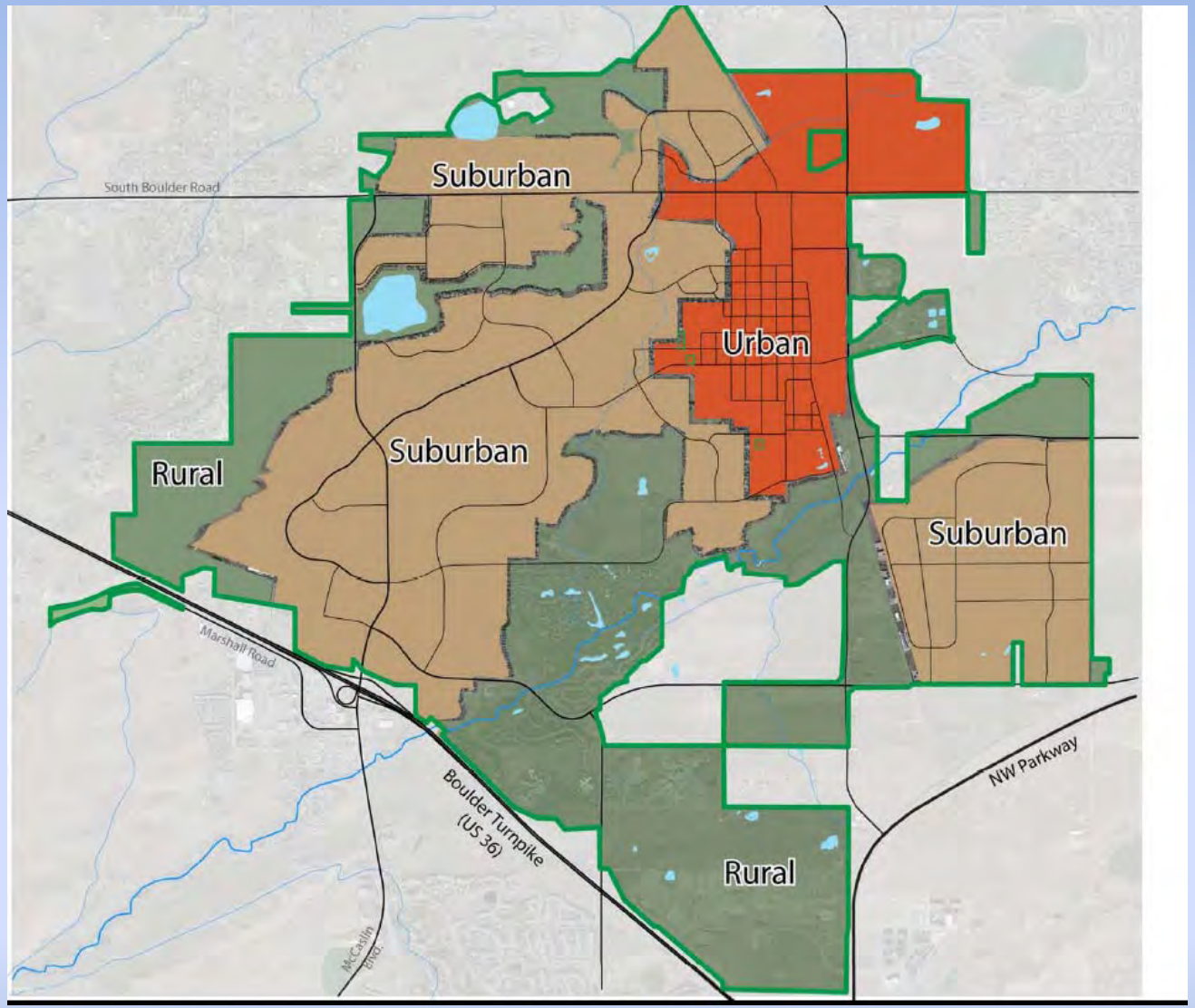
- Developed in Excel and Visual Basic
  - Allows for a powerful and flexible application
    - Easily modified
    - Additional modules can be integrated at a later date
  - Transparent structure avoids “black box” concerns
    - Data, assumptions, algorithms fully shown

Application Design

- Land Use/Scenario Input Module
  - Development projects and growth scenarios are represented through demographic inputs
  - Unlimited number of land use categories can be reflected
  - Can be designed to reflect multiple subareas (fiscal analysis zones)

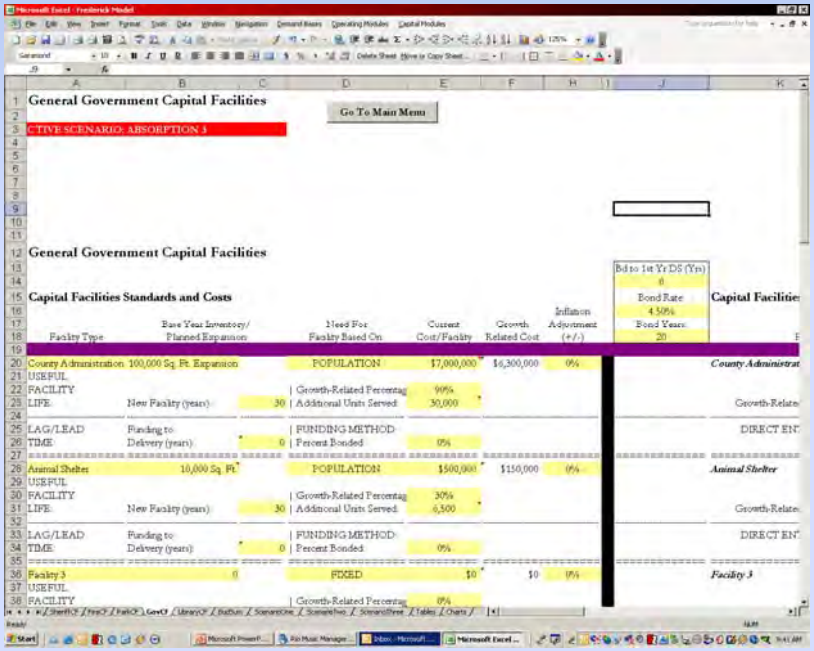


Model Geographies



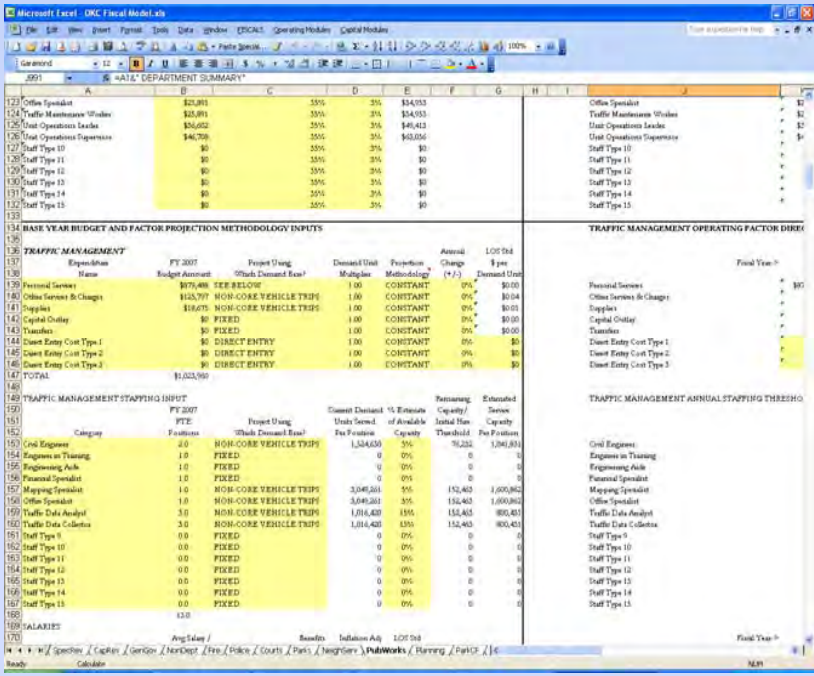
Application Design

- Capital Facilities
  - Option to have the model forecast the need for capital facilities or enter facilities directly
  - Recognize unused capacities and/or determine growth's proportionate share of the costs
  - Build new additions
  - Lag/lead time of construction
  - Financing mechanisms
  - Repurchase after useful life



Application Design

- Operating Expenses
  - Can be organized by department or program area
  - Reflects program-related operating expenses versus facility-related operating expenses
  - Forecasts staff and related expenses
  - Ability to factor one-time costs
  - Ability to factor fixed costs

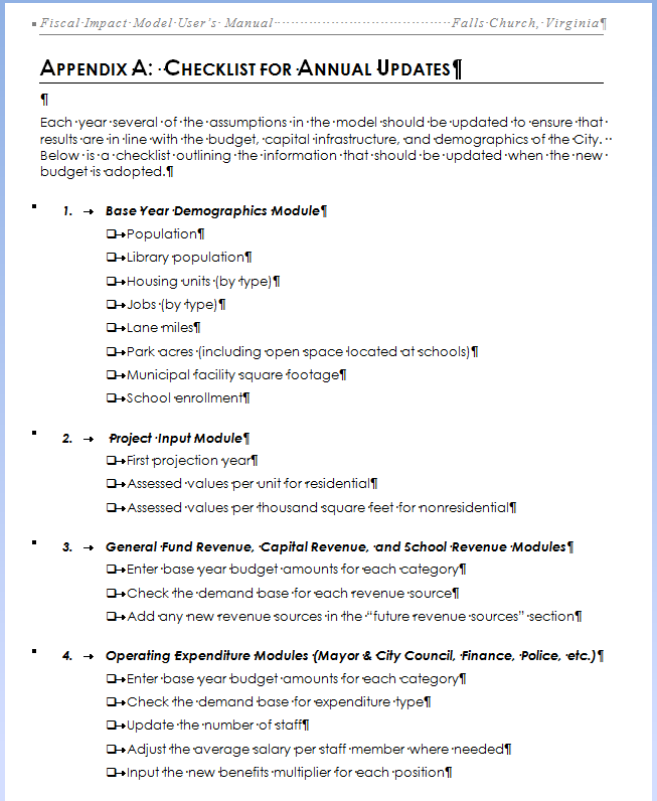


Application Design

- Revenue
  - Will include capital and operating revenue
  - Includes both annual and one-time revenue
  - Ability to factor fixed revenue

Maintenance of Tool

- Annual update
  - Demographics
  - Budget data
  - Capital facility inventories
  - Capital facility cost factors



Fiscal Impact Model User's Manual — Falls Church, Virginia

APPENDIX A: CHECKLIST FOR ANNUAL UPDATES

Each year several of the assumptions in the model should be updated to ensure that results are in line with the budget, capital infrastructure, and demographics of the City. Below is a checklist outlining the information that should be updated when the new budget is adopted.

1. ***Base Year Demographics Module***
   - Population
   - Library population
   - Housing units (by type)
   - Jobs (by type)
   - Lane miles
   - Park acres (including open space located at schools)
   - Municipal facility square footage
   - School enrollment
2. ***Project Input Module***
   - First projection year
   - Assessed values per unit for residential
   - Assessed values per thousand square feet for nonresidential
3. ***General Fund Revenue, Capital Revenue, and School Revenue Modules***
   - Enter base year budget amounts for each category
   - Check the demand base for each revenue source
   - Add any new revenue sources in the "future revenue sources" section
4. ***Operating Expenditure Modules (Mayor & City Council, Finance, Police, etc.)***
   - Enter base year budget amounts for each category
   - Check the demand base for expenditure type
   - Update the number of staff
   - Adjust the average salary per staff member where needed
   - Input the new benefits multiplier for each position

- Implementation of fiscal impact model
  - User's Manual with LOS Assumptions as Appendix
  - Training (2 sessions)
  - Ongoing technical support

City of Louisville, Colorado
Fiscal Impact Model User's Manual

May 5, 2015

Prepared by:

TischlerBise
FISCAL | ECONOMIC | PLANNING

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TischlerBise, Incorporated
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Bethesda, Maryland 20816

(800) 424-4318
info@tischlerbise.com

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I. WELCOME TO FISCALS

The City of Louisville, Colorado, has contracted with TischlerBise to provide a software application developed by TischlerBise specific to the City of Louisville specifications, the Louisville Fiscal Impact Model (known as FISCALS for copyright purposes), to evaluate the fiscal impact of specific development projects on the budget of the City of Louisville government. This User's Manual discusses the use and technical aspects of this FISCALS application.

The Louisville Fiscal Impact Model is an application, developed as a network of spreadsheet files in Microsoft Excel and Visual Basic for Applications (VBA). A basic level of competence with spreadsheet programs is recommended. Users are able to customize the application to particular needs, or TischlerBise can make changes as mutually agreed upon with the client.

This Manual is arranged in a progressive manner, beginning with the most general orientation, and progressing through increasing levels of detail. The Manual should provide virtually all of the information needed to operate and maintain the Fiscal Impact Model. If you wish to make significant modifications to the manner in which this application has been developed for the City, we recommend that you contact TischlerBise for advice or make arrangements for us to do the work for you.

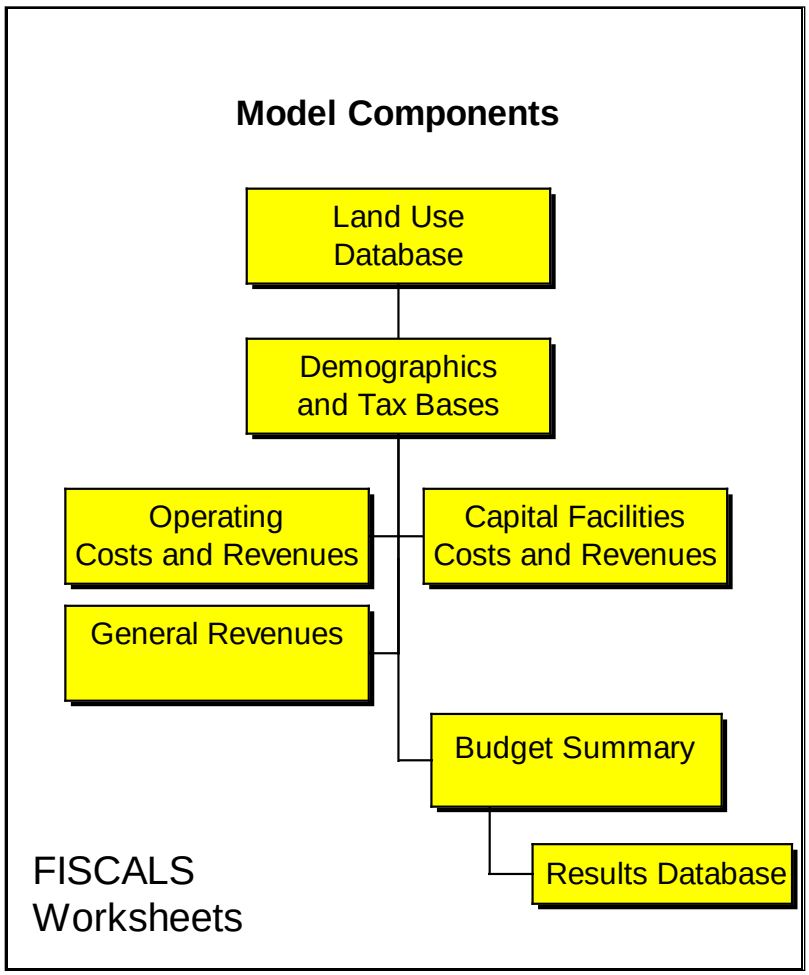
A. Overview of FISCALS

The Louisville Fiscal Impact Model has been developed to assess the fiscal impacts of new development projects. The application was developed to represent the particular budgetary structure of the City, as well as the types of outputs and analyses the City wishes to perform. Thus, while the Model provides a general framework in which fiscal impact issues are considered in a systematic order, the representation of budgets, levels of service, funding and debt policies, and future growth projections are as different and unique as each community in which they are employed. Furthermore, as a community grows and changes, levels of service, cost data, funding terms and other similar factors, which define expenditures, can be easily modified and updated. Alternative development schedules, represented by demographic projections, can be easily substituted to test different development proposals.

B. Basic Application Operation

This section describes how the Louisville Fiscal Impact Model operates and how to use it. The application was developed in Microsoft Excel and Visual Basic for Applications. To run the Louisville Fiscal Impact Model, you must first be running Excel, with the file "**Louisville Fiscal Model.xlsm**" open on your computer. The major components of this file are shown in the diagram below. The first module in the model is the **Scenarios** Input Module (Land Use Database), which contains data for each scenario or development proposal. The next modules, **Demand Base** and **Tax Base**, are used to calculate annual demand generators such as population, jobs, nonresidential building area, as well as the annual and cumulative tax base increases for the scenario or development proposal being analyzed. Each of the operating and capital modules refer to the Demand Base Module for the basic data that drives the model. The Tax Base Module is used by the revenue modules.

The middle group of modules address separate functional aspects of the model, such as **General Fund Revenues**, **Operating Costs (by department)**, and **Capital Facility Costs**. From each of the functional input/output modules, the "bottom line" costs and revenues are carried over to the **Output** module.



1. "DO's" and "DON'T's"

This Fiscal Impact Model is designed to address "95 percent" of all modeling and forecasting needs through editing and entering of data variables in specific data entry cells. Simply changing development schedules, level of service variables or base year budget data will likely comprise nearly all of the application's use. However, it is still possible that modifications to individual modules may be desired to reflect unique conditions. Because the Fiscal Impact Model is provided as a system of spreadsheet modules, the individual worksheet modules are open to modification by anyone familiar with Excel. While this enhances flexibility, it also provides a "Pandora's box"—where the proper functioning of the application may be impaired or destroyed through inappropriate changes. Adherence to the following rules should avoid most of the difficulties that could seriously impair or compromise the application.

a) DON'T erase cell contents.

If there are cells or worksheet areas not being used, and which are displaying values of 0, you may wish to use a hidden format to keep them from being displayed or printed, but these cells should not be erased. In general, the best approach is to hide entire columns and rows of the spreadsheet rather than the contents of individual cells.

b) DON'T move cells to other cell locations.

You run the risk of overwriting critical hidden cell contents in other locations. Furthermore, many cell ranges, particularly total and subtotal lines in the output tables, are "read" by other spreadsheets through linking formulas.

c) DO use great care if you copy cells.

Be sure that a cell range into which you are copying is truly empty and does not contain hidden formulas or entries. Be sure cell addresses adjust or are held as you really wish.

d) DO use great care in editing formulas.

Some of the cell references in formulas may not have an immediately recognizable purpose. These could be referencing look-up tables or other "internal" operations that may not be readily apparent. Do not remove a part of a formula just because its purpose is not obvious.

e) DON'T use a lot of direct cost entries.

Direct cost or other direct data entries (as opposed to modeled, calculated projections) do not always adjust as development schedules or other variables are altered. This could lead to incorrect results under different scenarios.

f) DO use the designed features of the application.

Resist the temptation to improvise. It is most likely that the designed features of the application can accommodate the type of calculation desired. Make sure that all costs are individually represented and attributed to specific demand bases, rather than just lumped together in a generic category with per-capita averages.

2. Direct Entry vs. Modeling

Most of the basic worksheet modules contain input areas in which the user can directly enter projections of demand and costs. Worksheets will model the need for costs and revenues, including capital facilities, unless the user enters "DIRECT ENTRY" in the input cells. When direct data entries are found, the worksheet formulas will simply accept the direct data entries and will not execute the demand calculation formulas.

Direct data entry has the advantage of directly loading detailed information that has been provided from other sources. If an operating department has provided a complete schedule of

capital facility costs that has been approved, it is by far more expedient to accept this information and enter it directly into the appropriate module. This also results in simpler confirmation that the results are in accordance with the information provided. And, for a single item in a single operation and single geographic area, such data can be relatively easy to find and modify if updated or revised data becomes available.

The disadvantage with direct entry is that it strips the application of a significant element of its power—the ability to easily model fiscal impacts as a result of changing or modifying development schedules. Facility projections, and cost projections that are modeled, that is, calculated based on demand, will change automatically as the demand projections themselves change. Substituting a new growth scenario, or simply updating growth projections, will immediately link to calculations throughout the application and provide for a revised fiscal impact evaluation. However, any cost or facility projections that are directly entered will not be changed as a result of revisions to demand. In this case, these items might have to be manually edited, year-by-year, and item-by-item to reflect the new demand assumptions. Or, if they are forgotten or ignored (because it is too difficult to obtain revised and approved projections from the original source), then the validity of the final result might be open to question.

3. Color Coding of Cells

To aid the user, a color-coding system for input/output cells is used throughout the Louisville Fiscal Impact Model. For example, **yellow cells are User Inputs**. Data entry cells that should be revised for each fiscal evaluation have yellow backgrounds and are surrounded by blue borders.

Single Family

Data entry cells that should be updated annually or as needed are simply yellow with no border.

General Property Tax Revenue	$2,346,440

Because cells are for user inputs doesn't mean that certain user input cells do not contain formulas. In some cases, particularly in the case of direct entries, a User Input cell may contain a formula such as an IF statement, instructing the model to use the direct entry data if certain conditions are met.

Cells with green shading are referred to as Demand Bases. 94

These cells contain formulas that convert scenario input information into annual demand bases that are used by the model to calculate costs and revenues. Examples of Demand Bases include population, housing units, vehicle trips, and calls for police services. Cells with no shading at all (white backgrounds) contain formulas that calculate various outputs throughout the model. The user should exercise great caution prior to editing, copying or erasing these types of cells, as any errors can greatly affect the accuracy and validity of the results.

II. INPUT/OUTPUT MODULES

This section of the User's Manual describes the design of the various input/output modules of the Louisville Fiscal Impact Model. The application is comprised of multiple input/output modules within the file "**Louisville Fiscal Model.xlsm**". These modules include an input module for up to three land use scenarios, an input module for base year demographic information, two modules for annual demand and tax base calculations, two modules for revenue calculations, numerous input/output modules for operating and capital costs, and several modules that summarizes the fiscal results. The table below summarizes the modules for the Louisville Fiscal Impact Model.

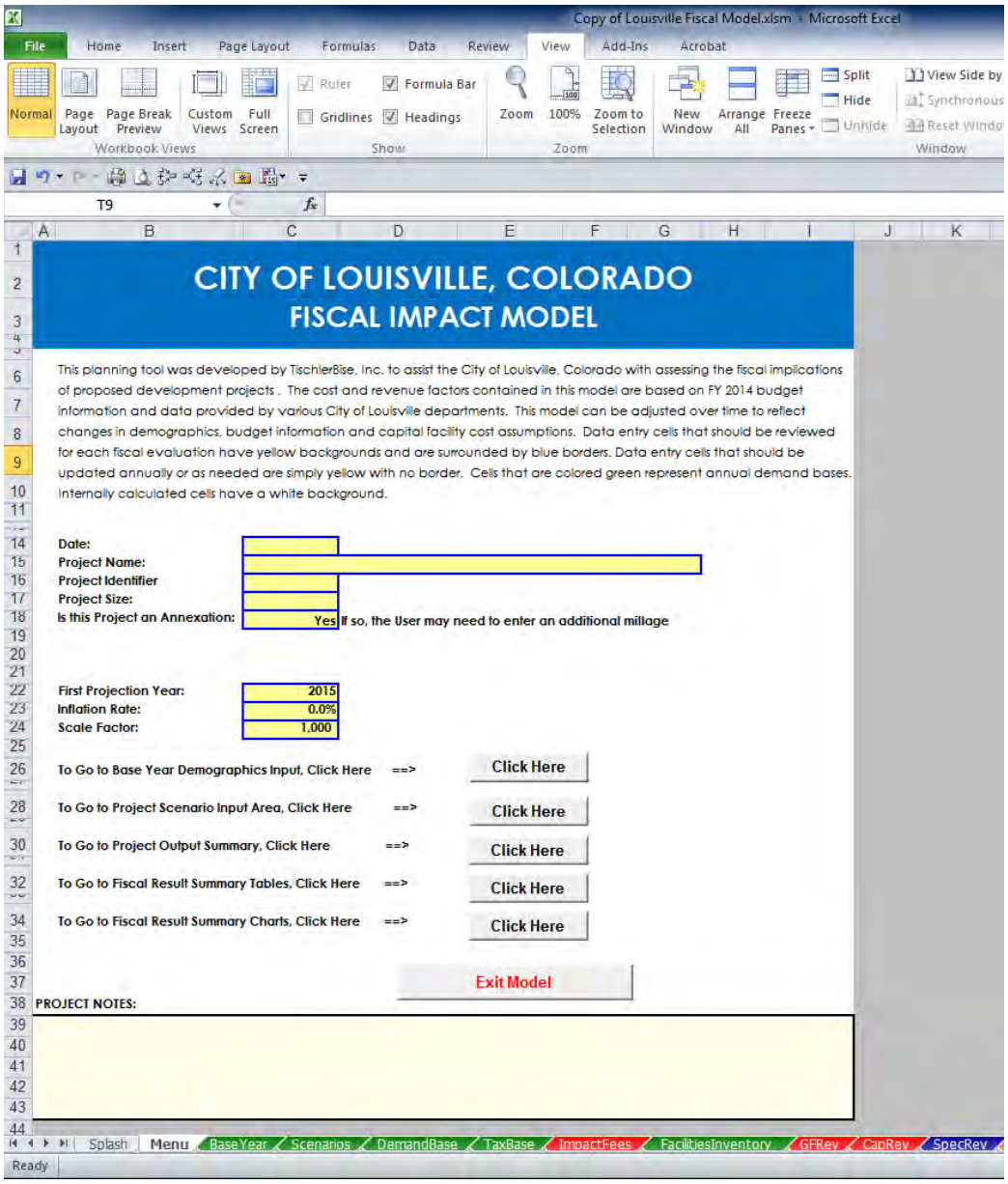
Calibration Modules	**Operating Modules**	**Capital Modules**	**Output Modules**
Base Year	Legislative	Parks and Trails	Output Summary
Scenarios (Scenario Inputs)	Admin 1	Recreation Facilities	Scenario 1 Outputs
Demand Base	Admin 2	Library	Scenario 2 Outputs
Tax Base	Finance	Municipal Facilities	Scenario 3 Outputs
Facilities Inventory	Planning	Transportation	Summary Tables
	Police		Summary Charts
Revenue Modules	Public Works 1		
General Fund Revenue	Public Works 2		
Capital Revenues	Library		
Impact Fees	Parks and Recreation 1		
Special Revenue Funds (revs and exps)	Parks and Recreation 2		
	Parks and Recreation 3		
	Parks and Recreation 4		
	Transfers		
	Special Revenue Funds (revs and exps)		

Each module described below has a main function, such as the input of base year budget data and calculation of operating costs for a particular department. This approach allows the user to navigate to the desired sections of the model.

A. Model Parameters

The worksheet named **Menu** contains a statement that provides a general description of the Louisville Fiscal Impact Model, describing some basic principles and general uses. It also contain a series of inputs in yellow that are referred to as the model parameters. These parameters tell the model the name of the project that is being evaluated, the size of the project (in acres), the first projection year, an inflation rate (normally zero), scale factor, and a place for notes on the project.

The specific user input cells are discussed below, reflected as they would appear on the computer screen.



Project Name	The name of the development proposal being evaluated is specified in this cell.
Project Identifier	Other identifier can be input here such as rezoning case number.

Project Size	The size (in acres) of the development proposal is specified in this cell.
Is this Project an Annexation?	Enter Yes/No whether the project is an annexation.
First Projection Year	The first projection year is specified in this cell. In the future, staff should update the model to coincide with each fiscal year and specify a different initial year for the fiscal analysis.
Inflation Rate	The inflation rate entered in this cell is used as the universal inflation rate for all costs and revenues throughout the model. If varying inflation rates are desired, there are Annual Change cells located in the cost and revenue modules. *Generally, TischlerBise recommends the use of constant dollars for fiscal impact studies (i.e., 0% inflation)*.
Scale Factor	The scale factor is what denomination the model's outputs are expressed in. A scale factor of 1,000 has been used in this model. This means that outputs in the model are expressed in thousands. Changing this cell does not result in the need for the user to editing any output formulas.
Project Notes	Provides a space for the user to include notes/descriptions on the project and/or scenarios being tested.

B. Base Year Demographics Input Module

The Base Year Demographics Input Module is where the user enters base year data pertaining to existing demographic and demand base information. The **Existing City Demand Base** table begins at cell A3 and can be accessed through use of the custom menu. For illustration purposes, a portion of this module is shown in the graphic below. This data is referenced by lookup tables through the model to calculate base year cost and revenue factors. **For each new budget year, the data in this table needs to be revised to generate the correct base year level of service factors.**

EXISTING CITY DEMAND BASE

	Year->	Base 2014
POPULATION		19,588
POP AND JOBS		31,167
SINGLE FAMILY		6,845
MULTIFAMILY		1,821
TOTAL UNITS		8,666
RETAIL JOBS		1,873
OFFICE JOBS		6,250
INSTITUTIONAL JOBS		302
INDUSTRIAL JOBS		3,154
TOTAL JOBS		11,579
RETAIL KSF		1,437
OFFICE KSF		1,664
INSTITUTIONAL KSF		222
INDUSTRIAL KSF		2,553
TOTAL NONRES SF		5,877
RES TRIPS		49,402
NONRES TRIPS		41,971
VEHICLE TRIPS		91,373

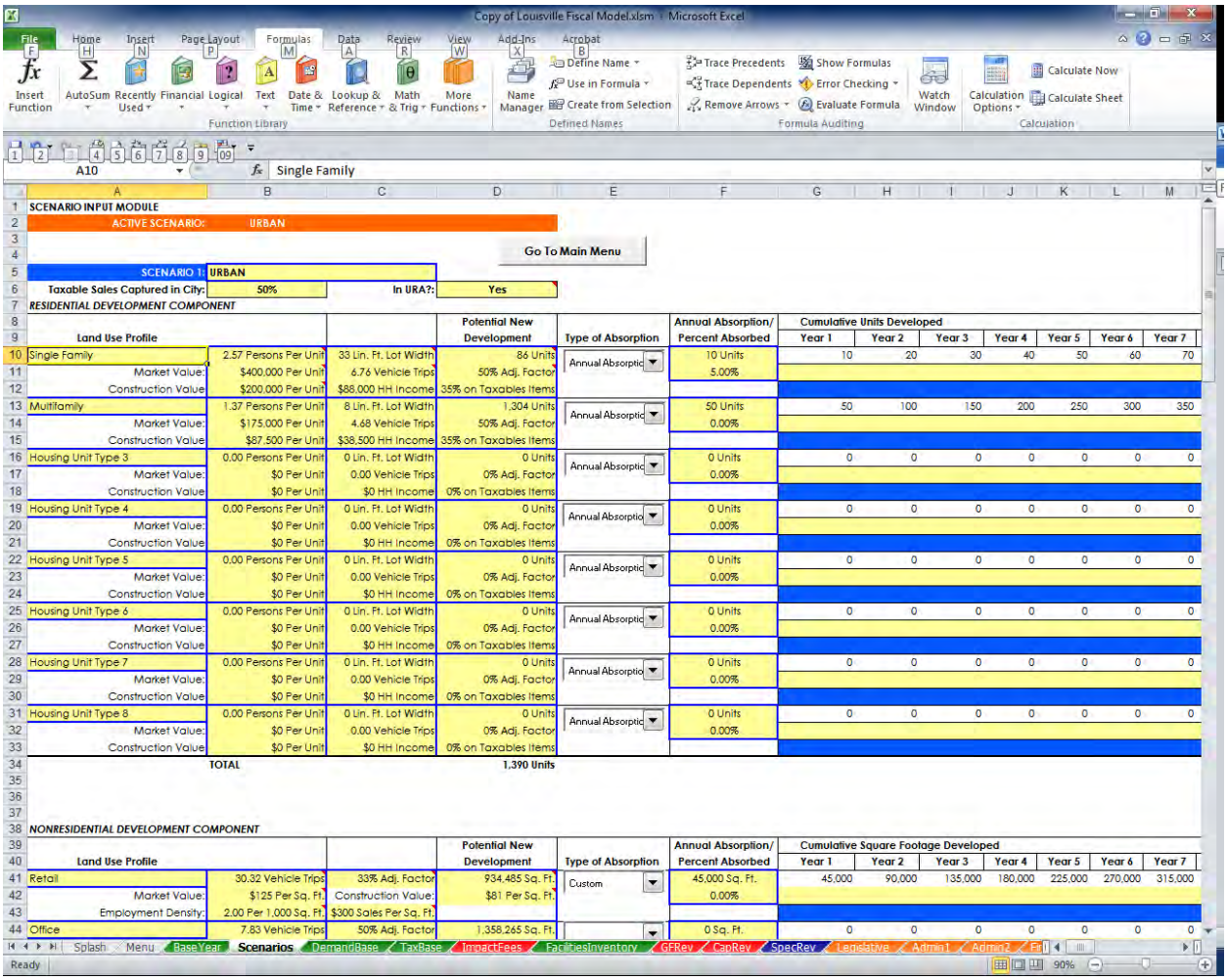
Other areas of the Base Year Demographic Module shaded in yellow (e.g., household size, police and fire calls for service) should be updated as necessary, likely no more than once a year.

C. Scenario Input Module

The Scenario Input Module is where the user enters data pertaining to development proposals or different absorption schedules for one proposal. Inputs include projections of residential (housing units) and nonresidential development (square feet), assessed values and demographic characteristics of new development.

1. Scenario Input

The Louisville Fiscal Impact Model contains input areas for three different development proposals or three different absorption schedules for a single development proposal. Each scenario has inputs for up to eight residential and six nonresidential land use types. A portion of the scenario input area is shown below for illustration.



The picture above shows the input area for residential and nonresidential land uses for Scenario One. Development projections for **new housing units** and **nonresidential square footage** are input into the model, and the model then calculates new population, and employment based on user inputs (persons per housing unit and nonresidential floor area per employee) located to the right.

As the picture indicates, a drop-down menu is available under the **Type of Absorption** column that allows the user to project new development in three different ways:

- First, the user can choose to project based on an annual absorption of number of units, such as 10 units annually.
- The second option is to choose an annual percentage rate absorption schedule, for instance, 25 percent annually. So for 100 units, the absorption will be 25 units per year.
- Finally, the user can elect to override the model and input population and employment data in the yellow input cells. This is done by selecting "Custom" from the pull down menu. This activates a macro that erases projection formulas in the white cells.

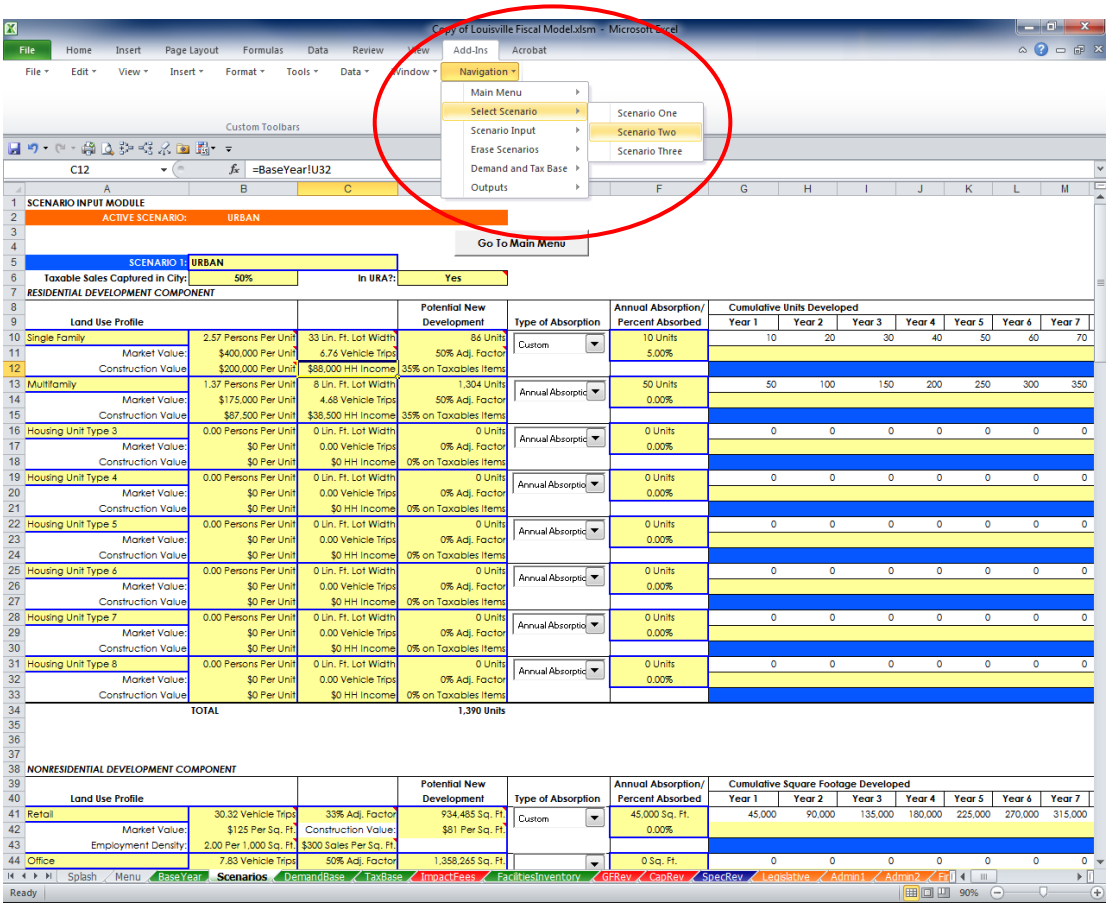
This is also the place for the following important user inputs:

- Household size (persons per household)
- Market value assumptions (value per residential unit or per square foot of nonresidential space)
- Construction value assumptions (assumed construction value per unit or square foot)
- Public road front footage, or linear feet lot width. This is used to calculate additional local lane miles that are then used in other revenue and expenditure calculations.
- Vehicle trip generation rates and adjustment factors for each of the residential and nonresidential land uses (trips per unit or square foot)
- Average household income per unit
- Employment density for nonresidential uses (employees per square foot)
- Sales per square foot for retail uses

TAKE NOTE: See comments inserted in this section for assistance. Also, see *Base Year Demographic Module* as a resource for the above data inputs if needed.

2. Activating a Scenario

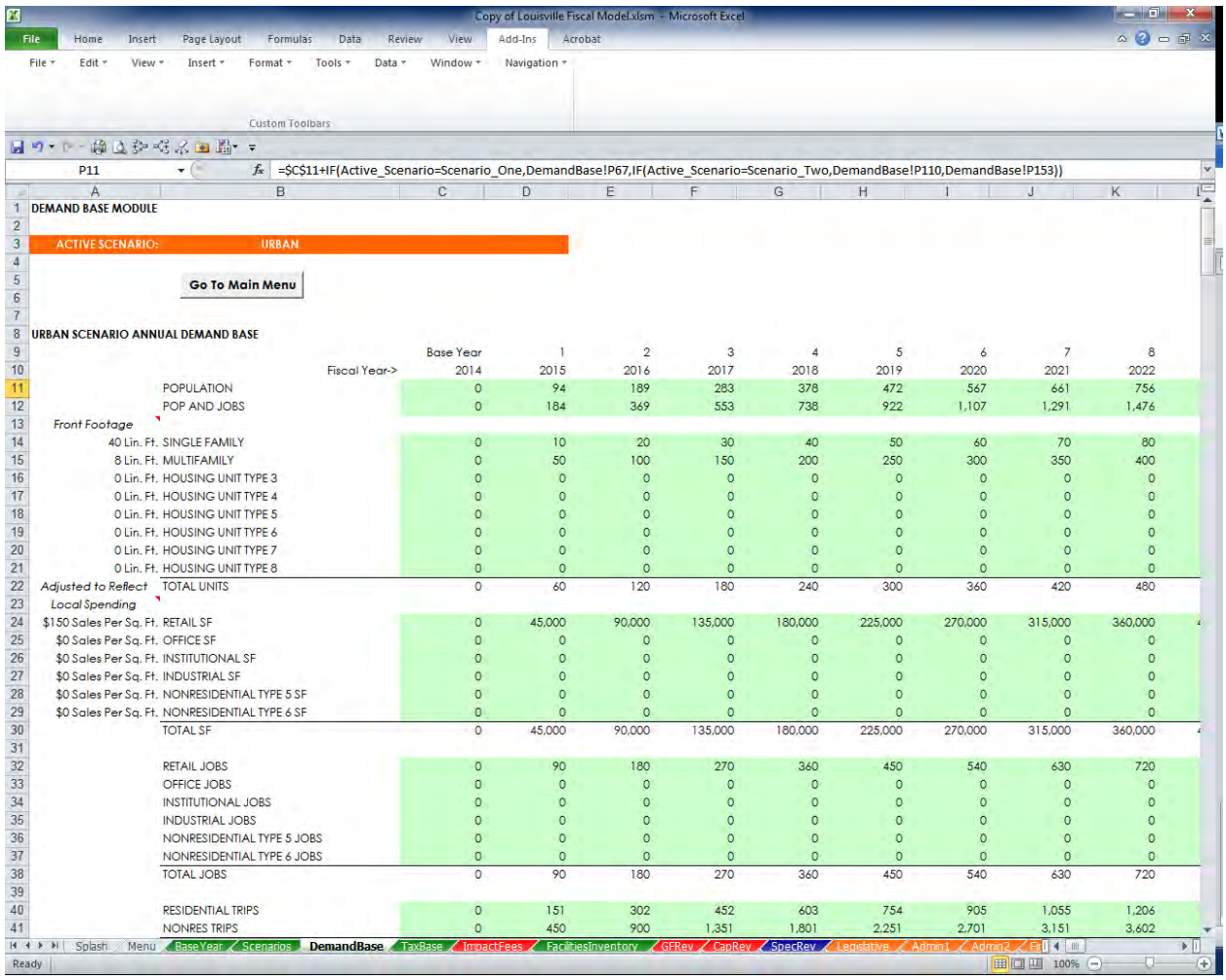
Although the model can evaluate three different land use scenarios, it evaluates one scenario at a time, and then uses a macro program (discussed later in this Manual) to run all three scenarios and organize outputs for each of the three scenarios. To activate a scenario, **the user must utilize the model's custom menu.** Using your mouse, select the Navigation menu from the menu bar, highlight Select Scenario and then click one of the three listed scenarios. The selection of one of the three scenarios activates a macro that pastes the active scenario name into the cell named Active_Scenario. This cell is referenced by numerous formulas within the model, thereby telling the model what data to retrieve. This is illustrated in the picture below.



D. Demand Base Module

1. Annual Demand Bases

The Demand Base module can be thought of as the "guts" of this application. Through linking formulas, this module converts scenario projection inputs into annual demand bases for the active scenario. The outputs of the Demand Base Module include population, dwelling units, employment and nonresidential square footage projections, vehicle trips, as well as other factors. These outputs are linked to other input/output modules in the model to project future costs and revenues. A portion of this module is replicated below.



P11 =$C$11+IF(Active_Scenario=Scenario_One,DemandBase!P67,IF(Active_Scenario=Scenario_Two,DemandBase!P110,DemandBase!P153))

DEMAND BASE MODULE

ACTIVE SCENARIO: URBAN

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URBAN SCENARIO ANNUAL DEMAND BASE

		Base Year	1	2	3	4	5	6	7	8
	Fiscal Year->	2014	2015	2016	2017	2018	2019	2020	2021	2022
	POPULATION	0	94	189	283	378	472	567	661	756
	POP AND JOBS	0	184	369	553	738	922	1,107	1,291	1,476
Front Footage										
40 Lin. Ft.	SINGLE FAMILY	0	10	20	30	40	50	60	70	80
8 Lin. Ft.	MULTIFAMILY	0	50	100	150	200	250	300	350	400
0 Lin. Ft.	HOUSING UNIT TYPE 3	0	0	0	0	0	0	0	0	0
0 Lin. Ft.	HOUSING UNIT TYPE 4	0	0	0	0	0	0	0	0	0
0 Lin. Ft.	HOUSING UNIT TYPE 5	0	0	0	0	0	0	0	0	0
0 Lin. Ft.	HOUSING UNIT TYPE 6	0	0	0	0	0	0	0	0	0
0 Lin. Ft.	HOUSING UNIT TYPE 7	0	0	0	0	0	0	0	0	0
0 Lin. Ft.	HOUSING UNIT TYPE 8	0	0	0	0	0	0	0	0	0
Adjusted to Reflect	TOTAL UNITS	0	60	120	180	240	300	360	420	480
Local Spending										
$150 Sales Per Sq. Ft.	RETAIL SF	0	45,000	90,000	135,000	180,000	225,000	270,000	315,000	360,000
$0 Sales Per Sq. Ft.	OFFICE SF	0	0	0	0	0	0	0	0	0
$0 Sales Per Sq. Ft.	INSTITUTIONAL SF	0	0	0	0	0	0	0	0	0
$0 Sales Per Sq. Ft.	INDUSTRIAL SF	0	0	0	0	0	0	0	0	0
$0 Sales Per Sq. Ft.	NONRESIDENTIAL TYPE 5 SF	0	0	0	0	0	0	0	0	0
$0 Sales Per Sq. Ft.	NONRESIDENTIAL TYPE 6 SF	0	0	0	0	0	0	0	0	0
	TOTAL SF	0	45,000	90,000	135,000	180,000	225,000	270,000	315,000	360,000
	RETAIL JOBS	0	90	180	270	360	450	540	630	720
	OFFICE JOBS	0	0	0	0	0	0	0	0	0
	INSTITUTIONAL JOBS	0	0	0	0	0	0	0	0	0
	INDUSTRIAL JOBS	0	0	0	0	0	0	0	0	0
	NONRESIDENTIAL TYPE 5 JOBS	0	0	0	0	0	0	0	0	0
	NONRESIDENTIAL TYPE 6 JOBS	0	0	0	0	0	0	0	0	0
	TOTAL JOBS	0	90	180	270	360	450	540	630	720
	RESIDENTIAL TRIPS	0	151	302	452	603	754	905	1,055	1,206
	NONRES TRIPS	0	450	900	1,351	1,801	2,251	2,701	3,151	3,602

In addition to annual demand bases that are the actual inputs for each scenario (housing units, nonresidential square feet), there are also annual demand bases generated from the demographic projections associated with each scenario. For example, new housing units and nonresidential square footage generate additional vehicle trips and calls for police services. Annual demand bases have been provided with formulas that link to other areas of the model to

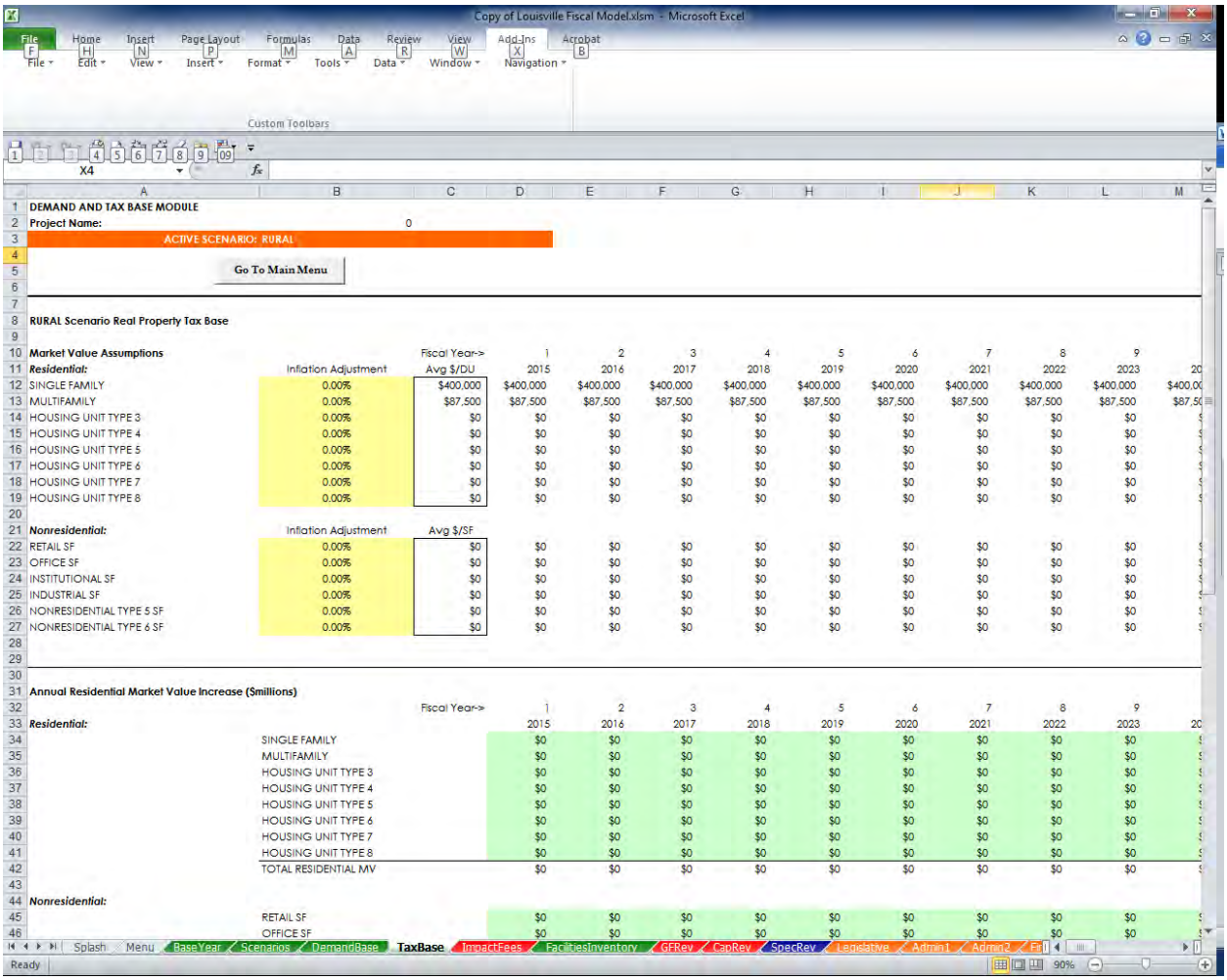
automatically project marginal increases. In another example, some Parks costs will increase as additional park acres are developed and purchased to serve new growth. Therefore, an annual demand base is created to track marginal park acre development and acquisition that is linked to the Parks Capital Facilities Module.

RESIDENTIAL TRIPS	0	151	302	452	603
NONRES TRIPS	0	450	900	1,351	1,801
VEHICLE TRIPS	0	601	1,202	1,803	2,404
PARK ACRES	0	5	10	16	21
RES POLICE CALLS	0	57	115	172	229
NONRES POLICE CALLS	0	32	64	95	127
CALLS FOR SERVICE	0	89	178	267	356
FACILITY SF	0	32,347	64,693	97,415	130,136
LANE MILES	0.0	0.3	0.6	0.9	1.2
CONSTRUCTION VALUE	$0	$10,031,250	$10,031,250	$10,031,250	$10,031,250

E. Tax Base Module

The Tax Base Module is used by the Revenue modules to calculate future real estate tax revenues. The first part of this module is the Real Property Tax Base for the active scenario. The formulas in this area convert the market value assumptions for each scenario to annual and cumulative market and assessed values for residential and nonresidential development.

As discussed above, the active scenario Real Property Tax Base is the sum of the marginal increases in assessed base for each land use type included in each scenario or absorption schedule. The table below contains an example of the input/output area for the individual land uses. Information is entered into the yellow cells pertaining to inflation adjustment (optional); average market values are from Scenario Input pages. In some cases this data is directly entered into the cells. In other cases, such as with market values, the cell is linked to information contained in the scenario input tables contained in the Scenario Input Module. This linkage eliminates the need for the user to manually input data into each cell each time a new scenario is analyzed.



	A	B	C	D	E	F	G	H	I	J	K	L	M
1	DEMAND AND TAX BASE MODULE												
2	Project Name:		0										
3	ACTIVE SCENARIO: RURAL												
4													
5	Go To Main Menu												
6													
7													
8	RURAL Scenario Real Property Tax Base												
9													
10	Market Value Assumptions		Fiscal Year->	1	2	3	4	5	6	7	8	9	
11	Residential:	Inflation Adjustment	Avg $/DU	2015	2016	2017	2018	2019	2020	2021	2022	2023	20
12	SINGLE FAMILY	0.00%	$400,000	$400,000	$400,000	$400,000	$400,000	$400,000	$400,000	$400,000	$400,000	$400,000	$400,0
13	MULTIFAMILY	0.00%	$87,500	$87,500	$87,500	$87,500	$87,500	$87,500	$87,500	$87,500	$87,500	$87,500	$87,5
14	HOUSING UNIT TYPE 3	0.00%	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$
15	HOUSING UNIT TYPE 4	0.00%	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$
16	HOUSING UNIT TYPE 5	0.00%	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$
17	HOUSING UNIT TYPE 6	0.00%	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$
18	HOUSING UNIT TYPE 7	0.00%	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$
19	HOUSING UNIT TYPE 8	0.00%	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$
20													
21	Nonresidential:	Inflation Adjustment	Avg $/SF										
22	RETAIL SF	0.00%	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$
23	OFFICE SF	0.00%	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$
24	INSTITUTIONAL SF	0.00%	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$
25	INDUSTRIAL SF	0.00%	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$
26	NONRESIDENTIAL TYPE 5 SF	0.00%	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$
27	NONRESIDENTIAL TYPE 6 SF	0.00%	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$
28													
29													
30													
31	Annual Residential Market Value Increase ($millions)												
32			Fiscal Year->	1	2	3	4	5	6	7	8	9	
33	Residential:			2015	2016	2017	2018	2019	2020	2021	2022	2023	20
34		SINGLE FAMILY		$0	$0	$0	$0	$0	$0	$0	$0	$0	$
35		MULTIFAMILY		$0	$0	$0	$0	$0	$0	$0	$0	$0	$
36		HOUSING UNIT TYPE 3		$0	$0	$0	$0	$0	$0	$0	$0	$0	$
37		HOUSING UNIT TYPE 4		$0	$0	$0	$0	$0	$0	$0	$0	$0	$
38		HOUSING UNIT TYPE 5		$0	$0	$0	$0	$0	$0	$0	$0	$0	$
39		HOUSING UNIT TYPE 6		$0	$0	$0	$0	$0	$0	$0	$0	$0	$
40		HOUSING UNIT TYPE 7		$0	$0	$0	$0	$0	$0	$0	$0	$0	$
41		HOUSING UNIT TYPE 8		$0	$0	$0	$0	$0	$0	$0	$0	$0	$
42		TOTAL RESIDENTIAL MV		$0	$0	$0	$0	$0	$0	$0	$0	$0	$
43													
44	Nonresidential:												
45		RETAIL SF		$0	$0	$0	$0	$0	$0	$0	$0	$0	$
46		OFFICE SF		$0	$0	$0	$0	$0	$0	$0	$0	$0	$

The market value is the value of the property from which the assessed value is determined, and is from the inputs for market value and inflation adjustment entered in the tables shown above (or from the scenario module). An input area is provided that converts market values to assessed values as well as for the lag time for new development to actually appear on the assessment rolls. This is shown in the shaded yellow cells below.

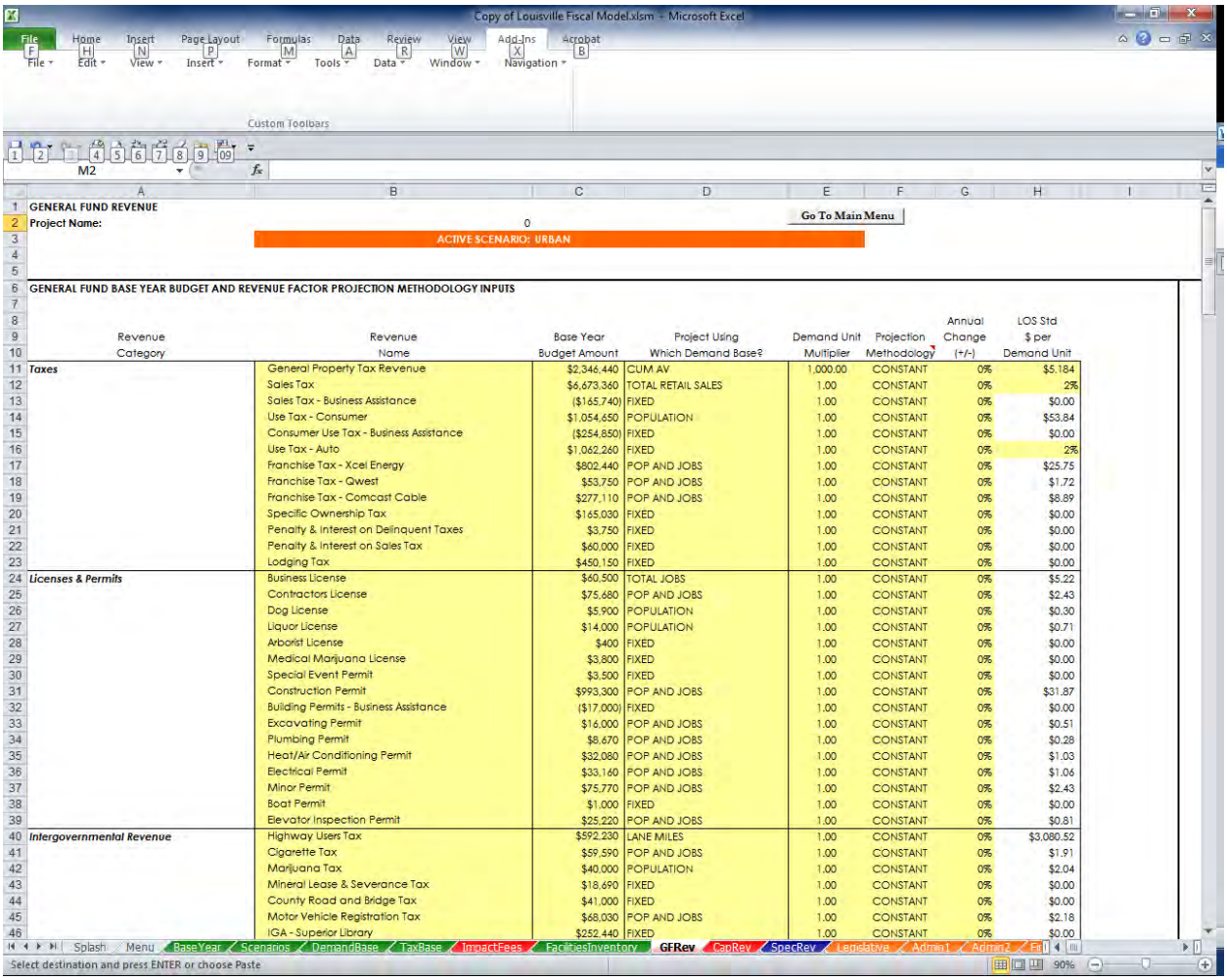
		Residential Percentage of MV to AV:	7.96%					
Annual Assessed Value Increase ($millions)		Commercial Percentage of MV to AV:	29%	Lag Time on Assessment Roll:			50%	
		Base Year	1	2	3	4	5	6
	Fiscal Year->	2014	2015	2016	2017	2018	2019	2020
	TOTAL RESIDENTIAL	$0	$0.5	$0.5	$0.5	$0.5	$0.5	$0.5
	TOTAL NONRESIDENTIAL	$0	$0.8	$0.8	$0.8	$0.8	$0.8	$0.8
	TOTAL ANNUAL ASSESSED VALI	$0.0	$1.3	$1.3	$1.3	$1.3	$1.3	$1.3
Cumulative Assessed Value Increase ($millions)								
		Base Year	1	2	3	4	5	6
	Fiscal Year->	2014	2015	2016	2017	2018	2019	2020
	CUM RES AV	$0.0	$0.5	$1.5	$2.5	$3.6	$4.6	$5.6
	CUM NONRES AV	$0.0	$0.8	$2.4	$4.1	$5.7	$7.3	$9.0
	CUM AV	$0.0	$1.3	$4.0	$6.6	$9.3	$11.9	$14.6

F. Revenue Modules

The first group of input/output modules of the Fiscal Impact Model are the Revenue Modules for the **General Fund, Capital Revenue (includes Impact Fees), and Special Revenue Funds**. As shown in the illustration below, base year budget information is entered in the left side of the base year budget input area. The next column represents the base year budget amounts.

The fourth column to the right indicates the demand base used to project the revenue; this is where the appropriate demand base for each revenue category is input in this column.

TAKE NOTE: The demand base must be the same category that is found in Existing City Demand Base (located in the Base Year Demographics Module) and Annual Demand Base. For example: POPULATION, TOTAL JOBS, POP AND JOBS), otherwise an error message will result. (FIXED, NOT FACTORED and DIRECT ENTRY can also be entered into these cells, as is explained further below.) This is illustrated below.



GENERAL FUND REVENUE

Project Name: 0

Go To Main Menu

ACTIVE SCENARIO: URBAN

GENERAL FUND BASE YEAR BUDGET AND REVENUE FACTOR PROJECTION METHODOLOGY INPUTS

Revenue Category	Revenue Name	Base Year Budget Amount	Project Using Which Demand Base?	Demand Unit Multiplier	Projection Methodology	Annual Change (+/-)	LOS Std $ per Demand Unit
Taxes	General Property Tax Revenue	$2,346,440	CUM AV	1,000.00	CONSTANT	0%	$5.184
	Sales Tax	$6,673,360	TOTAL RETAIL SALES	1.00	CONSTANT	0%	2%
	Sales Tax - Business Assistance	($165,740)	FIXED	1.00	CONSTANT	0%	$0.00
	Use Tax - Consumer	$1,054,650	POPULATION	1.00	CONSTANT	0%	$53.84
	Consumer Use Tax - Business Assistance	($254,850)	FIXED	1.00	CONSTANT	0%	$0.00
	Use Tax - Auto	$1,062,260	FIXED	1.00	CONSTANT	0%	2%
	Franchise Tax - Xcel Energy	$802,440	POP AND JOBS	1.00	CONSTANT	0%	$25.75
	Franchise Tax - Qwest	$53,750	POP AND JOBS	1.00	CONSTANT	0%	$1.72
	Franchise Tax - Comcast Cable	$277,110	POP AND JOBS	1.00	CONSTANT	0%	$8.89
	Specific Ownership Tax	$165,030	FIXED	1.00	CONSTANT	0%	$0.00
	Penalty & Interest on Delinquent Taxes	$3,750	FIXED	1.00	CONSTANT	0%	$0.00
	Penalty & Interest on Sales Tax	$60,000	FIXED	1.00	CONSTANT	0%	$0.00
	Lodging Tax	$450,150	FIXED	1.00	CONSTANT	0%	$0.00
Licenses & Permits	Business License	$60,500	TOTAL JOBS	1.00	CONSTANT	0%	$5.22
	Contractors License	$75,680	POP AND JOBS	1.00	CONSTANT	0%	$2.43
	Dog License	$5,900	POPULATION	1.00	CONSTANT	0%	$0.30
	Liquor License	$14,000	POPULATION	1.00	CONSTANT	0%	$0.71
	Arborist License	$400	FIXED	1.00	CONSTANT	0%	$0.00
	Medical Marijuana License	$3,800	FIXED	1.00	CONSTANT	0%	$0.00
	Special Event Permit	$3,500	FIXED	1.00	CONSTANT	0%	$0.00
	Construction Permit	$993,300	POP AND JOBS	1.00	CONSTANT	0%	$31.87
	Building Permits - Business Assistance	($17,000)	FIXED	1.00	CONSTANT	0%	$0.00
	Excavating Permit	$16,000	POP AND JOBS	1.00	CONSTANT	0%	$0.51
	Plumbing Permit	$8,670	POP AND JOBS	1.00	CONSTANT	0%	$0.28
	Heat/Air Conditioning Permit	$32,080	POP AND JOBS	1.00	CONSTANT	0%	$1.03
	Electrical Permit	$33,160	POP AND JOBS	1.00	CONSTANT	0%	$1.06
	Minor Permit	$75,770	POP AND JOBS	1.00	CONSTANT	0%	$2.43
	Boat Permit	$1,000	FIXED	1.00	CONSTANT	0%	$0.00
	Elevator Inspection Permit	$25,220	POP AND JOBS	1.00	CONSTANT	0%	$0.81
Intergovernmental Revenue	Highway Users Tax	$592,230	LANE MILES	1.00	CONSTANT	0%	$3,080.52
	Cigarette Tax	$59,590	POP AND JOBS	1.00	CONSTANT	0%	$1.91
	Marijuana Tax	$40,000	POPULATION	1.00	CONSTANT	0%	$2.04
	Mineral Lease & Severance Tax	$18,690	FIXED	1.00	CONSTANT	0%	$0.00
	County Road and Bridge Tax	$41,000	FIXED	1.00	CONSTANT	0%	$0.00
	Motor Vehicle Registration Tax	$68,030	POP AND JOBS	1.00	CONSTANT	0%	$2.18
	IGA - Superior Library	$252,440	FIXED	1.00	CONSTANT	0%	$0.00

The fifth column to the right is for the Demand Unit Multipliers. This value adjusts the projection factor by the entered percentage. For example, if a factor were based on a 50 percent per capita projection methodology, then 50 percent would be entered into the cell in decimal notation. The results of the Demand Unit Multipliers are reflected in the output. A value of 1,000 is used for the real estate tax since the tax rate is per $1,000 in value and the cumulative value in the model is shown in millions ($1,000,000 / $1,000 = 1,000).

The sixth column to the right is for the Projection Methodologies. This variable works in conjunction with the seventh column to the right, the Annual Change. There are four revenue projection methodologies: (1) CONSTANT, (2) LINEAR, (3) LOGARITHMIC, and (4) POWER. The default input for each revenue category is CONSTANT. These methodologies are discussed further in the next section.

The final column is where the Level of Service Standard Per Demand Unit is calculated. Unless shaded yellow, this cell contains a LOOKUP formula that refers to Existing City Demand Base contained in the Base Year Demographics Module that automatically calculates the LOS standard. For example, if a revenue is projected based on population, the LOOKUP formula

divides the base year budget amount (in the third column) by the current population to arrive at the LOS standard. **Cells with yellow shading indicate that the factor has been entered directly. For example, the property tax rate of $5.184 has been direct entered.**

> **TAKE NOTE:** The yellow-shaded cells in the "LOS Standard" column on the General Fund Revenue page should be updated/checked annually or when rates change.

Scrolling to the right of the Input table is the **Operating Revenues Direct Entry Data or Adjusted Values** table. Here, the level of service factors are projected over a 20-year analysis period. In addition, direct entries for revenues can be entered into this table if you choose to do so for particular budget categories (by entering DIRECT ENTRY in the Based On projection cells). A portion of this table is shown below.

OPERATING FACTOR DIRECT ENTRY DATA OR ADJUSTED VALUES

	Base	1	2	3	4	5
Fiscal Year->	2014	2015	2016	2017	2018	2019
General Property Tax Revenue	$5.18	$5.18	$5.18	$5.18	$5.18	$5.18
Sales Tax	$0.02	$0.02	$0.02	$0.02	$0.02	$0.02
Sales Tax - Business Assistance	($165,740.00)	($165,740.00)	($165,740.00)	($165,740.00)	($165,740.00)	($165,740.00)
Use Tax - Consumer	$53.84	$53.84	$53.84	$53.84	$53.84	$53.84
Consumer Use Tax - Business Assistance	($254,850.00)	($254,850.00)	($254,850.00)	($254,850.00)	($254,850.00)	($254,850.00)
Use Tax - Auto	$1,062,260.00	$1,062,260.00	$1,062,260.00	$1,062,260.00	$1,062,260.00	$1,062,260.00
Franchise Tax - Xcel Energy	$25.75	$25.75	$25.75	$25.75	$25.75	$25.75
Franchise Tax - Qwest	$1.72	$1.72	$1.72	$1.72	$1.72	$1.72
Franchise Tax - Comcast Cable	$8.89	$8.89	$8.89	$8.89	$8.89	$8.89
Specific Ownership Tax	$165,030.00	$165,030.00	$165,030.00	$165,030.00	$165,030.00	$165,030.00

Below the Operating Revenues Direct Entry Data or Adjusted Values table are the **General Fund Revenue Outputs**. This section contains calculated values that are derived using demand base data and factors from the base year budget data over the 20-year analysis period.

	Base	1	2	3	4	5
Fiscal Year->	2014	2015	2016	2017	2018	2019
GENERAL FUND REVENUES						
General Property Tax Revenue	$0	$7	$21	$34	$48	$62
Sales Tax	$0	$145	$290	$434	$579	$724
Sales Tax - Business Assistance	$0	$0	$0	$0	$0	$0
Use Tax - Consumer	$0	$5	$10	$15	$20	$25
Consumer Use Tax - Business Assistance	$0	$0	$0	$0	$0	$0
Use Tax - Auto	$0	$0	$0	$0	$0	$0
Franchise Tax - Xcel Energy	$0	$5	$9	$14	$19	$24
Franchise Tax - Qwest	$0	$0	$1	$1	$1	$2
Franchise Tax - Comcast Cable	$0	$2	$3	$5	$7	$8
Specific Ownership Tax	$0	$0	$0	$0	$0	$0

Below the Revenue Output area is the **Revenue Summary**, which summarizes revenues by major category.

GENERAL FUND REVENUE SUMMARY

	Base	1	2	3	4	5
Fiscal Year->	2014	2015	2016	2017	2018	2019
GENERAL FUND REVENUE BY CATEGORY						
Taxes	$0	$163	$334	$504	$674	$845
Licenses & Permits	$0	$8	$16	$23	$30	$38
Intergovernmental Revenue	$0	$2	$4	$6	$8	$9
Charges for Service	$0	$8	$16	$23	$31	$39
Fines and Forfeitures	$0	$1	$2	$3	$4	$5
Miscellaneous	$0	$0	$1	$1	$2	$2
Other Financing Sources	$0	$0	$0	$0	$0	$0
Transfers	$0	$0	$0	$0	$0	$0
Future Revenue Sources	$0	$0	$0	$0	$0	$0
TOTAL GENERAL FUND REVENUE:	$0	$183	$372	$561	$750	$939

1. Impact Fees

One-time Impact Fees are calculated by the model based on development assumptions. This is an automated calculation, which is captured in the Capital Revenue module.

However, the user is responsible for updating the Impact Fee Schedule when fees are adopted. This is found on the Impact Fees module at AA6.

Development Impact Fees	Square Feet	Parks & Trails	Municipal Government	Recreation	Library	Transportation	Subtotal
Residential (per unit)							
Single Family Detached	0-2 Bedrooms	$1,822	$413	$1,203	$325	$185	$3,948
	3 Bedrooms	$2,664	$604	$1,759	$475	$225	$5,727
	4 Bedrooms	$3,464	$786	$2,288	$617	$287	$7,442
	5+ Bedrooms	$4,233	$960	$2,796	$754	$379	$9,122
Single Family Attached	0-2 Bedrooms	$1,653	$375	$1,092	$295	$93	$3,508
	3+ Bedrooms	$2,580	$585	$1,704	$460	$149	$5,478
Multi-family	All Sizes	$1,516	$344	$1,001	$270	$144	$3,275
Nonresidential (per 1,000 square feet)							
Comm/Shop Ctr	50000 or less		$270			$430	$700
	50001-100000		$240			$380	$620
	100001 - 200000		$210			$330	$540
Business Park (R & D)			$300			$190	$490
Medical-Dental Office			$390			$530	$920
Office	50000 or less		$370			$230	$600
	50001 - 100000		$350			$190	$540
	100001 - 200000		$330			$170	$500
Hospital			$300			$240	$540
Mini-Warehouse			$0.40			$40	$40
Warehousing			$90			$50	$140
Manufacturing			$170			$60	$230
Light Industrial			$220			$100	$320
Lodging	per room		$42			$82	$124
Elementary	per student		$8			$19	$27
Secondary School	per student		$8			$25	$33
Day Care	per student		$15			$65	$80
Nursing Home	bed		$35			$35	$70

G. Operating Department Input/Output Module Design

The Operating Department Input/Output Modules are organized by City department, with line item inputs for expenses as generated from annual budget data entry. If there are any questions regarding how certain input variables are treated and how specific outputs are calculated, this section should provide the desired information. If the user undertakes any modifications to any of the modules, you should be completely familiar with the information provided here.

1. Operating Costs Inputs

Operating costs are generally meant to include any form of regular annual expenditures other than costs for the acquisition of capital facilities. Expenditures of this nature might include salaries, building operations, vehicle maintenance costs, insurance or fees, supplies, purchased services, or similar items. As much as possible, these should be summed for a reasonably broad area for each single line used. However, it should be reflective of the level of specificity of City budget data.

Beginning with inputs, as shown in the illustration below (excerpt from Police: Patrol/Investigations), base year budget information is entered in the left side of the base year budget input area, beginning with the expenditure name. Each input area contains enough entry cells for regular operating expenses, as wells as several cells for direct entries. An example of a direct entry would be showing a cost that was specific to the particular development being analyzed. For example, if for some reason a new government building was needed for the City as a result of a new development, staff could reflect the "lumpy" operating expenses that will be incurred when the facility is opened. The next column represents the base year budget amounts. The remaining input areas for the divisional operating costs are described below:

BASE YEAR BUDGET AND FACTOR PROJECTION METHODOLOGY INPUTS

PLANNING ADMINISTRATION

Expenditure Name	Base Year Budget Amount	Project Expenditure Factor Using:	Demand Unit Multiplier	Projection Methodology	Annual Change (pos. or neg.)	LOS Std $ per Demand Unit
Regular Salaries	$339,100	SEE BELOW	1.00	CONSTANT	0%	$0.00
Temporary Salaries	$4,550	SEE BELOW	1.00	CONSTANT	0%	$0.00
FICA Expense	$26,290	SEE BELOW	1.00	CONSTANT	0%	$0.00
Retirement Contribution	$18,650	SEE BELOW	1.00	CONSTANT	0%	$0.00
Health Insurance	$51,780	SEE BELOW	1.00	CONSTANT	0%	$0.00
Workers Compensation	$1,800	SEE BELOW	1.00	CONSTANT	0%	$0.00
Office Supplies	$3,000	POP AND JOBS	1.00	CONSTANT	0%	$0.10
Computer Supplies - Software	$1,600	POP AND JOBS	1.00	CONSTANT	0%	$0.05
Miscellaneous Supplies	$0	POP AND JOBS	1.00	CONSTANT	0%	$0.00
Professional Services - Consulting	$0	POP AND JOBS	1.00	CONSTANT	0%	$0.00
Professional Services - Recording Fees	$100	POP AND JOBS	1.00	CONSTANT	0%	$0.00
Professional Services - Other	$58,400	POP AND JOBS	1.00	CONSTANT	0%	$1.87
Parts/Repairs/Maintenance - Copiers	$5,000	POP AND JOBS	1.00	CONSTANT	0%	$0.16
Equipment Rental	$3,000	POP AND JOBS	1.00	CONSTANT	0%	$0.10
Education Expense	$6,000	POP AND JOBS	1.00	CONSTANT	0%	$0.19
Public Outreach	$7,000	POP AND JOBS	1.00	CONSTANT	0%	$0.22
Printing	$3,500	POP AND JOBS	1.00	CONSTANT	0%	$0.11
Travel	$8,000	POP AND JOBS	1.00	CONSTANT	0%	$0.26
Dues/Subscriptions/Books	$3,000	POP AND JOBS	1.00	CONSTANT	0%	$0.10
Computer Replacement	$1,080	FIXED	1.00	CONSTANT	0%	$1,080.00
Future	$0	FIXED	1.00	CONSTANT	0%	$0.00
Future	$0	FIXED	1.00	CONSTANT	0%	$0.00
Future	$0	FIXED	1.00	CONSTANT	0%	$0.00
Future	$0	FIXED	1.00	CONSTANT	0%	$0.00
Future	$0	FIXED	1.00	CONSTANT	0%	$0.00
Direct Entry Cost Type 1	$0	DIRECT ENTRY	1.00	CONSTANT	0%	$0.00
Direct Entry Cost Type 2	$0	DIRECT ENTRY	1.00	CONSTANT	0%	$0.00
Direct Entry Cost Type 3	$0	DIRECT ENTRY	1.00	CONSTANT	0%	$0.00
TOTAL	$541,850					

a) Project Using Which Demand Base?

Enter the name of the demand base upon which calculations of need for the operating unit will be based. Just as with revenues, the demand base must exactly match one of the categories contained in the Existing City Demand Base table (in the Base Year Demographics Module) and the Annual Demand Base input area located in the Demand Base Module. Entering the word DIRECT ENTRY indicates that projection data from other sources will be directly entered in the direct data entry area, rather than using the module's modeling formulas. Entering FIXED indicates that costs are not impacted by growth.

TAKE NOTE: The demand base must exactly match one of the categories from the Existing City Demand Base (located in the Base Year Demographics Module) and the Annual Demand Base (e.g., POPULATION, TOTAL JOBS, POP AND JOBS, etc.), otherwise an error message will result.

b) Demand Unit Multiplier

This defines "Demand Units" in proportion to the demand base. If demand for an operation is to be based on some portion of the demand base, this entry allows for this mathematical adjustment. The factor entered here will be multiplied by the selected demand base to create a value ("demand units"), which in turn will be used to compute the need for operating expenditures.

For example, let us assume that the office expenses budget for a particular department totals $500,000. However, $250,000 of that amount is a one-time expenditure that will not be included in next year's budget. Therefore, to reflect the true level of service, the user can adjust the demand unit multiplier to .50 (i.e., 50%), as $250,000 is the variable portion of the $500,000 budget. In most cases, this mathematical adjustment will not be needed, and the **default entry is pre-set at 1.00 for most expenditures**.

c) Projection Methodology

One of four projection methodologies may be specified for each operating cost line item. "CONSTANT" should be entered whenever a snapshot approach is being used for the fiscal analysis. If costs have been increasing but are expected to level off over time, the user may choose to enter "LOGARITHMIC" as the preferred cost projection methodology. "LINEAR" cost increase will cause the model to increase the cost factor at a constant absolute change. The final projection alternative is "POWER", which will increase the specified cost factor at a cost percentage change. This projection methodology results in exponential growth of the operating cost. The factor will increase or decrease following the specified "curve" based on the percentage amount entered into the cell immediately to the right (discussed in Part d below). **The default setting is CONSTANT throughout**.

d) Annual Change

The annual percentage change will be used in the cost projection formulas described above, if necessary. The default value is 0 percent.

e) LOS Standard Per Demand Unit

The final column is where the Level of Service (LOS) Standard Per Demand Unit is calculated. Unless shaded yellow, this cell contains a LOOKUP formula that refers to the Existing City Demand Base (located in the Base Year Demographics Module) that automatically calculates the LOS standard. For example, if a cost is projected using population as the demand base, the LOOKUP formula divides the base year budget amount (in the second column) by the current population to arrive at the LOS standard. Cells with yellow shading indicate that the factor has been entered directly.

2. Operating Costs Inputs: Staffing Input

In the budget entry section, all staffing costs for the current fiscal year have been entered with a "SEE BELOW" demand base. When each position is entered individually in this staffing section, the model will automatically forecast when an additional staff person is needed in each staffing category.

In the Staffing Input section, the City should enter all positions each fiscal year including the category in the first column and the number of full-time equivalent positions in the second column. The demand base for the position should be entered in the third column. Like previous demand base entries, *the demand base must exactly match one of the categories contained in the Existing City Demand Base table in the Base Year Demographics Module as well as a category contained in the Annual Demand Base input area located in the Demand Base Module, otherwise an error message will result.* Entering the word DIRECT ENTRY indicates that projection data from other sources will be directly entered in the direct data entry area, rather than using the module's modeling formulas. Entering FIXED indicates that the positions are not impacted by growth.

Finally, an estimate of *available capacity* should be entered in the fifth column. Doing so ensures that a new position is not triggered while the existing staff are still able to perform more duties and provide additional services.

PLANNING ADMINISTRATION STAFFING INPUT Category	Base Year FTE Positions	Project Using Which Demand Base?	Current Demand Units Served Per Position	% Estimate of Available Capacity	Remaining Capacity/ Initial Hire Threshold	Estimated Service Capacity Per Position
Planning Director	1	FIXED	0	0%	0	0
Principal Planner	1	FIXED	0	0%	0	0
Planner II	1	FIXED	0	0%	0	0
Planner I - Preservation Planner	0.70	FIXED	0	0%	0	0
Sr. Administrative Assistant	0.5	FIXED	0	0%	0	0
Front Counter & Bldg Safety Asst	0.4	FIXED	0	0%	0	0
Staff Type 7	0	FIXED	0	0%	0	0
Staff Type 8	0	FIXED	0	0%	0	0
Staff Type 9	0	FIXED	0	0%	0	0
Staff Type 10	0	FIXED	0	0%	0	0

3. Operating Costs Inputs: Salaries

For the model to estimate the cost of the new positions generated by the entry of staffing shown in the above section, it is necessary to have the average salary for a new hire in each position listed in the Salaries section that appears just below the Staffing Input for each operating cost input.

The salaries currently entered in the model are in line with the position classifications as of FY2014. Each time the position classifications are changed, the average salaries should be updated in the model. When the benefits multiplier changes, it should be updated.

The inflation adjustment factor serves the same role as with the other operating costs. With a positive entry, it increases the inflation rate used in the model overall; with a negative entry, it offsets or decreases the model's overall inflation level for these position costs. For example, if staff costs are increasing at a rate of 6% while a 3% inflation rate has been used for the model, an inflation adjustment of 3% should be entered in this column for each position. The default is 0 percent.

SALARIES	Avg Salary / Staff Member	Benefits Multiplier	Inflation Adj (+/- Base)	LOS Std Total Cost
Planning Director	$122,045	30%	0%	$158,659
Principal Planner	$85,980	30%	0%	$111,774
Planner II	$55,485	30%	0%	$72,131
Planner I - Preservation Planner	$38,591	30%	0%	$50,168
Sr. Administrative Assistant	$23,434	30%	0%	$30,464
Front Counter & Bldg Safety Asst	$13,565	30%	0%	$17,635
Staff Type 7	$0	30%	0%	$0
Staff Type 8	$0	30%	0%	$0
Staff Type 9	$0	30%	0%	$0
Staff Type 10	$0	30%	0%	$0

4. Operating Cost Direct Entry or Adjusted Values Outputs

To the right of the input tables for operating costs are the Operating Cost Direct Enter Data or Adjusted Values outputs. Here, the level of service factors are projected over the 20-year analysis period. This section is populated automatically. However, **direct entries** for staffing or operating costs and revenues can be entered into this table if you choose to do so for particular budget categories (by entering DIRECT ENTRY in the Based On projection cells or by using the preset "Direct Entry Cost Type 1" line item). See *Section V of this Manual, Technical Reference, Part C* pertaining to direct entries. A portion of this table is shown below. The user should be aware that formulas in the base year are frequently constructed somewhat differently than in the second and all subsequent years and therefore should not be dragged to the right.

PLANNING ADMINISTRATION OPERATING FACTOR DIRECT ENTER DATA OR ADJUSTED VALUES

	Base	1	2	3	4	5
Fiscal Year->	2014	2015	2016	2017	2018	2019
Regular Salaries	$0	$0	$0	$0	$0	$0
Temporary Salaries	$0	$0	$0	$0	$0	$0
FICA Expense	$0	$0	$0	$0	$0	$0
Retirement Contribution	$0	$0	$0	$0	$0	$0
Health Insurance	$0	$0	$0	$0	$0	$0
Workers Compensation	$0	$0	$0	$0	$0	$0
Office Supplies	$0	$0	$0	$0	$0	$0
Computer Supplies - Software	$0	$0	$0	$0	$0	$0
Miscellaneous Supplies	$0	$0	$0	$0	$0	$0
Professional Services - Consulting	$0	$0	$0	$0	$0	$0
Professional Services - Recording Fees	$0	$0	$0	$0	$0	$0
Professional Services - Other	$2	$2	$2	$2	$2	$2
Parts/Repairs/Maintenance - Copiers	$0	$0	$0	$0	$0	$0
Equipment Rental	$0	$0	$0	$0	$0	$0
Education Expense	$0	$0	$0	$0	$0	$0
Public Outreach	$0	$0	$0	$0	$0	$0
Printing	$0	$0	$0	$0	$0	$0
Travel	$0	$0	$0	$0	$0	$0
Dues/Subscriptions/Books	$0	$0	$0	$0	$0	$0
Computer Replacement	$1,080	$1,080	$1,080	$1,080	$1,080	$1,080
Future	$0	$0	$0	$0	$0	$0
Future	$0	$0	$0	$0	$0	$0
Future	$0	$0	$0	$0	$0	$0
Future	$0	$0	$0	$0	$0	$0
Future	$0	$0	$0	$0	$0	$0
Direct Entry Cost Type 1	$0	$0	$0	$0	$0	$0
Direct Entry Cost Type 2	$0	$0	$0	$0	$0	$0
Direct Entry Cost Type 3	$0	$0	$0	$0	$0	$0

PLANNING ADMINISTRATION STAFFING DIRECT ENTER DATA

	Enter Number of Additional Staff Directly ONLY For Direct Entry Cat				
	1	2	3	4	5
	2015	2016	2017	2018	2019
Planning Director	0	0	0	0	0
Principal Planner	0	0	0	0	0
Planner II	0	0	0	0	0
Planner I - Preservation Planner	0	0	0	0	0
Sr. Administrative Assistant	0	0	0	0	0
Front Counter & Bldg Safety Asst	0	0	0	0	0
Staff Type 7	0	0	0	0	0
Staff Type 8	0	0	0	0	0
Staff Type 9	0	0	0	0	0
Staff Type 10	0	0	0	0	0

	Base	1	2	3	4	5
Fiscal Year->	2014	2015	2016	2017	2018	2019
Planning Director	$122,045	$122,045	$122,045	$122,045	$122,045	$122,045
Principal Planner	$85,980	$85,980	$85,980	$85,980	$85,980	$85,980
Planner II	$55,485	$55,485	$55,485	$55,485	$55,485	$55,485
Planner I - Preservation Planner	$38,591	$38,591	$38,591	$38,591	$38,591	$38,591
Sr. Administrative Assistant	$23,434	$23,434	$23,434	$23,434	$23,434	$23,434
Front Counter & Bldg Safety Asst	$13,565	$13,565	$13,565	$13,565	$13,565	$13,565
Staff Type 7	$0	$0	$0	$0	$0	$0
Staff Type 8	$0	$0	$0	$0	$0	$0
Staff Type 9	$0	$0	$0	$0	$0	$0
Staff Type 10	$0	$0	$0	$0	$0	$0

In the example shown above, cost level of service factors are constant over time. This is because CONSTANT was chosen as the operating cost projection methodology.

5. Operating Cost Outputs

Below the Operating Cost Direct Enter Data or Adjusted Values outputs are the Operating Cost Outputs. This section contains calculated values that are derived using demand base data and various factors from the Cost Input Data. The contents of each of the output areas is described in detail below.

Again, the user should be aware that formulas in the base year are frequently constructed somewhat differently than in the second and all subsequent years. This is a result of the first year formula referencing data from the input section, and formulas for later years simply building on the prior year's value. Altering formulas in the first year, and then simply copying the revised formulas to all later years may produce erroneous results. Rather, it may be necessary to enter similar alterations in both first and second year cells, and then copy from the second year cell to all subsequent years. By carefully checking between the first and second year cells, you can determine if the second year formula is altered in any significant way (i.e., non-consecutive cell addresses in the formula).

The output area summarizes operating expenditures by **budget line item**. The Budget Summary module, discussed later, retrieves the total costs from each operating module. Excerpts are shown below:

PLANNING ADMINISTRATION

	Base	1	2	3	4	5
Fiscal Year->	2014	2015	2016	2017	2018	2019
CUMULATIVE STAFF NEEDED BASED ON CITYWIDE NEED						
Planning Director	1	1	1	1	1	1
Principal Planner	1	1	1	1	1	1
Planner II	1	1	1	1	1	1
Planner I - Preservation Planner	0.7	1	1	1	1	1
Sr. Administrative Assistant	0.5	1	1	1	1	1
Front Counter & Bldg Safety Asst	0.4	0	0	0	0	0
Staff Type 7	0	0	0	0	0	0
Staff Type 8	0	0	0	0	0	0
Staff Type 10	0	0	0	0	0	0
Total Staff:	4.6	4.6	4.6	4.6	4.6	4.6
STAFF COST (in thousands)						
Planning Director		$0	$0	$0	$0	$0
Principal Planner		$0	$0	$0	$0	$0
Planner II		$0	$0	$0	$0	$0
Planner I - Preservation Planner		$0	$0	$0	$0	$0
Sr. Administrative Assistant		$0	$0	$0	$0	$0
Front Counter & Bldg Safety Asst		$0	$0	$0	$0	$0
Staff Type 7		$0	$0	$0	$0	$0
Staff Type 8		$0	$0	$0	$0	$0
Staff Type 10		$0	$0	$0	$0	$0
Total Staff Cost:		$0	$0	$0	$0	$0

	Base	1	2	3	4	5
Fiscal Year->	2014	2015	2016	2017	2018	2019
OPERATING EXPENDITURES (in thousands)						
Regular Salaries	$0	$0	$0	$0	$0	$0
Temporary Salaries	$0	$0	$0	$0	$0	$0
FICA Expense	$0	$0	$0	$0	$0	$0
Retirement Contribution	$0	$0	$0	$0	$0	$0
Health Insurance	$0	$0	$0	$0	$0	$0
Workers Compensation	$0	$0	$0	$0	$0	$0
Office Supplies	$0	$0	$0	$0	$0	$0
Computer Supplies - Software	$0	$0	$0	$0	$0	$0
Miscellaneous Supplies	$0	$0	$0	$0	$0	$0
Professional Services - Consulting	$0	$0	$0	$0	$0	$0
Professional Services - Recording Fees	$0	$0	$0	$0	$0	$0
Professional Services - Other	$0	$1	$2	$2	$3	$3
Parts/Repairs/Maintenance - Copiers	$0	$0	$0	$0	$0	$0
Equipment Rental	$0	$0	$0	$0	$0	$0
Education Expense	$0	$0	$0	$0	$0	$0
Public Outreach	$0	$0	$0	$0	$0	$0
Printing	$0	$0	$0	$0	$0	$0
Travel	$0	$0	$0	$0	$0	$0
Dues/Subscriptions/Books	$0	$0	$0	$0	$0	$0
Computer Replacement	$0	$0	$0	$0	$0	$0
Future	$0	$0	$0	$0	$0	$0
Future	$0	$0	$0	$0	$0	$0
Future	$0	$0	$0	$0	$0	$0
Future	$0	$0	$0	$0	$0	$0
Future	$0	$0	$0	$0	$0	$0
Direct Entry Cost Type 1	$0	$0	$0	$0	$0	$0
Direct Entry Cost Type 2	$0	$0	$0	$0	$0	$0
Direct Entry Cost Type 3	$0	$0	$0	$0	$0	$0
Total Operating Expenditures:	$0	$1	$3	$4	$4	$5
TOTAL STAFF & OPER COST:	$0	$1	$3	$4	$4	$5

Below the individual output areas for the different departments is the **Department Summary**, which summarizes operating costs by individual department area.

PLANNING ADMINISTRATION & BUILDING SAFETY DEPARTMENT SUMMARY						
	Base	1	2	3	4	5
Fiscal Year->	2014	2015	2016	2017	2018	2019
OPERATING EXPENDITURES BY DIVISION (in thousands)						
Planning Administration	$0	$1	$3	$4	$4	$5
Building Safety	$0	$7	$7	$7	$3	$3
Future Operating Department	$0	$0	$0	$0	$0	$0
==========	========	==========	==========	==========	==========	==========
Total Staff and Operating Expenditures:	$0	$8	$10	$11	$7	$8

Note: The model's formulas calculate operating costs based on the named demand base. The formula selects the demand base quantity, based on the demand base named for the respective year. It then factors this quantity by the multiplier, units served per operating unit, and combined inflation factors and base year unit costs. Results will display to the next highest whole number according to the scaling factor. The default scaling factor will result in cost values being displayed in thousands. Fractions of displayed amounts (i.e., fractions of thousands) will be retained in the calculations but will not display or print. For this reason, values may not always appear to total correctly, due to the rounding of the displayed values. Fractional values may be displayed by editing the format for these cells to display to one or more decimal positions.

H. Capital Facilities Input/Output Modules

Capital Facilities Input/Output Modules determine when new facilities (or parts of facilities) are needed to serve the projected new demand—based on delivery criteria provided by the user. These criteria can include recognition of capacities of existing facilities and useful life spans, thus providing for purchase of new facilities. The timing of delivery further recognizes lead- or lag-times, providing for funding needs at times before or after actual delivery, as may be appropriate for construction or ordering processes. The timing of debt payments may also be similarly adjusted relative to actual delivery. Funding, bonding, and debt mechanisms and terms, including direct funding ("pay as you go"), are at the discretion of the user. Finally, any capital facility may generate a corresponding item in the operations module, assuring that both acquisition and operation of the facility is fully represented.

The capital facilities input areas provides space for numerous capital facility listings. These can be used for individual facilities, such as a single building, or for a category of facilities such as police cars or neighborhood parks. The output of this application provides a schedule of when new facilities are to be obtained, when they may need to be replaced, and a funding schedule. A large work area contains debt service payment schedules for capital facilities.

Capital facilities input data and projections are arranged in "blocks" or horizontal bands of cells, one block for each facility listing. Within each of these bands, the functions of the cell input data and formulas is the same for each facility. The capital facility input area is designed to have specifications both on demand—how the facilities are required—and their cost and funding.

NOTE: The capital modules have been populated with Capital Facilities data specific to the City of Louisville based on the most recent Impact Fee Study. An inventory of existing capital facilities is included in the model as "**FacilitiesInventory**," which is linked to the Capital pages (with the exception of the Transportation Capital Page). The Facilities Inventory and Transportation Capital Page should be updated when the Impact Fees are updated or revised.

1. Capital Facilities Input

An example of the capital facility input area for Parks and Trail facilities is shown below. The inputs are meant to represent broad categories of facilities (depending on the category) such as Police stations or vehicles (if desired), or in this case acres of Community Parks and Improvements and miles of Trails, and where prototype information is developed regarding facility size, cost, etc. The contents of each of the input cells is described in detail below.

Parks and Trails Capital Facilities
Capital Facilities Standards and Costs

Facility Type	Base Year Inventory	Unit	Need For Facility Based On:	LOS by Capital Facility	Current Demand Units Served Per Facility	Current Cost/Unit in ($000s)	Inflation Adjustment (+/-)
Community Park Land & Improvements	94.3	Acres	POPULATION	0.0048	2176	$1,704	0%
USEFUL			| CAPACITY FACTORS:			Remaining Capacity/	
FACILITY			| Prototype Facility Size (Acres):		10.48	Initial Construction	
LIFE:	New Facility (years):	30	| Estimate of Available Facility Capacity:		50%	Threshold (Acres):	5.2
LAG/LEAD	Funding to		| FUNDING METHOD:				
TIME:	Delivery (years):	0	| Percent Bonded:	0%			
Trail	53	Trail Miles	POPULATION	0.0027	372.3954	$152	0%
USEFUL			| CAPACITY FACTORS:			Remaining Capacity/	
FACILITY			| Prototype Facility Size (Units):		1	Initial Construction	
LIFE:	New Facility (years):	30	| Estimate of Available Facility Capacity:		50%	Threshold (Acres):	0.5
LAG/LEAD	Funding to		| FUNDING METHOD:				
TIME:	Delivery (years):	0	| Percent Bonded:	0%			

a) Facility Type

Enter the name by which the facility/category will be identified. This name will be copied by the cell formula to all other appropriate locations in input and output tables.

b) Base Year Inventory

This entry denotes the current inventory of the facility type being modeled. There is a separate cell to enter the units by which the facility is to be projected and the unit type (in this example: Acres for Parks). Types of **units** include acres for parks, vehicles for police vehicles, lane miles for roads, etc. As shown in the example above, there is 94.3 acres of Community Parks in the City.

c) Need For Facility Based On

Enter the name of the demand base upon which calculations of need for the capital facility category will be based. **This entry must exactly match one of the categories contained in the Existing City Demand Base table (located in the Base Year Demographics Module) as well as a category contained in the Annual Demand Base area located in the Demand Base Module.**

Entering the word FIXED, or DIRECT ENTRY indicates that projection data from other sources will be directly entered in the direct data entry area, rather than using the module's modeling formulas, or that facilities are not impacted by growth. In the example shown above, Community Parks, the need for additional acreage is based on a projection of future population (POPULATION).

d) LOS (Level of Service) by Capital Facility/Current Demand Units Served per Facility

The value here is automatically calculated based on the previous inputs and indicates the current level of service for the particular type of facility. As shown in the example above, given the current number of acres of Community Parks (94.3) and POPULATION selected as the demand base, there are .0048 acres per person, or 4.8 acres per 1,000 people. Also provided is the amount of current demand units served per "prototype" facility. In this case, an average Community Park is 10.5 acres, which serve 2,176 people.

e) Current Cost Per Unit

This cell reflects the base cost per unit and is linked to the Facilities Inventory page. The cost shown here is the cost for a prototype facility. In this example, it is the average cost per acre ($162,672) multiplied by the prototype size of a Community Park (10.5 acres) for a total cost per park of $1.7 million (shown in thousands). This value is multiplied by the combined-effective inflation rate to arrive at a projected capital cost per unit for subsequent years. This cost should be an inclusive total, including all secondary or dependent costs (such as fees, or "soft costs") associated with the facility.

TAKE NOTE: Be sure to pay attention to the unit being projected—to ensure cost factor is appropriate. For example, if projecting square feet, cost should reflect cost per square foot ($200/sf). If projecting based on number of facilities, cost should reflect cost per facility ($200/sf x 10,000 sf Facility = $2 million).

f) Inflation Adjustment

A decimal fraction entry here will add to the underlying "universal" inflation rate established in the Scenario Input Module. If no universal inflation rate was assumed, an entry here will adopt one for the particular line item in which it is entered. If a universal rate was assumed in the Scenario Input Module, the entry here will modify or cancel it, depending upon your entry. For example, a negative entry here of -0.05 (-5.0%) will add to, and effectively cancel an underlying

positive rate of 0.05. Similarly, an entry here of 0.01 will add to an underlying rate of 0.05, creating an effective rate of 0.06. An entry of this latter nature may be appropriate if the particular facility cost where the entry is made is assumed to increase in value faster than the universal inflation rate established in the Scenario Input Module. The combined, net-effective inflation rate is then applied to the base year cost of a single capital facility unit. The default value is 0 percent.

g) Useful Facility Life

Enter the useful life (in years) before facilities have to be replaced. Useful lives for vehicles are particularly useful to represent in this manner. Useful lives for buildings and parks will typically be greater than the projection time frame of 20 years. If existing facilities are indicated as being initially available to meet future demands, the entry of useful life can represent when such facilities need to be replaced, or their capacities are consumed.

h) Lag/Lead Time: Funding to Delivery

This entry is used to indicate if expenditure for the facility is to occur at a time other than delivery of the facility. The entry should be expressed in years. Executing bonding one or two years prior to actual completion of a new building to allow for construction is a typical use of this entry. A pre-set entry of 0 years is provided as a default value.

i) Funding Method: Percent Bonded

Enter the percentage of the cost to be bonded (debt financed) in this cell. The value entered is linked to the module's amortization schedule formulas to incur debt and calculate debt service payments according to the other financing inputs made in this area.

For example, a value of 0 corresponds to "Pay-As-You-Go" funding and will result in 100 percent of facility being paid for with cash. A value of .50 will result in 50 percent being bonded and the other half being paid for with cash. The default percentage for all capital improvements/purchases is 0%. TischlerBise typically recommends that all capital improvements be Pay-Go in this analysis. By showing pay-go funding for all growth-related capital improvements, the true costs of capital improvements are depicted. If those facilities were bonded, debt service payment for some improvements would continue beyond the last projection year and therefore would not adequately be captured in the analysis.

j) Bonding to First Debt Service

This entry is used to indicate the number of years between execution of bonds and the first debt service. This might occur if bonding leads delivery time to allow for construction, but one or two years of forgiveness are allowed until the facility is completed and available for use. A preset entry of 0 years is provided as a default value.

This section allows for changing interest rate and term (how long the bond will be issued for) (in years). The bond length has been set to a default of 20 years and the bond interest rate at 6.0%.

Bd to 1st Yr DS (Yrs)
0
Bond Rate:
6.00%
Bond Years:
20

Capital Facilities Standards and Costs

Facility Type	Base Year Inventory	Unit	Need For Facility Based On:	LOS by Capital Facility	Current Demand Units Served Per Facility	Current Cost/Unit in ($000s)	Inflation Adjustment (+/-)
Recreation Facilities	86,540	SF	POPULATION	4.4180	4897.0000	$3,488	0%
USEFUL FACILITY LIFE:	New Facility (years)	30	| CAPACITY FACTORS: | Prototype Facility Size (SF): | Estimate of Available Facility Capacity:		21,635 / 90%	Remaining Capacity/ Initial Construction Threshold (SF):	19,472
LAG/LEAD TIME:	Funding to Delivery (years):	0	| FUNDING METHOD: | Percent Bonded:	0%			

2. *Direct Entry Capital Facilities*

There may be situations where it will be more appropriate to simply incorporate capital facility schedules provided by an operating department, rather than modeling future needs. This can be done by using the direct entry capabilities. This might particularly be the case where an approved capital facilities program (CIP) is in place, and the department simply wishes this to be incorporated without further reconsideration. **Remember that a capital facilities schedule that is modeled will change as assumptions and growth scenarios change, while a fixed schedule of facilities may have to be manually adjusted—or risk being out-of-step—if underlying growth assumptions are altered.** On the other hand, approved capital expenditure schedules have the advantage of official acceptance, and in some ways may be easier to enter in the template. An example from another model is used for purposes of explanation.

General Government Capital Facilities

Capital Facilities Standards and Costs

Facility Type	Base Year Inventory	Unit	Need For Facility Based On:	Countywide LOS by Capital Facility	Current Cost/Unit	Inflation Adjustment (+/-)
General Government Office	162,000	SF	DIRECT ENTRY		$200.00	0%
USEFUL FACILITY LIFE:	New Facility (years):	30			AMOUNT NEEDED TO MAINTAIN LOS:	Total New SF 0.0
LAG/LEAD TIME:	Funding to Delivery (years):	0	| FUNDING METHOD: | Percent Bonded:	0%		

To create a direct entry for a capital facility, the user would scroll to the right of the Input area and enter the size of the facility planned to be built. **It is important to be consistent between the units (e.g., square feet) entered in the Direct Entry Area and the units entered in the Input section.** In this example, square feet is used. The size of the planned facility is 10,000 square feet and the cost per square foot is $200—and shown in $1,000s directly above. (*If the user wanted the facility to be constructed under one scenario, but not under another, an IF statement formula should be used.*)

Capital Facilities Data and Adjusted Costs

	Base	1	2	3	4	5
Fiscal Year->	2006	2007	2008	2009	2010	2011
General Government Office	$0.200	$0.200	$0.200	$0.200	$0.200	$0.200
SF Needed to Maintain Current LOS:		0.000	0.000	0.000	0.000	0.000
DIRECT ENTRY AREA:			10,000.0			

3. Capital Facilities Output

Altering the contents of capital facilities output cells should not be done casually. For each type of capital facility, the following information is provided. The example from above is shown below.

Parks and Trails Capital Facilities Output

	Base	1	2	3	4	5
Fiscal Year->	2014	2015	2016	2017	2018	2019
Community Park Land & Improvements						
New Facilities Delivered (Inc. Replacemer		0.00	0.00	0.00	0.00	1.00
Facilities Retired		0.00	0.00	0.00	0.00	0.00
Available Facilities		0	0	0	0	1
New Facility Cost		$0.00	$0	$0	$0	$1,704
Directly Funded		$0	$0	$0	$0	$1,704
Bonding Executed		$0	$0	$0	$0	$0
Trail						
New Facilities Delivered (Inc. Replacemer		1.00	1.00	1.00	0.00	0.00
Facilities Retired		0.00	0.00	0.00	0.00	0.00
Available Facilities		1.00	2.00	3.00	3.00	3.00
New Facility Cost		$152	$152	$152	$0	$0
Directly Funded		$152	$152	$152	$0	$0
Bonding Executed		$0	$0	$0	$0	$0

a) New Facilities Delivered

This line shows the number of new capital facilities (in the respective unit of measure) to be delivered in each respective year.

b) Facilities Retired

Facilities will be subtracted as their useful lives are met. Values that show in this line are treated as negatives, subtracting from available inventory.

c) Available Facilities

This is the current net summation of existing facilities, new facilities added, and older facilities subtracted as they exhaust their useful lives.

d) New Facility Cost

This line represents the actual expenditures projected for capital facilities both in terms of amount and timing. The calculation reflects the number of facilities to be acquired in a given year, and the effects of the combined inflation rates on unit costs.

e) Directly Funded Costs

This line displays costs that are directly funded as of the year indicated, and not subject to debt financing. This corresponds to "pay-as-you-go" funding.

f) Bonding Executed

This line displays costs that are funded through debt. The timing of bond amounts may be dependent upon a lead-time input.

4. Debt Service Work Area

Below the capital facilities output areas are work areas used for the computation of debt service. For any type or block of capital facilities, expenditures in any year may initiate debt service payments. These payments may build up in "layers" each subsequent year. Thus, in Year 1, a single debt service may be incurred as a result of first year expenditures. In Year 2, a new expenditure will initiate a second debt service payment, in addition to the continuing payment initiated by the first year's bonding. In Year 3, another new payment may start in addition to the payments due from bonding executed in the first two years; and so forth. This "layering" of debt service payments can be seen in the layout of the work area. Each subsequent year has an additional line in the debt service schedule.

The individual cells in the debt service work area should not be edited or altered in any way. The formula in the work area cells reads the capital facilities output area to see if bonding has been incurred in a given year. The year that is read depends upon the lead/lag time settings selected in the input area. If bonding has occurred, and a debt service payment is appropriate for the given year (allowing for lead/lag time and duration of the bond), then the debt service payment is calculated based on the interest rate and bond term set in the input area. The debt service payment amounts which appear in the output area are the summation of all "layered" payments as of the respective year for a given capital facility block. An example from another model is shown below.

DEBT SERVICE WORK AREA

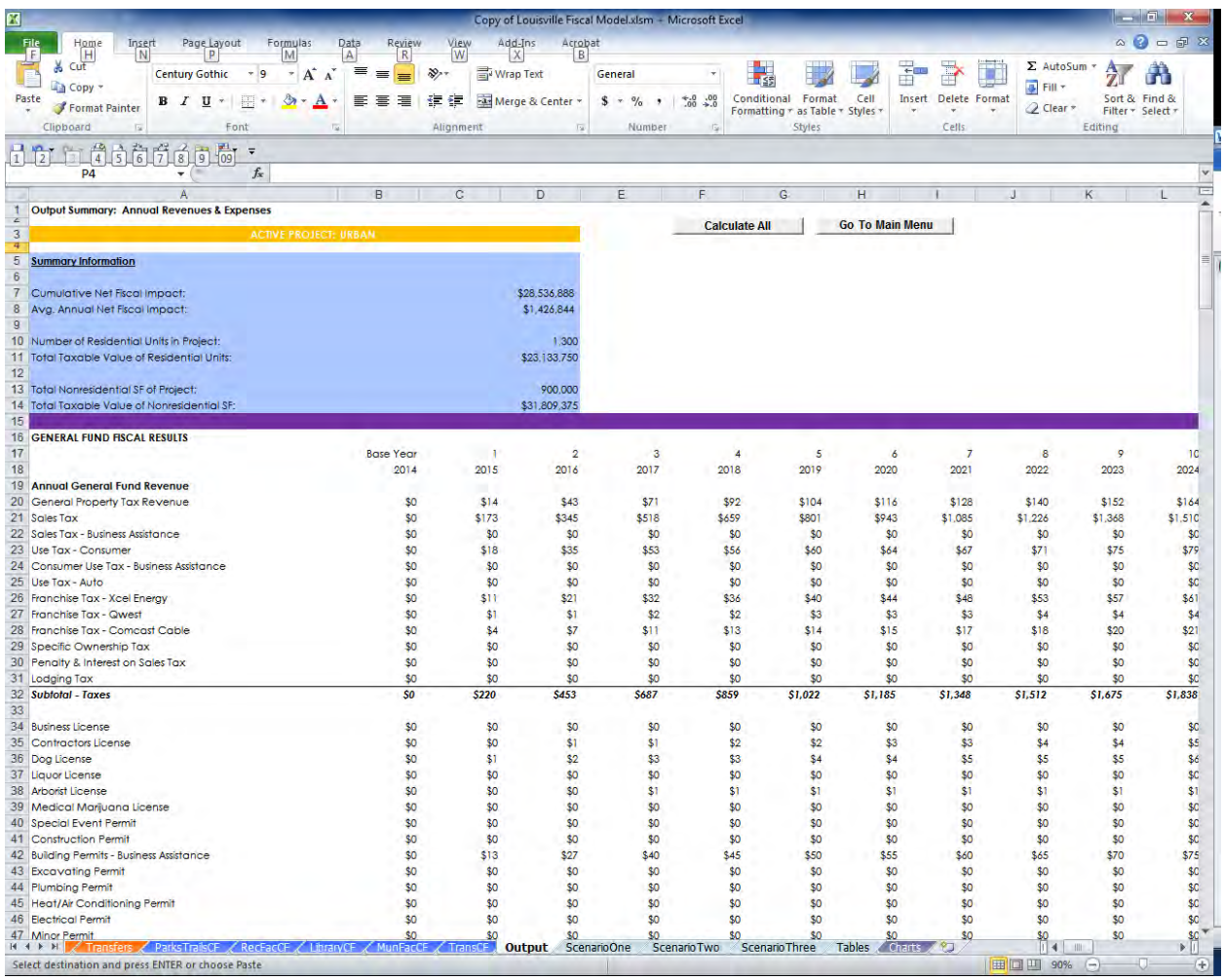
Year	Payment	=======	=======	=======	=======	=======	=======
1	$75	$75	$75	$75	$75	$75	$75
2	$75		$75	$75	$75	$75	$75
3	$75			$75	$75	$75	$75
4	$59				$59	$59	$59
5	$37					$37	$37
6	$27						$27
7	$20						

III. BUDGET SUMMARY AND OUTPUTS

A. General Overview

The Budget Summary is the final module in the calculation flow of the Fiscal Model file. This is the "bottom line" module where all revenues and all costs (both direct and bond funded) are summarized and compared for the active scenario.

The **Output** Module is comprised mostly of formulas that simply read subtotal results from the other modules and sums them together to arrive at annual and cumulative fiscal impacts. There is no user input in the module. Rather, the Output Module is the final collection point of all costs and revenues as individually projected in the other modules. A picture of the Output Module is shown below.



Output Summary: Annual Revenues & Expenses

ACTIVE PROJECT: URBAN

Calculate All | Go To Main Menu

Summary Information

Cumulative Net Fiscal Impact:	$28,536,888
Avg. Annual Net Fiscal Impact:	$1,426,844
Number of Residential Units in Project:	1,300
Total Taxable Value of Residential Units:	$23,133,750
Total Nonresidential SF of Project:	900,000
Total Taxable Value of Nonresidential SF:	$31,809,375

GENERAL FUND FISCAL RESULTS

	Base Year	1	2	3	4	5	6	7	8	9	10
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Annual General Fund Revenue											
General Property Tax Revenue	$0	$14	$43	$71	$92	$104	$116	$128	$140	$152	$164
Sales Tax	$0	$173	$345	$518	$659	$801	$943	$1,085	$1,226	$1,368	$1,510
Sales Tax - Business Assistance	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Use Tax - Consumer	$0	$18	$35	$53	$56	$60	$64	$67	$71	$75	$79
Consumer Use Tax - Business Assistance	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Use Tax - Auto	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Franchise Tax - Xcel Energy	$0	$11	$21	$32	$36	$40	$44	$48	$53	$57	$61
Franchise Tax - Qwest	$0	$1	$1	$2	$2	$3	$3	$3	$4	$4	$4
Franchise Tax - Comcast Cable	$0	$4	$7	$11	$13	$14	$15	$17	$18	$20	$21
Specific Ownership Tax	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Penalty & Interest on Sales Tax	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Lodging Tax	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Subtotal - Taxes	***$0***	***$220***	***$453***	***$687***	***$859***	***$1,022***	***$1,185***	***$1,348***	***$1,512***	***$1,675***	***$1,838***
Business License	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Contractors License	$0	$0	$1	$1	$2	$2	$3	$3	$4	$4	$5
Dog License	$0	$1	$2	$3	$3	$4	$4	$5	$5	$5	$6
Liquor License	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Arborist License	$0	$0	$0	$1	$1	$1	$1	$1	$1	$1	$1
Medical Marijuana License	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Special Event Permit	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Construction Permit	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Building Permits - Business Assistance	$0	$13	$27	$40	$45	$50	$55	$60	$65	$70	$75
Excavating Permit	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Plumbing Permit	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Heat/Air Conditioning Permit	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Electrical Permit	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Minor Permit	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0

As discussed previously, the Louisville Fiscal Impact Model analyzes one scenario at a time. Therefore, to analyze the results for multiple scenarios, the user must utilize a macro program contained in the custom menu, or the **Calculate All** macro button located (see example below) at the top of the Output Module.

Pressing this macro button from the Output worksheet, or selecting, **Navigation —> Outputs —> Calculate All Scenarios** from the custom menu, the model's results are transferred to individual output worksheets for each scenario. Here, the results for all three scenarios can be observed in detail.

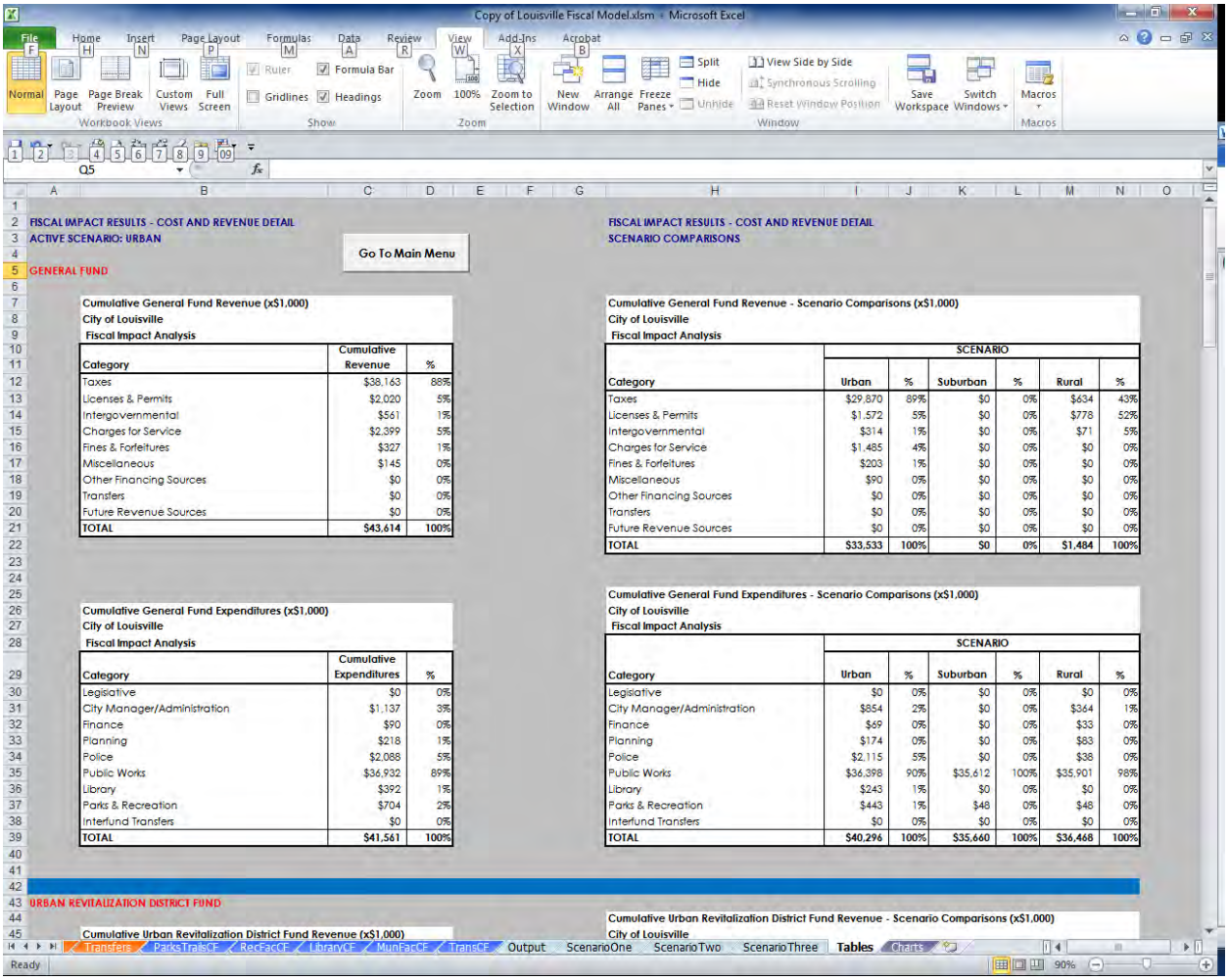
The Calculate All Scenarios macro program performs the following steps when activated.

1. Runs the Calculate Scenario Visual Basic Application macro program (CalcAll). The program will run each scenario and transfer the results to the individual scenario data worksheets.
2. The analysis is now complete. The various tables and charts contained in the model can now be observed.

B. Outputs

1. Scenario Comparisons

There are also two worksheets that contain summary outputs for each scenario. The worksheet labeled **Tables** contains revenue and expenditure details for the Active Scenario, as well as for the three scenarios the model is capable of evaluating. This is shown in the picture below.



FISCAL IMPACT RESULTS - COST AND REVENUE DETAIL
ACTIVE SCENARIO: URBAN

Go To Main Menu

GENERAL FUND

Cumulative General Fund Revenue (x$1,000)
City of Louisville
Fiscal Impact Analysis

Category	Cumulative Revenue	%
Taxes	$38,163	88%
Licenses & Permits	$2,020	5%
Intergovernmental	$561	1%
Charges for Service	$2,399	5%
Fines & Forfeitures	$327	1%
Miscellaneous	$145	0%
Other Financing Sources	$0	0%
Transfers	$0	0%
Future Revenue Sources	$0	0%
TOTAL	$43,614	100%

Cumulative General Fund Expenditures (x$1,000)
City of Louisville
Fiscal Impact Analysis

Category	Cumulative Expenditures	%
Legislative	$0	0%
City Manager/Administration	$1,137	3%
Finance	$90	0%
Planning	$218	1%
Police	$2,088	5%
Public Works	$36,932	89%
Library	$392	1%
Parks & Recreation	$704	2%
Interfund Transfers	$0	0%
TOTAL	$41,561	100%

URBAN REVITALIZATION DISTRICT FUND

Cumulative Urban Revitalization District Fund Revenue (x$1,000)

FISCAL IMPACT RESULTS - COST AND REVENUE DETAIL
SCENARIO COMPARISONS

Cumulative General Fund Revenue - Scenario Comparisons (x$1,000)
City of Louisville
Fiscal Impact Analysis

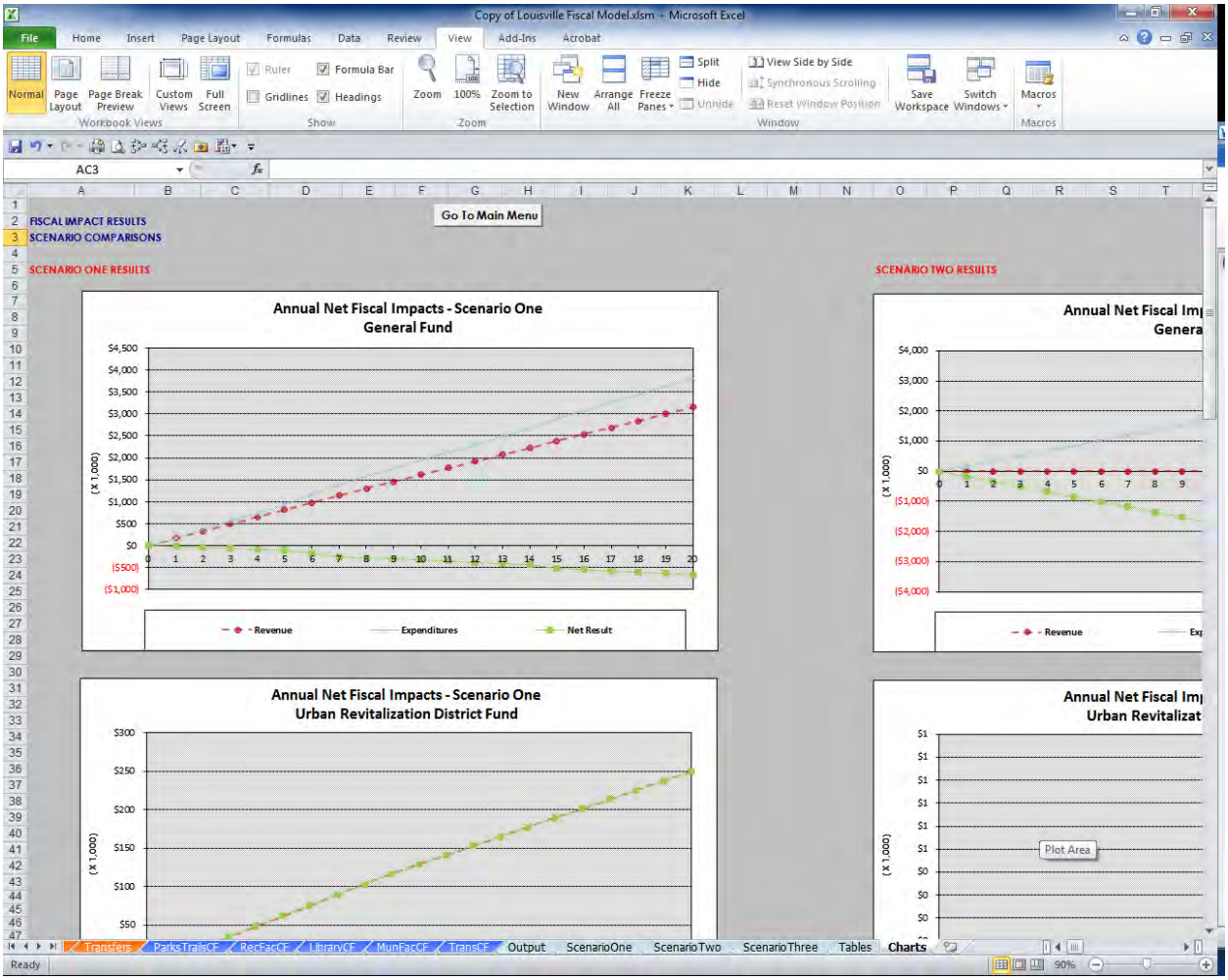
	SCENARIO					
Category	Urban	%	Suburban	%	Rural	%
Taxes	$29,870	89%	$0	0%	$634	43%
Licenses & Permits	$1,572	5%	$0	0%	$778	52%
Intergovernmental	$314	1%	$0	0%	$71	5%
Charges for Service	$1,485	4%	$0	0%	$0	0%
Fines & Forfeitures	$203	1%	$0	0%	$0	0%
Miscellaneous	$90	0%	$0	0%	$0	0%
Other Financing Sources	$0	0%	$0	0%	$0	0%
Transfers	$0	0%	$0	0%	$0	0%
Future Revenue Sources	$0	0%	$0	0%	$0	0%
TOTAL	$33,533	100%	$0	0%	$1,484	100%

Cumulative General Fund Expenditures - Scenario Comparisons (x$1,000)
City of Louisville
Fiscal Impact Analysis

	SCENARIO					
Category	Urban	%	Suburban	%	Rural	%
Legislative	$0	0%	$0	0%	$0	0%
City Manager/Administration	$854	2%	$0	0%	$364	1%
Finance	$69	0%	$0	0%	$33	0%
Planning	$174	0%	$0	0%	$83	0%
Police	$2,115	5%	$0	0%	$38	0%
Public Works	$36,398	90%	$35,612	100%	$35,901	98%
Library	$243	1%	$0	0%	$0	0%
Parks & Recreation	$443	1%	$48	0%	$48	0%
Interfund Transfers	$0	0%	$0	0%	$0	0%
TOTAL	$40,296	100%	$35,660	100%	$36,468	100%

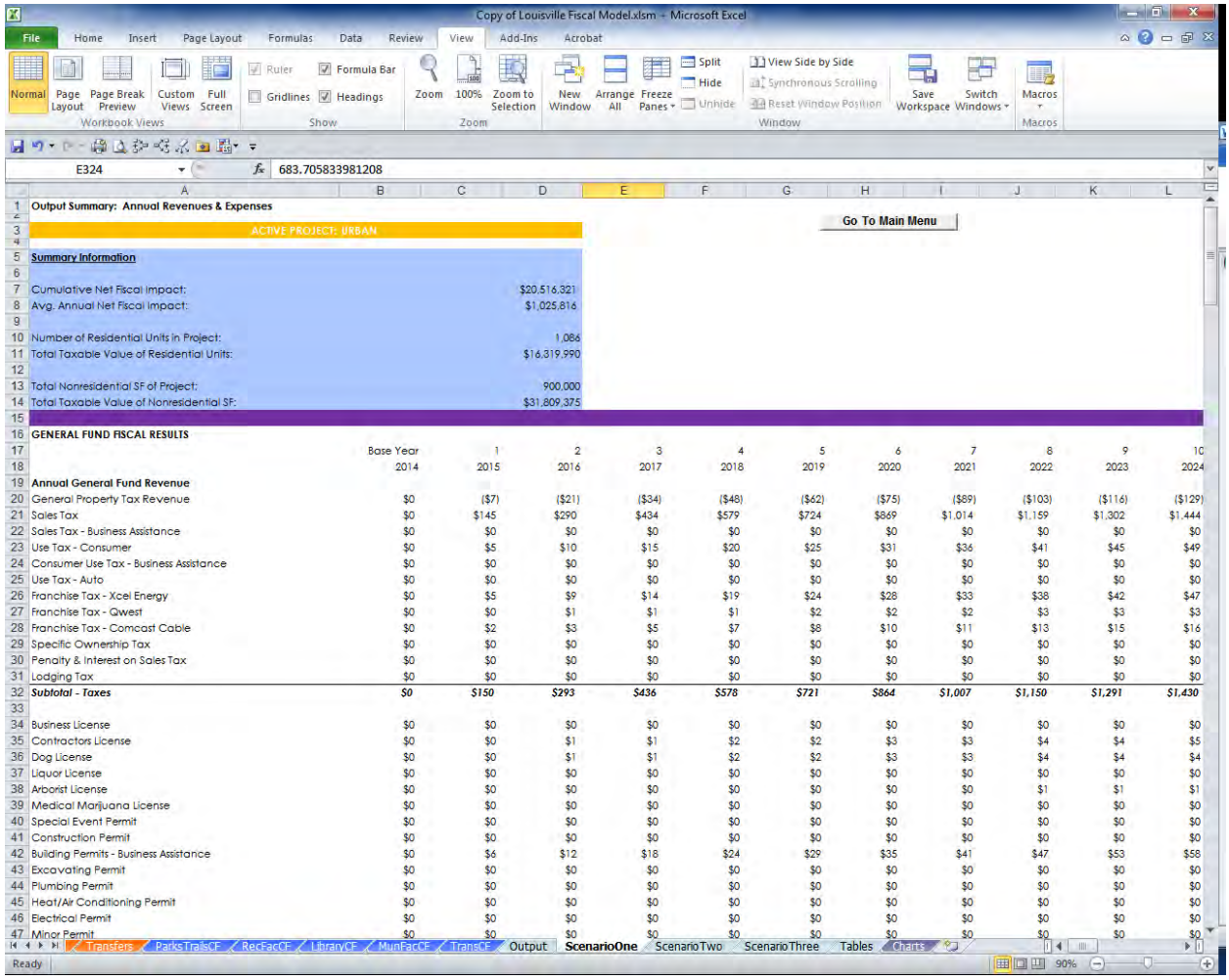
Cumulative Urban Revitalization District Fund Revenue - Scenario Comparisons (x$1,000)
City of Louisville

The **Charts** worksheet contains a series of charts that show annual results for the three scenarios evaluated by the model. Results are provided by **fund**.



2. Scenario Detail

The output pages Scenario One, Scenario Two, and Scenario Three, provide annual detail on revenues and expenditures by fund as well as a **snapshot summary** at the top of each sheet. A picture is provided below.



Output Summary: Annual Revenues & Expenses

ACTIVE PROJECT: URBAN

Go To Main Menu

Summary Information

Cumulative Net Fiscal Impact:	$20,516,321
Avg. Annual Net Fiscal Impact:	$1,025,816
Number of Residential Units in Project:	1,086
Total Taxable Value of Residential Units:	$16,319,990
Total Nonresidential SF of Project:	900,000
Total Taxable Value of Nonresidential SF:	$31,809,375

GENERAL FUND FISCAL RESULTS

	Base Year	1	2	3	4	5	6	7	8	9	10
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Annual General Fund Revenue											
General Property Tax Revenue	$0	($7)	($21)	($34)	($48)	($62)	($75)	($89)	($103)	($116)	($129)
Sales Tax	$0	$145	$290	$434	$579	$724	$869	$1,014	$1,159	$1,302	$1,444
Sales Tax - Business Assistance	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Use Tax - Consumer	$0	$5	$10	$15	$20	$25	$31	$36	$41	$45	$49
Consumer Use Tax - Business Assistance	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Use Tax - Auto	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Franchise Tax - Xcel Energy	$0	$5	$9	$14	$19	$24	$28	$33	$38	$42	$47
Franchise Tax - Qwest	$0	$0	$1	$1	$1	$2	$2	$2	$3	$3	$3
Franchise Tax - Comcast Cable	$0	$2	$3	$5	$7	$8	$10	$11	$13	$15	$16
Specific Ownership Tax	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Penalty & Interest on Sales Tax	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Lodging Tax	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Subtotal - Taxes	***$0***	***$150***	***$293***	***$436***	***$578***	***$721***	***$864***	***$1,007***	***$1,150***	***$1,291***	***$1,430***
Business License	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Contractors License	$0	$0	$1	$1	$2	$2	$3	$3	$4	$4	$5
Dog License	$0	$0	$1	$1	$2	$2	$3	$3	$4	$4	$4
Liquor License	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Arborist License	$0	$0	$0	$0	$0	$0	$0	$0	$1	$1	$1
Medical Marijuana License	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Special Event Permit	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Construction Permit	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Building Permits - Business Assistance	$0	$6	$12	$18	$24	$29	$35	$41	$47	$53	$58
Excavating Permit	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Plumbing Permit	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Heat/Air Conditioning Permit	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Electrical Permit	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Minor Permit	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0

IV. CUSTOM MENUS

A customized menu has been integrated into the Louisville Fiscal Impact Model. In addition to Excel's regular menus, the Add-Ins > Navigation menu bar consists of six additional pull-down menu headings that contain numerous commands that are designed to assist the user with model operations. These commands assist the user with movement throughout the model, changing current scenarios, selecting demand bases and analyzing fiscal results.

A. Navigation

Under "Add-Ins," the pull-down menu heading of **Navigation** leads to additional commands designed to assist the user with inputs associated with calibrating the model and analyzing the fiscal results. This includes changing the active scenario, as well as other inputs. The following are the command headings under the Navigation menu:

Main Menu	Contains a submenu with commands that takes the user to the Main Menu or Exit the Model.
Select Scenario	Contains a submenu with three commands that allow the user to change the active scenario for the model.
Scenario Input	Contains a submenu with commands that takes the user to the Scenario Parameters Input area, as well as the specific input areas for the three Scenario Input areas to enter proposals and/or absorption schedules.
Erase Scenarios	Contains a submenu that erases data entered in respective scenario. This is useful to clean the slate from previous analyses.
Demand and Tax Base	Contains a submenu that directs the user to inputs related to the Base Year Demographics, as well as the Active Scenario Real Property Tax Base and Active Scenario Annual Demand Base.
Outputs	Contains a submenu that takes the user to the Active Scenario Budget Summary as well as the associated charts and tables, calculate all scenarios, and view various tables and charts from all three scenarios.

V. TECHNICAL REFERENCE

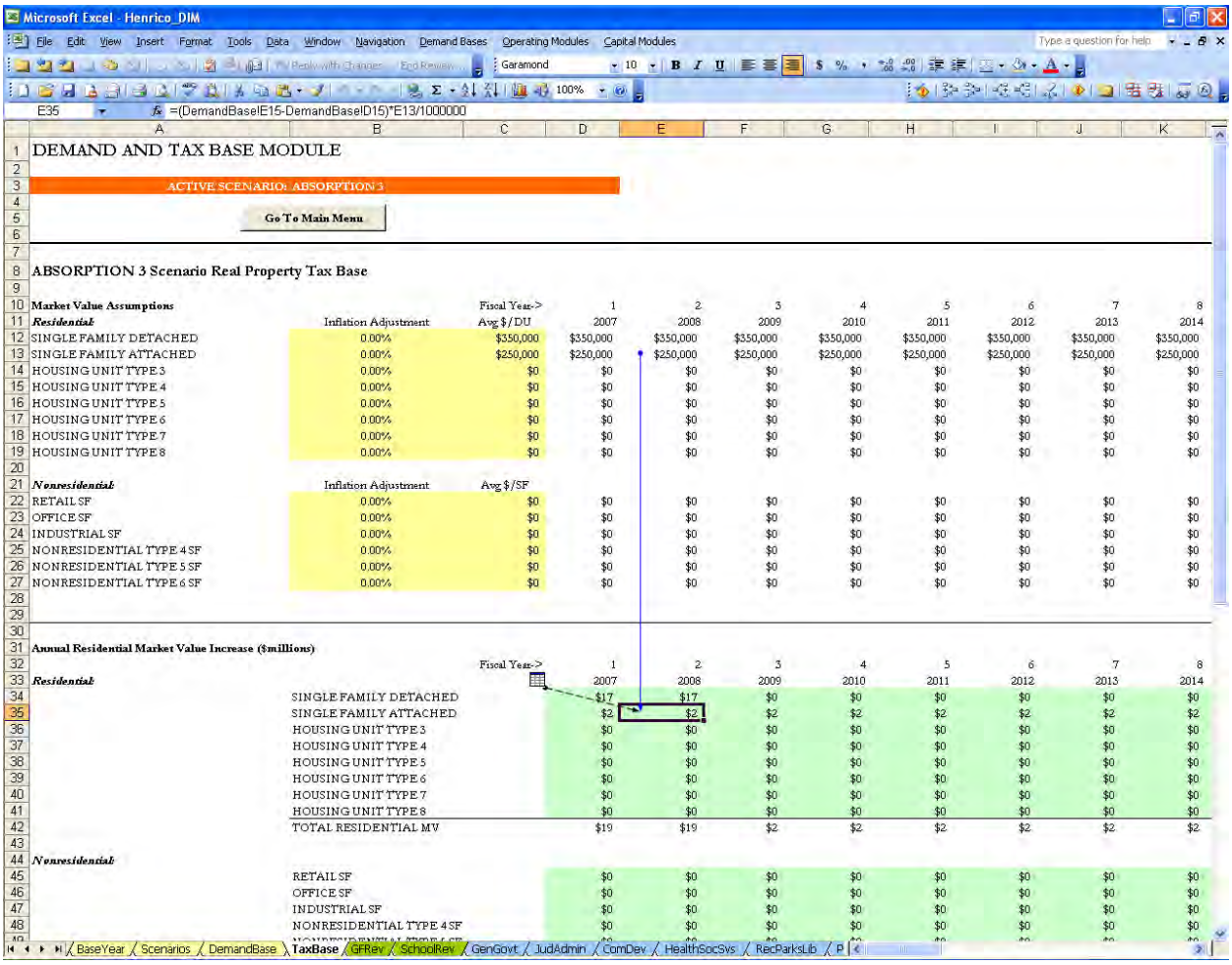
This section of the User's Manual provides technical references for various procedures and functions contained in Microsoft Excel. If there are any questions regarding how certain input variables are treated and how specific outputs are calculated, this section should provide the desired information. If the user undertakes any modifications to any of the worksheets, you should be completely familiar with the technical data provided here.

A. Helpful Excel Features

The Louisville Fiscal Impact Model uses several Excel features that make it easier to understand and modify the various modules in the model. To facilitate the use of these features, a brief description is given along with suggestions on how to use them.

1. Auditing

On the Tools menu, the user may select "Formula Auditing" to trace either the precedents or dependents for an individual cell. This feature temporarily adds arrows to help the user track down the components of a cells formula. This feature is helpful when trying to understand a formula or fix problems within a worksheet. An example of this tool is depicted in the graphic below (from another model).



Microsoft Excel - Henrico_DIM

File Edit View Insert Format Tools Data Window Navigation Demand Bases Operating Modules Capital Modules

E35 =(DemandBase!E15-DemandBase!D15)*E13/1000000

DEMAND AND TAX BASE MODULE

ACTIVE SCENARIO: ABSORPTION 3

Go To Main Menu

ABSORPTION 3 Scenario Real Property Tax Base

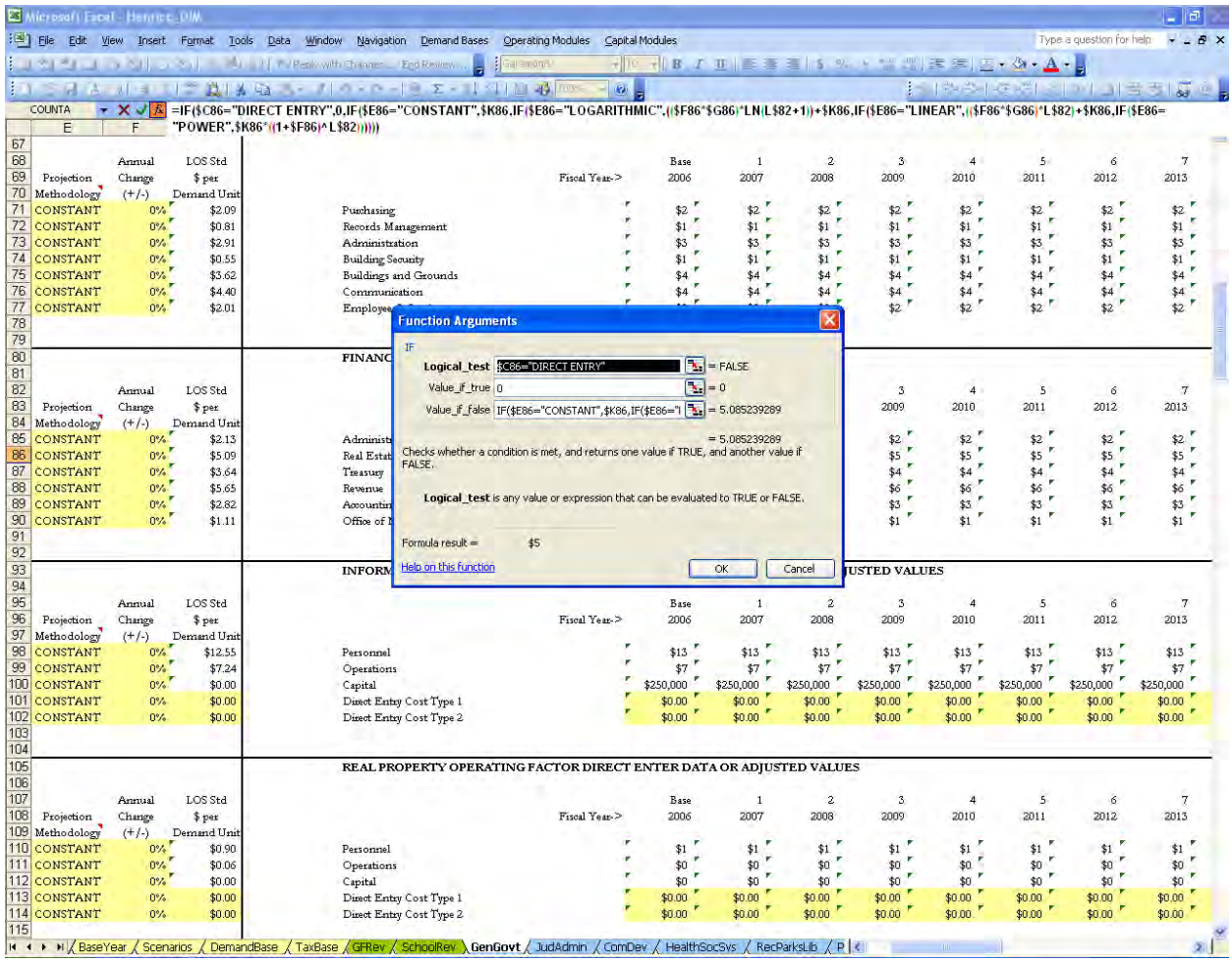
Market Value Assumptions		Fiscal Year->	1	2	3	4	5	6	7	8
Residential	Inflation Adjustment	Avg $/DU	2007	2008	2009	2010	2011	2012	2013	2014
SINGLE FAMILY DETACHED	0.00%	$350,000	$350,000	$350,000	$350,000	$350,000	$350,000	$350,000	$350,000	$350,000
SINGLE FAMILY ATTACHED	0.00%	$250,000	$250,000	$250,000	$250,000	$250,000	$250,000	$250,000	$250,000	$250,000
HOUSING UNIT TYPE 3	0.00%	$0	$0	$0	$0	$0	$0	$0	$0	$0
HOUSING UNIT TYPE 4	0.00%	$0	$0	$0	$0	$0	$0	$0	$0	$0
HOUSING UNIT TYPE 5	0.00%	$0	$0	$0	$0	$0	$0	$0	$0	$0
HOUSING UNIT TYPE 6	0.00%	$0	$0	$0	$0	$0	$0	$0	$0	$0
HOUSING UNIT TYPE 7	0.00%	$0	$0	$0	$0	$0	$0	$0	$0	$0
HOUSING UNIT TYPE 8	0.00%	$0	$0	$0	$0	$0	$0	$0	$0	$0
Nonresidential	Inflation Adjustment	Avg $/SF								
RETAIL SF	0.00%	$0	$0	$0	$0	$0	$0	$0	$0	$0
OFFICE SF	0.00%	$0	$0	$0	$0	$0	$0	$0	$0	$0
INDUSTRIAL SF	0.00%	$0	$0	$0	$0	$0	$0	$0	$0	$0
NONRESIDENTIAL TYPE 4 SF	0.00%	$0	$0	$0	$0	$0	$0	$0	$0	$0
NONRESIDENTIAL TYPE 5 SF	0.00%	$0	$0	$0	$0	$0	$0	$0	$0	$0
NONRESIDENTIAL TYPE 6 SF	0.00%	$0	$0	$0	$0	$0	$0	$0	$0	$0

Annual Residential Market Value Increase ($millions)		Fiscal Year->	1	2	3	4	5	6	7	8
Residential			2007	2008	2009	2010	2011	2012	2013	2014
	SINGLE FAMILY DETACHED		$17	$17	$0	$0	$0	$0	$0	$0
	SINGLE FAMILY ATTACHED		$2	$2	$2	$2	$2	$2	$2	$2
	HOUSING UNIT TYPE 3		$0	$0	$0	$0	$0	$0	$0	$0
	HOUSING UNIT TYPE 4		$0	$0	$0	$0	$0	$0	$0	$0
	HOUSING UNIT TYPE 5		$0	$0	$0	$0	$0	$0	$0	$0
	HOUSING UNIT TYPE 6		$0	$0	$0	$0	$0	$0	$0	$0
	HOUSING UNIT TYPE 7		$0	$0	$0	$0	$0	$0	$0	$0
	HOUSING UNIT TYPE 8		$0	$0	$0	$0	$0	$0	$0	$0
	TOTAL RESIDENTIAL MV		$19	$19	$2	$2	$2	$2	$2	$2
Nonresidential										
	RETAIL SF		$0	$0	$0	$0	$0	$0	$0	$0
	OFFICE SF		$0	$0	$0	$0	$0	$0	$0	$0
	INDUSTRIAL SF		$0	$0	$0	$0	$0	$0	$0	$0
	NONRESIDENTIAL TYPE 4 SF		$0	$0	$0	$0	$0	$0	$0	$0

BaseYear / Scenarios / DemandBase / TaxBase / GFRev / SchoolRev / GenGovt / JudAdmin / ComDev / HealthSocSvs / RecParksLib / P

2. Function Wizard

This feature provides the user with a concise explanation of Excel functions and their various components. The function wizard is helpful when writing new formulas and when trying to understand the components of existing formulas used by the model. An example of the function wizard is shown in the figure below (from another model).



3. Chart Wizard

After results have been analyzed, the user may wish to incorporate additional charts. TischlerBise recommends that charts be inserted as a separate worksheet and then the worksheet renamed to help the user easily find the new graphic. The user should highlight or select the block of data to be graphed and then from the Insert menu, choose "Chart". The Chart Wizard will take the user through four steps with tabs available in each step for changing data. These steps will open Excel's Chart Wizard, which may be used to create the desired graphic. On the fourth step select the option "As New Sheet" to add the chart in a separate sheet in the Model.

B. Common Functions Used in FISCALS

There are several common Excel functions that may be found throughout the Fiscal Impact Model. A basic understanding of these functions may help the user edit formulas and adapt the worksheets to particular analysis.

1. Lookup Functions

This application frequently uses both horizontal and vertical lookup functions. The common use of this function is to obtain data for a particular geographic area or demand base. Use Excel's Function Wizard to identify the required and optional components of a lookup formula.

2. Logical Functions

Within the application, logical functions are used to test specific conditions and then alter worksheets according to these conditions. There are three common logical functions in the fiscal model. An "IF" formula is used to test a condition and then return one value if the condition is true and another value if the condition is false. The model may also use an "OR" function to test if either two conditions are true. The third type of logical function used in the model is the "MAX" function. This function is used to return the maximum of two variables and is used by the model to avoid negative numbers.

3. Naming of Cells and Ranges

Excel allows for the user to **name** cells and ranges. This is particularly useful when trying to write and understand complex formulas. There are numerous cells and ranges within the City of Louisville application that are named. For example, rather than referring to the Active Scenario Demand Base in a formula as "DemandBase!$B$11:$AB$60" the model refers to this range as **Scenario_Demand_Base**. Other examples include the cell where the scale factor is entered, which is referred to as Scale_Factor.

C. Direct Entries

As discussed earlier, direct data entry has the advantage of loading detailed information into the model. However, the user must be careful when using direct data entries, as incorrect outputs can occur if the user is unfamiliar with the flow of calculations throughout the model.

For example, the ability to reflect one-time costs/revenue may be desired, such as the case if a developer proffered a certain amount and staff wanted to reflect this amount in the analysis. To reflect a one-time cost or revenue, the most appropriate method would be to edit the output formula so that it is not a cumulative calculation. For example, most output formulas contain a MAX argument. Just after MAX, the formula contains a reference to the previous cell, which is then added to the results of VLOOKUP function. The user would simply delete the cell reference after MAX to reflect a one-time cost. The cell/row should then be shaded yellow and a

comment inserted (using the Insert Comment command) pertaining to the entry. The user can use the auditing function discussed above to trace formulas. An example is shown below:

Before:

MAX(L465+(((VLOOKUP($C165,Scenario_Demand_Base,M$461+2,FALSE)-VLOOKUP($C165,Scenario_Demand_Base,M$461+1,FALSE))*$D165*M165)/Scale_Factor),0)))))

After (reflecting one-time nature of output):

MAX(((VLOOKUP($C165,Scenario_Demand_Base,M$461+2,FALSE)-VLOOKUP($C165,Scenario_Demand_Base,M$461+1,FALSE))*$D165*M165)/Scale_Factor),0)))))

D. Adding Menu Items

For advanced users, adding additional menus and submenus to the application can be accomplished using the Visual Basic Editor found in Excel, under the Tools menu. Visual Basic for Applications (VBA) uses modules to store procedures and code. The code for the custom menu can be found in the module named Command. The existing code can be used as a guide to add menu headings, submenus and menu items. The user should look for green text, which are notes indicating what action(s) the code that follows executes. For example, to add a new demand base category and associated items under the Operating Modules menu, the user would scroll down to the code that accompanies demand bases. An example is shown below.

```
ADD A NEW MENU
  Set NewMenu = NewMenuBar.Controls.Add _
  (Type:=msoControlPopup)
  NewMenu.Caption = "&Operating Modules"
```

This menu currently contains eight menu headings. To add a ninth, the user can simply copy the relevant code, paste in the appropriate location and then edit for the appropriate heading. This is shown below:

```
EIGHTH MENU ITEM
  Set MenuItem = NewMenu.Controls.Add(Type:=msoControlPopup)
  With MenuItem
    .Caption = "Capital Projects Management"
  End With
```

```
'  First SubMenu Item
   Set SubMenuItem = MenuItem.Controls.Add(Type:=msoControlButton)
   With SubMenuItem
      .Caption = "Capital Projects Management Base Year Budget Input"
      .OnAction = "CPM"
   End With

'  Second SubMenu Item
   Set SubMenuItem = MenuItem.Controls.Add(Type:=msoControlButton)
   With SubMenuItem
      .Caption = "Capital Projects Management Summary"
      .OnAction = "CPMSum"
   End With
```

The user would then paste this code prior to the next ADD A NEW MENU command and edit appropriately (i.e. NINTH MENU ITEM and relevant captions). The user should note the .OnAction = code. This references an action, or event in the application. In this case a macro program named "CPM". To have a menu item that directs the user to a new department titled CDBG Programs, for example, the user would edit the .Caption code to read CDBG Base Year Budget Input and would enter the name of the macro that contains the procedure that directs the user to the CDBG Budget Input Area. (The user would have to record this macro.) In this case we will assume the macro is called "CDBGInput". Examples of macro code can be found under the Tools menu, Macro and then Macros, which will show a list of all the macros contained the application.

SUBJECT: **RESOLUTION NO. 27, SERIES 2015 – A RESOLUTION AMENDING THE 2015 BUDGET BY AMENDING APPROPRIATIONS IN THE GENERAL FUND, URBAN REVITALIZATION DISTRICT FUND, OPEN SPACE & PARKS FUND, CONSERVATION TRUST – LOTTERY FUND, CEMETERY FUND, HISTORIC PRESERVATION FUND, CAPITAL PROJECTS FUND, WATER UTILITY FUND, WASTEWATER UTILITY FUND, STORM WATER UTILITY FUND, GOLF COURSE FUND, AND FLEET MANAGEMENT FUND FOR CARRY FORWARD OF APPROPRIATIONS AND ADDITIONAL APPROPRIATIONS WITHIN SUCH FUNDS AND ADJUSTING BUDGETED REVENUE IN THE GENERAL FUND, URBAN REVITALIZATION DISTRICT FUND, OPEN SPACE & PARKS FUND, HISTORIC PRESERVATION FUND, CAPITAL PROJECTS FUND, IMPACT FEE FUND, WASTEWATER UTILITY FUND, STORM WATER UTILITY FUND, GOLF COURSE FUND, AND DEBT SERVICE FUND – PUBLIC HEARING (Advertised *Daily Camera* 05/03/2015)**

DATE: **MAY 5, 2015**

PRESENTED BY: **KEVIN WATSON, FINANCE**

SUMMARY:

The attached resolution proposes a series of amendments to the City's 2015 Operating & Capital Budget. Staff requests these proposed amendments to:

1. Carry-forward unused appropriations from 2014 to 2015 for projects that Council approved for 2014 but, for various reasons, staff needed to extend work on the project or purchase into 2015. In other words, staff asks for the unspent budgets for projects not completed, or equipment not purchased, in 2014 to be added to the current 2015 budget. Total carry-forward = +$10,796,890.

2. Formally adopt other adjustments to the 2015 expenditure budget. These adjustments are for items that staff did not anticipate, or were not measureable, at the time Council adopted the original 2015 budget in November of 2014. Staff has previously discussed many of these items with the Council, but they have not been formally incorporated into the City's 2015 expenditure budget. Total other adjustments = +$23,906,740.

3. Formally adjust the revenue budget to new revenue estimates or for new revenue sources that staff did not anticipate, or were not measureable, at the time Council

adopted the original 2015 budget in November of 2014. Total revenue adjustments = +$22,588,640.

State law requires a public hearing to amend the budget. Staff published a notice of the public hearing as required by law.

The budget amendment is shown by line item detail and subtotaled by fund in Appendices A, B, and C to the Resolution. The following discussion includes departmental narratives for each line item, or related group of line items.

1. EXPENDITURE AMENDMENTS – Carry Forward of Unused Appropriations from 2014 to 2015 (Appendix A to the Resolution) and Additional Adjustments to 2015 Appropriations (Appendix B to the Resolution)

010-144-53500-22 Website Maintenance (+$3,000)
Carry forward of funding for website design theme work for arts and library

010-172-52150-01 Software Subscription & Maintenance Fees (+8,000)
Additional budget needed for 7 DELL server support/maintenance extensions ($6,700) and the addition of a VMWare Software support annual contract ($1,200).

010-172-53810-06 Telephone Subscription (VOIP) (-$25,000)
Reduction in operating budget since staff will not be proceeding with a subscription model for telephones.

010-220-53100-01 Professional Services - Audit (+$50,000)
Carry forward of estimated contingency fee related to sales, use, and franchise tax audit of Comcast and Public Service Company.

010-321-53826-00 High Risk Tactical & Entry Training (+$5,120)
Additional budget dollars needed for Purchase Order #91949 (entry vests for Louisville Officers participating on the County SWAT Team). Pending Purchase Order #91949 (entry vests for Louisville Officers participating on the County SWAT Team)

010-433-52210-06 Street Supplies – Ice Slicer (+$40,000)
Increasing the approved 2015 Streets Snow Deicer budget from $69,300 to $109,300. Higher than average snowfall and long periods of cold temperatures from January through early March required more road deicer than historical averages used for budgeting purposes. This budget amendment provides additional funding through the end of 2015 for street deicing materials.

010-442-53300-01 Communication Services - Telephone (+$6,300)
Correction – original budget request was recorded in error.

010-444-53500-01 Parts/Repairs/Maintenance – Buildings/Facilities (+$10,000)
This funding represents a carry forward of funds to finish the closeout and final payment process for a 2014 contract that is substantially completed.

010-444-53500-10 Parts/Repairs/Maintenance – HVAC (+$15,210)
This funding represents a carry forward of funds to finish the closeout and final payment process for a 2014 contract that is substantially completed.

010-510-53100-03 Professional Services - Consulting (+$55,610)
Carry forward of funding to complete the fiscal impact model consultation and document scanning. Staff expects the fiscal model to be complete by the 2nd quarter of 2015, and the scanning component to be complete by the third quarter of 2015.

010-510-53100-99 Professional Services - Other (+$75,180)
Cary forward of funds for the South Boulder Road and McCaslin Small Area Plans. Staff expects the South Boulder Road Small Area Plan to be complete by the third quarter of 2015 and the McCaslin Small Area Plan to be complete in the fourth quarter of 2015.

010-530-53100-30 Professional Services – Microfilming/Laserfiche Imaging (+$17,840)
Carry forward of funding to the 2015 budget. Staff capacity was limited because of internal turn-over. Staff has the necessary capacity in 2015. Staff expects this item will be completed in the 3rd quarter of 2015.

010-110-57030-00 Transfer to Capital Projects Fund (+$385,000)
Additional transfer from the General Fund to the Capital Projects Fund for property acquisition. This funding will be needed if Council approves the acquisition of 1125 Pine Street for a future extension of Lee Avenue. The property owner has agreed to sell at this price.

010-110-57043-00 Transfer to Impact Fee Fund (+$98,370)
Transfer from the General Fund to the Impact Fee Fund for payment of impact fees for Boulder County Housing Authority.

022-110-55840-83 Payments from Construction Fund – DELO (+$967,000)
City funding for the Regional Detention facility within the Core Project Area ($490,000) plus the remaining TIF Bond proceeds ($477,000)

028-750-51110-00 Temporary Salaries (+$18,190)
028-750-51200-00 FICA Expense (+$1,390)
028-751-51110-00 Temporary Salaries (-$18,190)
028-751-51200-00 FICA Expense (-$1,390)
This amendment reflects the transfer of one Parks seasonal to Open Space. In the past, Parks FTE's performed maintenance duties on Open Space including emptying

trash receptacle and mowing the trail edge. These responsibilities are now being transferred to Open Space for the summer and a seasonal will be utilized to complete the duties.

028-799-55210-04 City Services Facility (25%) (+$1,068,100)
042-499-55210-04 City Services Facility (25%) (+$1,068,100)
051-499-55210-04 City Services Facility (25%) (+$1,068,100)
052-499-55210-04 City Services Facility (25%) (+$1,068,100)
This carries forward approximately $3.9 million in previously budgeted funds and adds approximately $400,000 ($100,000 in each fund) in additional funds for 2015 to complete construction of the City Services Facility. The carry forward of funding is necessary because it took longer to secure approval for the project from the CTC owners association and City Council than originally anticipated when the budget was approved in November 2013. The $400,000 in additional funding is needed to cover the net increase in cost associated with construction related scope changes identified between the 60% design and final design. The project will be complete this year.

028-799-55120-04 Cottonwood park Acquisition and Demolition (+$23,530)
This carries forward funds to finish the closeout and final payment process for a 2014 contract that is substantially completed.

028-799-55330-49 Lastoka Open Space (+$10,000)
Adds $10,000, increasing the 2015 total to $17,000 for improvements needed to convey water from the north side of the property to the Community Supported Agricultural area.

028-799-55410-01 New Equipment – Truck (+$70,000)
Carries forward $20,449 and adds $49,551 for a total of $70,000 to purchase two Park trucks, one of which was scheduled for replacement in 2014 and the other, a new truck to support a new Park position Council approved in 2014.

029-799-55220-15 Restroom Improvement Program (+$26,590)
029-799-55330-56 Park Renovations (+$39,660)
029-799-55220-15 Restroom Improvement Program (+$26,590)
042-799-55440-40 ADA Requirements (+$18,669)
Carry forward funding for Parks Building Renovations with the primary use for Miners Restroom Renovation project and Lake Park shelter repairs.

029-799-55330-88 Signage and Trails Wayfinding (+$20,540)
Carry forward the Parks & Open Space Signage and Trails Wayfinding funding to complete project work and increase collaboration with the Planning Department's 2015 Wayfinding project efforts. This brings the 2015 total to $45,540.

029-799-55330-92 Emergency Tree Work (+$10,000)
Carry forward $10,000 to take care of hazard trees located on the Cottonwood Park/former church property. Original funds were mainly set aside for potential impacts

from emerald ash borer (which did not occur) and additional flood related tree work (which was not needed).

032-799-55380-01 General Cemetery Improvements (+$30,000)
Carry forward remaining 2014 funds for purchase and implementation of a cemetery software management program.

033-540-53100-74 Professional Services – Preservation Master Plan (+$19,410)
Carry forward funding to be used for the Preservation Master Plan. The Plan started in the 4th quarter of 2014 and staff expects to complete work in the 2nd quarter of 2015.

033-542-55100-00 Property Acquisitions (+$286,800)
Carry forward because stabilization work on the Grain Elevator has taken longer than anticipated. Staff expects full stabilization to be complete in November 2015. Louisville Mill Site LLC is managing the project.

042-110-55100-03 Property Acquisition (+$385,000)
This funding will cover the expenditure if Council approves the acquisition of 1125 Pine Street for a future extension of Lee Avenue. The property owner has agreed to sell at this price.

042-110-55200-11 Louisville Housing Authority & Habitat for Humanity (+$10,560)
This carries forward the remaining balance of unspent Stadium Tax revenue for the City's Non-Profit Grant Program.

042-110-55200-38 City Hall Fire Sprinkler System (+$23,530)
This carry forward is needed to closeout and make final payment for the 2014 contract, which is substantially completed.

042-110-55200-40 Fiber Enhancement – Library & Museum (+$30,000)
This carries forward funding to replace deficient multimode fiber segment between City Hall and Louisville Library and to connect the Louisville Museum to the City Network. This project will coincide with alley construction taking place in 2015.

042-110-55220-07 Peace Officer Memorial in Helburg Park (+$20,000)
This adds funding in 2015 that was originally anticipated to be spent in 2016. The cost for this project is estimated at $50,000 with the City initially committing to provide $10,000 towards the project in 2015 and up $20,000 in 2016, with the Helburg Memorial Committee asked to raise the remaining $20,000. As of April 10, 2015, the Committee as raised approximately $21,000, and has asked that the project be completed in 2015.

042-110-55300-03 Upgrade City Website (+$10,740)
This carries forward funding needed to close out work that is substantially complete.

042-110-55420-17 Library Copier Replacement (+$21,000)
This carries forward funding to replace 3 Library copiers in 2015 due to end-of-life. 2 units are revenue generating public facing pay-per-copy units.

042-110-55500-19 Police Dept Intercom Radio System Replacement (+$7,670)
Carry forward of funding for work that was delayed but has now been completed.

042-110-55500-20 Police Dept Printer, Copier, Scanner Replacement (+$20,000)
Carry forward funding to replace existing equipment; Department delayed purchase planned in 2014.

042-110-55500-29 City-Wide Telephone System Upgrade (+$50,000)
This adds funding to cover costs for implementation and configuration assistance for the telephone system replacement and the 1st year of support, the total for which exceeded the $75,000 budget. This cost increase will be fully offset by $25,000 in savings from not proceeding with a subscription model for telephones, which will not be necessary with the new phone system, and reducing the IT Operating Budget item 010-172-53810-06 by that amount, and by additional ongoing operational savings from disconnecting 3 T1 circuits and restructuring the City's analog line contracts during the implementation of the new phone system.

042-499-55310-40 Hwy 42 & Pine Street Intersection (+$5,040)
This carries forward funding to close out completed work for the design of improvements at Highway 42 and Pine Street intersection.

042-499-55310-59 McCaslin/US36 Interchange (DDI) (+$103,000)
This carries forward funding to upgrade the base lighting package to LED lighting for the McCaslin Blvd. and US 36 Diverging Diamond Interchange, including $15,000 to provide for future traffic operations infrastructure to ensure future connectivity, monitoring, and synchronization of signals from Marshall Road to Dillon Road across the US 36 Interchange, and $12,000 to provide for additional landscape construction based upon recommendations for the DDI to ensure a maintainable landscape.

042-499-55310-63 Short Street Traffic Signal (+$4,000)
This adds funding necessary to perform traffic analysis and projections to address CDOT comments and questions regarding the approval process for improvements to Highway 42 and Short Street intersection.

042-499-55420-01 Motor Vehicle/Road Equipment (+$135,100)
042-499-55310-04 Street Reconstruction Program (-$103,500)
This adds funding to purchase a new vehicle for the new Facilities Technician III position ($31,600). This purchase was anticipated in the 2015 budget process and noted in personnel requests, but funding was inadvertently not placed in a specific line item of the budget. The $103,500 will be reclassified from street reconstruction to

equipment for the purchase of a skid steer, attenuator, and roller to be used for street patching work.

042-499-55310-48 Wayfinding (+$78,900)
This carries forward $5,000 to install directional signs that adhere to standards set by the Manual on Uniform Traffic Control Devices to help drivers find public parking lots in Downtown Louisville. Staff expects the signs to be installed in the 2nd quarter of 2015. The remaining $73,900 carry forward will be used to develop city-wide "branding" signage as part of the McCaslin wayfinding program and to install those signs in Downtown in the 4th quarter of 2015.

042-499-55310-53 Hwy 42 Traffic Signals (+$426,190)
This carries forward $276,190 for this project and adds $150,000 to construct an intersection at Highway 42 and Paschal. Of total project costs, $135,000 are developer funds and the remaining costs will be split with the City of Lafayette. Lafayette is providing reimbursement in 2016. Staff anticipates construction to begin in the 2nd or 3rd Quarter of 2015 and finish by the 4th Quarter of 2015.

042-499-55310-58 Wayfinding – McCaslin & Centennial Valley (+$90,610)
This carries forward funding budgeted for the McCaslin and South Boulder Road Small Area Plans' wayfinding component. The Plans started in the 3rd quarter of 2014. Staff expects the South Boulder Road Small Area Plan to be completed by the 3rd quarter of 2015 and the McCaslin Small Area Plan to be complete in the 4th quarter of 2015.

042-499-55310-61 BNSF RR Underpass/N Drainage (25%) (+$45,460)
053-499-55840-65 BNSF RR Underpass/N Drainage (75%) (+$146,370)
This carries forward $50,000 and adds $141,830 (with 25% coming from the Capital Projects Fund and 75% coming from the Stormwater Fund) to design the BNSF railroad underpass railroad adjacent to Steel Ranch. Construction timing is dependent on the BNSF approving designs and scheduling the construction and the extent to which the City wants to offset City funding with Urban Drainage funding. The Takoda Metro District has contributed $250,000 toward construction of this underpass.

042-499-55310-64 Downtown Parking/Transit Project (+$280,000)
This carries forward funding for the acquisition of a portion of 1055 Courtesy Road (the Tebo property) for downtown parking. The City has paid $20,000 earnest money and staff anticipates closing on the property in 2015. An additional $120,000 will be needed to cover the remaining portion of the $417,000 purchase price plus closing costs. $40,000 is currently budgeted in 2015 for design and related work and $400,000 is included in the 2016 CIP for parking lot construction.

042-499-55310-61 Hwy 42/Short Crossing Improvements (+$500,000)
This carries forward funding to finish design, CDOT permitting, and then construct intersection improvements at Highway 42 and Short Street. These funds coincide with anticipated grant funding from CDOT.

042-799-55330-02 Pond Liner Replacement (50%) (+$41,960)
052-498-55330-02 Pond Liner Replacement (50%) (+$41,960)
This carries forward unspent funds to close out project and make final payment. The project was completed in March 2015.

042-799-55330-33 Median Improvements (+$39,680)
This carries forward unspent funds for Cherry Street and McCaslin Blvd. median improvements to irrigation systems, plant material and hardscape.

042-799-55440-40 ADA Requirements (+$18,670)
This carries forward funding for Parks Building Renovations with the primary use for Miners Restroom Renovation project and Lake Park shelter repairs.

051-462-53813-05 NCWCD – SWSP Yearly Maintenance (Assessment) (+$115,000)
051-499-55450-36 NCWCD Pump Station Variable Drives (-$115,000)
Correction of budget error – reclassification from capital account to operating account.

051-463-52211-00 Meter Pits & Meters (+$20,000)
This carries forward and reallocates funding to install meters and meter pits for normal development related process. This funding was intended to move from the CIP to an operational line item. This did not take place during the 2014 budget process and is therefore being completed through this budget amendment.

051-498-55410-01 Vehicle & Equipment Replacement (+$28,300)
This adds funding to replace a Public Works Operations vehicle that was hit by a motorist and totaled in a November 2014 accident. The expense is partially offset by an $8,476 insurance reimbursement for the totaled 2001 vehicle.

051-498-55830-04 US36 Raw Waterline Replacement (+$177,000)
This carries forward funding to improve the raw water supply piping that goes under US 36 during the current corridor improvements. This funding will be held until the US 36 project team completes this work and invoices the City.

051-498-55840-07 3MG Tank (+$2,340)
This carries forward funding to finish project closeout for final payment and as-built drawings. This work will be completed the 2nd Quarter of 2015.

051-498-55840-23 Valve R&R (+$5,930)
This carries forward funding to finish planned valve replacements at the Water Treatment Plants. Staff anticipates this work to be completed the 2nd Quarter of 2015.

051-498-55840-80 Eldorado Intake – Flood Reconstruction (+$1,200,000)
This carries forward $675,750 and adds $524,250 in 2015 to address flood repairs and reconstruction from the 2013 Flood. The project is currently designed and working through necessary Federal approvals. Staff anticipated construction in 2015.

051-499-53100-31 Raw Water Master Plan (+$150,000)
This carries forward previously approved funds in 2014 that support current work in progress to update the City's long term water supply planning efforts.

051-499-55360-11 Lateral Lining (+$93,780)
This carries forward funds to finish the closeout and final payment process for a 2014 contract that is substantially completed.

051-499-55450-19 Sludge Treatment/Handling (+$2,210,000)
This carries forward funds to finish design, permitting, and begin construction of a new sludge handling facility at the South Water Treatment Plant.

051-499-55450-30 North Plant Carbon Feed (+$12,460)
This carries forward funds to close out completed $45,811 in work to design taste and odor improvements at the Sid Copeland Water Treatment Facility. This represents a savings of $150,000 to as much as $700,000 for equipment originally anticipated that through analysis and experimentation staff concluded was unnecessary because they were able to change operational procedures and achieve similar results.

051-499-55450-31 Heating Upgrades (HBWTF) (+$32,000)
This carries forward funds that support current work in progress to be completed by 3rd Quarter 2015.

051-499-55450-33 North Plant Flooring Replacement (+$15,000)
This carries forward funds to finish a project that has currently bid and will soon be under construction and finished by the end of 2nd Quarter 2015.

052-498-55810-07 Roof Structure (+$20,000)
This adds funding to address emergency roof repairs at the WWTP.

052-499-55810-14 Wastewater Plant Upgrade (+$13,750,000)
This adds funds ($12,750,000 from loan proceeds and $1,000,000 from a Colorado Department of Public Health & Environment Grant) to cover estimated 2015 project expenses to begin construction of the WWTP Improvements.

053-499-55810-09 Sand/Salt Storage Building (+$135,000)
This carries forward funds for construction of the sand/salt storage building at the City Services Facility.

053-499-55840-75 Core Area Utility (80%) (+$600,000)
This carries forward funding for part of the Core Area Utility project; specifically construction of that portion of regional storm water conveyance through the DELO development that is not associated with that development. Staff expects infrastructure construction to begin in 2015 in conjunction with the DELO Phase 2 project.

053-499-55840-79 CCS Drainage (+$250,000)
This carries forward funding for City storm water improvements to be completed in coordination with construction of the proposed Coal Creek Station development.

053-499-55840-81 Golf Course Drainage Mitigation (+$150,000)
This carries forward funding as construction/grow-in is still in progress and final closeout on the project is not yet complete.

053-499-55840-99 City-Wide Storm Sewer Outfall Improvements (+$6,500,000)
This adds funding ($5,500,000 from loan proceeds and $1,000,000 from a grant from the Urban Drainage & Flood Control District) to cover estimated 2015 project expenses to begin construction of the Eastern Outfall Storm Water Improvements.

054-715-53500-01 Repairs & Maintenance – Buildings & Facilities (+$30,000)
This adds funding to address previously unknown building and health code deficiencies at Coal Creek Clubhouse concessionaire agreement, (+$30,000)

054-799-55260-03 Golf Course Flood Reconstruction (+$227,570)
This carries forward funding to cover construction/grow-in still in progress including funding for Booster Pump trenching ($15,979), Re-Use Water Overflow Cap ($1,988), Landfill costs ($1,337), and driving range mats ($9,000).

068-110-55410-01 Motor Vehicle/Road Equipment (+$141,750)
This carries forward funding for two dump trucks, ordered in 2014 and on which the City is still awaiting delivery.

2. REVENUE AMENDMENTS – Changes to 2015 Revenue Budget (Appendix C to the Resolution)

010-001-41100-00 Property Tax (+$23,560)
097-001-41100-00 Property Tax (+$6,940)
Adjustment to property tax revenue based on final 2014 assessed valuation.

010-001-41200-00 Sales Tax (+$196,980)
028-001-41200-00 Sales Tax (+$37,560)
033-001-41200-00 Sales Tax (+$11,960)
042-001-41200-00 Sales Tax (+$100,090)
Adjustment to sales tax revenue to equal a 3.5% increase over 2014 actual sales tax revenue, plus an additional adjustment for Alfalfa's.

010-001-41205-00 Use Tax – Consumer (-$12,500)
028-001-41205-00 Use Tax – Consumer (+$21,270)
033-001-41205-00 Use Tax – Consumer (+$11,720)
042-001-41205-00 Use Tax – Consumer (-$6,250)
Adjustment to consumer use tax revenue to equal 2014 actual consumer use tax revenue, plus an adjustment for Whitewave.

010-001-41210-00 Use Tax – Auto (+$39,280)
028-001-41210-00 Use Tax – Auto (+$4,910)
033-001-41210-00 Use Tax – Auto (+$1,640)
Adjustment to auto use tax revenue to equal a 4% increase over 2014 actual auto use tax revenue.

010-001-41500-00 Lodging Tax (-$9,230)
Adjustment to lodging tax revenue to equal a 3% increase over 2014 actual lodging tax revenue.

010-001-43310-00 Cigarette Tax (-$8,430)
Adjustment to cigarette tax revenue to equal a 3% decrease from 2014 actual cigarette tax revenue.

022-001-43299-00 Grant Revenue – City of Louisville (+$490,000)
Amount deposited to construction fund at US Bank from the City for the DELO Storm Water Project.

028-001-43299-00 Grant Revenue (+$8,000)
Grant from the Colorado Department of Agriculture for noxious weed control and education.

028-001-47100-00 Sales of Assets (+$202,770)
Sale of Easements to Public Service Company (Xcel).

033-001-47100-00 Sales of Assets (+$200,000)
Sale of Grain Elevator Property – amount moved from 2014 revenue to 2015 revenue.

042-001-43299-00 Grant Revenue (+$500,000)
State RAMP Funds for Highway 42 and Short crossing improvements – amount moved from 2014 revenue to 2015 revenue.

042-001-48010-00 Transfer from General Fund (+$385,000)
This transfer from the General Fund to the Capital Projects Fund reflects the additional funding for property acquisition if Council approves the acquisition of 1125 Pine Street.

043-001-48010-00 Transfer from General Fund (+$98,370)
Payment of impact fees for Boulder County Housing Authority.

052-001-47200-00 Bond/Loan Proceeds (+$12,750,000)
053-001-47200-00 Bond/Loan Proceeds (+$5,500,000)
Loan proceeds from the Colorado Water Resources & Power Development Authority for the Wastewater Treatment Plant Upgrade and Storm Sewer Outfall Improvements.

052-001-43299-00 Grant Revenue (+$1,000,000)
Colorado Department of Public Health & Environment Grant for WWTP Upgrade project.

053-001-43299-00 Grant Revenue (+$1,000,000)
Grant from the Urban Drainage & Flood Control District for the City-Wide Storm Sewer Outfall Improvements project.

054-001-43199-00 FEMA & State Grants (+$525,000)
Estimated amount of FEMA/State 2015 reimbursement for golf course reconstruction.

FISCAL IMPACT:
The Finance Department has updated revenue, expenditure, and fund balance estimates for all funds based on the proposed budget adjustments in the attached resolution and other information. The following schedule summarizes those estimates for fiscal year 2015.

Fund Description	Beginning Fund Balance	Revenue & Other Sources	Expenditures & Other Uses [1]	Ending Fund Balance	Amount of Change	Percent of Change
General	3,658,783	17,825,870	18,070,550	3,414,103	(244,680)	-7%
Special Revenue Funds:						
Urban Revitalization District	726,607	854,440	1,434,800	146,247	(580,360)	-80%
PEG Fees	43,598	25,250	15,040	53,808	10,210	23%
Parking Improvement	6,095	50	-	6,145	50	1%
Open Space & Parks	5,253,147	2,783,500	5,206,100	2,830,547	(2,422,600)	-46%
Conservation Trust - Lottery	624,068	186,500	503,090	307,478	(316,590)	-51%
Cemetery Perpetual Care	456,255	28,760	2,750	482,265	26,010	6%
Cemetery	100,223	213,800	213,800	100,223	-	0%
Historic Preservation	905,271	780,690	1,087,960	598,001	(307,270)	-34%
Total Special Revenue Funds	8,115,265	4,872,990	8,463,540	4,524,715	(3,590,550)	-44%
Capital Project Funds						
Capital Projects	7,741,737	10,129,760	16,711,060	1,160,437	(6,581,300)	-85%
Impact Fee	332,633	809,790	333,900	808,523	475,890	143%
Total Capital Project Funds	8,074,370	10,939,550	17,044,960	1,968,960	(6,105,410)	-76%
Debt Service Fund	664,665	702,650	727,780	639,535	(25,130)	-4%
Enterprise Funds (WC Basis)						
Water Utility	10,269,699	8,795,170	12,667,889	6,396,980	(3,872,719)	-38%
Wastewater Utility	8,638,276	17,858,960	19,257,720	7,239,516	(1,398,760)	-16%
Stormwater Utility	2,240,961	7,140,360	8,353,470	1,027,851	(1,213,110)	-54%
Golf Course	164,063	2,858,330	2,868,530	153,863	(10,200)	-6%
Solid Waste & Recycling Utility	77,622	1,554,980	1,548,370	84,232	6,610	9%
Total Enterprise Funds	21,390,621	38,207,800	44,695,979	14,902,442	(6,488,179)	-30%
Internal Service Funds (WC Basis)						
Technology Management	161,847	48,750	60,750	149,847	(12,000)	-7%
Fleet Management	767,527	221,460	391,500	597,487	(170,040)	-22%
Total Internal Service Funds	929,374	270,210	452,250	747,334	(182,040)	-20%
Total All Funds	42,833,078	72,819,070	89,455,059	26,197,089	(16,635,989)	-39%

[1] General Fund Expenditures Include a 3% Projected Turnback, which amounts to $ 488,760

RECOMMENDATION:
Hold a public hearing and approve Resolution No. 27, Series 2015, amending the 2015 budget.

ATTACHMENTS:
1. Proposed Resolution No. 27, Series 2015
2. Appendix A to the Resolution
3. Appendix B to the Resolution
4. Appendix C to the Resolution
5. PowerPoint Presentation

RESOLUTION NO. 27
SERIES 2015

A RESOLUTION AMENDING THE 2015 BUDGET BY AMENDING APPROPRIATIONS IN THE GENERAL FUND, URBAN REVITALIZATION DISTRICT FUND, OPEN SPACE & PARKS FUND, CONSERVATION TRUST – LOTTERY FUND, CEMETERY FUND, HISTORIC PRESERVATION FUND, CAPITAL PROJECTS FUND, WATER UTILITY FUND, WASTEWATER UTILITY FUND, STORM WATER UTILITY FUND, GOLF COURSE FUND, AND FLEET MANAGEMENT FUND FOR CARRY FORWARD OF APPROPRIATIONS AND ADDITIONAL APPROPRIATIONS WITHIN SUCH FUNDS AND ADJUSTING BUDGETED REVENUE IN THE GENERAL FUND, URBAN REVITALIZATION DISTRICT FUND, OPEN SPACE & PARKS FUND, HISTORIC PRESERVATION FUND, CAPITAL PROJECTS FUND, IMPACT FEE FUND, WASTEWATER UTILITY FUND, STORM WATER UTILITY FUND, GOLF COURSE FUND, AND DEBT SERVICE FUND

WHEREAS, the need exists to amend the 2015 budget by amending appropriations in the General Fund, Urban Revitalization District Fund, Open Space & Parks Fund, Conservation Trust – Lottery Fund, Cemetery Fund, Historic Preservation Fund, Capital Projects Fund, Water Utility Fund, Wastewater Utility Fund, Storm Water Utility Fund, Golf Course Fund, and Fleet Management Fund; and

WHEREAS, the need exists to amend the 2015 revenue budget by amending budgeted revenue in the General Fund, Urban Revitalization District Fund, Open Space & Parks Fund, Historic Preservation Fund, Capital Projects Fund, Impact Fee Fund, Wastewater Utility Fund, Storm Water Utility Fund, Golf Course Fund, and Debt Service Fund; and

WHEREAS, the need to amend the 2015 budget arises due to three general reasons:

1. To carry-forward unused appropriations from 2014 to 2015 for projects that were approved for 2014 but not completed by the end of 2014; and

2. To formally adopt other adjustments to the current 2015 appropriations that were not anticipated, or were not measureable, at the time the original 2015 budget was adopted; and

3. To adjust the revenue budget to new revenue estimates or for new revenue sources that were not anticipated, or were not measureable, at the time the original 2015 budget was adopted; and

WHEREAS, funding for any increase in appropriations will come from new/increased revenue or from fund reserves.

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

SECTION 1. That the 2015 General Fund appropriation be increased by $744,630, from $17,981,320 to $18,725,950.

SECTION 2. That the 2015 Urban Revitalization District Fund appropriation be increased by $967,000, from $467,800 to $1,434,800.

SECTION 3. That the 2015 Open Space & Parks Fund appropriation be increased by $1,171,630, from $4,047,710 to $5,219,340.

SECTION 4. That the 2015 Conservation Trust – Lottery Fund appropriation be increased by $96,790, from $406,300 to $503,090.

SECTION 5. That the 2015 Cemetery Fund appropriation be increased by $30,000, from $188,650 to $218,650.

SECTION 6. That the 2015 Historic Preservation Fund appropriation be increased by $306,210, from $782,480 to $1,088,690.

SECTION 7. That the 2015 Capital Projects Fund appropriation be increased by $3,311,710, from $13,713,070 to $17,024,780.

SECTION 8. That the 2015 Water Utility Fund appropriation be increased by $5,014,910, from $7,747,060 to $12,761,970.

SECTION 9. That the 2015 Wastewater Utility Fund appropriation be increased by $14,880,060, from $5,613,630 to $20,493,690.

SECTION 10. That the 2015 Storm Water Utility Fund appropriation be increased by $7,781,370, from $988,960 to $4,657,830.

SECTION 11. That the 2015 Golf Course Fund appropriation be increased by $257,570, from $2,616,490 to $2,874,060.

SECTION 12. That the 2015 Fleet Management Fund appropriation be increased by $141,750, from $249,750 to $391,500.

SECTION 13. That the 2015 General Fund revenue budget be increased by $229,660, from $17,501,850 to $17,731,510.

SECTION 14. That the 2015 Urban Revitalization District Fund revenue budget be increased by $490,000, from $364,400 to $854,440.

SECTION 15. That the 2015 Open Space & Parks Fund revenue budget be increased by $274,510, from $2,685,210 to $2,959,720.

SECTION 16. That the 2015 Historic Preservation Fund revenue budget be increased by $225,320, from $555,370 to $780,690.

SECTION 17. That the 2015 Capital Projects Fund revenue budget be increased by $978,840, from $9,226,670 to $10,205,510.

SECTION 18. That the 2015 Impact Fee Fund revenue budget be increased by $98,370, from $711,420 to $809,790.

SECTION 19. That the 2015 Wastewater Utility Fund revenue budget be increased by $13,750,000, from $4,115,710 to $17,865,710.

SECTION 20. That the 2015 Storm Water Utility Fund revenue budget be increased by $6,500,000, from $835,020 to $7,335,020.

SECTION 21. That the 2015 Golf Course Fund revenue budget be increased by $525,000, from $2,620,400 to $3,145,400.

SECTION 22. That the 2015 Debt Service Fund revenue budget be increased by $6,940, from $695,710 to $702,650.

PASSED AND ADOPTED this 5th day of May 2015.

Robert P. Muckle, Mayor

ATTEST:

Nancy Varra, City Clerk

Appendix A

City of Louisville, Colorado

Proposed Budget Amendment - Carry Forward of Unused Appropriations from 2014

2015 Annual Budget

Account Number	Account Description	Current Budget	Proposed Amendment	Proposed Budget	Comments/Notes
010-144-53500-22	Web Site Maintenance	26,300	3,000	29,300	Purchase Order #91943
010-220-53100-01	Professional Services - Audit	-	50,000	50,000	Delay in Comcast and Xcel Sales, Use, and Franchise Tax Audits
010-321-53826-00	High Risk Tactical & Entry Training	4,000	4,180	8,180	Purchase Order #91949
010-444-53500-01	Parts/Repairs/Maintenance - Buildings/Facilities	990	7,020	8,010	Purchase Order #91991
010-444-53500-10	Parts/Repairs/Maintenance - HVAC	15,000	15,210	30,210	Purchase Order #91991
010-510-53100-03	Professional Services - Consulting	-	19,860	19,860	Purchase Order #91911 - Fiscal Impact Model
010-510-53100-03	Professional Services - Consulting	19,860	35,750	55,610	Purchase Order #91929 - Document Scanning
010-510-53100-99	Professional Services - Other	58,400	75,180	133,580	Purchase Order #91998
010-530-53100-30	Professional Services - Microfilming/Laserfiche Imaging	20,000	17,840	37,840	Purchase Order #91929 - Document Scanning
	Total General Fund		**228,040**		
028-799-55210-04	City Services Facility (25%)	1,612,500	968,100	2,580,600	Total Unspent Budget from 2014 for City Services Facility
028-799-55410-01	New Equipment - Truck	-	20,450	20,450	Carryforward Remainder of Unspent Budget from 2014
	Total Open Space & Parks Fund		**988,550**		
029-799-55220-15	Restroom Improvement Program	160,500	26,590	187,090	Carryforward Remainder of Unspent Budget from 2014
029-799-55330-56	Park Renovations	-	39,660	39,660	Carryforward Remainder of Unspent Budget from 2014
029-799-55330-88	Signage & Trails Wayfinding	-	20,540	20,540	Purchase Order #91968
029-799-55330-92	Emergency Tree Work	-	10,000	10,000	Carryforward for Harzardous Trees on Cottonwood Park
	Total Conservation Trust - Lottery Fund		**96,790**		
032-799-55380-01	General Cemetery Improvements	17,000	30,000	47,000	Carryforward Portion of Unspent Budget from 2014
	Total Cemetery Fund		**30,000**		
033-540-53100-74	Professional Services - Preservation Master Plan	-	19,410	19,410	Purchase Order #91987
033-542-55100-00	Property Acquisitions	-	286,800	286,800	Carryforward Remainder of Unspent Budget from 2014
	Total Historic Preservation Fund		**306,210**		
042-110-55200-11	Louisville Housing Authority & Habitat for Humanity	-	10,560	10,560	Carryforward Balance of Excess Stadium Tax Revenue from 2014
042-110-55500-19	Police Dept Intercom Radio System Replacement	-	7,670	7,670	Purchase Order #92002
042-110-55500-20	Police Dept Printer, Copier, Scanner Replacemt	-	20,000	20,000	Carryforward Unspent Budget from 2014
042-499-55210-04	City Services Facility (25%)	1,612,500	968,100	2,580,600	Total Unspent Budget from 2014 for City Services Facility
042-499-55310-40	Highway 42 & Pine Street Intersection	-	5,040	5,040	Purchase Order #91601
042-499-55310-48	Wayfinding	-	78,900	78,900	Carryforward Unspent Budget from 2014
042-499-55310-53	State Highway 42 Traffic Signals	-	5,040	5,040	Purchase Order #91601
042-499-55310-53	State Highway 42 Traffic Signals	5,040	271,150	276,190	Carryforward Remainder of Unspent Budget from 2014
042-499-55310-58	Wayfinding - McCaslin & Centennial Valley	-	20,610	20,610	Purchase Order #91998
042-499-55310-58	Wayfinding - McCaslin & Centennial Valley	20,610	70,000	90,610	Carryforward Remainder of Unspent Budget from 2014
042-499-55310-61	BNSF RR Underpass/N Drainage (25%)	-	7,960	7,960	Purchase Order #91602
042-499-55310-64	Downtown Parking/Transit Project	40,000	280,000	320,000	Carryforward Remainder of Unspent Budget from 2014

Account Number	Account Description	Current Budget	Proposed Amendment	Proposed Budget	Comments/Notes
042-499-55310-68	SH 42 Short Crossing Improvements	-	500,000	500,000	Carryforward Unspent Budget from 2014
042-799-55330-02	Pond Liner Replacement (50%)	-	2,060	2,060	Purchase Order #91747
042-799-55330-02	Pond Liner Replacement (50%)	2,060	39,900	41,960	Carryforward Remainder of Unspent Budget from 2014
042-799-55330-33	Median Improvements	-	39,680	39,680	Carryforward Remainder of Unspent Budget from 2014
042-799-55440-40	ADA Requirements	-	18,670	18,670	Carryforward Remainder of Unspent Budget from 2014
	Total Capital Projects Fund		**2,345,340**		
051-498-55830-04	US36 Raw Waterline Replacement	-	177,000	177,000	Carryforward Unspent Budget from 2014
051-498-55840-07	3 MG Tank	-	2,340	2,340	Purchase Order #91908
051-498-55840-23	Valve R and R	-	5,930	5,930	Purchase Order #91970
051-498-55840-80	Eldorado Intake - Flood Reconstruction	-	675,750	675,750	Total Unspent Budget from 2014 for Eldorado Intake Reconstruction
051-499-53100-31	Raw Water Master Plan	-	150,000	150,000	Carryforward Unspent Budget from 2014
051-499-55210-04	City Services Facility (25%)	1,612,500	968,100	2,580,600	Total Unspent Budget from 2014 for City Services Facility
051-499-55360-11	Lateral Lining	-	2,940	2,940	Purchase Order #91873
051-499-55360-11	Lateral Lining	2,940	30,490	33,430	Purchase Order #91976
051-499-55450-19	Sludge Treatment/Handling	-	2,210,000	2,210,000	Carryforward Remainder of Unspent Budget from 2014
051-499-55450-30	North Plant Carbon Feed	-	12,460	12,460	Purchase Order #12460
051-499-55450-31	Heating Upgrades (HBWTF)	-	32,000	32,000	Carryforward Unspent Budget from 2014
051-499-55450-33	North Plant Flooring Replacement	-	15,000	15,000	Carryforward Unspent Budget from 2014
	Total Water Utility Fund		**4,282,010**		
052-498-55330-02	Pond Liner Replacement (50%)	-	2,060	2,060	Purchase Order #91747
052-498-55330-02	Pond Liner Replacement (50%)	2,060	39,900	41,960	Carryforward Remainder of Unspent Budget from 2014
052-499-55210-04	City Services Facility (25%)	1,612,500	968,100	2,580,600	Total Unspent Budget from 2014 for City Services Facility
	Total Wastewater Utility Fund		**1,010,060**		
053-499-55810-09	Sand-Salt Storage Building	-	135,000	135,000	Total Unspent Budget from 2014 for City Services Facility
053-499-55840-65	BNSF RR Underpass/N Drainage (75%)	-	33,870	33,870	Purchase Order #91602
053-499-55840-75	Core Area Utility (80%)	-	600,000	600,000	Carryforward Unspent Budget from 2014
053-499-55840-79	CCS Drainage	-	250,000	250,000	Carryforward Unspent Budget from 2014
053-499-55840-81	Golf Course Drainage Mitigation	-	150,000	150,000	Purchase Order #91776
	Total Storm Water Utility Fund		**1,168,870**		
054-799-55260-03	Golf Course Flood Reconstruction	-	199,270	199,270	Purchase Order #91776
	Total Golf Course Fund		**199,270**		
068-110-55410-01	Motor Vehicle/Road Equipment	249,000	141,750	390,750	Purchase Order #91885
	Total Fleet Management Fund		**141,750**		
	Total for All Funds		**10,796,890**		

Appendix B

City of Louisville, Colorado

Proposed Budget Amendment - Additional Adjustments to 2015 Appropriations

2015 Annual Budget

Account Number	Account Description	Current Budget	Proposed Amendment	Proposed Budget	Comments/Notes
010-172-52150-01	Software Subscription & Maintenance Fees	31,000	8,000	39,000	Dell Maintenance Upgrade & VMWare Subscription
010-172-53810-06	Telephone Subscription (VOIP)	25,000	(25,000)	-	Moved to Capital (042-110-55500-29)
010-321-53826-00	High Risk Tactical & Entry Training	8,180	940	9,120	Additional Budget Needed for Purchase Order #91949
010-433-52210-06	Street Supplies - Ice Slicer	69,300	40,000	109,300	Need for Additional Ice Slicer due to Weather
010-442-53300-01	Communication Services - Telephone	700	6,300	7,000	Correction - Budget Request Recorded in Error
010-444-53500-01	Parts/Repairs/Maintenance - Buildings/Facilities	8,010	2,980	10,990	Additional Budget Needed for Purchase Order #91991
010-110-57030-00	Transfer to Capital Projects Fund	900,000	385,000	1,285,000	Additional Transfer Need for Property Acquistion
010-110-57043-00	Transfer to Impact Fee Fund	-	98,370	98,370	Payment of BCHA Impact Fees
	Total General Fund		**516,590**		
022-110-55840-83	Payments from Construction Fund - DELO Development	-	477,000	477,000	Remaining TIF Bond Proceeds
022-110-55840-83	Payments from Construction Fund - DELO Development	477,000	490,000	967,000	City of Louisville Core Project Area Funds
	Total Urban Revitalization District Fund		**967,000**		
028-750-51110-00	Temporary Salaries	11,130	18,190	29,320	Shift of 1,440 Seasonal Hours from Parks to Open Space
028-750-51200-00	FICA Expense	20,500	1,390	21,890	Shift of 1,440 Seasonal Hours from Parks to Open Space
028-751-51110-00	Temporary Salaries	152,250	(18,190)	134,060	Shift of 1,440 Seasonal Hours from Parks to Open Space
028-751-51200-00	FICA Expense	62,490	(1,390)	61,100	Shift of 1,440 Seasonal Hours from Parks to Open Space
028-799-55120-04	Cottonwood Park Acquisition and Demolition	-	23,530	23,530	Additional Budget Needed to Complete Project
028-799-55210-04	City Services Facility (25%)	2,580,600	100,000	2,680,600	Additional Budget Needed to Complete Project
028-799-55330-49	Lastoka Property Conservation	7,000	10,000	17,000	Additional Budget Needed to Complete Project
028-799-55410-01	New Equipment - Truck	20,450	49,550	70,000	Request for New Trucks for New Employees
	Total Open Space & Parks Fund		**183,080**		
042-110-55100-03	Property Acquisition	-	385,000	385,000	New Property Acquisition - 1125 Pine
042-110-55200-38	City Hall Fire Sprinkler System	-	23,530	23,530	Additional Budget Needed for Purchase Order #91942
042-110-55200-40	Fiber Enhancement - Library & Museum	-	30,000	30,000	New Project for Enhanced Fiber Service
042-110-55220-07	Victor Hellburg Memorial	10,000	20,000	30,000	Budget Total Project Cost in 2015
042-110-55300-03	Upgrade City Website	-	10,740	10,740	Additional Budget Needed for Purchase Order #91723
042-110-55420-17	Library Copier Replacement	-	21,000	21,000	Replacement of 3 Library Copiers
042-110-55500-29	City-Wide Telephone System Upgrade	75,000	50,000	125,000	Moved from Operations (010-172-53810-06) and Added $25,000
042-499-55210-04	City Services Facility (25%)	2,580,600	100,000	2,680,600	Additional Budget Needed to Complete Project
042-499-55310-53	State Highway 42 Traffic Signals	276,190	150,000	426,190	Additional Budget Needed to Complete Project
042-499-55310-59	McCaslin/US36 Interchange (DDI)	1,172,730	76,000	1,248,730	Additional Budget Needed for LED Lighting
042-499-55310-59	McCaslin/US36 Interchange (DDI)	1,248,730	15,000	1,263,730	Additional Budget Needed for Traffic Operations Infrastructure
042-499-55310-59	McCaslin/US36 Interchange (DDI)	1,263,730	12,000	1,275,730	Additional Budget Needed for Maintainable Landscaping
042-499-55310-61	BNSF RR Underpass/N Drainage (25%)	7,960	37,500	45,460	Additional Budget Needed to Complete RR Requirements
042-499-55310-63	Short Street Traffic Signal	-	4,000	4,000	Additional Budget Needed for Purchase Order #91634
042-499-55420-01	Motor Vehicle/Road Equipment	-	31,600	31,600	New Truck for New Facilities Maintenance Technician
042-499-55420-01	Motor Vehicle/Road Equipment	31,600	67,000	98,600	New Skid Steer for Road Construction

Account Number	Account Description	Current Budget	Proposed Amendment	Proposed Budget	Comments/Notes
042-499-55420-01	Motor Vehicle/Road Equipment	98,600	15,500	114,100	New Roller for Road Construction
042-499-55420-01	Motor Vehicle/Road Equipment	114,100	21,000	135,100	New Attenuator for Road Construction
042-499-55310-04	Street Reconstruction Program	1,550,000	(103,500)	1,446,500	Provide Funding for New Road Equipment
	Total Capital Projects Fund		**966,370**		
051-462-53813-05	NCWCD - SWSP Yearly Maintenance (Assessment)	85,000	115,000	200,000	Reclassification from Capital (051-499-55450-36)
051-463-52211-00	Meter Pits & Meters	-	20,000	20,000	Move Replacement Meter Costs to Operations
051-498-55410-01	Vehicle & Equipment Replacement	-	28,300	28,300	Truck Replacement - from November 2014 Accident
051-498-55840-80	Eldorado Intake - Flood Reconstruction	675,750	524,250	1,200,000	Additional Budget Needed to Complete Project
051-499-55210-04	City Services Facility (25%)	2,580,600	100,000	2,680,600	Additional Budget Needed to Complete Project
051-499-55360-11	Lateral Lining	33,430	60,350	93,780	Additional Budget Needed for Purchase Order #91929
051-499-55450-36	NCWCD Pump Station Variable Drives	115,000	(115,000)	-	Reclassification to Operations (051-462-53813-05)
	Total Water Utility Fund		**732,900**		
052-498-55810-07	Roof Structure	-	20,000	20,000	Emergency Expenditure - Moved from 2016 C-I-P
052-499-55210-04	City Services Facility (25%)	2,580,600	100,000	2,680,600	Additional Budget Needed to Complete Project
052-499-55810-14	Wastewater Plant Upgrade	-	13,750,000	13,750,000	Budget for Bond Proceeds to be used for WWTP Upgrade
	Total Wastewater Utility Fund		**13,870,000**		
053-499-55840-65	BNSF RR Underpass/N Drainage (75%)	33,870	112,500	146,370	Additional Budget Needed to Complete RR Requirements
053-499-55840-99	City-Wide Storm Sewer Outfall Improvements	-	6,500,000	6,500,000	Budget for Bond Proceeds to be used for Storm Sewer Impr
	Total Storm Water Utility Fund		**6,612,500**		
054-715-53500-01	Repairs & Maintenance - Buildings & Facilities	360	30,000	30,360	Concession Agreement and Health Code Deficiencies
054-799-55260-03	Golf Course Flood Reconstruction	199,270	28,300	227,570	Additional Budget Needed to Complete Project
	Total Golf Course Fund		**58,300**		
	Total for All Funds		**23,906,740**		

Appendix C

City of Louisville, Colorado
Proposed Budget Amendment - Changes to 2014 Revenue Budget
2014 Annual Budget

Account Number	Account Description	Current Budget	Proposed Amendment	Proposed Budget	Comments/Notes
010-001-41100-00	General Property Tax Revenue	2,346,440	23,560	2,370,000	Adjustment to Revenue Based on Final Assessed Valuation
010-001-41200-00	Sales Tax	6,673,360	196,980	6,870,340	Adjust to 3.5% Increase over 2014 Actual (+ Alfalfas Adjustment)
010-001-41205-00	Use Tax - Consumer	1,054,650	(12,500)	1,042,150	Adjust to Equal 2014 Actual (+ Whitewave Adjustment)
010-001-41210-00	Use Tax - Auto	1,062,260	39,280	1,101,540	Adjust to 4% Increase over 2014 Actual
010-001-41500-00	Lodging Tax	450,150	(9,230)	440,920	Adjust to 3% Increase over 2014 Actual
010-001-43310-00	Cigarette Tax	59,590	(8,430)	51,160	Adjust to 3% Decrease from 2014 Actual
	Total General Fund		**229,660**		
022-001-43299-00	Grant Revenue - City of Louisville	-	490,000	490,000	Amount Deposited to US Bank from City for DELO Storm Water
	Total Urban Revitalization District Fund		**490,000**		
028-001-41200-00	Sales Tax	1,250,100	37,560	1,287,660	Adjust to 3.5% Increase over 2014 Actual (& Alfalfas Adjustment)
028-001-41205-00	Use Tax - Consumer	160,250	21,270	181,520	Adjust to Equal 2014 Actual (+ Whitewave Adjustment)
028-001-41210-00	Use Tax - Auto	132,780	4,910	137,690	Adjust to 4% Increase over 2014 Actual
028-001-43299-00	Grant Revenues	250,000	8,000	258,000	CO Dept of Agriculture Grant for Noxious Weed Control & Education
028-001-47100-00	Sale of Assets	-	202,770	202,770	Sale of Easements to Public Servcie Company
	Total Open Space & Parks Fund		**274,510**		
033-001-41200-00	Sales Tax	416,700	11,960	428,660	Adjust to 3.5% Increase over 2014 Actual (& Alfalfas Adjustment)
033-001-41205-00	Use Tax - Consumer	53,420	11,720	65,140	Adjust to Equal 2014 Actual (+ Whitewave Adjustment)
033-001-41210-00	Use Tax - Auto	44,260	1,640	45,900	Adjust to 4% Increase over 2014 Actual
033-001-47100-00	Sale of Assets	-	200,000	200,000	Sale of Grain Elevator Property - Moved from 2014
	Total Historic Preservation Fund		**225,320**		
042-001-41200-00	Sales Tax	3,333,610	100,090	3,433,700	Adjust to 3.5% Increase over 2014 Actual (& Alfalfas Adjustment)
042-001-41205-00	Use Tax - Consumer	527,330	(6,250)	521,080	Adjust to Equal 2014 Actual (+ Whitewave Adjustment)
042-001-43299-00	Grant Revenues	3,445,240	500,000	3,945,240	State RAMP Funds for SH42 & Short Crossing Improvements
042-001-48010-00	Transfer from General Fund	900,000	385,000	1,285,000	Additional Transfer for Property Acquistion
	Total Capital Projects Fund		**978,840**		
043-001-48010-00	Transfer from General Fund	-	98,370	98,370	Payment of BCHA Impact Fees
	Total Impact Fee Fund		**98,370**		
052-001-43299-00	Grant Revenues	-	1,000,000	1,000,000	Colorado Dept of Public Health & Environment Grant on WWTP
052-001-47200-00	Bond Proceeds	-	12,750,000	12,750,000	Bond/Loan Proceeds for Wastewater Plant Upgrade
	Total Wastewater Utility Fund		**13,750,000**		
053-001-43299-00	Grant Revenue	-	1,000,000	1,000,000	UD&FC Grant for Storm Water Project
053-001-47200-00	Bond Proceeds	-	5,500,000	5,500,000	Bond/Loan Proceeds for Storm Water Project
	Total Storm Water Utility Fund		**6,500,000**		
054-001-43199-00	FEMA & State Grants - 2013 Flood	-	525,000	525,000	Estimated FEMA Reimbursement for 2015
	Total Golf Course Fund		**525,000**		
097-001-41100-00	General Property Tax Revenue	690,710	6,940	697,650	Adjustment to Revenue Based on Final Assessed Valuation
	Total Debt Service Fund		**6,940**		
	Total for All Funds		**23,078,640**		

Resolution No. 27, Series 2015 Amending the 2015 Budget

Reasons for Amendment:

1. To carry-forward unused appropriations from 2014 to 2015 (+$10,796,890)
2. To adjust appropriations for items not anticipated, or not measurable, at the time of original budget adoption (+$23,906,740*)
3. To adjust the revenue budget for items not anticipated, or not measurable, at the time of original budget adoption (+$22,588,640*)

** includes $20,250,000 for WWTP Upgrade and Storm Sewer Outfall Improvements projects*

Resolution No. 27, Series 2015 Amending the 2015 Budget

Presentation Format:

- Council Communication contains department narratives for each line item, or related groups of line items
- Council Communication narratives are divided into two sections – expenditure amendments and revenue amendments
- Appendices A, B, and C to the Resolution display the amendment by line item and subtotaled by fund
  - Appendix A = carry-forward adjustments
  - Appendix B = other expenditure adjustments
  - Appendix C = revenue adjustments

Resolution No. 27, Series 2015 Amending the 2015 Budget

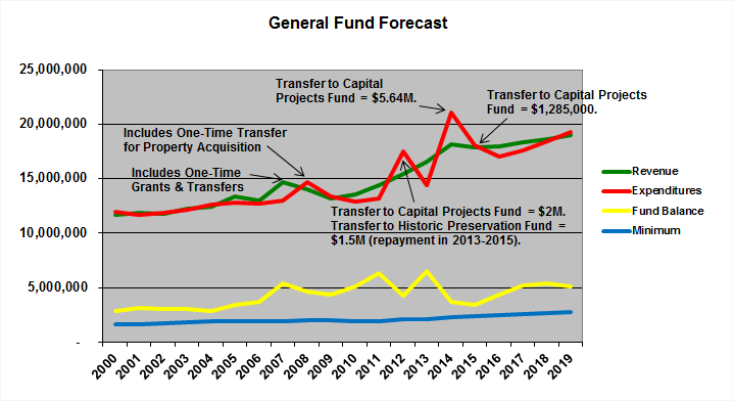
Fiscal Impact:

- Council Communication contains schedule of projected revenue, expenditures, and changes to fund balances for all funds assuming the proposed budget amendment is approved (page xx)
- Total City-wide reserves are projected to be reduced by $16.6 million in 2015.
- However, all funds are projected to retain adequate levels of fund balance
- Finance Committee reviewed the proposed amendment on April 20

Resolution No. 27, Series 2015 Amending the 2015 Budget

Fiscal Impact (continued):

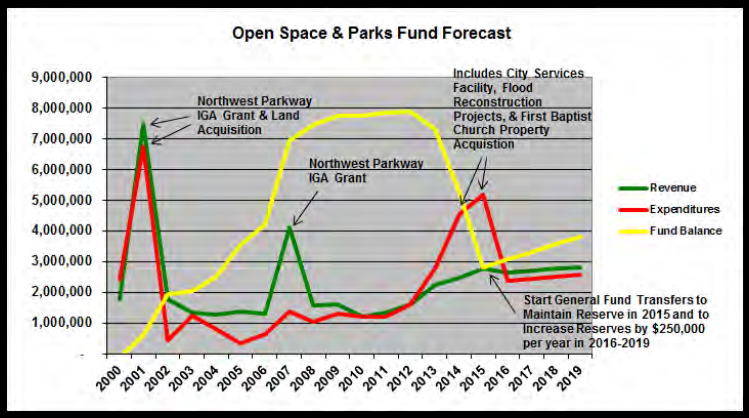
- The current long-term forecast for the General Fund



Resolution No. 27, Series 2015 Amending the 2015 Budget

Fiscal Impact (continued):

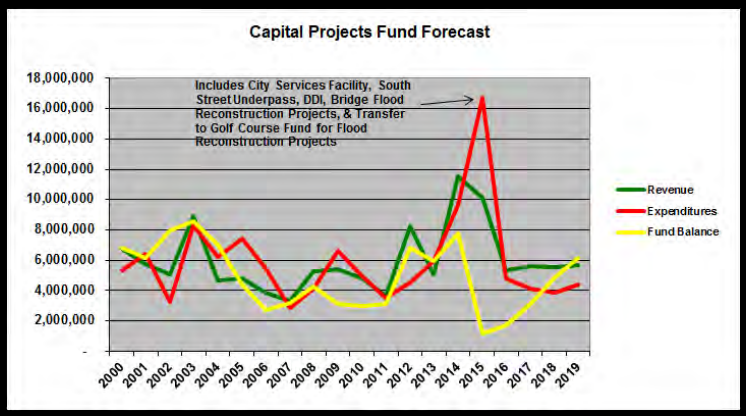
- The current long-term forecast for the Open Space & Parks Fund



Resolution No. 27, Series 2015 Amending the 2015 Budget

Fiscal Impact (continued):

- The current long-term forecast for the Capital Projects Fund



City of Louisville
COLORADO • SINCE 1878

CITY COUNCIL COMMUNICATION
AGENDA ITEM 8H

SUBJECT: **2014 AND 2015 CAPITAL IMPROVEMENT PROJECTS UPDATE**

DATE: **MAY 5, 2015**

PRESENTED BY: **HEATHER BALSER, DEPUTY CITY MANAGER**
MEREDYTH MUTH, PUBLIC RELATIONS MANAGER
KEVIN WATSON, FINANCE DIRECTOR

SUMMARY:
In conjunction with the Budget amendment staff has prepared comprehensive lists of the status of the major 2014 and 2015 Capital Improvement Projects.

The 2014 list includes information about project status, what was or was not completed, and what is being requested for rollover to 2015. At the beginning of each budget year staff anticipates and works towards the completion of each project, however over the course of the year there are changes to priorities, cost overruns, third party issues, staffing changes and other issues that can delay projects.

These spreadsheets are for informational purposes and are formatted to facilitate quarterly updates as the year progresses. As the first summary indicates, staff completed dozens of significant projects and several projects, specifically the City Services Facility, South Street Gateway Underpass, Sludge Treatment/Handling, Eldorado Intake, Windy Gap Firming, and Core Area [URA] Utility make up the majority of funding that staff asked to be carried forward from 2014 to 2015. The scheduling for the South Street Gateway, Eldorado Intake, Windy Gap and Core Area Utility projects are highly unpredictable and entirely outside City staff's control, and yet it is still necessary to budget funding for these projects so we can proceed when other parties are ready to proceed.

During the May 5th meeting Department staff will be available to answer questions regarding this information.

FISCAL IMPACT:
None

RECOMMENDATION:
None

ATTACHMENT(S):
1. 2014 Capital Improvement Project Status Spreadsheet
2. 2015 Capital Improvement Project Status Spreadsheet

2014 Capital Projects Status as of April 1, 2015

Fund and Project Description	Dept	2014 Budget	2014 Actual	Percentage Complete	Rollover	Turnback
Conservation Trust - OS&P Fund						
Trails Reconstruction Projects - Flood	Parks	600,000	241,424	100	0	358,576
McCaslin/Washington Underpass (50%)	CIP	432,630	412,138	100	0	20,492
US36 Underpass at Davidson Mesa	PW	162,500	162,500	100	0	
Notes: Funds paid to CDOT						
Hecla Lake Reservoir Improvements	Parks	34,490	27,852	100	0	6,638
Davidson Highline Lateral Ditch	PW		32,338	100	0	(32,338)
Trail Improvements	Parks	27,500	26,027	100	0	1,473
Lastoka Property Conservation	Parks	19,500	16,957	100	1,000	
Trail Flood damage repair	Parks	9,950	10,188	100	0	(238)
Cottonwood Park Property Acquisition	ED	1,268,000	1,363,502	98	23,530	
Notes: This funding represents a carry forward of funds to finish the closeout and final payment process for a 2014 contract that is substantially completed.						
City Services Facility (25%)	PW	1,337,500	369,469	50	1,612,500	
Notes: Budgeted full cost to get under contract. the project took longer to be approved by the CTC owners association and Council than anticipated when the budget was approved in November 2013. The project will be complete this year.						
Total Conservation Trust - OS&P Fund		**3,892,070**	**2,662,395**		**1,637,030**	
Conservation Trust - Lottery Fund						
Emergency Tree Work	Parks	70,000	5,188	100	10,000	54,812
Notes: Rollover $10,000 from the remaining budget to take care of hazard trees at Cottonwood Park/former church property						
Trails Signage and Wayfinding	Parks	35,000	19,455	60	20,540	(4,995)
Notes: Rollover remaining budget to complete project work in conjunction with Wayfinding project efforts.						
Restroom Improvement Program	Parks	57,000	30,410	10	26,590	
Notes: Rollover for Miners Field Restroom Renovation Project						
Park Renovations	Parks	44,000	4,345	0	39,660	(5)
Notes: Rollover for shelter repairs at Lake Park and support funding for Miners Restroom Renovation Project						
Total Conservation Trust - Lottery Fund		**206,000**	**59,397**		**96,790**	
Cemetery Fund						
General Cemetery Improvements	Parks	46,770	108	0	30,000	16,662
Notes: Rollover for purchase and implementation of a cemetery software management program						
Total Cemetery Fund		**46,770**	**108**			

Fund and Project Description	Dept	2014 Budget	2014 Actual	Percentage Complete	Rollover	Turnback
Capital Projects Fund						
Street Reconstruction Program	PW	1,750,000	1,694,072	100	0	55,928
McCaslin/US36 Interchange (DDI)	CMO/PW	1,312,730	1,172,732	100	103,000	36,998
Notes: Funds to be paid to CDOT						
McCaslin Washington Underpass (33%)	CMO	285,820	272,428	100	0	13,392
South Boulder Road Pedestrian Crossing	PW	128,900	100,330	100	0	28,571
Memory Square Improvements	Parks	89,500	75,339	100	0	14,161
Recreation Equipment	Parks	83,500	180,801	100	0	(97,301)
Rec Center - pool upgrades	Parks	79,000	56,896	100	0	22,104
SBR/Garfield Pole Replacement	PW	75,000	50,181	100	0	24,820
Traffic Signals	PW	53,000	47,182	100	0	5,818
Contract Street Striping	PW	70,000	67,327	100	0	2,673
Monarch K-8 Safety improvements	PW	50,000	34,575	100	0	15,425
Hutchinson Parking Lot Landscape	Parks/PW	46,960	20,748	100	0	26,212
Pond Liner Replacement	Parks	45,600	3,642	100	41,960	(2)
Notes: Project completed March 2015, rollever to make final payments in 2015						
City Hall Building Automation	PW/IT	45,000	45,000	100	0	0
Concrete Replacement	PW	45,000	53,912	100	0	(8,912)
Service Center Forklift	PW	28,980	28,973	100	0	7
Rec Center - Lobby Furniture	Parks	25,000	24,177	100	0	823
Police Dept Mobile video capture system	Police	22,500	21,338	100	0	1,162
US36 prepaid Kiosks FASTER contribution	PW	11,560	14,100	100	0	(2,540)
Library Security Camera System	Library	22,000	21,336	100	0	664
Planning scanner/plotter	PBS	10,000	16,500	100	0	(6,500)
Notes: Scanner purchased, looking to partner with public works on the plotter						
Rec Center - Security Cameras	Parks	20,000	18,146	100	0	1,854
Asphalt Recycler Hotbox	PW	18,000	18,225	100	0	(225)
Main Street Patios	ED	0	17,078	100	0	(17,078)
Rec Center - Sauna/Steam ADA	Parks	16,000	15,996	100	0	4
LTE-D-Block Radio Program	Police	15,000	15,057	100	0	(57)
HW 42 Corridor study	PBS	14,100	14,100	100	0	0
Notes: Funding was moved to South Boulder small area plan and spent in 2014.						
Athletic Fields Annual Upgrades	Parks	14,000	5,306	100	0	8,694
Via Appia Scoping Study	PBS	12,000	10,377	100	0	1,623
Library Copier	IT	10,500	10,458	100	0	42

Fund and Project Description	Dept	2014 Budget	2014 Actual	Percentage Complete	Rollover	Turnback
Planning IT space consolidation	PBS	10,000	9,692	100	0	308
Rec Center - Dri-Deck	Parks	10,000	0	100	0	10,000
Autodesk Design Suite Premium Licenses	IT	8,500	6,827	100	0	1,673
Hand Held GPR	PD/IT	8,000	8,579	100		(579)
Desktop Scanner for Planning	IT	8,000	7,820	100	0	180
Police Dept intercom radio *Notes: Delayed to 2015*	Police	7,900	0	100	7,670	
Lucity software	IT/PW		8,408	100	0	(8,408)
Rec Center- Pool Impeller & Pump	Parks	0	6,840	100	0	(6,840)
Alfalfas Community Room	PBS/ED	150,000	150,000	100	0	0
GeoDocs for LaserFiche *Notes: Some cash used borrowed from this CIP to pay for the KIP scanner in Planning. Project can be closed.*	IT	17,500	0	100		17,500
Library Improvements	PW	30,000	40,789	100		(10,789)
City Hall Fire Supression System *Notes: Rollover to finish the closeout and final payment process for a 2014 contract that is substantially complete.*	PW	91,000	93,440	95	23,530	
Upgrade City website *Notes: Main site complete, waiting for sub sites*	CMO	47,920	42,746	75	10,735	(5,562)
Median Improvements *Notes: Rollover funds for Cherry St. and McCaslin median improvements to irrigation systems, plant material and hardscape.*	PW/Parks	90,280	50,598	70	39,682	0
Dillon Rd/St Andrews Intersection	PW	35,000	31,810	60		3,190
City Services Facility Site Improvements (25%) *Notes: Budgeted full cost to get under contract. the project took longer to be approved by the CTC owners association and Council than anticipated when the budget was approved in November 2013. The project will be complete this year.*	PW	1,337,500	369,469	50	1,612,500	(644,469)
Hwy 42 Pine St intersection *Notes: forward to close out completed work for the design of improvements at Highway 42 and Pine Street intersection*	PW	11,300	6,215	50	5,040	45
ADA Requirements *Notes: Rec Center Project 100% Complete, rollover unspent funds to complete Miners Field Restroom Renovation Project*	Parks/PW	199,500	0	20	18,669	180,831
Highway 42 & Short Intersection *Notes: CDOT will not approve warrants. Geometric design improvements being pursued.*	PBS	500,000	0	10	500,000	0
Hwy 42 Traffic signals *Notes: Final design complete, bidding 2nd Quarter 2015.*	PW	283,100	6,907	10		
South Street Underpass (95%) *Notes: Final design complete, waiting on BNSF approval.*	PW	2,603,220	0	10	2,476,870	126,350
Downtown Wayfinding *Notes: Standard MUTCD Parking sign install to be completed in May. Remainder rolled over for McCaslin and SBR Small Area Plans.*	PBS	78,900	0	5	78,900	0

Fund and Project Description	Dept	2014 Budget	2014 Actual	Percentage Complete	Rollover	Turnback
Bridge Repair *Notes: Project to start late 2015*	PW	450,000	282,465	0		
Wayfinding - McCaslin & Centennial Valley *Notes: Concurrent with McCaslin small area plan*	PBS	100,000	9,390	0	90,610	0
Police Dept printer, copier *Notes: Existing equipment needs to be replaced, and Department did not get purchase done in 2014.*	Police	20,000	0	0	20,000	0
Pine St Gateway *Notes: Did not complete because of lack of consensus on downtown sign design.*	PBS	15,000	0	0	0	15,000
BNSF RR Underpass/N Drainage (25%) *Notes: Needed for design. Waiting for BNSF*	PW	12,500	0	0	12,500	0
Police Dept basement restrooms *Notes: Delayed to 2015*	Police	26,500	350	0	26,500	(350)
Enterprise Resource Planning System (70%) *Notes: Not used in 2014, rebudgeted in 2015, 2016, 2017*	IT	463,000	0	0	0	
Downtown Parking Transit Project *Notes: Purchase agreement approved by City Council, contingent on the approval of the Delo Plaza PUD*	ED/PBS	300,000	20,000	0	280,000	0
Total Capital Projects Fund		**11,314,270**	**5,278,676**		**5,348,166**	

Fund and Project Description	Dept	2014 Budget	2014 Actual	Percentage Complete	Rollover	Turnback
Water Utility Fund						
3 MG Tank	PW	1,235,570	756,675	100	2,340	476,555
Notes: funds to finish project closeout for final payment and as-built drawings. Work will be completed 2nd Quarter 2015.						
Water Line Replacement	PW	205,000	206,972	100	0	(1,972)
North Plant Carbon Feed	PW	200,000	46,435	100	12,460	141,105
Notes: Funds to close out completed work.						
McCaslin/Washington Underpass (17%)	CIP	147,210	140,127	100	0	7,083
Lateral Lining	PW	147,000	113,574	100	95,780	
Notes: Funds to finish the closeout and final payment process for a 2014 contract that is substantially complete.						
Marshall Lake Multi-Level Outlet & Evaluation	PW	92,340	17,644	100	0	74,696
Water System tie in with Superior	PW	90,000	9,160	100	0	80,840
North Floculators	PW	42,000	46,549	100	0	(4,549)
Utility rate study	PW	35,400	45,811	100	0	(10,411)
Golf Course reuse expansion	PW	59,000	58,720	100		280
North Plant Flooring Replacement	PW	15,000	0	50	15,000	0
Notes: Currently under construction						
City Services Facility (25%)	PW	1,337,500	369,469	30	1,612,500	(644,469)
Notes: Budgeted full cost to get under contract. the project took longer to be approved by the CTC owners association and Council than anticipated when the budget was approved in November 2013. The project will be complete this year.						
Sludge Treatment/Handling	PW	3,227,788	119,672	20	2,210,000	
Notes: Rollover to finish design, permitting, and begin construction of a new sludge handling facility at the South Water Treatment Plant.						
Heating upgrades (HBWTF)	PW	32,000	0	20	32,000	0
Notes: Currently bidding.						
Eldorado Intake - Flood Recon	PW	750,000	74,250	10	750,000	(74,250)
Notes: to address flood repairs and reconstruction from the 2013 Flood. The project is currently designed and working through necessary Federal approvals. Construction is anticipated in 2015.						
NCWCD-Windy Gap Firming Project	PW	495,110	66,860	10	495,110	(66,860)
Notes: Debt service place holder.						
Eldorado Springs Stormwater Control	PW	87,000	0	0	0	87,000
Notes: Project cancelled due to Flood.						
Core Area Utility (11%)	PW	82,500	0	0	82,500	0
Notes: Developer delay						
Enterprise Resource Planning System (15%)	IT	66,000	0	0	0	
Notes: Not used in 2014, rebudgeted in 2015, 2016, 2017						

Fund and Project Description	Dept	2014 Budget	2014 Actual	Percentage Complete	Rollover	Turnback
US 36 water line replacement	PW	177,000	0	0	177,000	0
Notes: Funds will be paid when CDOT completes the project.						
Total Water Utility Fund		**8,523,418**	**2,071,919**		**5,484,690**	
Wastewater Utility Fund						
Sewer Utility Line Replacement	PW	275,000	213,210	100	0	61,790
Pond Liner Replacement (50%)	Parks	45,600	3,642	100	41,960	(2)
Notes: Project completed March 2015, rollover to make final payments in 2015						
PLC and SCADA replacements/upgrades	PW	44,780	26,629	100	0	18,151
Sewer Main Video	PW	25,000	16,852	100	0	8,148
City Services Facility (25%)	PW	1,337,500	369,469	30	1,612,500	
Notes: Budgeted full cost to get under contract. the project took longer to be approved by the CTC owners association and Council than anticipated when the budget was approved in November 2013. The project will be complete this year.						
Wastewater Plant Upgrade	PW	771,700	1,131,734	10		(360,034)
Water Line Upgrade 8"	PW	250,000	0	10		
Notes: Moved to 2015						
HWY 42 to WWTP Sewer Improvements	PW	550,000	0	10		
Notes: Moved to 2015						
Core Area Utility (9%)	PW	67,500	0	0	67,500	0
Notes: Developer delay						
Enterprise Resource Planning System (15%)	PW	66,000	0	0	0	
Notes: Not used in 2014, rebudgeted in 2015, 2016, 2017						
Total Wastewater Utility Fund		**3,433,080**	**1,761,537**		**1,721,960**	
Storm Water Utility Fund						
Golf Course Drainage Mitigation	PW	150,000	0	100	150,000	0
Storm sewer Detention Pond Maint	PW	110,000	14,183	50		95,817
Sand-Salt Storage Building	PW	135,000	0	30	135,000	0
Notes: Rollover for constructionat new City Services Facility						
Citywide Storm Sewer Outfall impr.	PW	199,700	125,000	20		74,700
Notes: project rebudgeted in 2015						
South Street Underpass (5%)	PW	140,030	5,866	5	133,380	784
Notes: Waiting for BNSF						
Core area utility (80%)	PW	600,000	0	0	600,000	0
Notes: Developer Delay, construction about to begin						

Fund and Project Description	Dept	2014 Budget	2014 Actual	Percentage Complete	Rollover	Turnback
CCS Drainage *Notes: Developer Delay*	PW	250,000	0	0	250,000	0
BNSF RR Underpass/N Drainage (75%) *Notes: Needed for design. Waiting for BNSF*	PW	37,500	0	0	37,500	0
Total Storm Water Utility Fund		**1,622,230**	**145,048**		**1,305,880**	
Golf Course Fund						
Golf Course Flood reconstruction *Notes: Rollover remaining budget left on P.O. 91776*	Parks	6,584,940	5,529,904	98	227,570	827,466
IT	Parks		25,000	0	0	(25,000)
Machinery & equip Maint equip	Parks	750,000	22,000	0	0	728,000
Deli Display Case	Parks		10,832	0	0	(10,832)
Beverage Cart	Parks		10,000	0	0	(10,000)
Marshall Carts	Parks		5,000	0	0	(5,000)
Total Golf Course Fund		**7,334,940**	**5,602,736**		**227,570**	

City of Louisville, Colorado
Schedule of 2015 Capital Projects by Fund

Description	Department	2015 Budget	2015 Estimate	In Progress	3rd Party Delay	Delayed	Cancelled	Complete	2016 Rollover	Notes/Comments
Open Space & Parks										
City Services Facility (25%)	PW	1,612,500		X						
US36 Underpass at Davidson Mesa	PW	162,500								
Wayfinding & Signs	OS	25,000	45,540	X						
Conservation Trust - Lottery Fund										
Recreation Campus Restroom	Parks	199,500	199,500	X						
Memory Square Improvements	Parks	30,000	30,000	X						
ADA Restoom Improvements	Parks	160,500	160,500	X						
Capital Projects Fund										
Enterprise Resource Planning System (70%)	IT	525,000	525,000	X						
IT Core Routing & Switching - City Hall	IT	50,000	50,000	X						
Technology - City Services Facility	IT	25,000	40,000	X						
Desktop Productivity Suite of Software	IT	48,000	48,000	X						
Downtown Bike Parking	PBS/PW	10,000	10,000	X						100 bike racks to be installed before May 25th
City-Wide Telephone System Upgrade	IT	75,000	125,000	X						
City Services Facility (25%)	PW	1,612,500		X						
Concrete Replacement	PW	90,000		X						
Street Reconstruction Program	PW	1,550,000		X						
Bridge Reconstruction Projects - Flood (Gross Co	PW	3,160,000		X	X					
South Street Underpass (95%)	PW	2,476,870			X					
McCaslin/US36 Interchange (DDI)	PW	1,172,730		X						
Downtown Parking/Transit Project	ED	40,000		X						Dependant on DELA Plaza PUD approval
Dillon Road/St Andrews Intersection	PW	391,000		X						
Traffic Signals	PW	95,000		X						
Lucity Asset Management Software (25%)	PW	18,750		X						
Pavement Booster Program	PW	220,000				X				
Downtown Surface Parking Expansion	PW/ED	100,000	300,000			X				
Water Utility Fund										
Water Line Replacement	PW	210,000		X						
City Services Facility (25%)	PW	1,612,500		X						
Enterprise Resource Planning System (15%)	IT	112,500	112,500	X						
Water System Tie-In with Superior	PW	450,000		X						
NCWCD-Windy Gap Firming Project	PW	400,000		X						

Description	Department	2015 Budget	2015 Estimate	In Progress	3rd Party Delay	Delayed	Cancelled	Complete	2016 Rollover	Notes/Comments
Lucity Asset Management Software (25%)	PW	18,750		X						
Sid Copeland WTP Contact Tank Improvements	PW	160,000		X						
NCWCD Pump Station Variable Drives	PW	115,000		X						
Wastewater Utility Fund										
Sewer Utility Line Replacement	PW	300,000		X						
City Services Facility (25%)	PW	1,612,500		X						
Enterprise Resource Planning System (15%)	IT	112,500	112,500	X						
Wastewater Plant Upgrade (2015-2019 = Debt Se	FIN	1,826,100		X						
Lucity Asset Management Software (25%)	PW	18,750		X						
Storm Water Utility Fund										
South Street Underpass (5%)	PW	133,380			X					
Storm Sewer Detention Pond Maintenance	PW	110,000		X						
City-Wide Storm Sewer Outfall Improvements (De	FIN	575,100		X						
Lucity Asset Management Software (25%)	PW	18,750		X						
Golf Course Fund										
Golf Course Flood Reconstruction	Parks	0								
Machinery & Equipment - Maintenance Equipmen	GOLF	750,000	750,000	X						$349,270 rollover from 2014 plus additional funds for 2015 o
Golf Course Technology	GOLF	50,000	50,000	X						
Perimeter Fencing	GOLF	15,000	15,000	X						
Golf Course Startup	GOLF	250,000	250,000	X						
CCGC Identity Package	GOLF	68,000	68,000	X						
Golf Course Clubhouse HVAC	FAC	35,000		X						

SUBJECT: **ORDINANCE NO. 1690, SERIES 2015 - AN ORDINANCE AMENDING SECTION 2.32.060 OF THE LOUISVILLE MUNICIPAL CODE REGARDING THE COLLECTION OF MUNICIPAL COURT ASSESSMENTS – 2nd Reading - Public Hearing (Advertised *Daily Camera* 04/26/2015)**

DATE: **DATE: MAY 5, 2015**

PRESENTED BY: **NANCY VARRA, CITY CLERK**

SUMMARY:
This ordinance is at the request of Municipal Court Judge Joss, who has expressed the need for a collection agency to collect unpaid parking tickets.

Pursuant to the Louisville Municipal Code, parking tickets are non-criminal and are defined as parking infractions, which are civil matters. As such, the court may only impose fines and no imprisonment or arrest warrants are allowed.

Section 10.04.070(A): When a defendant fails to pay a fine for a parking ticket, the Court may take the following actions as allowed by Section 10.04.070(C):

1) Where 3 more unpaid tickets are outstanding for a vehicle, issue a contempt citation requiring the defendant to appear in court;
2) If 3 or more unpaid tickets are outstanding, the vehicle may be towed or booted;
3) An unpaid fine may be reduced to a civil judgment by Order of the Court and collected as a civil judgment; and
4) The municipal court is authorized to establish additional procedures for collection of fines.

Because there are not any adequate or effective procedures for collection of unpaid parking fines, the Court has adopted the attached Policy For Unpaid Parking Tickets pursuant to Sections 10.04.070(B) and (C)(4). Recent statistics on unpaid parking tickets reflect the following: In calendar year 2014, 344 parking tickets were issued, an increase of 89% over 2013. In 2014 there was $990.00 in unpaid parking tickets. Year to date, in 2015, 104 parking tickets have been issued and $380.00 of unpaid parking fines are past due.

The proposed collection process is as follows: If a defendant fails to pay a parking ticket by the court date on the ticket, a letter is sent to the defendant by the court clerk adding a $15 late fee to the fine amount, requesting payment of the total amount within 30 days, and notifying the defendant that if the total amount due is not paid within that time period, the matter will be referred to a collection agency and an additional 25% fee added to the total amount due. If the defendant fails to pay, the account is sent to collection. The collection agency adds 25% of the total due as its fee and is then solely

responsible for collection of the amount due. Collected funds are sent to the court on a monthly basis.

Judge Joss will be in attendance to respond to Council's questions and concerns.

FISCAL IMPACT:
The Court will have the ability to collect unpaid parking fines without spending any additional resources or staff time.

RECOMMENDATION:
The Court staff recommends the City Council approve Ordinance No. 1690, Series 2015.

ATTACHMENT(S):
1) Ordinance No.1690, Series 2015
2) Louisville Municipal Court Policy for Unpaid Parking Tickets.
3) Collection Services Agreement

ORDINANCE NO. 1690
SERIES 2015

AN ORDINANCE AMENDING SECTION 2.32.060 OF THE LOUISVILLE MUNICIPAL CODE REGARDING THE COLLECTION OF MUNICIPAL COURT ASSESSMENTS

WHEREAS, the City has situations where defendants fail to pay fines, costs, fees and judgments assessed against them by the Louisville Municipal Court, and there is a loss of revenue from such defendants' failure to comply with Municipal Court orders; and

WHEREAS, these unpaid assessments constitute debts to the City, which the City is authorized to collect by any lawful means; and

WHEREAS, the City Council desires to amend the Louisville Municipal Code to expressly authorize the Municipal Judge, City Manager or a designee to utilize lawful means to collect unpaid Municipal Court assessments and to assess reasonable costs of collection.

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

Section 1. Section 2.32.060 of the Louisville Municipal Code is hereby amended to read as follows (words to be deleted are shown in ~~strikeout~~; words to be added are underlined):

2.32.060 Fines and penalties and court costs.

The municipal judge in his discretion may assess costs against any defendant who pleads guilty or nolo contendere or who enters into a plea agreement or who, after trial, is found guilty of an ordinance violation, such costs not to exceed $100.00 for trial to the court and $200.00 for trial by jury. The municipal judge, city manager, or a designee, is authorized to use any lawful method of collecting fines, fees, default judgments, personal recognizance bond forfeitures, civil penalties, or any other unpaid amounts due from any person assessed such sums by the Municipal Court, including court costs, surcharges and the reasonable costs of collection. Reasonable costs of collection shall include, without limitation, the fees and costs of a collection agency or counsel, but such fees and costs shall not exceed twenty-five percent of the unpaid amount.

Section 2. If any section, paragraph, sentence, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 3. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 4. The repeal or modification of any provision of the Municipal Code of the City of Louisville by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

INTRODUCED, READ, PASSED ON FIRST READING, AND ORDERED PUBLISHED this 21st day of April, 2015.

_____
Robert P. Muckle, Mayor

ATTEST:

_____
Nancy Varra, City Clerk

APPROVED AS TO FORM:

_____
Light | Kelly, P.C.
City Attorney

PASSED AND ADOPTED ON SECOND AND FINAL READING, this _____ day of _____, 2015.

_____
Robert P. Muckle, Mayor

ATTEST:

_____
Nancy Varra, City Clerk

Louisville Municipal Court
Policy for Unpaid Parking Tickets

The policy/procedures for unpaid parking tickets shall be as follows:

1. Should Defendant not pay or not appear by the date set on the parking ticket a letter will be sent to Defendant with an added $15.00 late fee.

2. The Defendant will be given an additional 30 days (from original Court date) to pay the new fine, including the late fee.

3. This letter will also indicate if payment is not received the matter will be sent to a collection agency for final action.

4. If the Defendant fails to pay the total due by the extension date, the amount due will be assigned to a collection agency.

5. Once the collection agency has been given the delinquent account the Louisville Municipal Court shall no longer be able to accept payment from the Defendant.

6. The collection agency will be solely responsible for collection of monies owed to the Louisville Municipal Court and will remit collected fines to the Court on a monthly basis.

Dated 3-16-15

By: _____
Municipal Court Judge

Unpaid Parking ticket Policy 3-06-15

COLLECTION SERVICES AGREEMENT

THIS COLLECTION SERVICES AGREEMENT ("Agreement") is entered into this _____the day of _____, 2015 ("Effective Date"), by the City of Louisville on behalf of the Municipal Court of the City of Louisville ("Municipal Court"), and Integral Recoveries, Inc., a corporation organized under the laws of the State of Colorado ("Agency").

The parties agree as follows:

1. Scope of Services. Agency will provide Municipal Court with collection services consisting of Agency's normal collection activities, including, without limitation, correspondence and communications between Agency and the debtor and credit reporting, as deemed appropriate by Agency and agreed to by Municipal Court. Agency will provide services as an independent contractor and not as an employee of Municipal Court. As an independent contractor, neither Agency, its employees nor its agents are entitled to workers' compensation benefits except as may be provided by the Agency nor to unemployment insurance benefits unless unemployment compensation coverage is provided by Agency or some other entity. Agency is obligated to pay all federal and state income tax on any moneys earned or paid pursuant to this contract. Services will commence immediately upon Municipal Court's assignment of a debtor's account ("Account") to Agency.

2. Recovery and Agency Fee. The Account will specify the Judgment Amount (the amount due the court for fines, fees, costs, surcharges and restitution). Agency may seek to recover and may recover from the debtor an amount not greater than one hundred twenty-five percent (125%) of the Judgment Amount. Agency will provide a monthly remittance to the City on or about the 15th of each month for eighty percent of all monies recovered in the previous calendar month, retaining twenty percent for its fee. The monthly remittance will list each specific account, the total amount collected from each account, and the amount remitted for each account.

3. Term. This Agreement will commence on the Effective Date and will continue for 3 years. The parties may agree, in writing to extend the term. However, either party may terminate this Agreement by giving thirty days' written notice. Upon expiration of the Term or termination by notice, the parties may agree that Agency may continue collecting on those Accounts previously assigned to Agency under the same terms as set forth in this Agreement until those Accounts are closed or are cancelled. The parties hereto do not intend this Agreement to be a multiple fiscal year financial obligation within the meaning of Article X, Section 20 of the Colorado Constitution, and this Agreement shall be interpreted so as to avoid any such meaning. The parties therefore agree that all obligations of the City to make payment under this Agreement are subject to annual appropriation by the City Council.

4. Manner of Assignment. Assignment of an Account will be effective as the date Municipal Court submits the Account to Agency. Within fifteen working days of Agency's receipt of an assignment, Agency must submit a written acknowledgment of assignment to Municipal Court. If Municipal Court does not receive the acknowledgment within that fifteen day period, Municipal Court may withdraw that Account from Agency. After an assignment of an Account

to Agency, Municipal Court will refrain from contacting the debtor for collection purposes and will refer all matters concerning collection to Agency for the duration of the period of assignment, unless Municipal Court cancels the Account as provided below.

5. Cancellation of Accounts. Accounts previously assigned to Agency for collection will be cancelled prior to the expiration of the period of collection if: (a) Municipal Court withdraws an Account, by notice to Agency in writing; (b) Agency ceases collection efforts on an Account it considers not collectable; or (c) the debtor files for bankruptcy and Municipal Court directs Agency to take no further action after Agency informs Municipal Court and the Office of the City Attorney, in writing, of the filing for bankruptcy.

6. Standards of Agency Performance. Agency agrees to maintain the following minimum standards of operation and performance during the term of this Agreement and to provide proof of compliance upon request by Municipal Court:

a. Maintain proper licensing and bonding as required by law
b. Adhere to the provisions of all applicable laws, ordinances and regulations, including the Federal Fair Debt Collection Practices Act, the Colorado Fair Debt Collection Practices Act and the Fair Credit Reporting Act.
c. Agency's professional services shall be in accordance with the prevailing standard of practice normally exercised in the performance of services of a similar nature in the Denver metropolitan area.

7. Audits. Municipal Court has the right to audit the accounts assigned to Agency at any time upon advance written notice.

8. Litigation. No court action will be instituted for collection of Accounts by Agency without prior written authorization from Municipal Court.

9. Progress Reports. Agency will provide Municipal Court with written reports relating to collection activities, collection totals, dates of collection, and specific accounts when requested by Municipal Court.

10. Payment Remittance. By the 15th day of each month, Agency will provide Municipal Court with a billing of amounts collected during the previous month.

11. Governing Law: Venue. This Agreement will be construed in accordance with the laws of the State of Colorado, the Louisville Municipal Code, and City ordinances, resolutions and policies.

12. Indemnification. Agency releases the City of Louisville and agrees to fully protect, defend, indemnify, and hold harmless the City of Louisville, its elected and appointed officers, employees, agents and representatives from and against any and all losses, claims of personal injury, loss, death or property damage, and any other causes of action, costs and expenses,

including attorney's fees, or liability of any nature arising out of or related to Agency's performance under this agreement.

Section 13. Insurance.

1. Agency shall at its own expense be required to keep in full force and effect during the term of this Agreement:

    a. Workers' Compensation insurance as required by the Labor Code of the State of Colorado and Employers Liability Insurance. Evidence of qualified self-insured status may be substituted.

    b. General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS ($1,000,000) each occurrence and ONE MILLION DOLLARS ($1,000,000) aggregate.

2. Agency's general liability insurance shall be endorsed to include the City, and its elected and appointed officers and employees, as additional insureds, unless the City in its sole discretion waives such requirement. Every policy required above shall be primary insurance, and any insurance carried by the City, its officers, or its employees, shall be excess and not contributory insurance to that provided by the Agency. Such policies shall contain a severability of interests provision. Agency shall be solely responsible for any deductible losses under the required policies.

3. Certificates of insurance shall be provided by Agency as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the City. No required coverage shall be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the City. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

4. Agency shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement by reason of its failure to secure liability insurance or by reason of its failure to secure insurance in sufficient amounts of sufficient durations, or sufficient types to cover such liability.

14. No Third Party Beneficiaries; No Assignment. This Agreement is intended to be solely for the benefit of the parties and their respective successors and permitted assigns, and this Agreement will not otherwise be deemed to confer upon or give to any other person or entity any remedy, claim, cause of action or other right. Agency shall not assign or delegate this Agreement or any portion thereof, or any monies due to or become due hereunder without the City's prior written consent.

15. Work by Illegal Aliens Prohibited. Exhibit A, the "City of Louisville Public Services Contract Addendum-Prohibition Against Employing Illegal Aliens", is attached hereto and incorporated herein by reference. There is also attached hereto a copy of Consultant's Pre-Contract Certification which Consultant has executed and delivered to the City prior to Consultant's execution of this Agreement.

16. Notices and other Communications. Any notice or other communication given or made under this Agreement must be in writing and sent by courier mail, with return receipt, or a copy may also be sent by facsimile or other electronic means. Any notice or other communication will be addressed as follows and, if so addressed, will be effective upon actual receipt.

If to Agency:

Integral Recoveries, Inc.
Jeffrey Slack, Director of Client Development
750 W. Hampden Avenue, Suite 501
Englewood, CO 80110

If to Municipal Court:

Louisville Municipal Court
c/o Municipal Court Clerk
992 West Via Appia
Louisville, CO 80027
Fax: 303-335-4690

17. Non-Waiver: The failure of either party to insist, in any one or more instances, upon strict performance of any of the provisions of this Agreement will continue and remain in full force and effect.

18. Entire Agreement: This written Agreement constitutes the entire agreement and understanding of the parties and supersedes all prior offers, negotiations, and other agreements of any kind. There are no representations or understandings not set forth in this Agreement.

CITY OF LOUISVILLE

BY:_____
Robert Muckle, Mayor

Date:_____

ATTEST

_____
Nancy Varra, City Clerk

INTEGRAL RECOVERIES, INC

BY:_____
Jeffrey Slack
Director of Client Development
Integral Recoveries, Inc.

Date:_____

Exhibit A

City of Louisville Public Services Contract Addendum
Prohibition Against Employing Illegal Aliens

Prohibition Against Employing Illegal Aliens. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.

Contractor will participate in either the E-verify program or the Department program, as defined in C.R.S. § § 8-17.5-101(3.3) and 8-17.5-101(3.7), respectively, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services. Contractor is prohibited from using the E-verify program or the Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed.

If Contractor obtains actual knowledge that a subcontractor performing work under this contract for services knowingly employs or contracts with an illegal alien, Contractor shall:

a. Notify the subcontractor and the City within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

b. Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this paragraph the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Contractor shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5).

If Contractor violates a provision of this Contract required pursuant to C.R.S. § 8-17.5-102, City may terminate the contract for breach of contract. If the contract is so terminated, the Contractor shall be liable for actual and consequential damages to the City.

Pre-Contract Certification in Compliance with C.R.S. Section 8-17.5-102(1)

The undersigned hereby certifies as follows:

That at the time of providing this certification, the undersigned does not knowingly employ or contract with an illegal alien; and that the undersigned will participate in the E-Verify program or the Department program, as defined in C.R.S. § § 8-17.5-101(3.3) and 8-17.5-101(3.7), respectively, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform under the public contract for services.

Proposer:
_____

By_____
Title:_____

_____
Date

SUBJECT: **ORDINANCE NO. 1689, SERIES 2015 – AN ORDINANCE REPEALING AND REENACTING CHAPTER 14.16 OF THE LOUISVILLE MUNICIPAL CODE REGARDING SPECIAL EVENT PERMITS – 2nd Reading, Public Hearing (advertised *Daily Camera* 04/26/2015)**

DATE: **MAY 5, 2015**

PRESENTED BY: **MEREDYTH MUTH, PUBLIC RELATIONS MANAGER**

SUMMARY:
In 2014, City staff updated the special event permitting process to address the increase in event requests in the City and concerns from residents. Adopting the attached ordinance would amend the Louisville Municipal Code (LMC) to clarify and codify the *existing* permitting requirements applicable to special events. Among other things, it clarifies the criteria for denying or revoking a special event permit, as well as the process for appealing those actions. The ordinance includes the following highlights:

- *Criteria for denial:* The ordinance includes specific criteria that would constitute grounds for denying a permit, including interference with scheduled construction or maintenance work, failure to provide complete information after being notified that additional information is required, conflicts with other already permitted special events, diversion of so many police officers that it would prevent normal protection to the rest of the City, and other factors.
- *Revocation*: The ordinance establishes criteria under which a permit may be revoked or an event terminated. Those criteria include "immediate danger to the health, safety or welfare of the participants or public" or noncompliance with the conditions of the permit.
- *Appeal Process:* The ordinance sets up an appeal process to the City Manager in the case of a denied permit. As the City Manager will hear appeals, the Deputy City Manager or her designee will be the signatory of the permits.

FISCAL IMPACT:
None. Enacting this ordinance would codify the City's current practices.

RECOMMENDATION:
Hold public hearing and approve Ordinance No. 1689, Series 2015.

ATTACHMENT(S):
1. Ordinance No. 1689, Series 2015
2. Link to Special Event Permit Application

ORDINANCE NO. 1689
SERIES 2015

AN ORDINANCE REPEALING AND REENACTING CHAPTER 14.16 OF THE LOUISVILLE MUNICIPAL CODE REGARDING SPECIAL EVENT PERMITS

WHEREAS, the City has seen an increase in requests for various types of special events to be held in City; and

WHEREAS, the City Council desires to amend the Louisville Municipal Code to adopt policies and procedures for the issuance of permits for special events conducted in the City.

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

Section 1. Chapter 14.16 of the Louisville Municipal Code is hereby repealed and reenacted to read as follows:

Chapter 14.16

Special Event Permits

Sec. 14.16.010 Purpose.
Sec. 14.16.020 Definitions.
Sec. 14.16.030 Permit required.
Sec. 14.16.040 Permit application.
Sec. 14.16.050 Criteria for denial.
Sec. 14.16.060 Issuance.
Sec. 14.16.070 Conditions.
Sec. 14.16.080 Insurance.
Sec. 14.16.090 Duties of permittee.
Sec. 14.16.100 Revocation.
Sec. 14.16.110 Appeal.
Sec. 14.16.120 No rights conferred.

Sec. 14.16.010 Purpose.

This Chapter establishes standards for the issuance of permits for special events in the City.

Sec. 14.16.020 Definitions.

The following words and phrases, whenever used in this Chapter, shall have the following meanings:

"Deputy City Manager" means the Deputy City Manager or his or her designee.

"Public right-of-way" means any street, road, sidewalk, alleyway, bike or pedestrian trail or path, or any other right-of-way owned by the City.

"Special event" means an organized procession or assembly of twenty-five (25) or more people: (1) requiring the exclusive use of all or a portion of a public right-of-way, public park, open space, trail, recreation area or other City facility; (2) involving the temporary closure of public rights-of-way; (3) requiring traffic control; or (4) creating a public safety hazard. Examples of special events include but are not limited to, festivals, celebrations, carnivals, concerts, races, parades, fundraisers, fairs, camps and other similar activities.

Sec. 14.16.030 Permit required.

Any person or organization desiring to conduct a special event in the City shall first obtain a permit from the Deputy City Manager.

Sec. 14.16.040 Permit application.

A. Any person or organization desiring to conduct a special event in the City shall apply for a permit by filing an application with the City Manager's Office on a form supplied by the City.

B. At a minimum, the application shall include the following information:

1. The applicant's name, address and phone number;

2. The date and time of the special event, including the estimated set-up period, start time, end time and estimated break-down and clean up period;

3. A site plan, showing the proposed location of the special event, including a detailed map of the route, if applicable;

4. The nature of the event;

5. The estimated number of participants and animals, if any;

6. The estimated number of vehicles;

7. A clean-up plan;

8. A description of amplified noise, if any;

9. A statement as to whether the event will involve hazardous, combustible or flammable materials and, if so, the safeguards planned; and

10. Any other information requested by the Deputy City Manager relevant to either the criteria set forth in Section 14.16.050 or the possible conditions that may be imposed pursuant to Section 14.16.070 that will aid the Deputy City Manager in deciding whether to issue the special event permit and under what conditions.

C. Applications for special event permits shall be accompanied by applicable fees for the special event, which fees shall be set from time to time by resolution of the City Council.

D. Unless such time period is waived by the Deputy City Manager, applications shall be submitted not less than sixty (60) days nor more than one (1) year before the special event. The Deputy City Manager shall, upon a showing of good cause, consider an application that is filed after the filing deadline if there is sufficient time to process and investigate the application and obtain necessary police services for the event. Good cause may be demonstrated by a showing that the circumstance that gave rise to the application did not reasonably allow the applicant to file within the time prescribed. If the Deputy City Manager refuses to consider a late application, the applicant may appeal such decision.

Sec. 14.16.050 Criteria for denial.

A. The Deputy City Manager shall approve an application and issue a special event permit unless the Deputy City Manager determines, upon consideration of the application and other pertinent information that:

1. Information contained in the application or supplemental information obtained from the applicant is found to be false in any material detail;

2. The applicant has failed to complete the application after having been notified of any additional information or documents required;

3. Another special event permit has already been issued, or an application has been received prior in time, to hold another event on the same date and time or so close in time and place as to cause undue traffic congestion, or as to burden the City's ability to meet the needs of police, fire or other emergency services to the remainder of the City;

4. The time, route, size, nature or location of the special event will substantially interrupt the safe and orderly movement of traffic on or

contiguous to the event site or route or will disrupt the use of a public right-of-way at a time when it is usually subject to traffic congestion;

5. The size or nature of the special event will require diversion of so great a number of police officers to ensure that participants stay within the boundaries or route of the event or to protect participants in the event, as to prevent normal protection to the rest of the City; provided that nothing herein authorizes denial of a permit because of the need to protect participants from the conduct of others, if reasonable permit conditions can be imposed to allow for protection of participants with the number of police officers available to police the event;

6. The location of the event will substantially interfere with any construction or maintenance work scheduled to take place on or near a public right-of-way;

7. The special event will occur at a time when a school is in session on a route or at a location adjacent to the school or class thereof, and the noise created by the activities of the event would substantially disrupt the educational activities of the school or class;

8. The special event involves the use of hazardous, combustible or flammable materials which could create a fire hazard;

9. The event, as described in the application, would violate any applicable law;

10. The applicant has failed to pay costs, fees or deposits for any previous special event permit; or

11. The applicant has failed to abide by terms or conditions of any previous special event permit.

B. When grounds for denial of an application can be corrected by altering the date, time, duration, route or location of the special event, the Deputy City Manager shall, instead of denying the application, conditionally approve the application upon the applicant's acceptance of appropriate corrective conditions or by making other reasonable modifications to the special event.

C. In the event that more than one application is received for one park, building, street, right-of-way, or recreation facility for use on the same day, the Deputy City Manager shall first act upon the application first received; provided, however, that in considering two or more special event applications for the same location on the same date, the following priorities shall be followed:

1. Uses sponsored or cosponsored by the City;

2. Uses sponsored by the school district of the City, Chamber of Commerce, or Downtown Business Association;

3. Groups composed primarily of City residents;

4. Groups composed primarily of nonresidents.

Sec. 14.16.060 Issuance.

Upon submission of a complete application for the special event permit, the Deputy City Manager shall consider the applicable criteria and approve, approve with conditions or deny the application. If the application is denied, the Deputy City Manager shall inform the applicant in writing of the grounds for denial. If the application is approved, the Deputy City Manager shall issue the special event permit, including any conditions.

Sec. 14.16.070 Conditions.

The Deputy City Manager may impose reasonable conditions on any special event permit necessary to protect the safety of persons and property and the control of traffic, including but not limited to:

1. Alteration of the date, time, duration, frequency, route or location of the special event;

2. Conditions concerning the area of assembly and disbanding of parades or other events occurring along the route;

3. Conditions concerning accommodation of available parking or pedestrian or vehicular traffic, including restricting the event to only a portion of a public right-of-way;

4. Requirements for the use of traffic cones, barricades or other traffic control devices to be provided, placed and removed by the permittee at its expense;

5. Requirements for arrangement of fire protection or law enforcement personnel to be present at the event at the permittee's expense;

6. Requirements for provision of emergency access and first aid;

7. Requirements for use of event monitors and providing notice of permit conditions to event participants;

8. Requirements for provision of sanitary facilities;

9. Restrictions on the number and type of vehicles, animals or structures at the event and inspection and prior approval of floats, structures and decorated vehicles for fire safety;

10. Requirements for use of trash receptacles, cleanup and restoration of property;

11. Restrictions on use of amplified sound;

12. A requirement that notice be provided to the property owners of property adjacent to any affected public property;

13. Compliance with any applicable law and obtaining any other legally required permits or licenses;

14. Designation of a contact person with decision-making authority who will be continuously available to law enforcement personnel and present at the event;

15. Approval of the special event permit by the City's Parks and Recreation Department, Public Works Department and Planning Department; and

16. Approval of the special event permit by the Louisville Police Department and the Louisville Fire Protection District.

Sec. 14.16.080 Insurance.

In addition to any other conditions allowed by Section 14.16.070, the Deputy City Manager may require the applicant to possess liability insurance to protect against loss from liability imposed by law for damages for bodily injury or property damage arising from the special event. The Deputy City Manager shall determine whether to require such insurance and the amount of insurance that shall be required, based upon the considerations routinely taken into account by the City in evaluating loss exposures, including without limitation, whether the event poses a substantial risk of damage or injury to the attendees, the anticipated number of participants, the nature of the event and activities involved and the physical characteristics of the proposed site or route. Such insurance shall name the City, its officers, employees and agents as additional insureds.

Sec. 14.16.090 Duties of permittee.

A. The permittee shall comply with all terms and conditions of the special event permit.

B. The permittee shall ensure that the person leading or in charge of the event is familiar with every provision of the special event permit and carries the special event permit on his or her person for the duration of the special event.

C. Immediately following the completion of the special event, the permittee shall ensure that the area used for the special event is cleaned and restored to the same condition as existed prior to the event. If the property used for the event has not been properly cleaned or restored, the permittee shall be required to reimburse the City for any costs incurred by the City to restore the area.

Sec. 14.16.100 Revocation.

A. The Deputy City Manager may, at any time prior to a special event, revoke or terminate a permit that has been issued for the event if conditions change so that the permit application could have been denied in the first instance.

B. The Deputy City Manager, Director of Parks and Recreation, Chief of Police, Director of Public Works or their designee may revoke the permit and terminate the special event during the course of the event if continuation of the event presents an immediate danger to the health, safety or welfare of the participants or public.

C. The Deputy City Manager, Director of Parks and Recreation, Chief of Police, Director of Public Works or their designee may revoke the permit and terminate the special event during the course of the event for noncompliance with any term or condition of the permit.

Sec. 14.16.110 Appeal.

A. Any decision of the Deputy City Manager under this Chapter may be appealed to the City Manager by filing a written notice of appeal, setting forth the grounds for appeal, within five (5) days after the decision.

B. The City Manager shall hold a hearing following the filing of such appeal at the office of the City Manager. The hearing must be held within two weeks of the date of the filing of such appeal, at which time the applicant may present any and all evidence, testimony and information relevant to the application. The City Manager, shall, within 24 hours of the appeal hearing, issue his decision either affirming the denial of the application or directing the Deputy City Manager to issue a permit as applied for, subject to the reasonable terms and conditions as outlined in this chapter.

Sec. 14.16.120 No rights conferred.

This Chapter grants no rights to and creates no property or other legal interest in any person or organization. The City retains full control over City-owned property and may at its sole and exclusive discretion issue, issue with conditions or deny a special event permit.

Section 2. If any section, paragraph, sentence, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 3. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 4. The repeal or modification of any provision of the Municipal Code of the City of Louisville by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

INTRODUCED, READ, PASSED ON FIRST READING, AND ORDERED PUBLISHED IN FULL this 21st day of April, 2015.

_____
Robert P. Muckle, Mayor

ATTEST:

_____
Nancy Varra, City Clerk

APPROVED AS TO FORM:

_____
Light Kelly, P.C.

City Attorney

PASSED AND ADOPTED ON SECOND AND FINAL READING, this 5th day of May, 2015.

_____
Robert P. Muckle, Mayor

ATTEST:

_____
Nancy Varra, City Clerk

City of Louisville
COLORADO • SINCE 1878

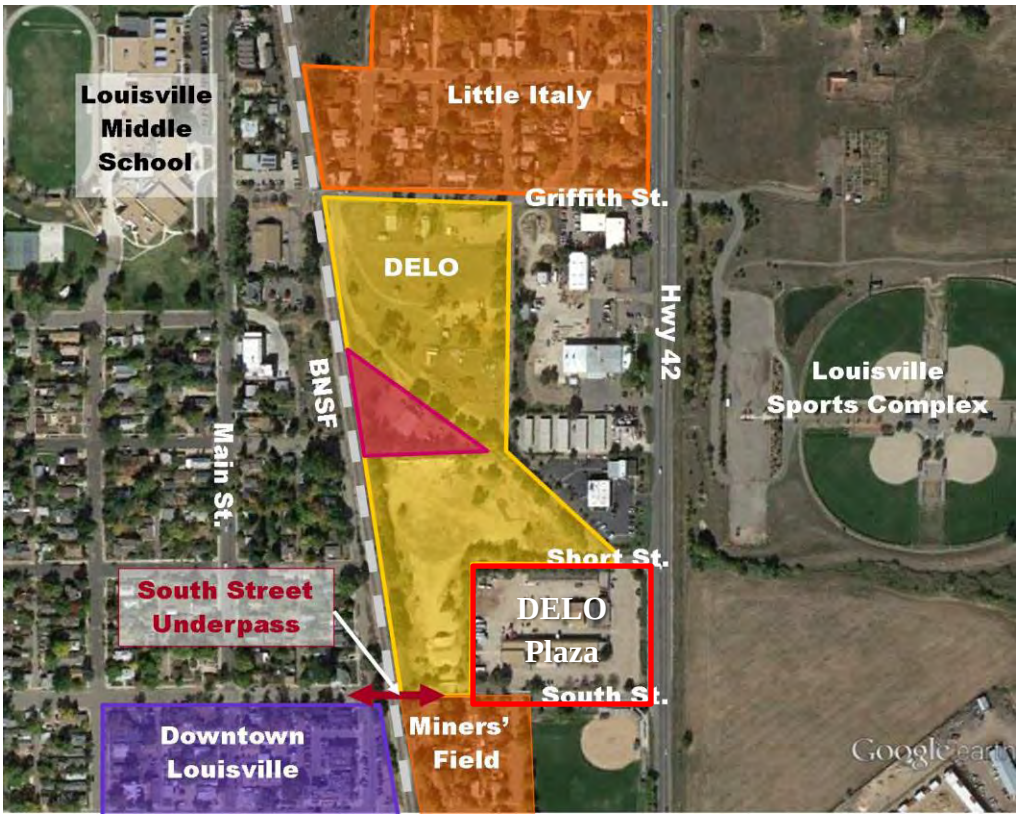
CITY COUNCIL COMMUNICATION
AGENDA ITEM 8K

SUBJECT: **RESOLUTION NO. 28, SERIES 2015 – A RESOLUTION DENYING A REZONING, FINAL PLAT, FINAL PLANNED UNIT DEVELOPMENT (PUD), AND SPECIAL REVIEW USE (SRU) FOR THE REDEVELOPMENT OF A 3.9 ACRE PROPERTY WITHIN THE CORE PROJECT AREA OF THE HIGHWAY 42 REVITALIZATION AREA. THE REDEVELOPMENT INCLUDES THE ADDITION OF APPROXIMATELY 19,208-23,000 SQ. FT. OF COMMERCIAL SPACE**

DATE: **MAY 05, 2015**

PRESENTED BY: **SEAN MCCARTNEY, PLANNING AND BUILDING SAFETY**

SUMMARY:
The applicant, Tebo Properties, Inc., has submitted a rezoning request, final Plat, final Planned Unit Development (PUD), and Special Review Use (SRU) application for the redevelopment of a 3.9 acre property in the Hwy. 42 Revitalization District. The proposed project, known as Downtown East Louisville (DELO) Plaza, includes the development of up to 23,000 sf of commercial space.



Louisville Municipal Code (LMC) requires this redeveloping property be rezoned from the Industrial (I) Zone District to: the Mixed Use Community Commercial (MU-CC) Zone District along Highway 42, and to the Mixed-Use Residential (MU-R) Zone District along Cannon Street.

Planning Commission reviewed the proposal April 9th and unanimously recommended City Council deny the application.

Since the Planning Commission hearing, the applicant has communicated to staff that they would accept all of staff's recommended conditions of approval and further modify the landscaping screening proposed on the rear of the property. The Planning Commission did not review these recently proposed changes.

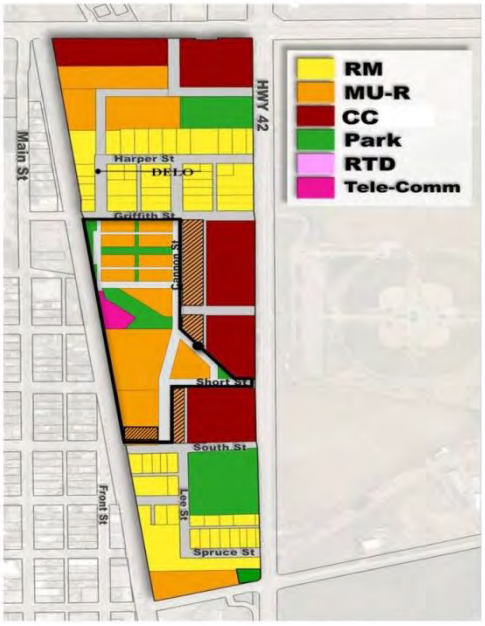
City Council three options following completion of its public hearing on the proposal:

1. The Council may pass Resolution No. 28, Series 2015 disapproving the application. This resolution was drafted in response to the recommendation of the Planning Commission.
2. The Council may approve the application with conditions.
3. The Council may remand the application back to the Planning Commission as a revised application.

Staff recommends the application be remanded back to Planning Commission to review the new proposal from the applicant.

BACKGROUND

EXHIBIT A



Highway 42 Revitalization Area, Highway 42 Framework Plan and Mixed Use Development Design Standards and Guidelines (MUDDSG)
The City developed the Highway 42 Framework Plan in 2004 to define a vision for the area compatible with Downtown Louisville, adjacent neighborhoods, and oriented toward the future RTD investment. The Framework Plan included a requirement to continue Louisville's interconnected traditional street network.

In 2007, the City of Louisville created the Mixed Use Overlay District (Sec. 17.14 of the LMC) and the MUDDSG to provide the regulation tools necessary to guide the character of future development in the area.

Downtown/Old Town Parking Action Plan
City Council adopted the Downtown / Old Town Parking Action Plan in August of 2014. The Parking Action Plan is intended to accomplish the following:

1. Eliminate the 325 parking space deficit in Downtown by adding 221 permanent public parking spaces and 109 evening leased public spaces in the next three years (330 total);
2. Ensure the Louisville Police Department has the capacity to regularly enforce parking rules in both Downtown and Old Town in 2015 and beyond;
3. Explore neighborhood parking permit programs oriented at enhancing the livability of Old Town while sustaining the economic vitality of Downtown;
4. Maintain and enhance the small town character of Downtown and Old Town with distributed parking facilities intended to serve current parking deficits throughout Downtown;
5. Establish a framework for a long-term parking strategy necessary to ensure future parking demand in Downtown is accommodated in Downtown, not Old Town; and,
6. Continue to improve the walkability and bicycle friendliness of Downtown and Old Town.

One of the key early objectives of the plan is for the City to acquire up to 70 parking spaces in the Hwy 42 Revitalization District. The purpose of this acquisition, with the access provided by the South Street Gateway (BNSF Underpass), is to provide immediate special event parking relief for Downtown Louisville and a parking supply for future transit investments along Hwy 42.

PARKING AREA PURCHASE AND SALE AGREEMENT
In 2013 and previously, City Council expressed interest in providing additional public parking in Downtown for various purposes including facilitating a future transit station, accommodating special events and promoting retail business in Downtown. This interest influenced Council to consider various strategies to acquire property to provide public parking. Consistent with this strategy, staff negotiated with the property owner, Stephen Tebo, to acquire that portion of this development designated as parcel 4. Tebo conditioned his agreement to sell this parcel to the City on the following:

- Cannon Street will be dedicated to the City at no cost to the City;
- No public land dedication is required;
- City staff will recommend in the rezoning agreement the following conditions;
    - Allowance for three (3) drive-thru restaurant parcels on the Land;
    - No required two story minimum building height **(waiver required)**;
    - No minimum lot coverage ratio in the Community Commercial portion of the Property;

- Minimum 15 foot setback in the Community Commercial portion of the Property;
- No required maximum parking restrictions **(waiver required)**;
- Match the criteria listed on site plans for the Land as shown in Exhibit B; and,
- Stormwater detention will be accommodated within a proposed regional detention facility. Should the detention facility be financed through a TIF Revenue Bond, no fee-in-lieu payment is required. If the TIF Revenue bond is not funded, Tebo has the option to provide for stormwater detention on-site or pay to the City a fee-in-lieu payment of up to $100,000 to provide detention off-site.

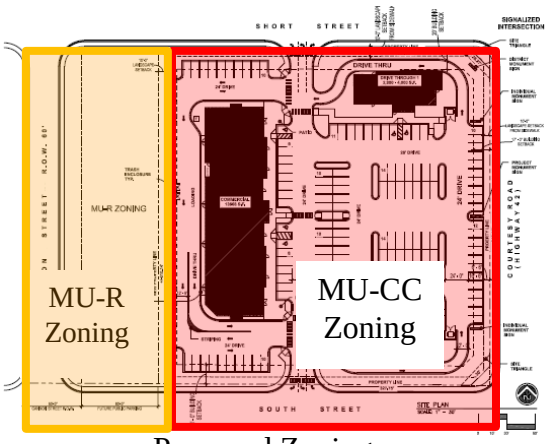
Tebo's position in negotiations convinced staff that it would be impossible to secure his agreement to sell parcel 4 to the City unless staff conceded to these conditions. While conceding to these conditions, staff advised Tebo that staff's recommendation in no way bound the City Council to approve such a waiver and that Council would consider any proposed development during a public hearing and decide on the proposal based on the information and testimony presented during that public hearing.

On October 7, 2014 City Council approved a Purchase and Sale Agreement between the City and Stephen Tebo, allowing for the City to acquire a .638 acre portion of property (facing Cannon Street) at 1055 Courtesy Road for future public parking within the Highway 42 Redevelopment Area. This .638 acre parcel is included in this DELO Plaza land development application. The purchase agreement is not binding unless City Council approves this Plat, PUD and SRU with the land use entitlement conditions noted above. On October 21, 2014, City Council approved Ordinance No. 1674, Series 2014 authorizing the payment of City Moneys for the acquisition of this parcel.

REQUEST

Rezoning

The required rezoning of this property must be consistent with the Land Use Exhibit A of the Mixed Use Development Design Standards and Guidelines (MUDDSG). A side-to-side comparison of the requested rezoning and the adopted Exhibit A of the MUDDSG are shown below.



Proposed Zoning

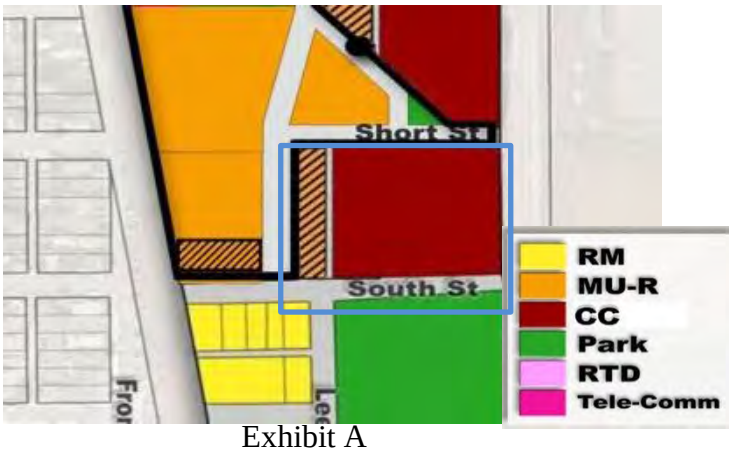


Exhibit A

The applicant is seeking the following zone district classifications:

<u>Commercial Community Zone District (CC)</u> – Section 17.14.030 of the MUDDSG states *"The Mixed Use Commercial Community (CC) Zone District is intended to provide zoning which would encourage the development of a limited range of highway oriented commercial uses adjacent to Highway 42. The Commercial Community Zoning is intended to address the market demand for highway-oriented commercial development in a form that would protect the existing residential neighborhoods as well as interface effectively with the future mixed use development of the neighborhood."*

<u>Mixed-Use Residential Zone District (MU-R)</u> – Section 17.14.0303 of the MUDDSG states *"The Residential Mixed Use (MU-R) District is intended to implement the residential mixed use land use and planning goals depicted and discussed in the Highway 42 Revitalization Area Plan. Areas zoned MU-R should be used predominantly for higher density multi-family residential, with subsidiary commercial uses and civic uses that cater to the needs of residents and transit commuters."*

The MUDDSG was created to implement the Highway 42 Revitalization Area plan. According to Section 17.14.010 of the MUDDSG, the Purpose and Intent of the MUDDSG is to:

A. *Implement the Highway 42 Revitalization Area Comprehensive Plan;*
B. *Strengthen and enhance adjacent residential neighborhoods while protecting them from potential adverse impacts associated with new development;*
C. *Complement and integrate the area with historic downtown Louisville through the establishment of strong pedestrian, and multimodal connections;*
D. *Capture the potential for high-quality, mixed use development that will serve adjacent neighborhoods and the citizens of Louisville and enhance the city's long-term tax base;*
E. *Avoid incompatible industrial and large-scale or heavy commercial growth;*

F. Adopt a regulatory framework which promotes and encourages redevelopment to integrate principles of sustainable architecture and energy conservation;
G. Provide for design standards for the development of a commuter rail station which shall promote the public health and safety, adequate ingress and egress, parking, and surface parking which shall be decentralized. Surface parking shall be decentralized in a manner which does not overwhelm the redevelopment area; and
H. Capture the potential for highway commercial development adjacent to State Highway 42 while providing a restricted range of retail sales and services;

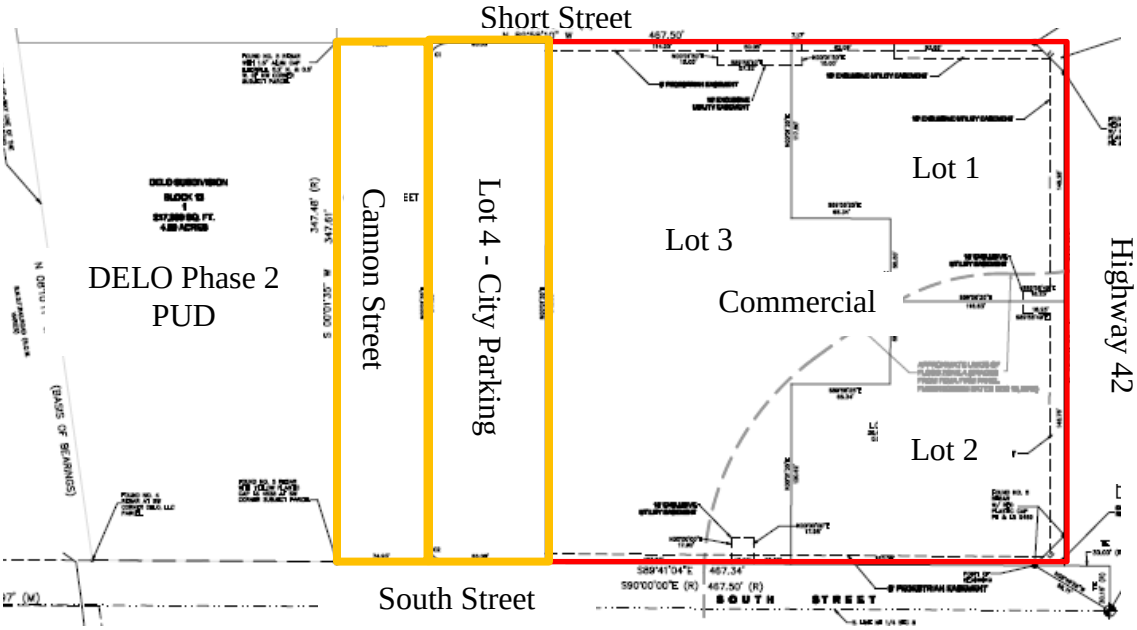
The MU-CC component of this development proposes to provide highway oriented commercial uses adjacent to Highway 42. The MU-R component of this development is proposed by the applicant to function as a municipal surface parking lot.

The proposed rezoning matches Exhibit A of the MUDDSG.

Final Subdivision Plat
The proposed subdivision plat provides a replat of the Caledonia Place Subdivision, which was originally approved in 1890. The subdivision component of this request is regulated by Chapter 16 of the LMC.

Lots
The applicant is requesting to subdivide the parcel into four Lots. Lots 1, 2, and 3 make-up the commercial component of the property:

- Lot 1 (27,775 SF or .64 acres) is proposed to be a drive thru use. This lot will have access from Short Street and South Street.
- Lot 2 (28,426 SF or .65 acres) is proposed as a drive thru use as well. The lot will also have access from Short and South Streets.
- Lot 3 (64,639 SF or 1.48 acres) is shown on the PUD to have a multi-unit commercial building. Lot 3 will have a drive-thru use with access from Short and South Streets.



Lot 4 (27,752 SF or .64 acres), if approved would be owned by the City of Louisville and is intended for the development of a 70 space municipal parking lot serving as an accessory parking function for events at Miners' Field and special events Downtown. This property would be zoned MU-R and City municipal uses are permitted as a special review use (SRU). Lot 4 is proposed to be accessed from South Street. The parking lot would be accessible by pedestrians from Downtown Louisville via the South Street Underpass.

The Cannon Street right-of-way proposed in the replat will create an instrument for Cannon Street to extend from E. Lafayette Street to South Street, thereby allowing for the creation of the "woonerf" established in DELO Phase 2 and complete the street network connectivity required for the successful implementation of the Hwy 42 Corridor Plan.

Block Design
The proposed block design is compliant with the MUDDSG by providing a 393 foot block dimension from Highway 42 to Cannon Street. The CC zone district permits a maximum block dimension of 400 feet.

Public Land Dedication
The property was originally platted as part of the Caledonia Place Subdivision (1890). It has been staff's practice on past proposals to recommend City Council waive the land dedication requirements identified in Section 16.16.060 of the LMC for projects that have been previously platted in the City.

Final PUD Development Plan

The PUD development plan illustrates highway oriented commercial development, providing between 19,308 SF and 21,608 SF of commercial / retail / office / restaurant uses. The proposal consists of three buildings with a private surface parking lot on Lots 1, 2, and 3. As mentioned previously, a municipal surface parking lot, open to the public, is proposed on Lot 4.

The larger multi-use commercial building on Lot 3 would be allowed to be constructed between 13,608 and 15,000 SF in size, while smaller, drive thru buildings ranging between 2,850 – 4,000 SF each would be built on Lots 1 and lot 2 if approved

The redevelopment of this parcel proposes land uses complimentary to the surrounding neighborhood; providing services within walking distance to residential, businesses and the City sports complex.

Land Use
The proposed land uses are permitted in Table 1 of Section 17.14.050 of the MUDDSG. Municipal uses require an SRU in the MU-R zone district.

Zone District	Use(s)	Building Area	Height	Parking Required	Parking Provided	Parking Ratio
MU-CC	*Commercial Retail*	Max. 15,000 SF	1 Story	1/300 SF = 45 spaces	143 total	1/250
	Drive Thru 1 Eating	Max. 4,000 SF	1 Story	Min.1/300 SF Max.125% of minimum req'd spaces		1/125
	Drive Thru 2 Commercial (Bank)	Max. 4,000 SF	1 Story	Min.1/400 Max.125% of minimum req'd spaces		1/125
MU-R	*Municipal Public Parking*	N/A	N/A		79 spaces	

Parking
The MUDDSG states the following intent for off-street parking: *"An adequate supply of off-street parking is necessary for the commercial viability and success of new development in the MU-R and CC Districts. However, commuter rail located within easy walking distance of the entire Highway 42 Revitalization Area may reduce the amount of off-street parking required or supplied in developments where the only travel mode option is the automobile. The city's adopted street design for the Highway 42*

Revitalization Area will also ensure that on-street parking spaces can serve the district's visitors and users."

The proposed development provides a total of 143 parking spaces. Only 77 parking spaces are needed for the requested floor area, an excess supply of 66 spaces. The MUDDSG requires a maximum parking standard of *"125% of minimum required spaces",* which means this development should have a maximum of 96 spaces (77 parking spaces X 1.25 = 96.25). The 143 parking space provision is 178% of the minimum required.

Section 4.2.C.1, of the MUDDSG, permits the following:
"Off-street parking may be permitted between the building's front façade and Highway 42 frontage, subject to parking lot landscape screening requirement for properties zoned MU-CC." Sheet 8 of the PUD shows the proposed landscape plan. The applicant has provided a 10' landscape buffer between the parking lot and the adjacent right-of-way, as well as landscape islands complete with trees and shrubs.

Bulk and Dimension Standards
The proposed development does not comply with the majority of the bulk and dimension standards established in the MUDDSG. Exceptions highlighted below require a waiver to the LMC.

CC zone district	**Required**	**Proposed – DELO Plaza**
Min. Lot Width	N/A	40'
Min. Building Coverage	30%	*N/A*
Min. Landscape Coverage	20%	*10%*
Max. Footprint	50,000 SF	15,000 SF
Max. Bldg. Length along street	350'	*N/A*
Min. % of street frontage	N/A	N/A
Building setbacks		
Min. & max. street setback (principal use)	Minimum: 15' Max: 60'	*Minimum: 10'* *Max: N/A*
Min. side yard setback (principal and accessory uses)	10'	*0'*
Min. rear yard setback (principal uses)	20'	*5'*
Min. rear yard setback (accessory uses)	20'	*5' (lane)*
Maximum Building Height		
Principal Uses	Min: 2 stories/35' Max: 3 stories/45'	Min: *1 story/16'* Max: 3 stories/45'
Accessory Uses	20'	20' max.

X – The yellow color denotes waivers being requested

Site Plan
The MUDDSG describes the intent of site planning as follows: *"The orientation of a principal building is a major influence on the public realm environment created at the public sidewalk or street edge. When buildings are set back far from the public sidewalk or street, or when a building turns its back on the primary abutting street, the pedestrian experience at the sidewalk or on the street suffers in quality. These building orientation and siting standards are intended to accommodate and invite pedestrians to walk to and between destinations within the MU-R, and CC Districts, to feel safe and comfortable doing so, and to support the use and security of the commuter rail line and transit station located in the Highway 42 plan area."*

The proposed site plan includes three buildings:

1. two drive-thru uses located along Highway 42, and
2. one multi-use, auto-oriented building set back approximately 225 feet from Highway 42.

The property has approximately 310 feet of frontage along Highway 42 and provides approximately 80 feet of building frontage, or 25% of the street property line containing a building facade. Although the MUDDSG is silent in regards to the amount of buildings facing a street in the MU-CC zone district (the MU-CC has a maximum building length along a street, not a minimum), staff believes the intent of the MUDDSG is to have most of the commercial development along the street frontage.

Section 4.2.C.1, of the MUDDSG permits off-street parking to be located between the building and Highway 42 as long as adequate landscaping is provided.

Pedestrian Circulation
Pedestrian users along Highway 42 have safe access to the commercial development, along Short Street and South Street, but will not have any mid-block access, unless they travel through the parking lot. Staff requests the proposed sidewalk match the sidewalk design included in the Highway 42 Plan (see attached).

Signs
The applicant is requesting building mounted signs on all buildings within the commercial development, as well as monument signage along Highway 42. Sign design in the MU-CC zone district is regulated by Chapter 7 of the Commercial Development Design Standards and Guidelines (CDDSG), as well as Section 17.24 of the LMC.

<u>Building Mounted Signs</u> – According to the CDDSG commercial users are permitted one SF of sign area per linear footage of an individual business. Sign copy, including trademarks, logos, etc. may not exceed 24 inches in height. On sheet 17 the applicant

requests the following building mounted sign variance (Staff has highlighted the non-conforming elements of the request in yellow):

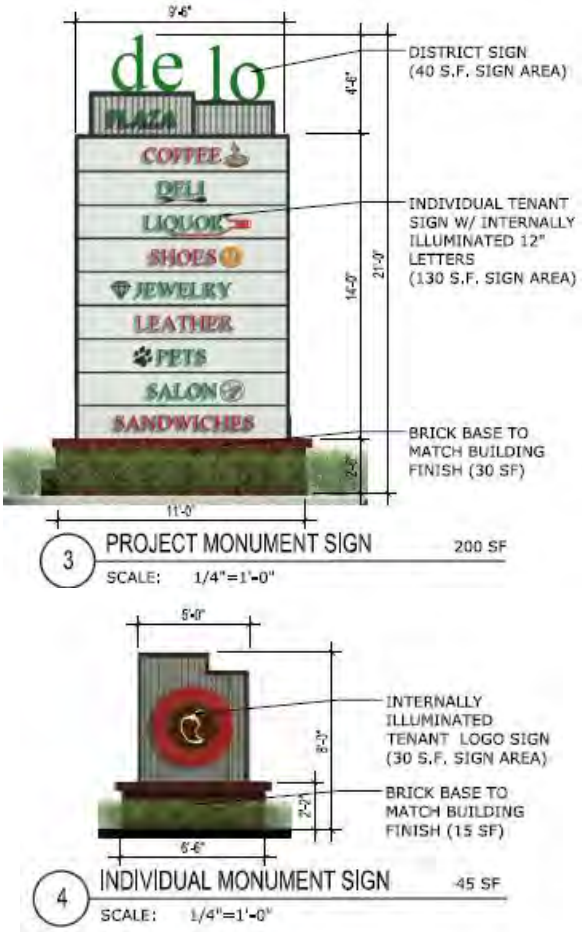
1. "Maximum area of building mounted signs per building façade surface shall be limited to 2 square feet of sign area per linear foot of the individual business, with no individual sign being larger than 200 square feet, including retailer's logos. Building mounted signs shall be allowed on all sides of the building."

2. Character height of building mounted signs shall be 30 inches maximum.

Staff recommends all building mounted signs follow the standards established in Chapter 7 of the CDDSG and Section 17.24 of the LMC.

Monument Signs – The CDDSG states "*For retail zones individual monument signs may be located at primary entries to freestanding buildings to provide individual businesses identifications and building addresses.*" The proposed development shows a total of 4 monument signs (2 individual monument signs, one project monument sign, and one district monument sign), all located along Highway 42. The applicant has asked for the following sign variances for the monument signs (Staff has highlighted the non-conforming elements of the request in yellow):

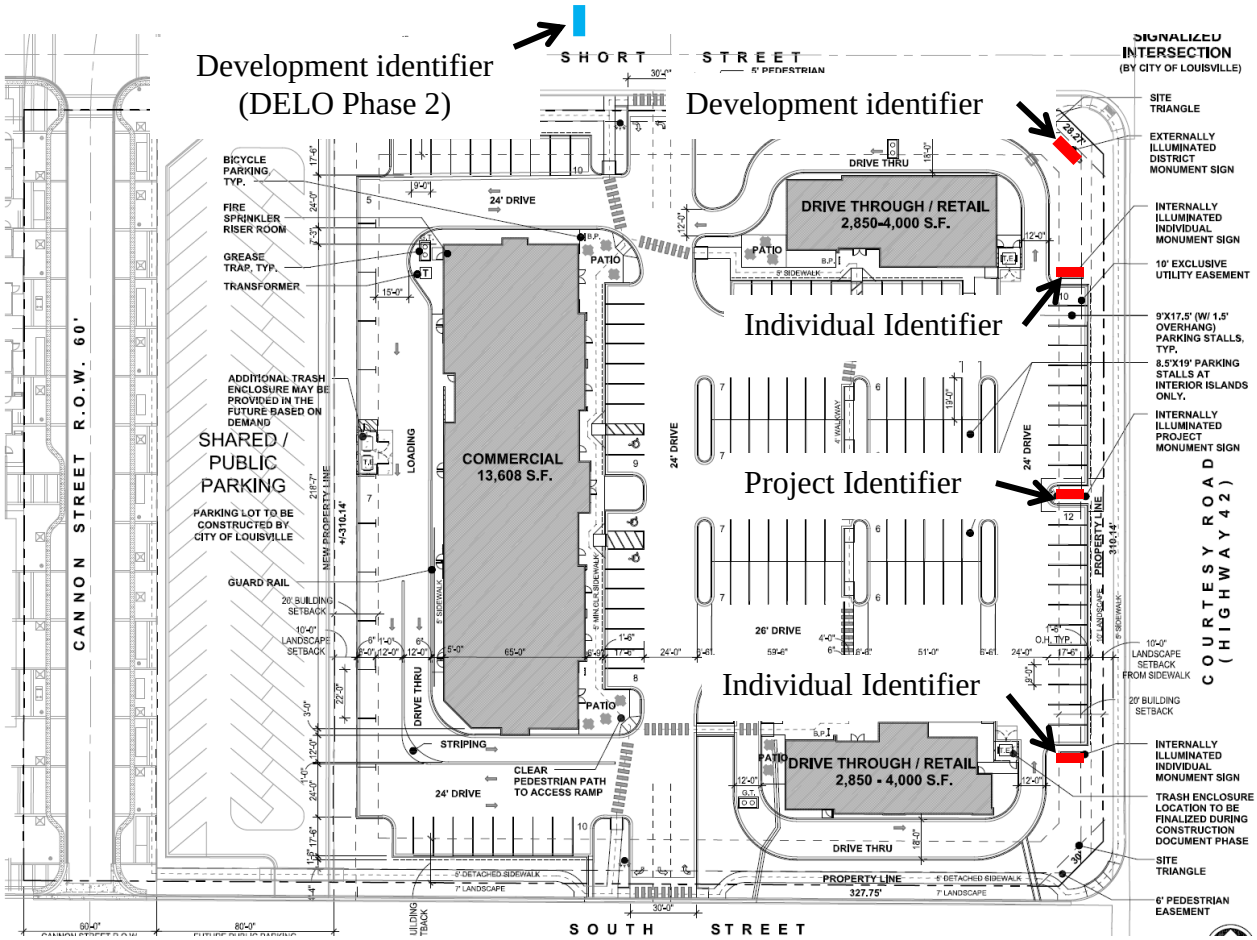
- Maximum height of monument signs shall be 21 feet,
- Maximum area of monument signs shall be 200 square feet,
- One (1) project monument sign that contains the name of the project and names of the individual tenants shall be provided,
- Two (2) individual monument signs for free standing buildings shall be provided,
- One (1) district monument sign shall be provided,



The CDDSG requires the following:

1. The maximum height of a monument sign in the commercial district is 12 feet,
2. The maximum area of a monument sign in the commercial district is 60 square feet,
3. "One monument sign per public street frontage, if authorized as part of the final PUD development plan. If so authorized, project monument signs may be located at the street or primary entries to commercial developments to provide the overall project identity." The above statement results in 3 monument signs for this development.

Staff believes the request for 4 monument signs creates sign clutter for this property. Also, staff believes the placement of a development identifier, the "DELO" sign, is redundant since the DELO Phase 2 PUD has provided a development identifier on Short Street. The monument signs may not be located within any utility easements.



By following the standards in the CDDSG and LMC, the development could have three 12 foot tall, 60 SF monument signs, located along Highway 42, setback 10 feet from the adjacent right-of-way. Staff recommends all proposed monument signs follow the standards established in Chapter 7 of the CDDSG and Section 17.24 of the LMC.

Architecture and Building Design

The MUDDSG is fairly specific on architectural and building design standards (Section 9 of MUDDSG). According to the MUDDSG, the standards are intended to "promote high-quality building, streetscape, and open area design and construction that will give the MU-R and CC Zone Districts an identifiable character and unique physical image."

The intent is also *to "create the appearance of development that occurred over a period of time, architectural features of new developments, including rooflines, materials, colors, door and window patterns, and decorative elements, should vary in form and style."* The requirement of creating architecture *"that occurred over a period of time"* is difficult to attain without creating a theme-based architectural style.

Staff believes the proposed architecture is a significant improvement on the architecture which was originally submitted.

During the referral project, the Louisville Revitalization Commission (LRC) asked the applicant to revise the architectural style. Staff worked with the applicant to achieve an architectural style not only reflecting the standards established in the MUDDSG, but also reflecting some of the architectural materials which may have been found in previous industrial development in the area:

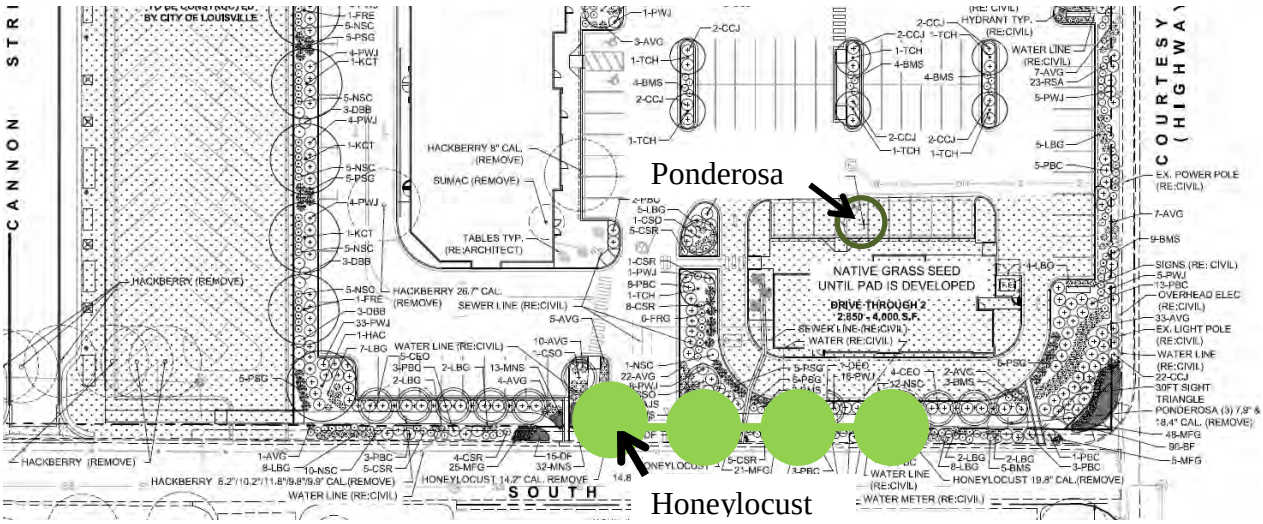
Height

Section 17.14.060 of the LMC requires a minimum building height of 35 feet and two stories, while allowing a maximum height of 45 feet and three stories in the MU-R districts. The proposed development is requesting a waiver to allow a 26'3" one-story building. As noted in the background information, the City Council expressed interest in providing additional public parking in Downtown and considered various strategies to acquire property for this purpose. Consistent with this strategy, staff negotiated with Stephen Tebo to acquire that portion of this development designated as parcel 4. Tebo conditioned his agreement to sell this parcel to the City on, among other things, staff recommending a waiver of the two-story requirement applicable to development in this location. The property owner's position in negotiations convinced staff that it would be impossible to secure his agreement to sell parcel 4 to the City unless staff conceded to the agreement. While conceding to recommend the waiver of the two-story requirement, staff advised the property owner that staff's recommendation in no way bound the City Council to approve such a waiver. In this context, and because staff understands development changes over time and believes this development could still allow for development of a two story structure in the future, staff recommends approving the height variance request. Additionally, the height variance request is consistent with the height waivers granted for Coal Creek Station.

Landscaping

The applicant is asking for a waiver to the required landscaping coverage (10% coverage instead of 20%). The applicant claims reduction in landscaping coverage

allows for a more flexible internal circulation and flexibility for future land uses. Staff does not support this waiver request. Further, according to the City Parks Project Manager, there are four existing Honeylocust trees along the south side of the property that should be preserved, as well as some Ponderosa Pines.



Staff understands some of the Ponderosa pines must be removed for the property to be redeveloped. However, the Honeylocusts along South Street could be saved if the sidewalk design is modified at the construction drawing phase.

WAIVERS

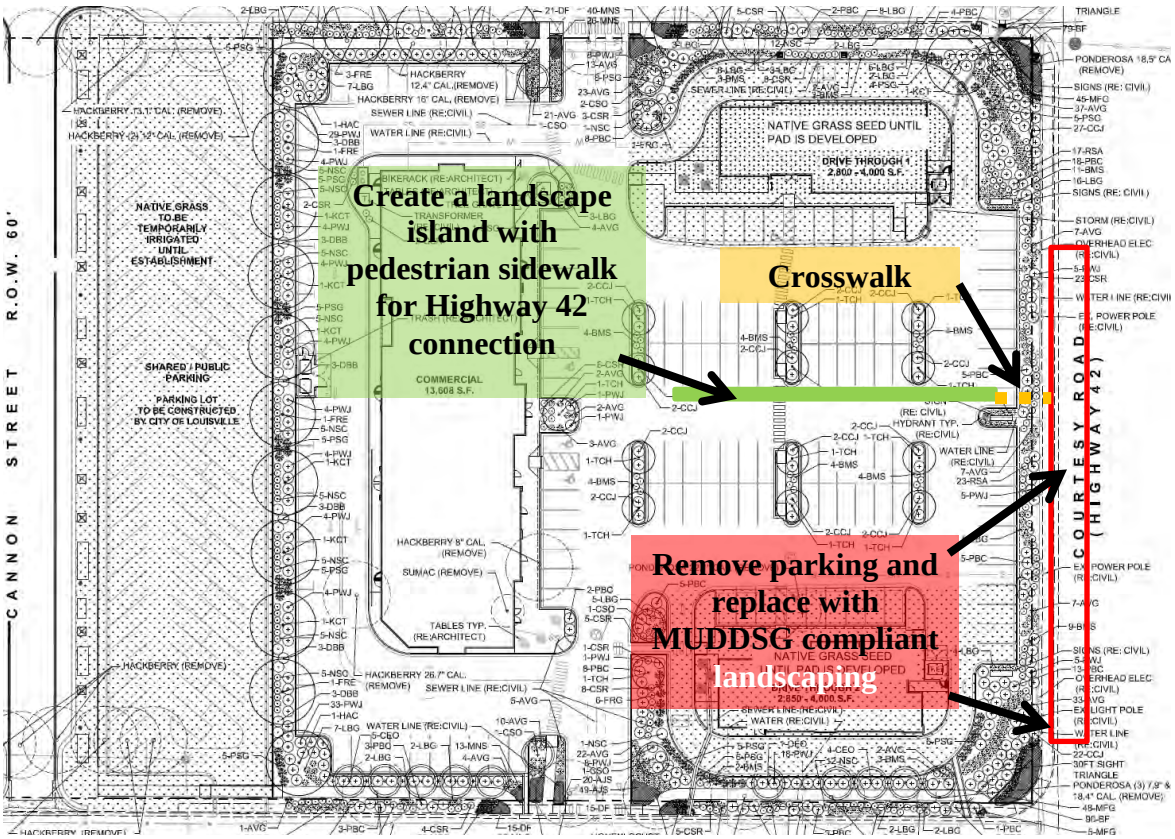
The proposed development includes the following waivers to the MUDDSG:

Design Element	Required	Proposed
Site Plan		
Min. building Coverage	30%	20%
Min. landscape coverage	20%	10%
Max. street setback	60 feet	Approx.. 225 feet
Min. Side setbacks	10 feet	0
Min. Rear setback	20 feet	5 feet
Height	2 stories and 35 feet	1 story and 27 feet
Signs		
Monument	Max. Number: 3 Max. Height: 12 feet	Max. Number: 4 Max. Height: 21 feet
Building Mounted Signs	Sign Area: 1/1 ratio Character Size: 24 inches	Sign Area: 2/1 ratio Character Size: 30 inches
Parking Ratio		
Commercial/Retail	1/300 SF	1/250
Eating	Min.1/300 SF Max.125% of minimum	1/125

	req'd spaces	
Office (Bank)	Min.1/400 Max.125% of minimum req'd spaces	1/125

Site Plan

A typical auto-oriented design will not be able to comply with every design standard of the pedestrian-oriented MUDDSG. By waiving the maximum street setback requirement the applicant is requesting to set the largest commercial building further west, allowing for more parking along Highway 42. The MUDDSG does not specifically prohibit parking between the building and Highway 42. Section 4.2.C.1 allows for parking between the building and the street. Staff would support this action if the parking stalls, located along Highway 42, were removed and replaced with MUDDSG compliant landscaping, and an east/west pedestrian sidewalk was created within a new landscape island. A new sidewalk, at mid-block, would improve the pedestrian-oriented design of the development. The drive aisles are 26 feet in width and only need to be 24 feet to be compliant with Fire Safety regulations so there is room for placement of a sidewalk.



Signs
The sign requirements in the CDDSG are designed for auto-oriented developments, such as those found in the South Boulder and McCaslin Corridors. This development is similar to a development found in either of those corridors and therefore should not receive any additional sign allowances than found on a standard commercial development. Staff does not support any of the sign waiver requests.

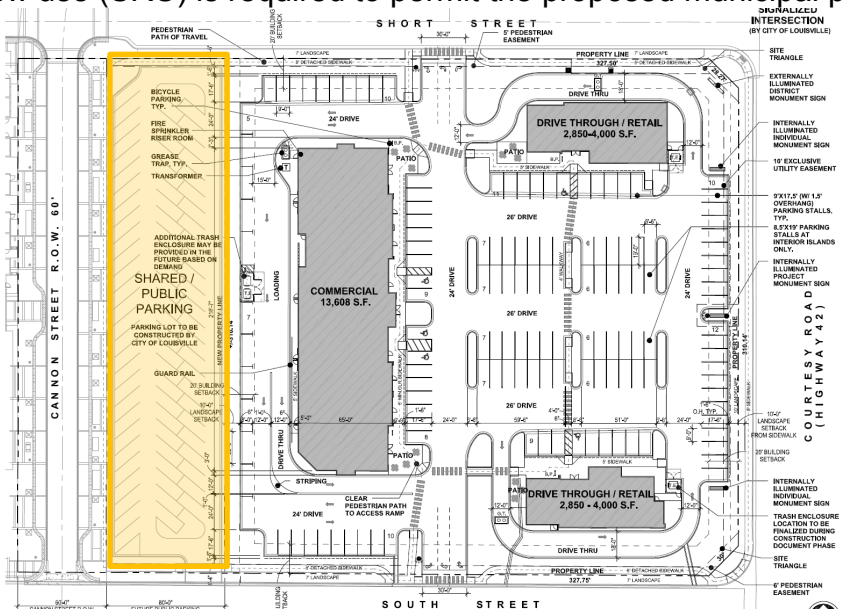
Parking Ratio
The request of a greater parking ratio allows the developer more flexibility in commercial land uses. However, an increase in parking ratio also decreases the amount of landscaping coverage. Staff would support the parking increase with two conditions:

1) The applicant and City enter into a share parking agreement so that events at Minors' Field and Downtown could utilize the extra parking when needed; and

2) Remove the parking along Highway 42 and replace with MUDDSG compliant landscaping, and preserve as many of the existing trees as possible (see image above).

The applicant is requesting a number of waivers for this development. Staff believes the public will benefit from the property being improved; the development will enable the City to acquire land for and construct a public parking lot; and developing commercial services on this site provides the residents, business owners, and sports complex users shopping conveniences within a safe, walkable environment. For these reasons, staff believes the public benefit discussion in Section 17.28.120, on which approval of waivers must be based, has been met with conditions.

Special Review Use Criteria:
A special review use (SRU) is required to permit the proposed municipal parking facility.



Louisville Municipal Code § 17.40.100.A lists five criteria to be considered by the Planning Commission and City Council in reviewing a Special Review Use application, which follow. The City Council is authorized to place conditions on approval, if they believe those are necessary to comply with all of the criteria.

1. *That the proposed use / development is consistent in all respects with the spirit and intent of the comprehensive plan and of this chapter, and that it would not be contrary to the general welfare and economic prosperity of the city or the immediate neighborhood;*

The establishment of the City's public parking lot, together with the South Street Gateway, would provide economic prosperity for Downtown Louisville by providing for additional parking options without further impacting the surrounding Old Town Neighborhood. Both the economic anticipated economic and neighborhood benefits support the Core Values of the Comprehensive Plan.

Staff believes the criterion has been met.

2. *That such use / development will lend economic stability, compatible with the character of any surrounding established areas;*

The establishment of the City's public parking lot complies with the intent established in the MUDDSG by providing a suitable public (shared) parking facility within walking distance to Downtown Louisville and Miners' Field. Additional public parking will, with the opening of the South Street Gateway and ongoing utilization of Miners' field, alleviate immediate and future parking pressure on the Miners' Field neighborhood. The additional parking will also assist in lowering parking impacts of Downtown Louisville on the Old Town Neighborhood.

Staff believes this criterion has been met.

3. *That the use / development is adequate for the internal efficiency of the proposal, considering the functions of residents, recreation, public access, safety and such factors including storm drainage facilities, sewage and water facilities, grades, dust control and such factors directly related to public health and convenience;*

The City's public parking lot is designed to accommodate public access, safety, and convenience. The City's public parking lot will also provide additional parking options for visitors to downtown and the nearby recreational facilities, which can be attributed to public health and convenience.

Staff believes this criterion has been met.

4. *That external effects of the proposal are controlled, considering compatibility of land use; movement or congestion of traffic; services, including arrangement of signs and lighting devices as to prevent the occurrence of nuisances; landscaping and other similar features to prevent the littering or accumulation of trash, together with other factors deemed to affect public health, welfare, safety and convenience;*

The City's public parking lot is designed to be compatible with the surrounding land use in terms of landscaping, lighting, movement and limiting nuisances.

Staff believes this criterion has been met.

5. *That an adequate amount and proper location of pedestrian walks, malls and landscaped spaces to prevent pedestrian use of vehicular ways and parking spaces and to separate pedestrian walks, malls and public transportation loading places from general vehicular circulation facilities.*

The City's public parking lot has a sidewalk on three of the four sides and has vehicular access on the south side of the lot (along South Street). Both attributes provide a controlled movement.

Staff believes this criterion has been met.

FLOODPLAIN DEVELOPMENT PERMIT
There is a limited portion of this property located within the 100 year floodplain. The applicant received a flood plain development permit from the Board of Adjustment on November 19, 2014.

PLANNING COMMISSION ACTION:
The Planning Commission conducted a properly noticed public hearing at its March 12, 2015 public hearing. The request before the Commission was for approval of a rezoning, final plat, final PUD, and SRU to allow for the development of approximately 23,000 SF of commercial uses.

Staff presented the staff report which dealt primarily with the issue of design, pedestrian access and sign design. Based on that proposal, staff concluded it does not comply with the Mixed Use Development Design Standards and Guidelines (MUDDSG) as it reflects more of an auto-oriented design rather than pedestrian oriented. Staff recommended the 6 following conditions:

1. The City and the applicant shall develop a shared parking agreement for the private surface parking lot for events at Miners' Field and larger downtown special events.

2. All signs, including any monument sign, shall comply with Chapter 7 of the CDDSG, as well as Section 17.24 of the LMC, including a 10 foot setback form right-of-way.
3. The applicant shall continue to work with Public Works on addressing the comments shown in the February 11, 2015 memo.
4. The proposed sidewalks shall match the sidewalk design included in the Highway 42 Plan.
5. Because the Hwy 42 sidewalk is required, the applicant shall modify the landscape sheets prior to recordation to remove the parking stalls, located along Highway 42, and be replaced with landscaping in compliance with the MUDDSG. The applicant shall also include an east/west sidewalk, connecting Highway 42 to the larger commercial building, via a sidewalk located within a landscape island.
6. Staff requests the applicant preserve as many of the existing trees as possible. The applicant shall work with the City Forester and Parks Project Manager, at time of construction drawings, to determine which trees may be preserved.

The applicant did not accept the above conditions, but did present alternative conditions. The Planning Commission reviewed the application as submitted without any conditions. The record reflects that the Planning Commission discussed following:

- Design – Planning Commission believed the proposed development turned its back on the surrounding uses instead of facing the streets
- Effects of the development on the surrounding neighborhood (the future DELO mixed-use development) – Planning Commission believed this development, as designed, would have a detrimental effect on the positive design of the DELO Mixed-use development
- Location of City Parking Lot – Planning Commission believed the location of the proposed City lot was not the highest and best use of the property
- Sign design – Planning Commission agreed with staff that the proposed signs were too large and there were too many signs for the development.

Planning Commission believed this project was “half baked”. The Commission passed a motion (6 to 0) of disapproval on the above referenced project with direction to staff to prepare findings for disapproval.

On April 9, 2015, the Planning Commission voted to approve Resolution No. 12, Series 2015, a resolution recommending denial. Planning Commission's findings for denial included the following:

a. *The project proposed by the application does not meet criteria A.1, A.7, A.9, B.1, B.5, and B.15 of Section 17.28.120 of the LMC. In particular, the Planning*

Commission concludes that the proposed PUD is not compatible with surrounding designs and neighborhoods, nor is it designed or oriented toward the pedestrian.

FISCAL IMPACT:
A fiscal analysis of this proposed development was not required because it is a mandatory rezoning. The proposed 23,000 square feet of retail development is expected to generate positive fiscal benefit to the City.

RECOMMENDATION:
Staff is forwarding to the City Council the Planning Commission's recommendation for disapproval. Given the process in the Louisville Municipal Code, the application comes forward to the City Council as a new hearing, and not as an appeal of the action of the Planning Commission. The City Council may conduct a full public hearing and consider new information from the applicant or the public. The applicant has not formally submitted any new information since the Planning Commission hearing. All documents Council is reviewing are the same documents Planning Commission reviewed.

However, the applicant has communicated to staff that they would accept all of staff's recommended conditions of approval and further modify the landscaping screening proposed on the rear of the property. The Planning Commission did not review these ecently proposed changes.

Section 17.28.170 of the Louisville Municipal Code (LMC) gives the City Council three options following completion of its public hearing on the proposal:

1. The Council may pass Resolution No. 28, Series 2015 disapproving the application. This resolution was drafted in response to the recommendation of the Planning Commission.
2. The Council may approve the application with conditions.
3. The Council may remand the application back to the Planning Commission as a revised application.

Staff recommends remanding the application to Planning Commission.

If City Council chooses to deny the project, staff requests City Council direct staff to prepare a draft resolution of denial for Council consideration at a subsequent meeting and that Council continues the public hearing to that future meeting date. If City Council chooses to approve with conditions, staff requests City Council direct staff to prepare a draft resolution of approval for Council consideration at a subsequent meeting and that Council continue the public hearing to that future meeting date. If the City Council chooses to remand the proposal to the Planning Commission, a public hearing will be scheduled for either June, or July, pending referral comments to the revised application. The Planning Commission will have a new public notice.

ATTACHMENT(S):

1. Applicant Letter
2. Resolution No. 28, Series 2015 – Resolution of Denial
3. Planning Commission Resolution No. 12, Series 2015
4. Application documents – Land Use Application, Letter of Intent, etc.
5. Final Plat
6. Link to Final PUD
7. Public Works Memo – dated February 11, 2015
8. Highway 42 Sidewalk Exhibit
9. Resolution 62, Series 2014 (Land Purchase Agreement)
10. March 12, 2015 Planning Commission staff report
11. March 12, 2015 Planning Commission Minutes
12. Presentation

RMCS, Inc.
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Mr. Troy Russ
Director of Planning and Building Safety
749 Main Street
Louisville, CO 80027

Mr. Sean McCartney
Principal Planner
749 Main Street
Louisville, CO 80027

Re: DeLo Plaza Notification of the Acceptance to Conditions from Resolution NO. 11 Series 15

Dear Troy and Sean,

Below are the conditions from Resolution NO 11 Series 2015. Please allow this letter to inform you that DeLo Plaza can accommodate the conditions as listed below. In an effort to exceed the criteria of the conditions below, we have increased the size of the landscape buffer at the rear of the property per Staff's request.

1. The city and the applicant shall develop a shared parking agreement for the private surface parking lot for the events at Miners' Field and larger downtown special events.

Agreed, however such agreement will include upfront capital reimbursements and ongoing costs and will be a limited amount of spaces in a limited area.

2. All signs, including any monument sign, shall comply with Chapter 7 of the CDDSG, as well as Section 17.24 of the LMC, including a 10 ft. setback from right-of-way.

Agreed, except that the development shall be granted a minimum of three individual monument signs (with multiple panels) at a height of 12'.

3. The applicant shall continue to work with Public Works on addressing the comments shown in the February 11, 2015 memo.

Agreed.

4. The proposed sidewalks shall match the sidewalk design included in the Highway 42 Plan.

Agreed.

5. Because the Hwy 42 sidewalk is required, the applicant shall modify the landscape sheets prior to recordation to remove the parking stalls, located along Highway 42, and be replaced with the landscaping in compliance with the MUDDSG. The applicant shall also include an east/west sidewalk, connecting Highway 42 to the larger commercial building, via a sidewalk located within a landscape island.

Agreed per the Site Exhibit below. Due to the decrease in available parking for the Development, the developer, its tenants and their employees and customers shall have the unrestricted use of the parking lot to the west of the development at no cost. The parking lot is to be constructed at the cost of Louisville.

6. Staff requests the applicant preserve as many of the existing trees as possible. The applicant shall work with the City Forester and Parks Project Manager, at time of construction drawings, to determine which trees may be preserved.

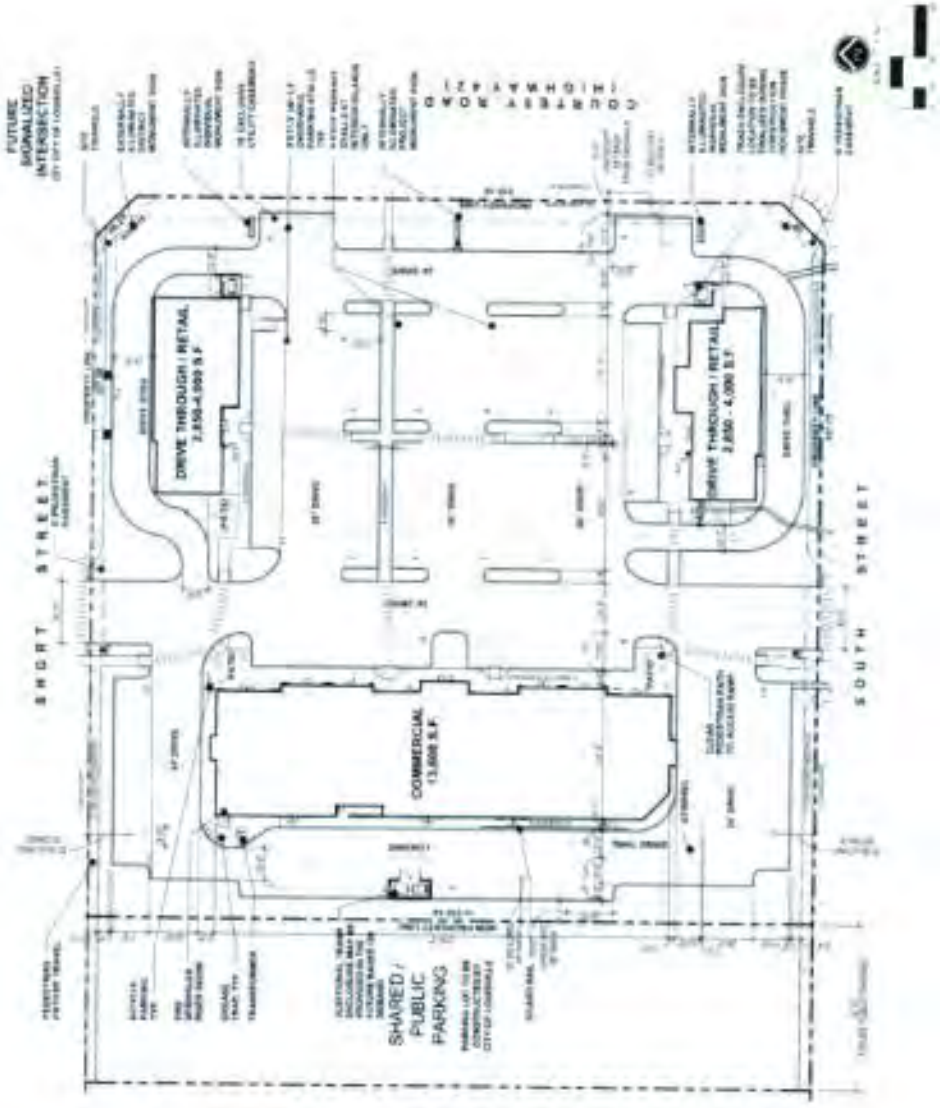
Agreed.

RMCS, Inc.
21 South Sunset St. Longmont CO 80503
Justin McClure
justinrmcs@gmail.com
720.524.3620

Respectfully,

4.29.2015

Justin McClure
RMCS, Inc.Owners Representative



RESOLUTION NO. 28
SERIES 2015

A RESOLUTION DENYING A REZONING, FINAL PLAT, FINAL PLANNED UNIT DEVELOPMENT (PUD), AND SPECIAL REVIEW USE (SRU) FOR THE REDEVELOPMENT OF A 3.9 ACRE PROPERTY WITHIN THE CORE PROJECT AREA OF THE HIGHWAY 42 REVITALIZATION AREA. THE REDEVELOPMENT INCLUDES THE ADDITION OF APPROXIMATELY 19,308-23,000 SQ.FT. OF COMMERCIAL SPACE

WHEREAS, there has been submitted to the Louisville City Council an application for approval of a rezoning, final Plat, final planned unit development (PUD), and special review use (SRU) for the redevelopment of a 3.9 acre property within the Core Project Area of the Highway 42 Revitalization Area. The redevelopment includes the addition of approximately 19,308-23,000 sq.ft. of commercial space; and

WHEREAS, the City Council held a properly noticed public hearing on April 21, 2015 and May 7, 2015, where evidence and testimony were entered into the record, including without limitation the application and supporting materials, the Louisville City Council staff report dated April 21, 2015 and May 7, 2015 and all attachments included with such staff report; the City comprehensive plan; the City subdivision and zoning ordinances set forth in titles 16 and 17 of the Louisville Municipal Code; and additional written statements and other documents, as well as testimony from the staff, and applicant; and

WHEREAS, the City Council by this Resolution desires to set forth its findings, conclusions and ruling with respect to the application.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF LOUISVILLE, COLORADO:

Section 1. The foregoing recitals are incorporated herein.

Section 2. Based on the testimony of the witnesses and the documents and other evidence made a part of the record of the hearing before the City Council, the City Council finds as follows:

a. The application is for a rezoning, final Plat, final planned unit development (PUD), and special review use (SRU) for the redevelopment of a 3.9 acre property within the Core Project Area of the Highway 42 Revitalization Area. The redevelopment includes the addition of approximately 19,308-23,000 sq.ft. of commercial space. The property is owned by Stephen Tebo, D.B.A Tebo Properties, Inc. The applicant is Tebo Properties, Inc.

b. The property that is the subject of the application is zoned Industrial (I). As

set forth in Louisville Municipal Code (LMC) Section 17.17.070, any person proposing new development, a change in use, or a substantial alteration or expansion, of an existing use, shall first apply to the City for a rezoning to either the Mixed-Use Residential (MU-R) Zone District or the Commercial Community (CC) Zone District according to the procedures stated in Section 17.14.090.

c. The project proposed by the application shall comply with Section 17.14.060, Dimensional and Bulk Standards.

d. The project proposed by the application is requesting waivers from the bulk and dimension standards established in Section 17.14.060.

e. Section 17.14.090.2.b. allows waiver or modifications of standards "if the decision-making body finds that the proposed development represent an improvement in site and building design over that which could be accomplished through strict compliance with otherwise applicable district standards. Unless specifically waived or modified during the review and approval process, the zoning, use, bulk, dimensional, development, and design standards stated in this Chapter 17.14 and the Mixed Use Design Standards and Guidelines shall apply."

f. The decision criteria that apply to the applicant's proposed final planned unit development are set forth in Chapter 17.28 of the Louisville Municipal Code, and primarily in Section 17.28.120 of that Chapter.

Section 3. Based on the foregoing findings and the evidence and testimony presented at the hearing, the City Council hereby concludes that the application should be denied for the following reasons:

a. The project proposed by the application does not meet criteria A.1, A.7, A.9, B.1, B.5, and B.15 of Section 17.28.120 of the LMC. In particular, the City Council concludes that the proposed PUD is not compatible with surrounding designs and neighborhoods, nor is it designed or oriented toward the pedestrian.

Section 4. In accordance with the above findings and conclusions, and based upon the evidence and testimony presented at the hearing, the City Council of the City of Louisville hereby denies the application for approval of a rezoning, final Plat, final planned unit development (PUD), and special review use (SRU) for the redevelopment of a 3.9 acre property within the Core Project Area of the Highway 42 Revitalization Area. The redevelopment includes the addition of approximately 19,308-23,000 sq.ft. of commercial space, and based on the foregoing denial of the final PUD, the rezoning, final plat and SRU are denied.

PASSED AND ADOPTED this _____ day of _____, 2015.

By: _____
Robert P. Muckle, Mayor

Attest: _____
Nancy Varra, City Clerk

RESOLUTION NO. 12
SERIES 2015

A RESOLUTION DENYING A REZONING, FINAL PLAT, FINAL PLANNED UNIT DEVELOPMENT (PUD), AND SPECIAL REVIEW USE (SRU) FOR THE REDEVELOPMENT OF A 3.9 ACRE PROPERTY WITHIN THE CORE PROJECT AREA of the Highway 42 Revitalization Area. THE REDEVELOPMENT INCLUDES THE ADDITION OF APPROXIMATELY 19,308-23,000 SQ.FT. OF COMMERCIAL SPACE

WHEREAS, there has been submitted to the Louisville Planning Commission an application for approval of a rezoning, final Plat, final planned unit development (PUD), and special review use (SRU) for the redevelopment of a 3.9 acre property within the Core Project Area of the Highway 42 Revitalization Area. The redevelopment includes the addition of approximately 19,308-23,000 sq.ft. of commercial space; and

WHEREAS, the Planning Commission held a properly noticed public hearing on March 12, 2015, where evidence and testimony were entered into the record, including without limitation the application and supporting materials, the Louisville Planning Commission staff report dated March 12, 2015 and all attachments included with such staff report; the City comprehensive plan; the City subdivision and zoning ordinances set forth in titles 16 and 17 of the Louisville Municipal Code; and additional written statements and other documents, as well as testimony from the staff, and applicant; and

WHEREAS, the Planning Commission by this Resolution desires to set forth its findings, conclusions and ruling with respect to the application.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF LOUISVILLE, COLORADO:

Section 1. The foregoing recitals are incorporated herein.

Section 2. Based on the testimony of the witnesses and the documents and other evidence made a part of the record of the hearing before the Planning Commission, the Planning Commission finds as follows:

a. The application is for a rezoning, final Plat, final planned unit development (PUD), and special review use (SRU) for the redevelopment of a 3.9 acre property within the Core Project Area of the Highway 42 Revitalization Area. The redevelopment includes the addition of approximately 19,308-23,000 sq.ft. of commercial space. The property is owned by Stephen Tebo, D.B.A Tebo Properties, Inc. The applicant is Tebo Properties, Inc.

b. The property that is the subject of the application is zoned Industrial (I). As set forth in Louisville Municipal Code (LMC) Section 17.17.070, any person proposing new development, a change in use, or a substantial alteration or expansion, of an existing use, shall first apply to the City for a rezoning to either the Mixed-Use Residential (MU-R) Zone

District or the Commercial Community (CC) Zone District according to the procedures stated in Section 17.14.090.

c. The project proposed by the application shall comply with Section 17.14.060, Dimensional and Bulk Standards.

d. The project proposed by the application is requesting waivers from the bulk and dimension standards established in Section 17.14.060.

e. Section 17.14.090.2.b. allows waiver or modifications of standards "if the decision-making body finds that the proposed development represent an improvement in site and building design over that which could be accomplished through strict compliance with otherwise applicable district standards. Unless specifically waived or modified during the review and approval process, the zoning, use, bulk, dimensional, development, and design standards stated in this Chapter 17.14 and the Mixed Use Design Standards and Guidelines shall apply."

f. The decision criteria that apply to the applicant's proposed final planned unit development are set forth in Chapter 17.28 of the Louisville Municipal Code, and primarily in Section 17.28.120 of that Chapter.

Section 3. Based on the foregoing findings and the evidence and testimony presented at the hearing, the Planning Commission hereby concludes that the application should be denied for the following reasons:

a. The project proposed by the application does not meet criteria A.1, A.7, A.9, B.1, B.5, and B.15 of Section 17.28.120 of the LMC. In particular, the Planning Commission concludes that the proposed PUD is not compatible with Chapter 17.14 of the Louisville Municipal Code, the MUDDSG, the Highway 42 Revitalization Plan, the surrounding existing and proposed neighborhoods, nor is it designed or oriented toward the pedestrian.

Section 4. In accordance with the above findings and conclusions, and based upon the evidence and testimony presented at the hearing, the Planning Commission of the City of Louisville hereby denies the application for approval of a rezoning, final Plat, final planned unit development (PUD), and special review use (SRU) for the redevelopment of a 3.9 acre property within the Core Project Area of the Highway 42 Revitalization Area. The redevelopment includes the addition of approximately 19,308-23,000 sq.ft. of commercial space, and based on the foregoing denial of the final PUD, the rezoning, final plat and SRU are denied.

PASSED AND ADOPTED this 9th day of April, 2015.

By: _____
Chris Pritchard, Chair
Planning Commission

Attest: _____

Ann O'Connell, Secretary
Planning Commission

City of Louisville
COLORADO · SINCE 1878

Department of Planning and Building Safety

749 Main Street • Louisville CO 80027 • 303.335.4592 • www.louisvilleco.gov

LAND USE APPLICATION

CASE NO. _____

APPLICANT INFORMATION

Firm: Tebo Properties, Inc
Contact: James Dixon
Address: 3111 28th Street
Boulder, CO 80301
Mailing Address: ~~Same As Above~~
Po Box T, Boulder 80306
Telephone: 303.447.8326
Fax: 3034470206
Email: jdixon@teboproperties.com

OWNER INFORMATION

Firm: Stephen D. TEBO, DBA Tebo Properties, ~~Inc~~
Contact: James Dixon
Address: 3111 28th Street
Boulder, CO 80301
Mailing Address: ~~Same As Above~~
Po Box T, Boulder Co 80306
Telephone: 303.447.8326
Fax: 303 447 0206
Email: jdixon@teboproperties.com

REPRESENTATIVE INFORMATION

Firm: RMCS, Inc.
Contact: Justin McClure
Address: 21 South Sunset Street
Longmont, CO 80503
Mailing Address: Same As Above
Telephone: 303.475.2106
Fax:
Email: justinrmcs@gmail.com

PROPERTY INFORMATION

Common Address: 1055 Courtesy Road
Legal Description: Lot _____ Blk _____
Subdivision DELO Plaza Subdivision
Area: 3.9 a/c Sq. Ft.

TYPE (S) OF APPLICATION

- ☐ Annexation
- ☐ Zoning
- ☐ Preliminary Subdivision Plat
- ☑ Final Subdivision Plat
- ☐ Minor Subdivision Plat
- ☐ Preliminary Planned Unit Development (PUD)
- ☑ Final PUD
- ☐ Amended PUD
- ☐ Administrative PUD Amendment
- ☐ Special Review Use (SRU)
- ☐ SRU Amendment
- ☐ SRU Administrative Review
- ☐ Temporary Use Permit: _____
- ☐ CMRS Facility: _____
- ☐ Other: (easement / right-of-way; floodplain; variance; vested right; 1041 permit; oil / gas production permit)

PROJECT INFORMATION

Summary: A proposal for the re-development of a 3.9 a/c industrial property within the Core Project Area. The redevelopment includes the addition of approx. 18,700-23,000 sq ft of commercial space.

Current zoning: I Proposed zoning: CC

SIGNATURES & DATE

Applicant: [signature]
Print: JAMES DIXON
Owner: [signature]
Print: STEPHEN TEBO
Representative: [signature]
Print: Justin McClure

CITY STAFF USE ONLY

- ☐ Fee paid: _____
- ☐ Check number: _____
- ☐ Date Received: _____

TEBO
PROPERTIES

August 15th, 2014

Mr. Sean McCartney, Principal Planner
Mr. Troy Russ, Planning Director
Mr. Scott Robinson, Planner II
City of Louisville Planning Department
749 Main Street
Louisville, CO 80027

RE: Submittal Letter for the Final DeLo Plaza PUD and Plat

Mr. Russ,

Industrial Use:

Tebo Properties, Inc. would like to thank the Louisville Planning Commission for giving us the opportunity to present the Final PUD and Plat for DeLo Plaza. This property has historically been referred to as the Alpine Lumber site and is bound by Short Street to the north, South Street to the south, SH 42 to the east, and what will become the extension of the Cannon Street Woonerf to the west. DeLo plaza enjoys a central location within the Core Project Area, frontage to SH 42, and is currently zoned industrial. The Core Project Area, as identified within the Highway 42 Framework Plan, consists of "blighted" properties that are no longer eligible for industrial uses. This proposal requests that the property be rezoned MU-R and CC, per the Louisville Municipal Code and the Highway 42 Framework Plan, thereby eliminating blight and providing a significant contribution to DeLo and the City of Louisville.

Redevelopment:

DeLo Plaza will host approximately 13,000 square feet of commercial floor area, and 8,000 square feet of stand alone drive-through floor area. Moreover, the proposal provides ample parking spaces totaling 139 stalls and will bolster the City's tax base. DeLo Plaza is located adjacent to the South Street Pedestrian Gateway, Miners Field, and Historic Downtown Louisville. The various retail opportunities will provide a public benefit to patrons of DeLo and the City of Louisville at large.

In summary, Tebo Properties Inc. is proud to be a contributing partner with the City of Louisville in the Core Project Area.

Respectfully,

Justin McClure
RMCS, Inc.

3111 28th St, Boulder, CO 80301

FINAL PLAT
DELO PLAZA SUBDIVISION
A REPLAT OF A PORTION OF BLOCK 18, CALEDONIA PLACE LOCATED IN THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 1 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN CITY OF LOUISVILLE, COUNTY OF BOULDER, STATE OF COLORADO.

SHEET 1 OF 2

LEGAL DESCRIPTION OF PARCELS INCORPORATED IN DELO PLAZA SUBDIVISION

(FROM TITLE COMMITMENT)

PARCEL A:

THAT PORTION OF BLOCK 18, CALEDONIA PLACE, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF BLOCK 18, CALEDONIA PLACE; THENCE ALONG THE SOUTH LINE OF SAID BLOCK 18, NORTH 89 DEGREES 43 MINUTES WEST, 243.75 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTH 89 DEGREES 42 MINUTES WEST 243.75 FEET; THENCE NORTH 347.48 FEET; THENCE EAST 243.75 FEET; THENCE SOUTH 348.76 FEET TO THE TRUE POINT OF BEGINNING, COUNTY OF BOULDER, STATE OF COLORADO.

PARCEL B:

THAT PORTION OF BLOCK 18, CALEDONIA PLACE, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF BLOCK 18; THENCE ALONG THE SOUTH LINE OF BLOCK 18, NORTH 89 DEGREES 42 MINUTES WEST, 243.75 FEET; THENCE NORTH 348.76 FEET; THENCE EAST 243.75 FEET; THENCE SOUTH 350.04 FEET TO THE POINT OF BEGINNING, EXCEPT THOSE PORTIONS DEEDED TO THE CITY OF LOUISVILLE BY DEED RECORDED JULY 16, 1978 AT RECEPTION NO. 290850 AND CORRECTED AUGUST 5, 1982 AT RECEPTION NO. 505807 AND DEED RECORDED JULY 26, 1978 AT RECEPTION NO. 290851, COUNTY OF BOULDER, STATE OF COLORADO.

CERTIFICATE OF DEDICATION AND OWNERSHIP

HAS LAID OUT, SUBDIVIDED AND PLATTED SAID LAND AS PER DRAWING HEREON CONTAINED UNDER THE NAME AND STYLE OF DELO PLAZA

A SUBDIVISION OF A PART OF THE CITY OF LOUISVILLE, COUNTY OF BOULDER, STATE OF COLORADO, AND BY THESE PRESENTS

DO HEREBY DEDICATE TO THE USE OF THE CITY OF LOUISVILLE AND THE PUBLIC, THE INGRESS-EGRESS AND FIRE LANE EASEMENTS, IF ANY, AS SHOWN ON THE ACCOMPANYING PLAT FOR VEHICULAR, AND

PEDESTRIAN AND EMERGENCY ACCESS, AS SHOWN ON THE ACCOMPANYING PLAT, IF ANY, FOR THE PUBLIC USE THEREOF FOREVER AND

DOES FURTHER DEDICATE TO THE USE OF THE CITY OF LOUISVILLE AND ALL MUNICIPALLY OWNED AND/OR FRANCHISED UTILITIES AND SERVICES THOSE PORTIONS OF SAID REAL PROPERTY, AS SHOWN ON THE ACCOMPANYING PLAT, IF ANY, FOR THE CONSTRUCTION, INSTALLATION, OPERATION, MAINTENANCE, REPAIR AND REPLACEMENT FOR ALL UTILITY SERVICES, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING,

TELEPHONE AND ELECTRIC LINES, WORKS, POLES AND UNDERGROUND CABLES, GAS PIPELINES, WATER PIPELINES, SANITARY SEWER LINES, STREET LIGHTS, CULVERTS, HYDRANTS, DRAINAGE DITCHES AND DRAINS AND ALL APPURTENANCES THERETO, AS SHOWN ON THE ACCOMPANYING PLAT, IF ANY,

IT BEING EXPRESSLY UNDERSTOOD AND AGREED BY THE UNDERSIGNED THAT ALL EXPENSES AND COSTS INVOLVED IN CONSTRUCTING AND INSTALLING SANITARY SEWER SYSTEM WORKS AND LINES, GAS SERVICE LINES, ELECTRICAL SERVICE WORKS AND LINES, STORM SEWERS AND DRAINS, STREET LIGHTING, GRADING AND LANDSCAPING, CURBS, GUTTERS, STREET PAVEMENT, SIDEWALKS AND OTHER SUCH UTILITIES AND SERVICES ON SAID REAL PROPERTY, SHALL BE GUARANTEED AND PAID FOR BY THE SUBDIVIDER OR

ARRANGEMENTS MADE BY THE SUBDIVIDER THEREOF WHICH ARE APPROVED BY THE CITY OF LOUISVILLE, COLORADO, AND

SUCH SUMS SHALL NOT BE PAID BY THE CITY OF LOUISVILLE, COLORADO, AND

THAT ANY ITEM SO CONSTRUCTED OR INSTALLED WHEN ACCEPTED BY THE CITY OF LOUISVILLE, COLORADO, SHALL BECOME THE SOLE PROPERTY OF SAID CITY OF LOUISVILLE, COLORADO,

EXCEPT PRIVATE ROADWAY CURBS, GUTTER AND PAVEMENT ITEMS OWNED BY MUNICIPALLY FRANCHISED UTILITIES WHICH WHEN CONSTRUCTED OR INSTALLED, SHALL REMAIN THE PROPERTY OF THE OWNER AND SHALL NOT BECOME THE PROPERTY OF THE CITY OF LOUISVILLE, COLORADO.

NOTES

1.) LAND TITLE GUARANTEE COMPANY TITLE COMMITMENT NO. ABC70407147 WITH EFFECTIVE DATE OF 03-24-2015 AT 17:00:00 WAS ENTIRELY RELIED UPON FOR EASEMENTS, RIGHTS-OF-WAY AND ENCUMBRANCES AFFECTING THE SUBJECT PARCEL.

2. BEARINGS SHOWN HEREON ARE BASED ON THE ASSUMPTION THAT THE EASTERLY RIGHT-OF-WAY LINE OF THE BURLINGTON NORTHERN SANTA FE (BNSF) RAILROAD BEARS NORTH 08 DEGREES, 10 MINUTES AND 11 SECONDS WEST BETWEEN A FOUND NO. 4 REBAR AT THE SOUTHWEST CORNER OF PARCEL B AND A FOUND NO. 5 REBAR, WITH YELLOW PLASTIC CAP LS 14815 AT THE NORTHWEST CORNER OF PARCEL A, AS SHOWN ON LAND SURVEY PLAT BY EPP & ASSOCIATES, DATED OCTOBER 18, 2000 AND DEPOSITED IN BOULDER COUNTY RECORDS AS LS-08-0057.

3. ANY PERSON WHO KNOWINGLY REMOVES, ALTERS OR DEFACES ANY PUBLIC LAND SURVEY MONUMENT OR LAND BOUNDARY MONUMENT OR ACCESSORY COMMITS A CLASS TWO (2) MISDEMEANOR PURSUANT TO STATE STATUTE 18-4-508, C.R.S.

4. DIMENSIONS SHOWN WITHOUT PARENTHESIS, ARE AS MEASURED BY ROCK CREEK SURVEYING, LLC AND PER THE RECORD DESCRIPTION. DIMENSIONS SHOWN IN PARENTHESIS ARE PER THE RECORDED DESCRIPTION.

5. THIS DRAWING IS BASED ON A FIELD SURVEY PERFORMED AND COMPLETED BY ROCK CREEK SURVEYING, LLC, ON OR ABOUT JULY 14-16, 2015.

6. ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED ON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVERED SUCH DEFECT. IN NO EVENT, MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN SIX YEARS FROM THE DATE OF CERTIFICATION SHOWN HEREON. CRS 13-80-104(3)(A).

7. THE LOCATION OF THE ABOVE GROUND UTILITIES SHOWN HEREON ARE BASED ON THE FIELD SURVEY BY ROCK CREEK SURVEYING, LLC IS NOT RESPONSIBLE FOR UTILITY INFORMATION PROVIDED BY OTHERS. ROCK CREEK SURVEYING, LLC RECOMMENDS THAT THE LOCATION OF THE UTILITIES BE FIELD VERIFIED PRIOR TO ANY DIGGING ON, OR ADJACENT TO THE SUBJECT PROPERTY.

8. THE LAND USE CHART PRESENTED HEREON IS PROVIDED TO OUTLINE THE GENERAL USE OF EACH OUTLOT, BOTH PRIVATE AND PUBLIC.

9. THE CITY OF LOUISVILLE SHALL REVIEW AND APPROVE THE LOCATIONS OF UTILITY LINES, PEDESTALS AND CABINETS WITHIN PUBLIC PROPERTY AND WITHIN CITY OF LOUISVILLE EXCLUSIVE WATER, STORM AND SANITARY SEWER EASEMENTS. ALL UTILITY EASEMENTS NOT SPECIFICALLY DESIGNATED FOR OTHERS (E.G. DRY UTILITY EASEMENTS) ARE EXCLUSIVELY FOR THE CITY OF LOUISVILLE WET UTILITIES.

10. THE MINIMUM SEPARATION BETWEEN WATER AND SEWER SHALL BE 10' OUTSIDE OF PIPE TO OUTSIDE OF PIPE. SEPARATION BETWEEN ALL OTHER UTILITIES SHALL NOT BE LESS THAN 7' FOR ALL PARTIES. THE CITY WILL WORK WITH THE SUBDIVIDER TO GENERATE PRACTICAL SOLUTIONS FOR ALL PARTIES FOR AREAS OF UTILITY SEPARATION CONCERNS.

11. ALL UTILITY EASEMENTS 10' IN WIDTH OR LESS ARE SPECIFICALLY RESERVED FOR DRY UTILITY FACITLITIES. UTILITY EASEMENTS GREATER THAN 10' IN WIDTH ARE SPECIFICALLY EXCLUSIVE FOR CITY OF LOUISVILLE WATER, SANITARY AND STORM SEWERS, DRY UTILITIES ARE REQUIRED TO REQUEST PERMISSION/APPROVAL FROM THE CITY AND THE DEVELOPER FOR CROSSING WET UTILITY EASEMENTS. DRY UTILITIES THAT ARE APPROVED TO CROSS EXCLUSIVE CITY EASEMENTS SHALL DO SO AT SUBSTANTIALLY RIGHT ANGLES. WET UTILITIES MAY TRAVERSE DRY UTILITY EASEMENTS WITHOUT SPECIAL PERMISSION.

12. EMERGENCY AND CITY OF LOUISVILLE MAINTENANCE ACCESS IS GRANTED HEREWITH OVER AND ACROSS ALL PAVED AREAS FOR POLICE, FIRE, EMERGENCY AND CITY MAINTENANCE VEHICLES.

13.DIMENSIONS ARE SHOWN HEREON ARE IN U.S. SURVEY FEET.

LEGAL DESCRIPTION OF DELO PLAZA SUBDIVISION

A TRACT OF LAND LOCATED IN THE NORTHEAST ¼ OF SECTION 8, TOWNSHIP 1 SOUTH, RANGE 69 WEST OF THE 6TH P.M., DESCRIBED AS FOLLOWS:

BEGINNING AT THE EAST ¼ CORNER OF SAID SECTION 8;
THENCE NORTH 58°49'56" WEST A DISTANCE OF 58.71 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF SOUTH STREET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 44°36'09" EAST A DISTANCE OF 28.35 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF COURTESY ROAD (COLORADO STATE HIGHWAY 42);

THENCE NORTH 00°01'11" EAST ALONG THE WEST RIGHT-OF-WAY LINE OF COURTESY ROAD (COLORADO STATE HIGHWAY 42) A DISTANCE OF 310.04 FEET;

THENCE NORTH 44°58'49" WEST A DISTANCE OF 27.86 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF SHORT STREET;

THENCE NORTH 89°58'10" WEST ALONG THE SOUTH RIGHT-OF-WAY LINE OF SHORT STREET A DISTANCE OF 467.50 FEET;

THENCE SOUTH 00°01'35" WEST A DISTANCE OF 347.61 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF SOUTH STREET;

THENCE SOUTH 89°41'04" EAST ALONG SAID NORTH RIGHT-OF-WAY LINE OF SOUTH STREET A DISTANCE OF 467.34 FEET TO THE TRUE POINT OF BEGINNING;

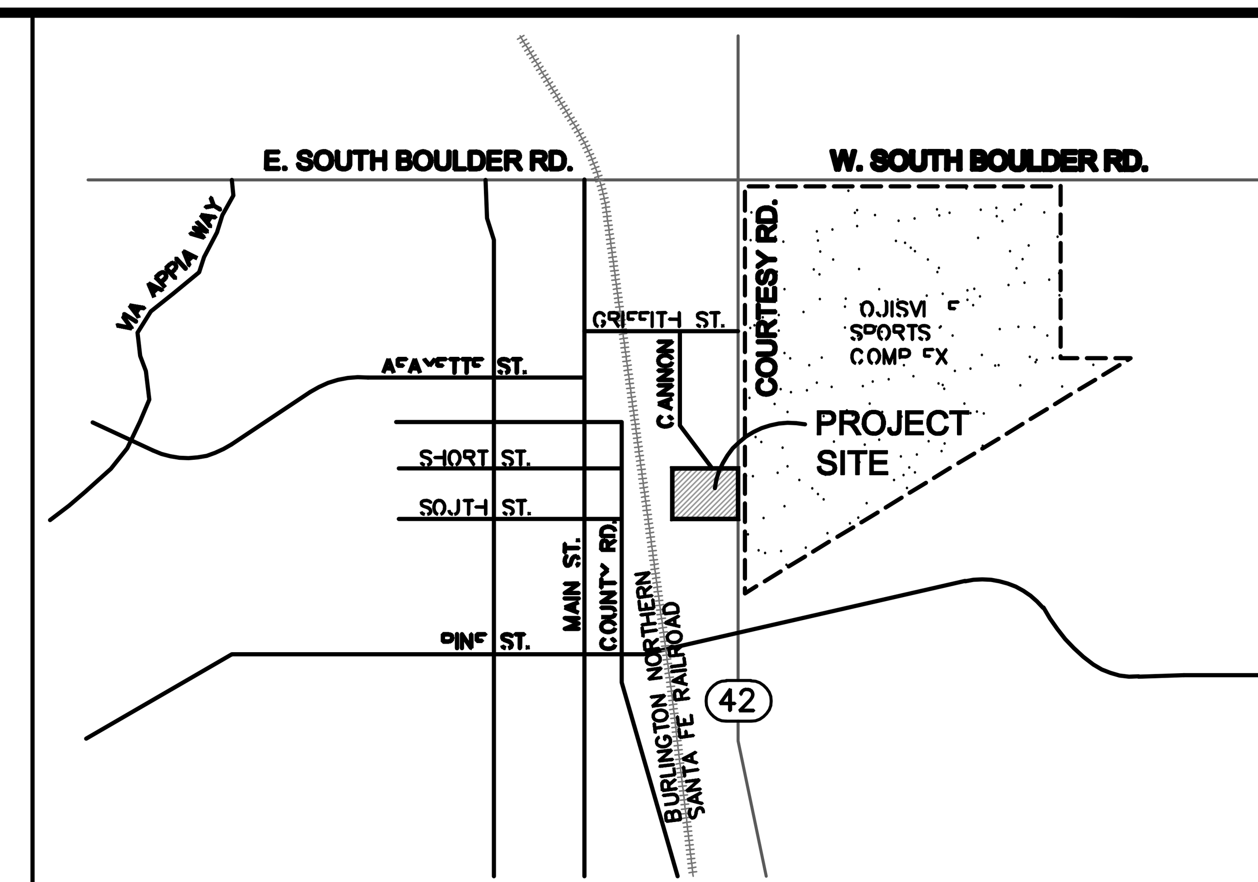
CITY OF LOUISVILLE, COUNTY OF BOULDER, STATE OF COLORADO.
AREA = 3.89 ACRES

FLOODPLAIN STATEMENT

ACCORDING TO FEMA FLOOD INSURANCE RATE MAP, FIRM PANEL NO. 08013C0582J WITH REVISION DATE OF DEC. 12, 2012, A PORTION OF THE SUBJECT PARCEL IS IN FLOOD ZONE A WITH BASE FLOOD ELEVATIONS DETERMINED. THE APPROXIMATE LIMITS OF THIS FLOOD ZONE WERE TRACED FROM THIS FIRM PANEL AND ARE SHOWN HEREON. THESE LIMITS ARE SUBJECT TO FURTHER EVALUATION, SUCH AS A FLOOD ELEVATION CERTIFICATE, TO DETERMINE THE SPECIFIC FLOOD ZONE LIMITS. A FLOOD ELEVATION CERTIFICATE WAS NOT REQUESTED AT THE TIME OF THIS SURVEY.

LAND USE SUMMARY

LOT	AREA (ACRES)	OWNERSHIP	PRIMARY USES	MAINTENANCE
1	0.64	TEBO PROPERTIES, INC.	COMMERCIAL (CC)	TEBO PROPERTIES, INC.
2	0.65	TEBO PROPERTIES, INC.	COMMERCIAL (CC)	TEBO PROPERTIES, INC.
3	1.48	TEBO PROPERTIES, INC.	COMMERCIAL (CC)	TEBO PROPERTIES, INC.
4	0.64	CITY OF LOUISVILLE	PUBLIC/SHARED PARKING	CITY OF LOUISVILLE
ROW	0.48	CITY OF LOUISVILLE	FUTURE CANNON STREET R.O.W.	CITY OF LOUISVILLE
TOTAL	3.89 AC			



VICINITY MAP
NOT TO SCALE

OWNERSHIP CERTIFICATE
OWNER: STEPHEN D. TEBO d/b/a TEBO DEVELOPMENT COMPANY

BY:______________________________

DATE:_____________________________

ACKNOWLEDGEMENT
STATE OF COLORADO)
)SS
COUNTY OF BOULDER)

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS_____ DAY OF ______________________, 20____, BY ________________________________.

WITNESS MY HAND AND SEAL

MY COMMISION EXPIRES_____________________

____
NOTARY PUBLIC

SURVEYOR'S CERTIFICATE

I, ROBERT A. RICKARD, DO HEREBY CERTIFY THAT I AM A DULY LICENSED LAND SURVEYOR LICENSED UNDER THE LAWS OF THE STATE OF COLORADO, THAT THIS PLAT IS A TRUE, CORRECT AND COMPLETE PLAT OF "DELO PLAZA" AS LAID OUT, PLATTED, DEDICATED AND SHOWN HEREON, THAT SUCH PLAT WAS MADE FROM AN ACCURATE SURVEY OF SAID PROPERTY BY ME AND UNDER MY DIRECT RESPONSIBILITY, SUPERVISION AND CHECKING AND CORRECTLY SHOWS THE LOCATION AND DIMENSIONS OF THE LOTS, LAID OUT IN COMPLIANCE WITH ARTICLES 50-53 OF TITLE 38, COLORADO REVISED STATUES GOVERNING THE SUBDIVISION OF LAND.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS _____ DAY OF

_________________, 2015 A.D.

______________________________.
ROBERT A. RICKARD
COLORADO P.L.S. #28283

CITY COUNCIL CERTIFICATE

APPROVED THIS______DAY OF___________________, 2015 BY THE CITY COUNCIL OF THE CITY OF LOUISVILLE, COLORADO.

RESOLUTION NO. ___________, SERIES __________

(CITY SEAL)

____
MAYOR SIGNATURE

____
CITY CLERK SIGNATURE

PLANNING COMMISSION CERTIFICATE

APPROVED THIS______DAY______OF____________, 2015
BY THE PLANNING COMMISSION OF THE CITY OF LOUISVILLE, COLORADO

RESOLUTION NO. __________, SERIES __________

CLERK AND RECORDER CERTIFICATE
(COUNTY OF BOULDER, STATE OF COLORADO)

I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED IN

MY OFFICE AT_____________ O'CLOCK, __.M., THIS

________DAY OF _______________, 2015, AND IS

RECORDED IN PLAN FILE ________________

FEE _____________ PAID.

________________ FILM NO.

__________________________ RECEPTION.

____
CLERK & RECORDER

____
DEPUTY

ROCK CREEK SURVEYING, LLC
3021 GARDENIA WAY
SUPERIOR, CO 80027
PHONE: 303-521-7376

FINAL PLAT DELO PLAZA

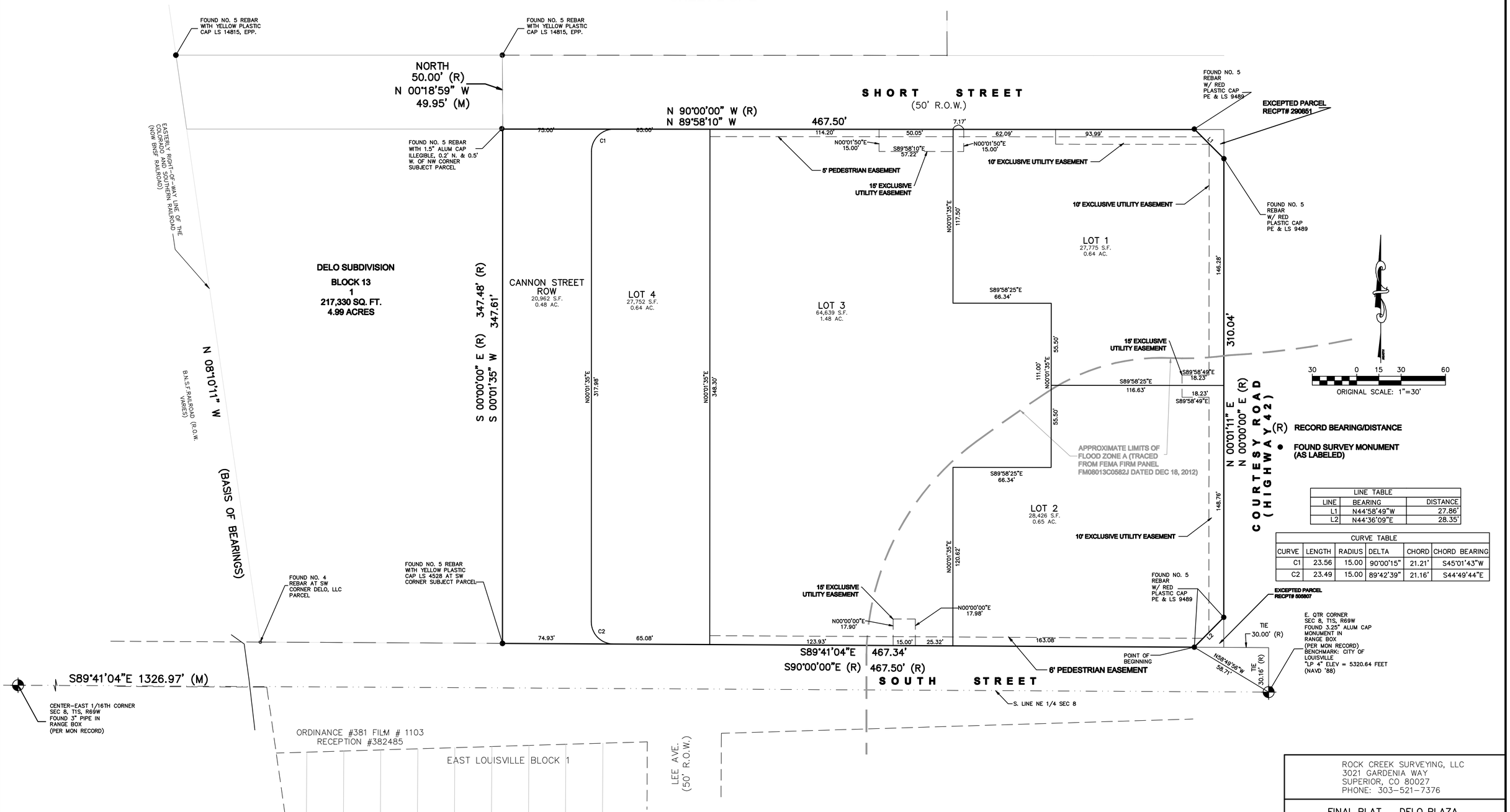
COVER SHEET

JOB NO	DATE	CAD NO	SHEET NO
317-13	01-08-15	317-13FP01	1 OF 2

FINAL PLAT
DELO PLAZA SUBDIVISION

A REPLAT OF A PORTION OF BLOCK 18, CALEDONIA PLACE
LOCATED IN THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 1 SOUTH,
RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN
CITY OF LOUISVILLE, COUNTY OF BOULDER, STATE OF COLORADO.

SHEET 2 OF 2



LINE TABLE		
LINE	BEARING	DISTANCE
L1	N44°58'49"W	27.86'
L2	N44°36'09"E	28.35'

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD	CHORD BEARING
C1	23.56	15.00	90°00'15"	21.21'	S45°01'43"W
C2	23.49	15.00	89°42'39"	21.16'	S44°49'44"E

ROCK CREEK SURVEYING, LLC
3021 GARDENIA WAY
SUPERIOR, CO 80027
PHONE: 303-521-7376

FINAL PLAT DELO PLAZA

FINAL PLAT

JOB NO	DATE	CAD NO	SHEET NO
317-13	01-08-15	317-13FP01	2 OF 2

City of Louisville
COLORADO • SINCE 1878

Memorandum | Department of Public Works

TO: Sean McCartney, Principle Planner

FROM: Craig Duffin, P.E., City Engineer

DATE: February 11, 2015

SUBJECT: DELO Plaza, Final Plat/PUD/Traffic Report/Drainage Report

---

Public Works has reviewed the subject referral received on January 21, 2015 and has the following comments:

GENERAL

1. The surrounding developments and proposed DEOL Phase 2 street improvements are shown on the documents however, line weight are inadequate to clearly see these improvements (e.g. Sheet 2 of PUD, South St./Short St. improvements are too light, please darken). In addition, please include the proposed SH 42 corridor improvements so that staff can determine present/future impacts to the development.
2. Staff reviewed the turning template plans for intersections and the fire truck rear bumper overhang encroaches into parking/building areas. (E.g. Sheet 12, Detail 3). Applicant shall provide a discussion concerning the rear swing of the vehicle and obvious conflicts with potential parked vehicles and buildings. In addition, noted the path of the emergency vehicle at the SW corner of the site that stops at the rear of the building. Typically the vehicle path continues to another access point to exit. Please clarify the reason for the stop in path.
3. Onsite fire hydrants that serve the development shall be privately maintained by the owner. Please add a note to the utility plan that these hydrants/lateral pipes are privately maintained.
4. Revise the two access points to the site using a standard ramp drive with detached walk. The proposed ramps shown are for streets with mountable curb. South Street and Short Street have vertical curb and the correct ramp drive is detail # 64.
5. The offsite detention pond for the "Core Area" is funded through the Urban Renewal Authority and constructed by the developer of DELO. The costs for annual maintenance of the offsite detention pond will be shared by its users and hence, this information will be included in the Subdivision Agreement.

PUD

Sheet 2 of 17 – Site Plan and General Notes

1. Noted the north access drive is offset from north property drive (DELO Tract C). Show traffic lanes at both access locations on Short St. Shift the drive easterly to better align with the Tract C drive.

2. Applicant shall add future SH42 improvements and the Short St. traffic signal to site plan.
3. The South Street curb chase design is not supported by staff. Suggest alternative routing of private storm drainage to north east corner of site for discharge into 60" storm sewer.
4. General Notes and Standards:
    a. Note 2, first line indicates that "Tracts" will be maintained by the HOA. The plat does not indicate any Tracts within the subdivision. Applicant to clarify specifically which tracts are HOA maintained.
    b. Note 11, for clarity, the pond will be constructed by the Developer of DELO. Off- Site detention pond maintenance and participation in annual cost will be addressed in the Subdivision Agreement
    c. Note 12, Short St. signalization was requested from CDOT and denied until signal warrants are met. Signalization of the Short Street intersection in 2015 will not occur. Revise note accordingly.
    d. Note 14, applicant shall provide a discussion specifically indicating the concern mentioned "the City's ability to impede sight lines on SH42".
5. Noted the Landscape Setback from sidewalk designated on the plan. Applicant to add a discussion regarding the purpose of the setback. The plans do have plantings in this area.

Sheet 13 of 17 – Horizontal Public Improvement Plan

1. Notes 1 and 2 are not applicable. The public walks on Shorts Street and South Street are not mentioned but are improvements that the Developer is obligated to install. For information and does not need to be included with notes, the sanitary sewer main at northeast corner of Lot 1 will be realigned by developer of DELO. An item not discussed is street lighting on Short St. and South St. The need for street lighting adjacent the development shall be evaluated and either included with this development or with the DELO Phase 2 development.

Sheet 14 of 15 – Horizontal Control Plan

1. Applicant to review drawing and revise text placed over property lines. Also, there is text box that is illegible, "struck through". If information is not necessary, please remove from the sheet.
2. The sidewalk chase on South St. conveys storm water directly from the site onto South St. As previously mentioned staff prefers on site storm water conveyed through private property and released to the 60" pipe in Short Street.

Sheet 15 of 17 – Utility Plan

1. Applicant shall redesign all buildings water and sanitary sewer services. Connect water service lines directly to water mains on Short St. and South St. Connect sanitary sewer service lines to existing/proposed manhole locations on Short St. and South St. Each building will then have separate water and sewer service lines connected to City mains.

2. Utility plan does not include lines constructed by others as part of the DELO Phase 2 development. Show proposed water and sanitary sewer mains proposed with the DELO Phase 2 project.
3. Revise the storm drainage plan to eliminate chase sections as previously mentioned.
4. Note 3; provide building annual water demand to confirm the water service line sizing. Staff can't approve the service line size without the appropriate information.

Sheet 16 of 17 – Grading, Drainage and Erosion Control Plan

1. Noted symbols that are not legible, "struck through". If information is not necessary, please remove from the sheet.
2. Revise South Street curb chase design per previous comment.

PLAT

Sheet 1 of 2

1. Delete Note 11 and add the following:
   "EXCLUSIVE CITY UTILITY EASEMENTS ARE RESERVED FOR CITY OF LOUISVILLE EXCLUSIVE USE FOR CITY WATER, SANITARY SEWER AND STORM SEWER FACILITIES. DRY UTILITY COMPANIES AND/OR PRIVATE OWNERS OF STORM DRAINAGE AND IRRIGATION LINES MUST OBTAIN PRIOR WRITTEN APPROVAL FROM THE CITY FOR ANY PROPOSED CROSSING OF ANY CITY WET UTILITY EASEMENTS AND MUST EXECUTE AN AGREEMENT WHICH STIPULATES THE DRY UTILITIES, STORM DRAINAGE, AND/OR IRRIGATION LINES APPROVED TO CROSS CITY EASEMENTS ARE SUBECT TO RELOCATION AT THE COMPANY'S OR OWNER'S EXPENSE AT THE DIRECTION OF THE CITY. DRY UTILITIES, STORM DRAINAGE, AND/OR IRRIGATION LINES THAT ARE APPROVED TO CROSS CITY EASEMENTS SHALL DO SO AT SUBSTANTIALLY RIGHT ANGLES. WET UTILITIES MAY TRAVERSE DRY UTILITY EASEMENTS WITHOUT REQUIREMENT FOR FURTHER PERMISSION. NO JOINT USE OF ANY CITY EXCLUSIVE UTILITY EASEMENTS IS PERMITTED WITHOUT THE EXPRESS WRITTEN APPROVAL OF THE CITY AND EXECUTION OF A JOINT USE AGREEMENT, WHICH SHALL BE AT THE CITY'S DISCRETION."
2. Legal Description of Parcels Incorporated in Delo Plaza Subdivision. Parcels A & B are described but information is not depicted on plat. Add the information to the Plat (maybe it's a map offset on the cover or second sheet).
3. Certification of Dedication and Ownership – Revise format. Applicant shall use Standard City language for this paragraph. The language does not include the dedication of right of way or dedication of Lot 4.
4. Land Use Summary:
   a. Lot 4 Primary Use, delete the word "Shared" as a use.
   b. Right of way, Primary Use, delete the word "Future" as a use.

Sheet 2 of 2

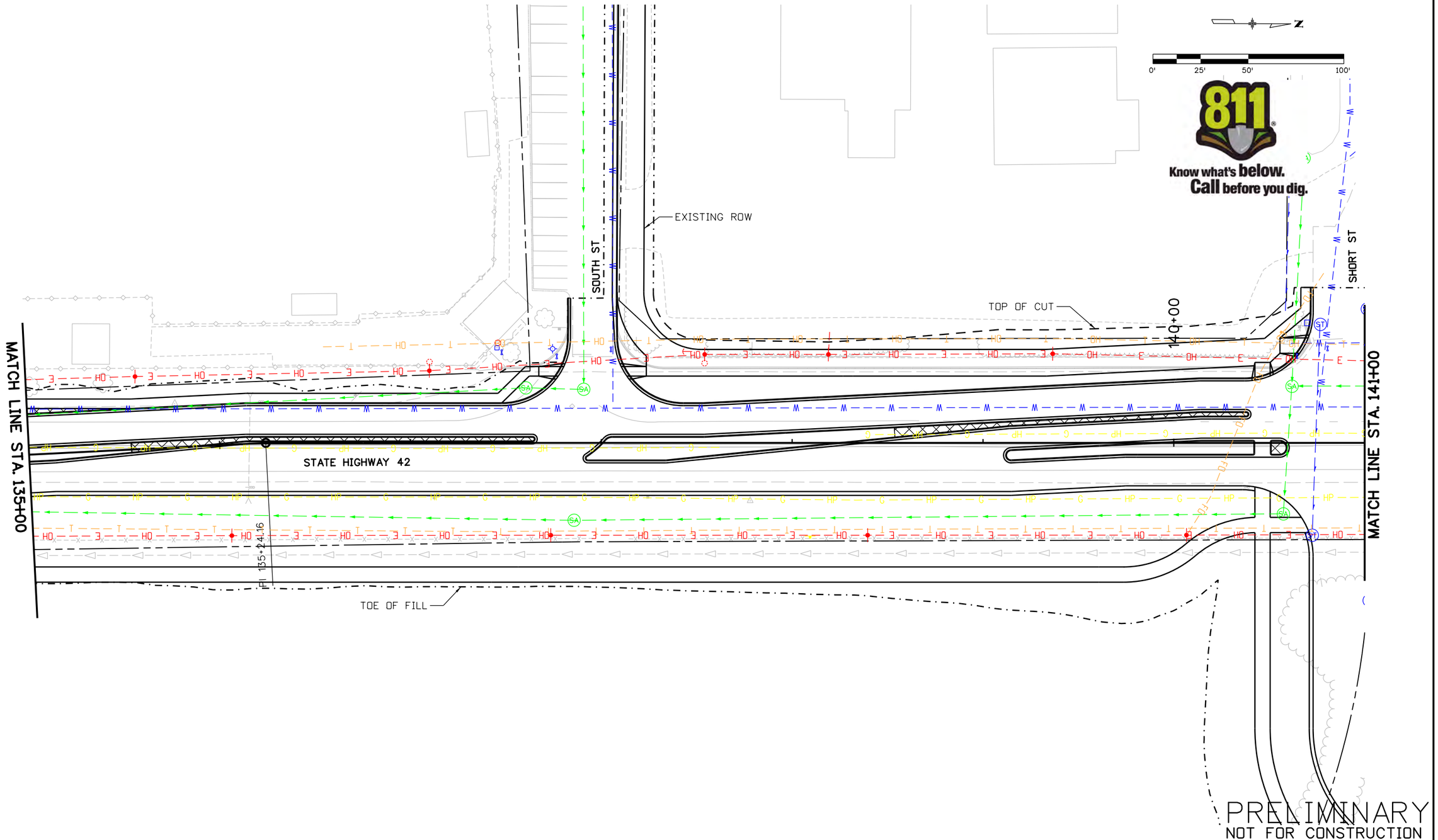
1. Relocate illegible dimensions above property lines on Lot 4 and right of way.
2. Revise "pedestrian easement" to "pedestrian/walk easement".
3. Add a note regarding dedication of a 4' surface easement for maintenance of public walk. The surface easement is adjacent the pedestrian walk easement.
4. Add all surrounding development information. The Industrial Area parcels, north of the site, are not labeled.
5. Delete the DELO Subdivision, Block 13 call out. The development is not yet approved by City Council.
6. Add "True" to "Point of Beginning".
7. Please submit copies of the Excepted Parcels on SH42. Font size of these call outs should be consistent.
8. At northwest corner of Lot 1, the 7.17" dimension is unclear (i.e. line protrudes into Short St. right of way).
9. Remove heavy line west of BNSF easterly right of way.
10. Noted the call out for Ordinance #381. If the information is not relative to the development, it can be removed.

DELO PLAZA - FINAL DRAINAGE REPORT

1. Public Works staff will complete its review of the final drainage report. Comments will be addressed during the civil plan review phase.

TRAFFIC IMPACT MEMORANDUM

1. Generally responses were acceptable. Note that build out of the DELO development will not occur in 2015 and CDOT will not approve the signal installation until warranted in the future. Short Street and South Street will operate at poor level of service during the interim.



Print Date: 4/1/2013	Sheet Revisions			As Constructed	UTILITY PLANS	Project No./Code
File Name: UTIL_Plan02.dgn	Date:	Comments	Init.	No Revisions:		
Horiz. Scale: 1:50 Vert. Scale: As Noted				Revised:	Designer: L. Lauvray / Structure Numbers	
Unit Information Unit Leader Initials				Void:	Detailer: S. Harris	
ATKINS 4601 DTC Boulevard, Suite 700 Denver, CO 80237 Phone: (303) 221-7275 Fax: (303) 221-7276					Sheet Subset: UTILITY / Subset Sheets: 2 of 6	Sheet Number 6

City of Louisville
749 MAIN STREET
LOUISVILLE, CO 80027
P: 303-666-6565
F: 303-335-4550

23378 2:35:48 PM S:\Tranproj\100024637 - Louisville Station and Hwy 42\Highway Design\Utilities\Drawings\UTIL_Plan02.dgn

RESOLUTION NO. 62
SERIES 2014

A RESOLUTION APPROVING A PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF LOUISVILLE AND STEPHEN D. TEBO, FOR ACQUISITION OF AN APPROXIMATELY 0.638 ACRE PARCEL LOCATED AT 1055 COURTESY ROAD

WHEREAS, Stephen D. Tebo ("Seller") is the owner of certain real property totaling 0.638 acres, more or less, which is a portion of a 3.897 acre parcel located at 1055 Courtesy Road, legally described on Exhibit A attached hereto and incorporated herein by reference (which 0.638 acres is hereinafter referred to as "the Property"); and

WHEREAS, the Property, which comprises the eastern 80 feet of the westernmost 140 feet of Seller's 3.897-acre parcel, is a location where future parking supply is needed for the community; and

WHEREAS, there has been proposed a Purchase and Sale Agreement ("Agreement") between the City and the Seller for the City to purchase the Property pursuant to the terms and conditions set forth in said Agreement; and

WHEREAS, the City Council is willing to acquire the Property upon the terms and conditions of the Agreement and finds that such Agreement will further the City's interest in providing additional parking supply; and

WHEREAS, City Council by this Resolution desires to approve the Purchase and Sale Agreement and authorize its execution;

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

Section 1. The proposed Purchase and Sale Agreement ("Agreement") between City of Louisville and Stephen D. Tebo, for the purchase of the Property as described in the Agreement and in Exhibit A attached hereto, is hereby approved in essentially the same form as the copy of such Agreement accompanying this Resolution.

Section 2. The Mayor and City Manager, or either of them, is authorized to execute the Agreement, except that the Mayor and City Manager are hereby granted the authority to negotiate and approve such revisions to said Contract as they determine are necessary or desirable for the protection of the City, so long as the essential terms and conditions of the Agreement are not altered.

Section 3. The Mayor, City Manager and City Staff are further authorized to do all things necessary on behalf of the City to perform the obligations of the City under the Agreement, and are further authorized to execute and deliver any and all closing documents and other documents necessary to perform said obligations and effect sale of

the Property under the terms and conditions of said Agreement. Without limiting the foregoing, the City Manager is authorized to approve and execute a lease for lease-back of the Property and a temporary construction easement for use of a portion of the Property, each as provided for in the Agreement, and to execute and deliver all documents necessary or appropriate in connection with performance of the City's obligations under the Agreement.

Section 4. The City Council hereby further approves of, ratifies and confirms all actions heretofore taken in connection with purchase of the Property in accordance with the Agreement.

PASSED AND ADOPTED this 7th day of October, 2014.

Robert P. Muckle, Mayor

SEAL
ATTEST:

Nancy Varra, City Clerk

Exhibit A
LEGAL DESCRIPTION OF SELLER'S LAND

Block 18, Caledonia Place, described as follows:

Parcel A:
Commencing at the southeast corner of Block 18, Caledonia Place; thence along the south line of said Block 18, north 89 degrees 42 minutes west 243.75 feet to the true point of beginning; thence continuing north 89 degrees 42 minutes west 243.75 feet; thence north 347.48 feet; thence east 243.75 feet; thence south 348.76 feet to the true point of beginning, County of Boulder, State of Colorado.

Parcel B:
Commencing at the southeast corner of Block 18, Caledonia Place; thence along the south line of said Block 18; north 89 degrees 42 minutes west 243.75 feet; thence north 348.76 feet; thence east 243.75 feet; thence south 350.04 feet to the Point of Beginning, except those portions deeded to the City of Louisville by Deed recorded July 16, 1978 at Reception No. 290850 and corrected August 5, 1982 at Reception No. 505807 and Deed recorded July 26, 1978 at Reception No. 290851, County of Boulder, State of Colorado.

The Property to be purchased by the City is comprised of the eastern 80 feet of the westernmost 140 feet of the above-described land.

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made as of the 14th day of November 2014 (the "Effective Date"), by and between CITY OF LOUISVILLE, COLORADO, a Colorado home rule municipal corporation ("Purchaser" or "City"), and STEPHEN D. TEBO ("Seller" or "Tebo"). Purchaser and Seller are collectively referred to as "the Parties."

RECITALS

A. Seller owns that certain real property described on Exhibit A attached hereto and by this reference incorporated herein containing in aggregate approximately 3.897 acres (approximately 169,760 square feet) of land (the "Seller's Land").

B. Purchaser desires to purchase from Seller an approximately 0.638-acre (27,800) square foot portion of the Seller's Land, which portion is hereinafter referred to as "Lot 2." The Seller's Land, not including Lot 2 or Lot 3 (defined below), is hereinafter referred to as the "Land")

C. The Parties desire to encourage redevelopment in the area.

COVENANTS

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements herein, the Parties hereto agree as follows:

ARTICLE 1.
PURCHASE AND SALE

1.1 Purchase and Sale. Subject to the terms and conditions of this Agreement, Seller agrees to sell and convey and Purchaser agrees to purchase the following described property: (a) Lot 2, together with all estates, rights, hereditaments, easements and rights-of-way appurtenant thereto; (excepting all oil, gas, and other minerals owned by Seller and appurtenant thereto) and all improvements and fixtures thereon at the time of delivery of possession to Purchaser; (b) Seller's interest, if any, in any contracts, licenses, permits, construction plans, studies, analyses, governmental approvals, development rights, utility rights (including, but subject to Section 8.14, any rights to water and sewer taps) and similar rights related to Lot 2, whether granted by governmental authorities or private persons; and (c) those items of personal property on the Lot 2 on the date of delivery of possession, which shall be conveyed by Bill of Sale executed at the time of delivery of possession (collectively, "the Property").

1.2 Purchase Price. The purchase price ("Purchase Price") for the Property is Four Hundred Seventeen Thousand and 00/100 Dollars ($417,000.00) based on $15.00 per square foot, and shall be payable as follows:

1.2.1 Twenty Thousand Dollars ($20,000.00) (the "Deposit") shall be paid by Purchaser to Land Title Guarantee Company, 2959 Canyon Blvd., Suite 340, Boulder,

Colorado 80302 (the "Title Company") in cash or by certified or wire transfer funds within five (5) business days following the Effective Date.

1.2.2 The balance of the Purchase Price shall be paid by Purchaser at the closing of the purchase and sale provided for in Article 5 (the "Closing") by bank cashier's check or certified check made payable to Seller or by wire transfer of federal funds to an account designated by Seller.

1.2.3 Purchaser or Seller shall be entitled to a pro-rata adjustment of the Purchase Price at a rate $15.00 per square foot if Lot 2, as surveyed and established on the recorded subdivision plat, is less or more than 27,800 square feet.

1.2.4 In the event the property appraisal shall be for an amount in excess of the Purchase Price of $417,000.00, or the amount adjusted due to Section 1.2.3, the Purchase Price shall then be increased to the appraisal value amount. At closing, (i) the Seller shall donate the difference between appraised value and the amount of $417,000, or the amount adjusted due to Section 1.2.3, to the Buyer ("Donation") and (ii) Buyer shall provide at Closing customary and/or reasonably requested evidence, documentation or letters acknowledging the Donation.

1.3 Deposit Generally. This Agreement shall terminate if Purchaser fails to pay the Deposit, or any portion thereof, within the time period specified therefor. The Deposit will be held by the Title Company in an interest-bearing account as an earnest money deposit and part payment of the Purchase Price and credited to Purchaser at the Closing; reference herein to the Deposit shall mean and include all interest earned thereon. The Deposit shall be applicable to the Purchase Price and shall be fully refundable until the end of Purchaser's Examination Period (as defined in Section 4.1) at which time the Deposit will become non-refundable except in the event of Seller's breach or the failure of a condition precedent to Purchaser's obligation to close under this Agreement. The Title Company shall hold and disburse the Deposit in accordance with the terms of this Agreement unless otherwise directed by written notice signed by Purchaser and Seller.

1.4 Approvals. Subject to Purchaser approving the Property during the Examination Period, Seller shall be responsible for submitting to the City and obtaining approval of a Subdivision Plat Application with an accompanying Subdivision Agreement and a Rezoning Application with an accompanying Zoning Agreement for the Property ("Property Approvals") and Seller shall be responsible for submitting to the City and obtaining approval of a Subdivision Plat Application with an accompanying Subdivision Agreement and a Rezoning Application with an accompanying Zoning Agreement for the Land ("Land Approvals") within one hundred eighty (180) calendar days after the Effective Date. Purchaser shall waive any fees shown on the document titled Department of Planning and Building Safety 2014 Development Review Fees Adopted: December 17, 2013 (including any future changes thereto) for Lot 2, Lot 3, and for the Land but only those fees that otherwise would be owed by the Seller prior to Closing for obtaining the Land Approvals or other approvals for the initial development of the Land and any administrative amendments to the initial Land Approvals within three years of the date of City Council approval of the Land Approvals. Seller shall pay all other application fees and bear all extraordinary costs for processing and obtaining the Land Approvals, Purchaser shall pay for

costs for surveying, engineering, planning and governmental processing for subdividing the Seller's Land, but Seller and Purchaser will sign all needed applications and otherwise cooperate with each other. Unless otherwise agreed by the Seller and Purchaser: (i) the Property Approvals will not encumber the Property prior to Closing, but such Property Approvals are anticipated to be obtained in time to be executed on the date of Closing; and (ii) upon any termination of this Agreement prior to Closing, the Seller and Purchaser shall have no obligation to finalize, execute or file the Property Approvals or the Land Approvals. The Property Approvals will include a replatting of the Seller's Land to create Lot 2 and other lots and provide for the dedication of easements as further described herein, if any. The Subdivision and Zoning Agreements shall contain provisions as are consistent with this Agreement and other terms which are mutually acceptable to the parties. The Parties agree and acknowledge that the Property Approvals and the Land Approvals and other actions of the City contemplated herein are matters of legislative, quasi-judicial and/or administrative discretion and no assurances of the granting of such Property Approvals and Land Approvals or taking of such other actions are or have been made by Purchaser. Furthermore, the Parties agree and acknowledge that the time schedule for processing the Property Approvals and Land Approvals is beyond the control of the Purchaser and Seller, and in the event that the Property Approvals and Land Approvals cannot be obtained in time to be executed within at or prior to the Closing Date as defined herein, the Parties hereby agree that the Closing Date will be extended accordingly, for a period not to exceed thirty (30) calendar days.

ARTICLE 2.
DOCUMENTS TO BE DELIVERED TO PURCHASER

2.1 Documents to be Delivered to or Obtained by Purchaser. On or before fifteen (15) calendar days following the Effective Date, Seller will provide Purchaser with any existing survey(s), environmental assessments, and other studies or analysis of the state or condition of the Property, and will make available for inspection and copying at Seller's offices documents referred to in Section 1.1 above, if any, which are in the possession of Seller. Purchaser shall either accept the Seller's existing survey, update the existing survey (if any) or obtain a new ALTA survey at its sole cost which shall be certified to Purchaser, Seller and the Title Company ("Survey") within forty-five (45) calendar days of the Effective Date. Within fifteen (15) calendar days after the Effective Date, Purchaser shall obtain, at Purchasers sole expense, a title insurance commitment issued by the Title Company showing the status of record title to the Property (a "Commitment") and committing to insure, subject to the exceptions and requirements set forth therein, title to Lot 2 in Purchaser in the amount mutually determined by the Parties and Title Company (but not to exceed the Purchase Price) under an Owner's Policy of Title Insurance, ALTA Form 1992 with standard printed exceptions deleted (subject to any matters disclosed by the Survey) ("Owners Policy"). Purchaser shall cause the Title Company to deliver to Purchaser and Seller legible copies of all recorded documents referred to in the Commitment, together with copies of any covenants to which the Property will be subjected at or before Closing. Extended title coverage or endorsements will be issued only at the request of Purchaser and will be at Purchaser's sole expense. The Commitment, together with the Schedule B-2 documents referenced therein are referred to collectively herein as "Title Documents." The Title Documents, Survey, and any other document, report or information relative to the Property that is delivered to or obtained by Purchaser are sometimes collectively referred to herein as "Property Information."

ARTICLE 3.
REPRESENTATIONS AND WARRANTIES

3.1 Seller's Representations. Seller represents and warrants to its knowledge without any duty to investigate, to Purchaser as of the Effective Date of this Agreement as follows:

3.1.1 Seller has the full right, power and authority to execute this Agreement, to transfer and convey the Property to the Purchaser as provided in this Agreement, and to carry out Seller's obligations under this Agreement, subject to the release of any Deed of Trust which is recorded against Seller's Land as of the Effective Date.

3.1.2 To Seller's actual knowledge, the performance by Seller under this Agreement is consistent with and not in violation of, and will not create any default under, any contract, agreement or other instrument to which Seller is a party, any judicial order or judgment of any nature by which Seller or the Property is bound.

3.1.3 To Seller's actual knowledge, there is no litigation pending or, to Seller's actual knowledge, threatened, which would affect the Property or Seller's ownership thereof.

3.1.4 Seller is not a "foreign person" within the meaning of Sections 1445(f)(3) and 7701(a)(30) of the Internal Revenue Code and Seller will furnish to Purchaser at Closing an affidavit confirming the same.

3.1.5 The Property will be conveyed by Seller to Purchaser free and clear of all leases or tenancies by other parties claiming through Seller, except for leases or tenancies (i) effected pursuant to this Agreement or (ii) which are subject to a sublease as described in Section 8.17.

3.1.6 Seller has no actual knowledge of any third parties who may have the right to claim or assert, any easement, right-of-way or claim of possession not shown by record, whether by grant, prescription, adverse possession or otherwise, as to any part of the Property.

3.1.7 Seller has no actual knowledge that any part of the Property has ever been used as a landfill, and Seller has no actual knowledge that materials, including without limitation, asbestos, PCBs or other hazardous substances have ever been stored or deposited upon the Property.

3.1.8 Seller has no actual knowledge of any underground storage tank, as that term is defined by federal statute or Colorado statute, is located on the Property which under applicable governmental law or regulation is required to be upgraded, modified, replaced, closed or removed.

3.1.9 Seller shall notify Purchaser in writing if, at any time prior to Closing, there are any known material changes to the foregoing representations and warranties adverse to Purchaser and in such event Purchaser has the right, but not the obligation to terminate this Agreement within ten (10) business days after said notice is delivered

by Seller, whereupon the Deposit in full shall be returned to Purchaser from the Title Company.

3.2 Purchaser's Representations. Purchaser hereby represents and warrants to Seller as of the Effective Date of this Agreement as follows:

3.2.1 Purchaser is a municipal corporation duly formed and in good standing under the laws of the State of Colorado.

3.2.2 Subject to Section 5.5, this Agreement constitutes the legal, valid and binding obligation of Purchaser; is enforceable against Purchaser in accordance with its terms, and the execution and delivery of this Agreement, and Purchaser's performance under this Agreement, are within Purchaser's powers and have been duly authorized by all necessary action.

3.2.3 The persons executing this Agreement on behalf of Purchaser has the authority to so act.

3.3 Disclaimer of Certain Representations and Warranties.

3.3.1 Purchaser acknowledges that Seller is affording Purchaser the opportunity for full and complete investigations, examinations and inspections of the Property. Purchaser acknowledges and agrees that Seller has not made any independent investigation or verification of, nor has any knowledge of, the accuracy or completeness of any of the Property Information and the Property Information is being furnished to Purchaser at its request and for the convenience of Purchaser.

3.3.2 Purchaser acknowledges that it is purchasing the Property based on its inspection and investigation of the Property and that Purchaser will be purchasing the Property "AS IS" and "WITH ALL FAULTS" based upon the condition of the Property as of the date of the Closing. Without limiting the foregoing, Purchaser acknowledges that, Seller, its officers, employees, agents and representatives have not made, do not make and specifically negate and disclaim any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, with respect to the condition of Property, including, without limitation, the existence or nonexistence of Hazardous Materials (defined below), water or water rights, development rights, taxes, covenants, conditions and restrictions, topography, drainage, soil, subsoil, utilities, zoning, or other rules and regulations affecting the Property. As used herein, the term "Hazardous Materials" means (i) hazardous wastes, hazardous substances, hazardous constituents, toxic substances or related materials, whether solids, liquids or gases, including, but not limited to substances defined as "hazardous wastes," "hazardous substances," "toxic substances," "pollutants," "contaminants," "radioactive materials," or other similar designations in, or otherwise subject to regulation under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; the Toxic Substance Control Act, 15 U.S.C. § 2601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1802; the

Resource Conservation and Recovery Act, 42 U.S.C. § 9601 et seq.; the Clean Water Act, 33 U.S.C. § 1251 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300(f) et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; and in any permits, licenses, approvals, plans, rules, regulations or ordinance adopted, or other criteria and guidelines promulgated pursuant to the preceding laws or other similar federal, state or local laws, regulations, rules or ordinances now or hereafter in effect relating to environmental matters (collectively the "Environmental Laws"); and (ii) any other substances, constituents or wastes subject to any applicable federal, state or local law, regulation or ordinance, including any Environmental Law now or hereafter in effect, including but not limited to petroleum, refined petroleum products, waste oil, waste aviation or motor vehicle fuel, and asbestos.

ARTICLE 4.
CONDITIONS PRECEDENT TO PURCHASER'S PERFORMANCE

The obligation of Purchaser to purchase the Property and Seller's right to delivery of the Deposit is subject to the satisfaction of the following conditions precedent in Sections 4.1 and 4.2 on or before the expiration of the Examination Period or expiration of the title objection deadline, and if the conditions are not so satisfied during the applicable period, the (i) unsatisfactory conditions may be waived by Purchaser in writing designated as a waiver, prior to the expiration of the applicable period, or (ii) Purchaser may terminate this Agreement in writing, prior to the expiration of the applicable period in which event Purchaser shall be returned the Deposit in full from the Title Company and the Parties will be released from all obligations hereunder other than those provisions hereof which expressly contemplate survival of termination.

4.1 Examination Period. Purchaser shall have ninety (90) calendar days following the Effective Date (the "Examination Period"), in which to inspect and evaluate the Property to determine the suitability of the Property for Purchaser's intended use.

4.1.1 At any and all times during the term of this Agreement, Purchaser and Purchaser's representatives, agents, consultants and designees shall have the right to enter upon the Property, at Purchaser's own cost, for any purpose in connection with its proposed purchase, development or operation of the Property, including, without limitation, the right to make such inspections, investigations and tests as Purchaser may elect to make or obtain. None of the Purchaser's investigations shall disturb any tenant or occupant of the Seller's Land.

4.1.2 Purchaser shall pay promptly when due for all work performed on the Property by Purchaser, or at Purchaser's instance or request, including, without limitation, all inspection fees, appraisal fees, engineering fees and other expenses of any kind incurred by Purchaser relating to the inspection of the Property, all of which shall be the sole expense of Purchaser unless subject to reimbursement by Seller pursuant to Section 4.1.3. Any and all liens, whether threatened or actually filed, against any portion of the Property resulting from Purchaser's inspection of the Property, or as a result of work performed or materials supplied at Purchaser's instance or request, shall be satisfied and removed by Purchaser within five (5)

business days after notice thereof is given to Purchaser. To the extent permitted by law, Purchaser shall indemnify, defend, protect and hold Seller harmless from any claims, injuries, losses, liens, judgments, liabilities, damages or expenses (including reasonable attorneys' fees and costs) arising out of or incurred in connection with the activities of Purchaser, its agents, designees, or representatives, including entering onto or otherwise inspecting the Property hereunder, or arising from or in connection with any and all mechanic's liens and physical damage to property or persons arising out of any such entry by Purchaser or its agents, designees or representatives. The indemnification obligation of Purchaser hereunder shall survive the termination of this Agreement. Purchaser shall reasonably restore any damage to the Seller's Land caused by Purchaser, including, without limit, by Purchaser's inspection, testing, investigation and survey thereof. Purchaser shall maintain a policy of public entity general liability insurance, with a company licensed to do business in Colorado, with a single combined limit of not less than One Million Dollars ($1,000,000), insuring the activity and conduct of Purchaser and its agents, representatives and independent contractors during any such entry onto Seller's Land, including contractual liability coverage.

4.1.3 If on or before the expiration of the Examination Period, Purchaser determines for any reason or for no reason not to proceed with the acquisition of the Property, Purchaser may elect by written notice to Seller given on or before expiration of the Examination Period to terminate this Agreement, and upon giving such notice this Agreement shall terminate, the Deposit shall be returned to Purchaser by the Title Company, and the Parties shall be released of all further obligations under this Agreement, except for those obligations which expressly survive termination hereof. If, however, Purchaser fails to give such notice, then the condition precedent set forth in Section 4.1 shall be deemed satisfied and this Agreement will continue in full force and effect.

4.2 Title Documents. Purchaser shall have ninety (90) calendar days after the Effective Date to object, in a writing delivered to Seller, to any matters shown on the Title Documents. Purchaser shall have forty-five (45) calendar days after Purchaser's receipt of the ALTA survey(s) as contemplated in Section 2.1 above in which to object, in a writing delivered to Seller, to any matters shown on the Survey. If Seller is willing to cause the cure or removal of any of the matters to which Purchaser objects upon terms acceptable to Purchaser in Purchaser's sole and absolute discretion, which cure may, with Purchaser's consent, include insuring over such objectionable title matters, then Seller shall so notify Purchaser within ten (10) calendar days of Seller's receipt of Purchaser's notice. If Seller does not respond, or chooses not to cure or remedy all of Purchaser's objections, or if Seller is unable to remove any such matters, Purchaser may elect either: (a) to terminate this Agreement by delivery of written notice to Seller within ten (10) calendar days after Purchaser's receipt of Seller's notice and receive a full refund of the Deposit from the Title Company; or (b) waive or modify such objection and to complete the transaction as otherwise contemplated by this Agreement. If Seller elects to cure or remove any title or survey matters objected to by Purchaser, and Seller cannot thereafter cure or remove the same by Closing, Seller shall have the right, but not the obligation, to extend the Closing for a period of up to sixty (60) calendar days to attempt to cure, insure over or remove such exceptions or defects to the satisfaction of Purchaser. In the event of Purchaser's election to

terminate this Agreement pursuant to this Section 4.2, upon Seller's receipt of Purchaser's written notice of such election, this Agreement shall terminate, the Deposit shall be returned to Purchaser from the Title Company, and the Parties shall be released of all further obligations under this Agreement, except for those obligations which expressly survive termination hereof as provided in Article 8. If Purchaser does not elect to terminate this Agreement in accordance with this Section 4.2, Purchaser shall thereby be deemed to have indicated its acceptance of, and waiver of any and all objection to all matters, exceptions and requirements set forth on the Commitment or the Survey, and its acceptance of the status of title to the Property generally. At such time, all matters then shown on Schedule B-2 of the Title Commitment and the Survey shall be deemed "Permitted Exceptions," except that there shall be no exception for leases or tenancies.

ARTICLE 5.
THE CLOSING

5.1 The Closing. The Closing shall occur, if at all, on the earlier of (a) thirty (30) calendar days after the receipt of the Property Approvals and the Land Approvals, or (b) two hundred forty (240) calendar days after the Effective Date. Closing shall take place at 10:00 a.m. at the offices of the Title Company in Boulder, Colorado (the "Closing Date") or other date or time or other place as the Parties may agree in writing.

5.2 Obligations of Seller at Closing. Seller shall have the following obligations at Closing:

5.2.1 Seller shall execute, have acknowledged and deliver to Purchaser a special warranty deed conveying title to Purchaser to Lot 2 subject only to the Permitted Exceptions free and clear of leases, tenancies and parties in possession.

5.2.2 Seller shall cause the Title Company to deliver to Purchaser either: (a) a current Owner's Policy on Lot 2 to be issued pursuant to the Commitment showing no lien, encumbrance or other restriction other than the Permitted Exceptions; or (b) an unqualified written commitment from the Title Company to deliver such an Owner's Policy.

5.2.3 Seller shall execute, have acknowledged and deliver to Purchaser a good and sufficient assignment and bill of sale in a form acceptable to Purchaser, conveying any rights in the property as described in Sections 1(b) and 1(c).

5.2.4 Seller shall deliver to Purchaser an affidavit setting forth Seller's federal tax identification number and certification that it is not a "foreign person" within the meaning of the Internal Revenue Code.

5.2.5 Seller shall execute such other documents as are required by this Agreement or reasonably required by the Title Company to effectuate the transaction contemplated herein.

5.3 Obligations of Purchaser at Closing. Purchaser shall deliver the Purchase Price less the amount of the Deposit to Seller, subject only to the adjustments set forth in Sections

1.2.3 and 5.4, by certified or bank cashier's check or by wire transfer of federal funds at Seller's direction. Purchaser shall execute such other documents as are required by this Agreement or reasonably required by the Title Company to effectuate the transaction contemplated herein.

5.4 Closing Costs. Closing costs and adjustments shall be allocated as follows:

5.4.1 Seller will pay the cost of one-half of any escrow or other Title Company closing fees, the fees of Seller's counsel, and the costs of recording the Plat, Subdivision Agreement(s), Zoning Agreement(s) and any other documents to be recorded in connection with the Land Approvals, which documents for such Approvals shall be recorded at Closing.

5.4.2 Real property taxes levied against the Property and other regular expenses, if any, and revenues, if any, affecting the Property shall be paid or shall be prorated as of 11:59 p.m. on the day preceding the Closing based upon the most recent valuation for assessment and most recent mill levy and shall be final. For purposes of calculating prorations, Purchaser shall be deemed to be in title to the Property and therefore entitled to the income and responsible for the expenses, for the entire day upon which the Closing occurs. Except as expressly provided herein, all proration adjustments shall be final as of the Closing Date. Any apportionments which are not expressly provided for herein shall be made in accordance with customary practice in Denver, Colorado. To the extent any revenues or expenses are not reasonably ascertainable, such adjustments, if and to the extent known and agreed upon as of the Closing, shall be paid by Purchaser to Seller (if the prorations result in a net credit to the Seller) or by Seller to Purchaser (if the prorations result in a net credit to the Purchaser), by increasing or reducing the cash portion (by showing credits or debits on the settlement statements) to be paid by Purchaser at the Closing.

5.4.3 Purchaser shall pay the cost of the Owner's Policy of Title Insurance to be provided pursuant to the terms of this Agreement, recording the special warranty deed and other conveyance documents, all documentary fees and taxes, and the costs of recording the Plat, Subdivision Agreement(s), Zoning Agreement(s) and any other documents to be recorded in connection with the Property Approvals, which documents for such Approvals shall be recorded at Closing, one-half of the escrow fees or other Title Company closing fees and the fees of Purchaser's counsel.

5.5 Closing Contingency. Seller acknowledges that Purchaser's obligation to close on the sale of the Property is expressly contingent upon adoption by the City and final effectiveness of an ordinance authorizing the purchase of the Property. In addition to all other rights and remedies of Purchaser and Seller hereunder, either party shall have the right to terminate this Agreement and make the same of no further force and effect (except for those Sections that expressly survive Closing) in the event such ordinance is not finally effective as of the Closing Date or in the event any action whatsoever is commenced by any non-party to defeat or enjoin Purchaser's performance under this Agreement; provided, however, that Purchaser shall also have the right, but not the obligation, to extend the Closing for a period of up to sixty (60) calendar days to attempt satisfy the foregoing contingency to the satisfaction of Seller.

ARTICLE 6.
DEFAULT AND TERMINATION

6.1 Time of Essence. Time is of the essence of the obligations of the Parties.

6.2 Purchaser Default. If Purchaser shall fail to terminate this Agreement as provided in Section 1.4, Section 3.1.9, Article 4 or Section 5.5 and thereafter fails to consummate this Agreement for any reason other than Seller's default hereunder or if Purchaser is otherwise in default of performing its obligations hereunder, then following written notice of such default given by Seller to Purchaser and the failure of Purchaser to cure such default within ten (10) business days following receipt of such notice, Seller shall be entitled to terminate this Agreement and have the Deposit paid to Seller as liquidated damages as Seller's sole and exclusive remedy. THE PARTIES HERETO ACKNOWLEDGE THAT SELLER'S DAMAGES DUE TO PURCHASER'S DEFAULT HEREUNDER ARE DIFFICULT TO ASCERTAIN AND AGREE THAT THE AMOUNT OF THE DEPOSIT REPRESENTS A REASONABLE ESTIMATE OF SELLER'S DAMAGES.

6.3 Seller Default. If Seller shall fail to consummate this Agreement for any reason other than Purchaser's default hereunder or termination of this Agreement by a party hereto or if Seller is otherwise in default of performing its obligations hereunder and fails to cure such default within fifteen (15) business days following written notice thereof, Purchaser, as its sole and exclusive remedy, shall either: (a) elect to terminate this Agreement and have the Deposit returned to Purchaser from the Title Company; or (b) elect to seek specific performance of this Agreement from Seller because of such default. PURCHASER ACKNOWLEDGES THAT SPECIFIC PERFORMANCE OF SELLER'S OBLIGATIONS HEREUNDER IS PURCHASER'S SOLE REMEDY, AND PURCHASER SHALL NOT BE ENTITLED TO OR CLAIM ANY FORM OF DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, ECONOMIC DAMAGES, OR INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES.

6.4 Effect of Termination. Upon proper termination of this Agreement which is allowed by this Agreement, neither party shall thereafter have any further obligations to the other party except as contemplated by said Sections and except for any provisions of this Agreement which expressly survive such termination as provided in Article 8.

ARTICLE 7.
SURVIVAL OF REPRESENTATIONS AND WARRANTIES

No representations or warranties whatever are made by any party to this Agreement except as specifically set forth in this Agreement. The representations, warranties and indemnities made by the Parties to this Agreement and the covenants and agreements to be performed or complied with by the respective Parties under this Agreement before the Closing Date shall be deemed to be continuing and shall survive the Closing; provided, however, the representations and warranties of Seller and Purchaser shall terminate on the date which is twenty-four (24) months after the Closing Date. Nothing in this Article shall affect the obligations and indemnities of the Parties with respect to covenants and agreements contained in

this Agreement that are permitted or required to be performed in whole or in part after the Closing Date.

ARTICLE 8.
MISCELLANEOUS

8.1 Effect of Headings. The subject headings of articles, paragraphs and subparagraphs of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

8.2 Entire Agreement/Survival of Agreement. This Agreement constitutes the entire agreement between the Parties hereto and supersedes all prior and contemporaneous agreements, representations and understandings of the Parties regarding the subject matter of this Agreement. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the Parties hereto. This Agreement and all provisions hereof shall not survive the Closing contemplated hereunder except for those provisions and obligations which this Agreement expressly states shall survive Closing.

8.3 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

8.4 Assignment. This Agreement may not be assigned by Purchaser without the prior written consent of Seller, which consent may be granted or withheld at the sole discretion of Seller.

8.5 Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service, if served personally on the party to whom notice is given, upon confirmed facsimile transmission, or on the third day after mailing, if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid and properly addressed as follows, or to alternate addresses as may be indicated by the Parties:

To Purchaser at:

City of Louisville
749 Main Street
Louisville, Colorado 80027
Attention: Aaron DeJong, Economic Development Director
Phone: (303) 335-4531
Email: aarond@Louisvilleco.gov

To Seller at:

Stephen D. Tebo
P.O. Box T
Boulder, CO 80306-1966
Attn: James Dixon

Facsimile: 303-447-0206
Telephone No.: 303-447-8326
Email: jdixon@tebopropertiesc.com

8.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

8.7 Time Calculations. Unless otherwise indicated, all periods of time referred to in this Agreement shall refer to calendar days and shall include all Saturdays, Sundays and state or national holidays; provided that if the date to perform any act or give any notice with respect to this Agreement shall fall on a Saturday, Sunday, or state or national holiday in Denver, Colorado, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday in Denver, Colorado. Each day shall be deemed to expire at 5:00 p.m. Mountain Standard Time.

8.8 Broker's Fees. Each of the Parties represents and warrants to the other that it has not employed, retained or otherwise utilized any broker or finder in connection with any of the transactions contemplated by this Agreement and no broker or person is entitled to any commission or finder's fees in connection with the transaction. To the extent permitted by law, the Parties each agree to indemnify and hold harmless one another against any loss, liability, damage, cost, claim or expense incurred by reason of any brokerage commission or finder's fee alleged to be payable because of any act, omission or statement of the indemnifying party.

8.9 Costs. If any legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, each party shall be responsible for and pay its own attorneys' fees and other costs.

8.10 Partial Invalidity. In the event that any condition or covenant herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

8.11 Special Taxing Districts.

SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. PURCHASER SHOULD INVESTIGATE THE DEBT

FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.

8.12 Further Acts. Each of the Parties hereto covenants and agrees with the other, upon reasonable request from the other, from time to time, to execute and deliver such additional documents and instruments and to take such other actions as may be reasonably necessary to give effect to the provisions of this Agreement.

8.13 Amendment. This Agreement shall not be amended, altered, changed, modified, supplemented or rescinded in any manner except by a written agreement executed by Purchaser and Seller.

8.14 Public Use Dedication Waived. The owner of the Land described in Exhibit A shall not be obligated to provide land or a fee-in-lieu payment to satisfy the City's Public Use Dedication requirement that would otherwise apply in connection with the Property Approvals or the Land Approvals. The foregoing shall not prohibit the City from requiring such a dedication or fee in-lieu thereof in the event there is a redevelopment of the Land which (a) is subsequent to the date that is three years after the date of City Council approval of the Land Approvals; and (b) proposes any new or increased density of residential use. Any development of the Land, and the Land Approvals, shall provide that all existing water taps, which serve any portion of the Seller's Land, and which Seller shall have the right to relocate within the Land at Seller's sole expense, shall remain available for future use on the Land without further tap fee cost to Seller; however, any additional water taps required for the development of the Land or the Land Approvals shall be provided to Seller by Purchaser in accordance with the City's then-current ordinances related to new required tap fees, including payment of then-applicable tap fees. The provisions of this Section shall survive Closing.

8.15 Subdivision of Property. Prior to Closing, Seller and Purchaser shall process the Subdivision Plat that is part of the Property Approvals and Land Approvals in order to plat the Seller's Land into three separate parcels to include the westerly sixty (60) feet to be conveyed or dedicated to the City, in accordance with that certain Contract for Purchase and Sale of Real Property ("Delo Contract") by and between Seller and DELO, LLC ("Delo"), at no expense to the City for right-of-way purposes ("Lot 3"), Lot 2, and the Land, together with the dedication of necessary and mutually acceptable, agreed-upon access, utility and other easements. The concept for the potential Subdivision Plat for Lot 2, Lot 3 and the Land are attached as Exhibit B; however, the final configuration of the lots, outlots, and easements shall be as determined through the platting process. It is a condition precedent to Closing that (a) the Subdivision Plat and Subdivision Agreement for Lot 2, Lot 3 and the Land be approved by Seller, Purchaser and Delo and recorded at or prior to Closing and (b) the Lot 3 closing under the Delo Contract occur at or prior to Closing. The legal description in the special warranty deed to be delivered from Seller to Purchaser shall conform to the Subdivision Plat and requirements of the Title Company. The foregoing shall not limit the ability of Seller and Purchaser to agree to a dedication of Lot 3 to the City of Louisville by a separate instrument at any time prior to Closing.

8.16 Rezoning. Prior to Closing, Seller and Purchaser shall process the Rezoning Application and Rezoning Agreement that is part of the Property Approvals and the Land Approvals to zone the Property to the mixed-use residential (MU-R) zone district provided for in Chapter 17.14 of the Louisville Municipal Code and to zone the Land to the Commercial Community (CC) district provided for in Chapter 17.14 of the Louisville Municipal Code, subject to the Rezoning Agreement. It is a condition precedent to Closing that the rezoning ordinance shall be finally effective prior to Closing and that the Rezoning Agreement be recorded at or prior to Closing. Staff will recommend within the Rezoning Agreement the following conditions:

1. Allowance for three (3) drive-thru businesses on the Land;
2. No required two story minimum building height;
3. No minimum lot coverage ratio in the Commercial Community portion of the Property;
4. Minimum 15 foot setback in the Commercial Community portion of the Property;
5. Allow a 5 year reprieve for grandfathered industrial uses to be introduced into or expanded within the confines of the buildings currently existing within the Land at the time of execution of this Agreement;
6. No required maximum parking restrictions;
7. Match the criteria listed on site plans for the Land as shown in Exhibit B; and,
8. A regional detention facility is intended to be constructed to serve an area that includes the Land (including all improvements on the Land). The regional detention facility is a project to be financed by a TIF revenue bond associated with public infrastructure for the DELO Phase II development ("Funding"). Should the Funding for the regional detention facility be provided, a fee-in-lieu payment by Seller will not be required by Purchaser for construction of such regional detention facility; however, the foregoing shall not be construed to prohibit the imposition of a customary and reasonable monthly City stormwater utility service fees or any other similar legislatively adopted fee, toll or charge, including without limitation a fee charged to users of the regional detention facility for maintenance and operation thereof. If the Funding for the regional detention facility is not provided, Seller shall have the option to accommodate the Land's stormwater detention requirements (i) upon the Land, (ii) with the City's cooperation and pending receipt of required approvals (which remain at the City's discretion), on the Highway 42 Right of Way, or (iii) by paying to the Purchaser at the time such requirements must be met a fee-in-lieu payment equal to the lesser of (a) $100,000.00 or (b) the Land's pro-rata share of the commercially reasonable total cost to construct and use the regional detention facility for development of a fixed amount of land which includes the Land, which pro-rata share shall be commercially reasonably determined by the City based upon demand, usage and/or other generally accepted methodologies. The provisions of this Section shall survive Closing.

The Parties agree and acknowledge that approval and final effectiveness of a rezoning ordinance and Rezoning Agreement are matters of legislative, quasi-judicial and/or administrative discretion and no assurances of the granting of such approvals are or have been made by Purchaser.

8.17 Improvements. Seller, at its expense, shall remove from Lot 2 the existing building and all other structures and personal property thereon, excepting only those items of personal property, if any, which the Seller and Purchaser in writing agree will be conveyed to Purchaser

by bill of sale, all of which shall occur before Purchaser commences construction of its parking lot on Lot 2 ("Lot 2 Start Date"), which construction commencement date is expected to begin prior to June 30, 2016, or an earlier date as mutually agreed upon by Purchaser and Seller. Purchaser will provide, to Seller, one hundred (180) days prior written notice of the Lot 2 Start Date, which notice shall include evidence that Purchaser's construction is fully designed, permitted and approved by the City Council for the City. If Seller fails to complete removal of the existing building and all other structures and personal property from Lot 2 by the date that is fifteen (15) calendar days prior to the Lot 2 Start Date, Purchaser, after providing not less than ten (10) business days prior written notice, may remove same at Seller's expense and Seller shall upon demand pay to Purchaser all reasonable costs incurred for such removal, including without limitation, all labor, materials, hauling, disposal, overhead, administrative and other costs, plus an additional surcharge of fifteen percent (15%) of such costs incurred. Amounts not paid upon demand shall bear interest at the rate of one-half percent (1/2%) percent per month until paid in full and Purchaser shall be entitled all administrative, legal and other reasonable fees and costs of collection. From the Closing Date until the Lot 2 Start Date, but in no event until later than June 30, 2016, Purchaser agrees to lease Lot 2 to Seller for the sum of One Dollar ($1.00) per month, on a month-to-month basis, with the understanding that Seller may sublease Lot 2, on a month-to-month basis to Seller's current or replacement tenants. The provisions of this Section shall survive Closing.

8.18 Temporary Construction Easement. After Closing, and upon request of Purchaser, Seller agrees to grant to Purchaser at no cost a temporary construction easement over the westernmost twenty (20) feet of the Land to facilitate the Purchaser's improvement of Lot 2. Such easement shall require Purchaser to restore any areas that may be damaged by its activities under said easement. Seller shall have no obligation to grant such temporary easement pursuant to this Section (a) more than seven (7) years after the date of Closing, or (b) if such easement materially conflicts with the use of, development of, or construction of improvements on, the Land. After Closing, and upon request of Seller, Purchaser agrees to grant to Seller at no cost a temporary construction easement over the easternmost twenty (20) feet of Lot 2 to facilitate the Seller's improvement of Land. Such easement shall require Seller to restore any areas that may be damaged by its activities under said easement. Purchaser shall have no obligation to grant such temporary easement pursuant to this Section (a) more than seven (7) years after the date of Closing, or (b) if such easement materially conflicts with the use of, development of, or construction of improvements on, Lot 2. Any temporary easement granted pursuant to this Section shall include provisions requiring non-disturbance of any buildings or structures then-existing within the easement area. The provisions of this Section shall survive Closing.

8.19 Purchaser does hereby acknowledge, represent, and agree to and with Seller that: (i) Purchaser is expressly purchasing the Property in its existing condition "AS IS, WHERE IS, AND WITH ALL FAULTS" with respect to all facts, circumstances, conditions and defects; (ii) Seller has no obligation to inspect for, repair or correct any such facts, circumstances, conditions or defects or to compensate Purchaser for same; (iii) Seller has specifically bargained for the assumption by Purchaser of all responsibility to inspect and investigate the Property and of all risk of adverse conditions and has structured the Purchase Price and other terms of the Agreement in consideration thereof; (iv) Purchaser has undertaken or will undertake all such inspections and investigations of the Property as Purchaser deems necessary or appropriate under the circumstances as to the condition of the Property and the suitability of the Property for

Purchaser's intended use, and based upon same, Purchaser is and will be relying strictly and solely upon such inspections and examinations and the advice and counsel of its own consultants, agents, legal counsel and officers and Purchaser is and will be fully satisfied that the Purchase Price is fair and adequate consideration for the Property; (v) Seller is not making and has not made any warranty or representation with respect to any materials or other data provided by Seller to Purchaser (whether prepared by or for the Seller or others) or the education, skills, competence or diligence of the preparers thereof or the physical condition or any other aspect of all or any part of the Property as an inducement to Purchaser to enter into the Contract and thereafter to purchase the Property or for any other purpose; and (vi) by reason of all the foregoing, Purchaser assumes the full risk of any loss or damage occasioned by any fact, circumstance, condition or defect pertaining to the Property. Without limiting the generality of any of the foregoing, and except as otherwise set forth herein or in the closing documents, Purchaser specifically acknowledges that Seller does not represent or in any way warrant the accuracy of any marketing information or documents describing the Property or the information, if any, provided by Seller to Purchaser.

8.20 Other. Without limiting the generality of the foregoing, upon Closing, Purchaser shall be deemed to have released any right to sue Seller or seek contribution or reimbursement from Seller or to join Seller in any litigation regarding environmental issues arising from contamination that occurred prior to Closing.

8.21 Tax Free Exchanges. If either party desires to purchase or sell the Property in connection with a tax-deferred exchange under Section 1031 of the Internal Revenue Code of 1986, that party (the "Exchanging Party") may assign its rights under this Agreement to a "qualified exchange intermediary" within the meaning of that said Section 1031. In such case, the other party (the "Non-Exchanging Party") shall sign such documents, and otherwise reasonably cooperate, as may be reasonably necessary to complete the tax-deferred exchange.

EXHIBIT A

LEGAL DESCRIPTION OF SELLER'S LAND

Block 18, Caledonia Place, described as follows:

Parcel A:
Commencing at the southeast corner of Block 18, Caledonia Place; thence along the south line of said Block 18, north 89 degrees 42 minutes west 243.75 feet to the true point of beginning; thence continuing north 89 degrees 42 minutes west 243.75 feet; thence north 347.48 feet; thence east 243.75 feet; thence south 348.76 feet to the true point of beginning, County of Boulder, State of Colorado.

Parcel B:
Commencing at the southeast corner of Block 18, Caledonia Place; thence along the south line of said Block 18; north 89 degrees 42 minutes west 243.75 feet; thence north 348.76 feet; thence east 243.75 feet; thence south 350.04 feet to the Point of Beginning, except those portions deeded to the City of Louisville by Deed recorded July 16, 1978 at Reception No. 290850 and corrected August 5, 1982 at Reception No. 505807 and Deed recorded July 26, 1978 at Reception No. 290851, County of Boulder, State of Colorado.

Exhibit B
Concept Plan for Subdivision Plat

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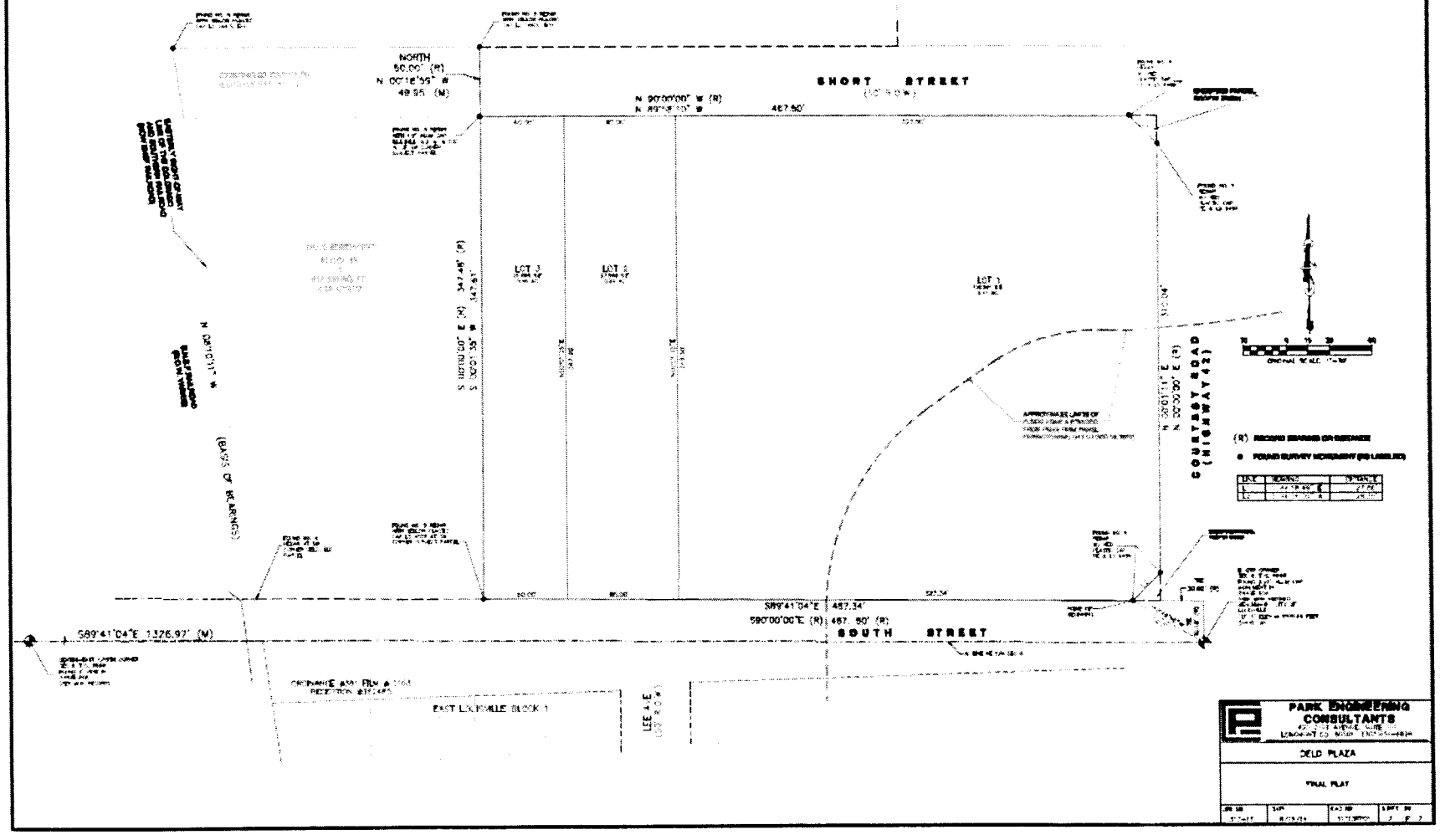
FINAL PLAT
DELO PLAZA SUBDIVISION
A REPLAT OF A PORTION OF BLOCK 18, CALEDONIA PLACE
LOCATED IN THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 1 SOUTH
RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN
CITY OF LOUISVILLE, COUNTY OF BOULDER, STATE OF COLORADO
SHEET 2 OF 2



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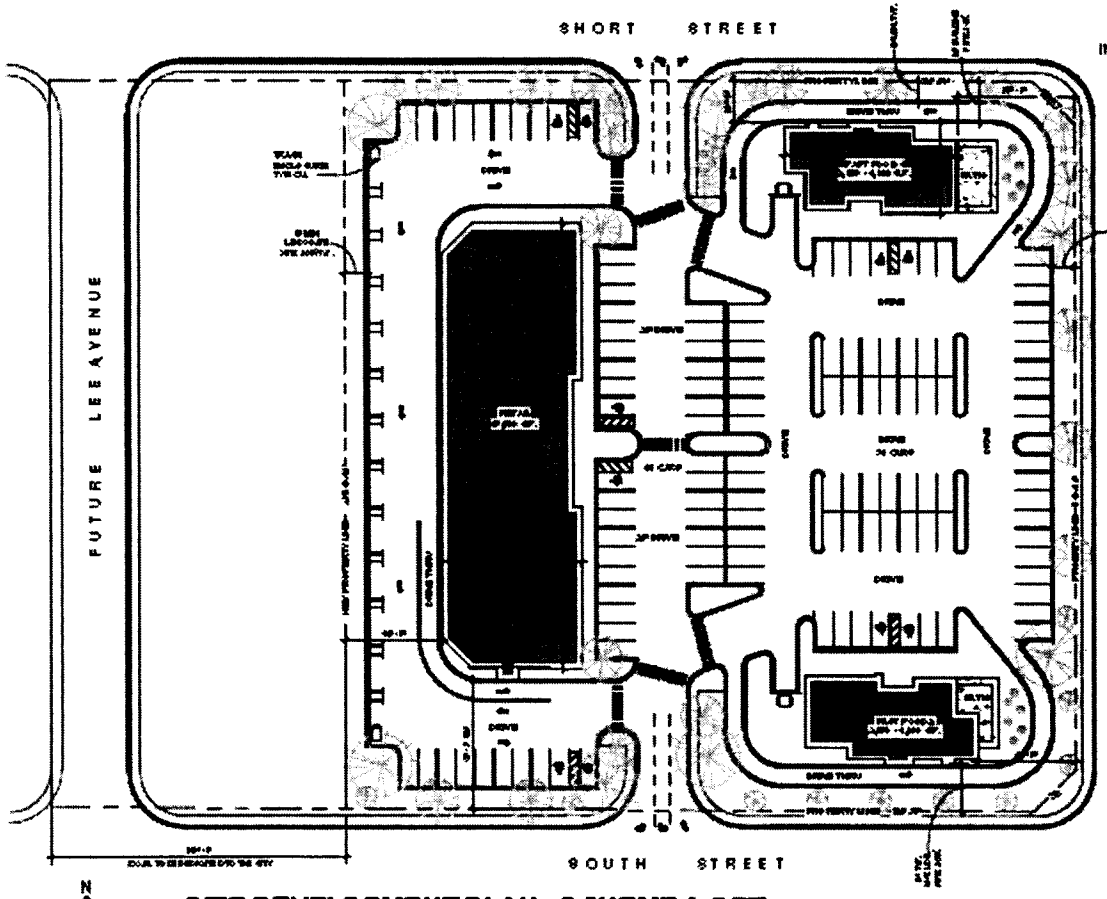

LAND USE DATA:

LAND AREA: 121,009.81 S.F

PROPOSED RETAIL: 15,500 S.F.

PROPOSED FAST FOOD 1: 2,850 S.F. - 4,000 S.F.

PROPOSED FAST FOOD 2: 4,000 S.F. - 4,000 S.F.

PARKING REQUIRED:

PARKING SHALL COMPLY WITH THE FOLLOWING PARKING RATIOS IN LIEU OF THE ZONING ORDINANCE:

RETAIL: 1 SPACE/250 S.F.

RESTAURANT: 1 SPACE/125 S.F.

OFFICE: 1 SPACE/300 S.F.

PARKING PROVIDED: 140 CARS

GENERAL NOTES:

1. THIS PARCEL SHALL BE ALLOWED 5 DRIVE THROUGH BUSINESSES.
2. 10' MINIMUM SET BACK AT ALL PROPERTY LINES.
3. THIS DEVELOPER SHALL NOT BE REQUIRED TO BUILD 2 STORY STRUCTURES. 1 STORY STRUCTURES ARE ALLOWED.
4. NO MAXIMUM BUILDING SET BACKS ARE REQUIRED. 20' MINIMUM BUILDING SET BACK.
5. NO MINIMUM BUILDING COVERAGE IS REQUIRED.
6. CITY OF LOUISVILLE SHALL NOT REQUIRE ON SITE DETENTION FOR THIS PARCEL.
7. NO MAXIMUM PARKING RESTRICTIONS SHALL BE ENFORCED.

N

1 **SITE DEVELOPMENT PLAN - SCHEME A OPT 1**
1" = 50'-0"

0' 25' 50' 100' 200'

[illegible]	LOUISVILLE RETAIL CENTER	DATE / NO. / DESCRIPTION	DRAWINGS PREPARED FOR: TEBO DEVELOPMENT CO	PROJECT NUMBER 04004	SITE PLAN - SCHEME A OPT 1
	NW CORNER HWY 42 & SOUTH ST.			PROJECT CODE LRC	
				MANAGER MO	SHEET NUMBER SP.1
				ARCHITECT NOOK	

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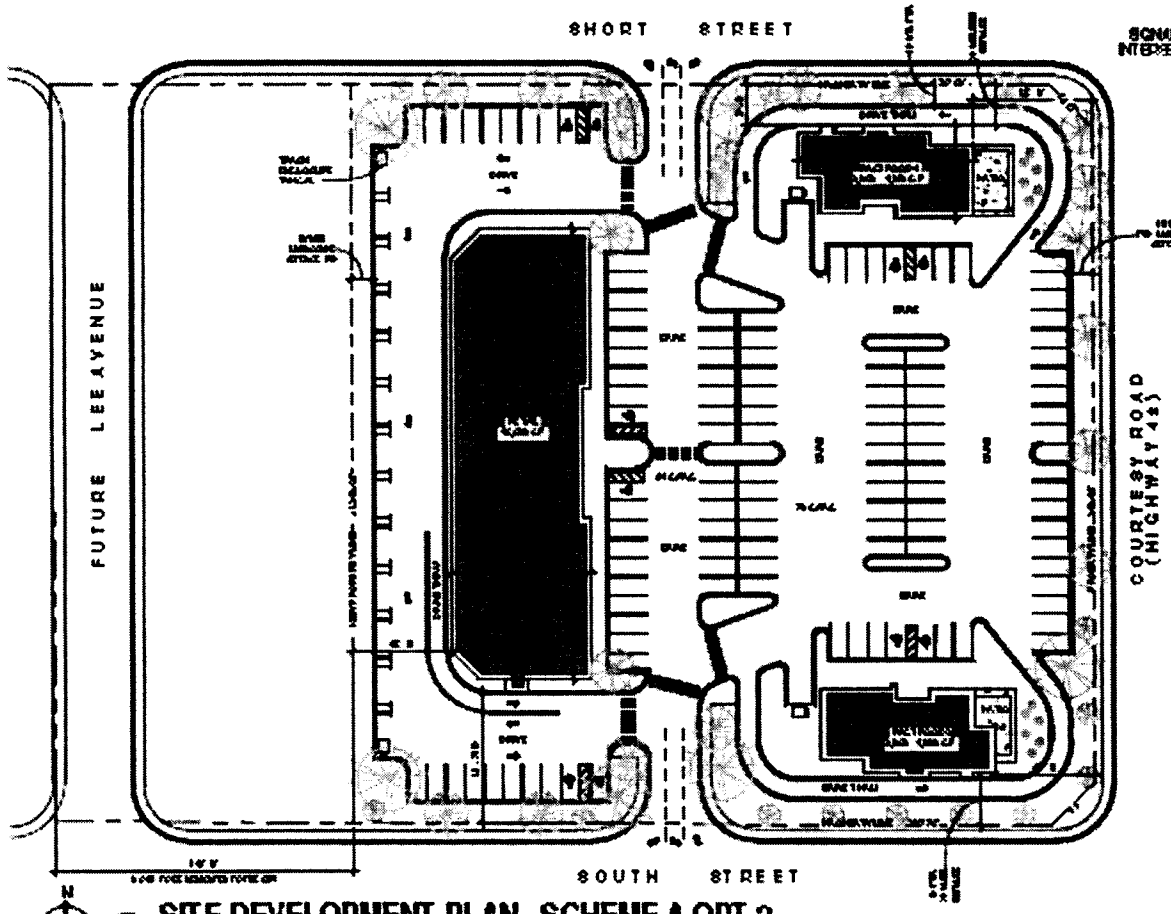

SITE DEVELOPMENT PLAN - SCHEME A OPT 2

LANDUSE DATA:

LAND AREA: 121,009.51 S.F.

PROPOSED RETAIL: 15,000 S.F.

PROPOSED FAST FOOD 1: 2,250 S.F. - 4,000 S.F.

PROPOSED FAST FOOD 2: 4,000 S.F. - 4,000 S.F.

PARKING REQUIRED:

PARKING SHALL COMPLY WITH THE FOLLOWING PARKING RATIOS IN LIEU OF THE ZONING ORDINANCE:

RETAIL: 1 SPACE/250 S.F.

RESTAURANT: 1 SPACE/125 S.F.

OFFICE: 1 SPACE/300 S.F.

PARKING PROVIDED: 134 CARS

GENERAL NOTES:

1. THIS PARCEL SHALL BE ALLOWED 2 DRIVE THROUGH BUSINESSES.
2. 10' MINIMUM SETBACK AT ALL PROPERTY LINES.
3. THIS DEVELOPER SHALL NOT BE REQUIRED TO BUILD 2 STORY STRUCTURES. 1 STORY STRUCTURES ARE ALLOWED.
4. NO MAXIMUM BUILDING SETBACKS ARE REQUIRED. 30' MINIMUM BUILDING SETBACK.
5. NO MINIMUM BUILDING COVERAGE IS REQUIRED.
6. CITY OF LOUISVILLE SHALL NOT REQUIRE ON SITE DETENTION FOR THIS PARCEL.
7. NO MAXIMUM PARKING RESTRICTIONS SHALL BE ENFORCED.

LOUISVILLE RETAIL CENTER	DATE / NO. / DESCRIPTION	DRAWINGS PREPARED FOR TEBO DEVELOPMENT CO	PROJECT NUMBER		SITE PLAN - SCHEME A OPT 2
NW CORNER HWY 42 & SOUTH ST.			PROJECT CODE	LRD	
			MANAGER	N.A.	SHEET NUMBER SP.2
			ARCHITECT	NOOK	

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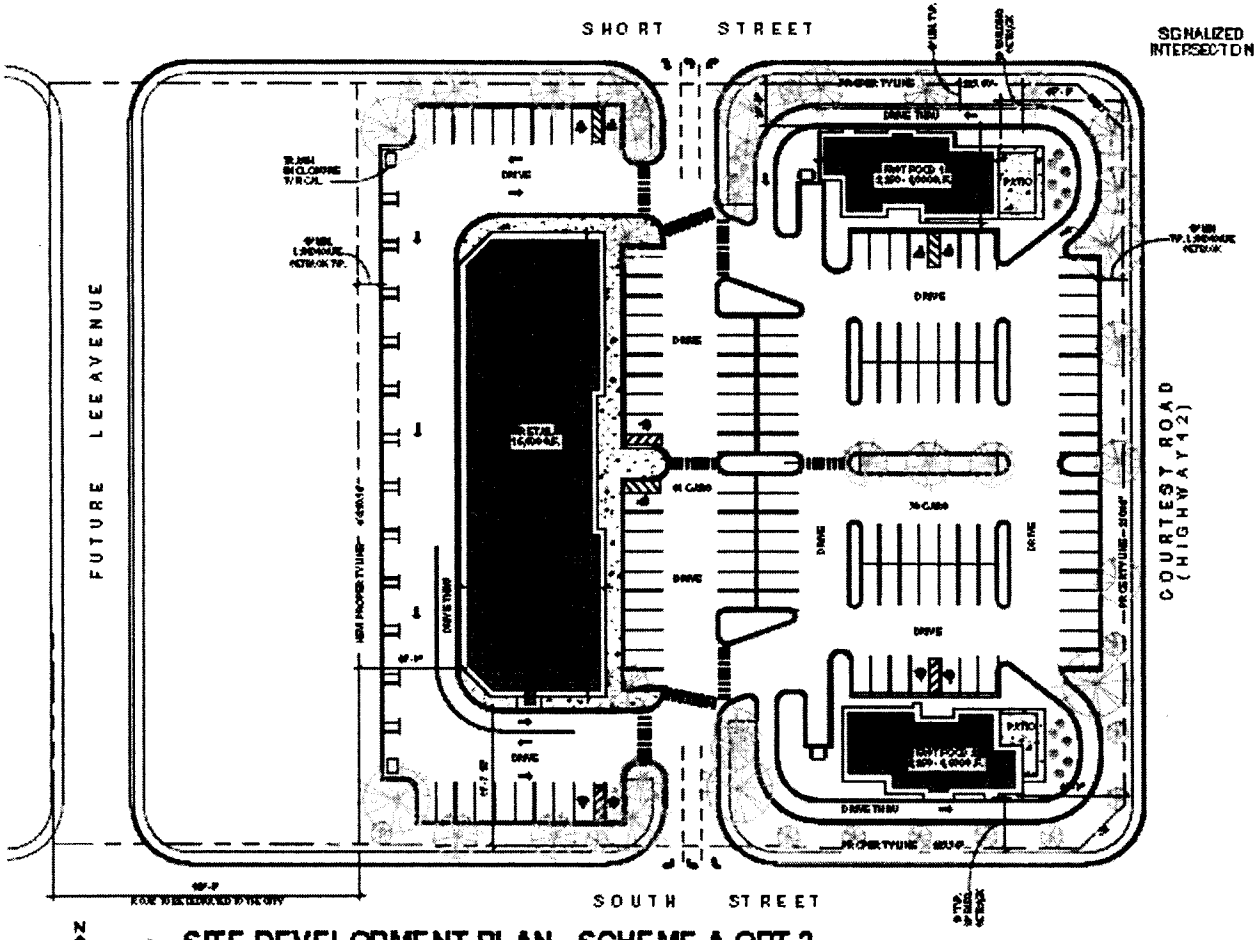

N

1 SITE DEVELOPMENT PLAN - SCHEME A OPT 3

1"=50'-0"

0' 25' 50' 100' 200'

LAND USE DATA:

LAND AREA: 121,009.81 S.F.

PROPOSED RETAIL: 15,500 S.F.

PROPOSED FAST FOOD 1: 2,850 S.F. - 4,000 S.F.

PROPOSED FAST FOOD 2: 4,000 S.F. - 4,000 S.F.

PARKING REQUIRED:

PARKING SHALL COMPLY WITH THE FOLLOWING PARKING RATIOS IN LIEU OF THE ZONING ORDINANCE

RETAIL: 1 SPACE/250 S.F.

RESTAURANT: 1 SPACE/125 S.F.

OFFICE: 1 SPACE/300 S.F.

PARKING PROVIDED: 140 CARS

GENERAL NOTES:

1. THIS PARCEL SHALL BE ALLOWED 3 DRIVE THROUGH BUSINESSES.
2. 10' MINIMUM SETBACK AT ALL PROPERTY LINES.
3. THIS DEVELOPER SHALL NOT BE REQUIRED TO BUILD 2 STORY STRUCTURES. 1 STORY STRUCTURES ARE ALLOWED.
4. NO MAXIMUM BUILDING SETBACKS ARE REQUIRED. 20' MINIMUM BUILDING SETBACK.
5. NO MINIMUM BUILDING COVERAGE IS REQUIRED.
6. CITY OF LOUISVILLE SHALL NOT REQUIRE ON SITE DETENTION FOR THIS PARCEL.
7. NO MAXIMUM PARKING RESTRICTIONS SHALL BE ENFORCED.

[illegible]	LOUISVILLE RETAIL CENTER	DATE / NO. / DESCRIPTION	DRAWINGS PREPARED FOR: TEBO DEVELOPMENT CO	PROJECT NUMBER	[illegible]	SITE PLAN - SCHEME A OPT 3
	NW CORNER HWY 42 & SOUTH ST.			PROJECT CODE	LRC	SHEET NUMBER
				MANAGER	M.O.	SP.3
				ARCHITECT	NOOK	

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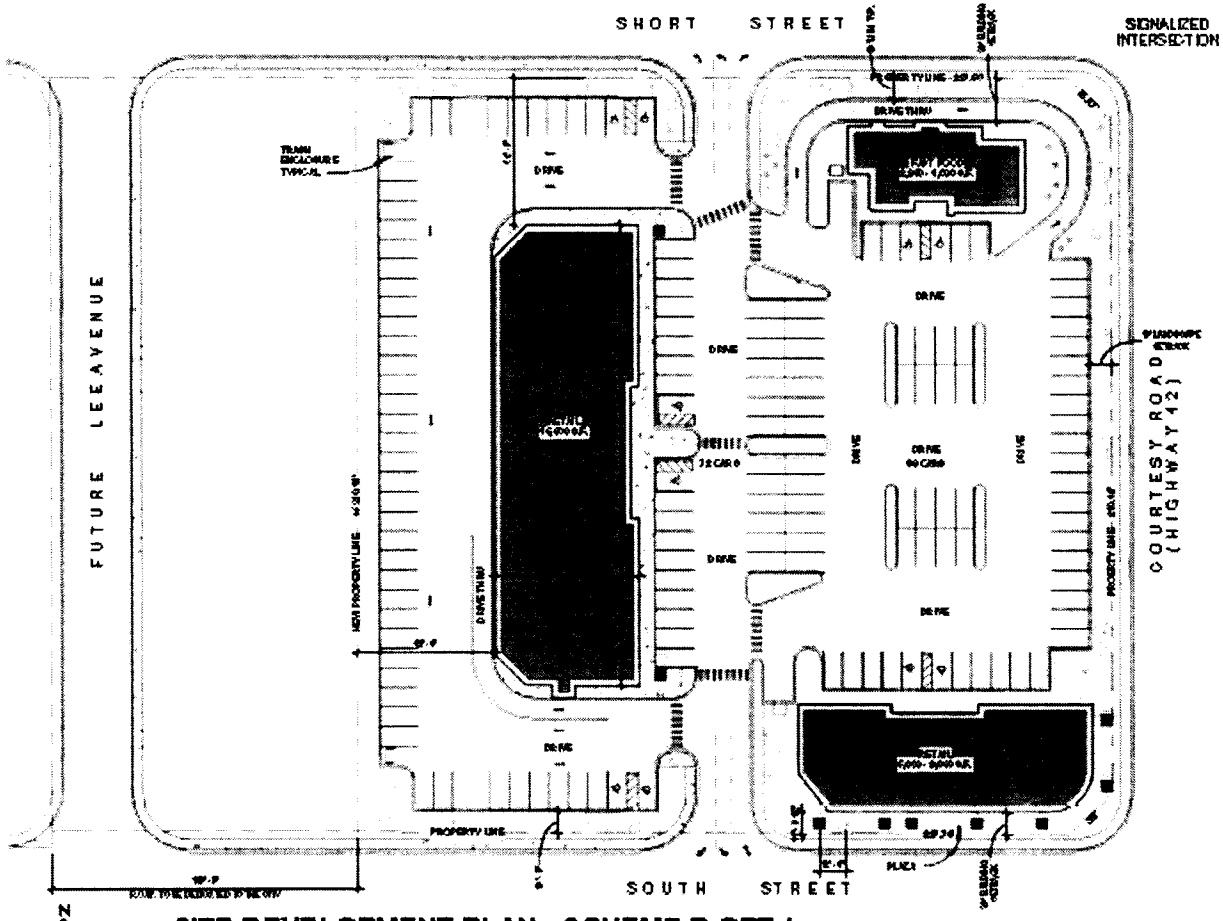

SITE DEVELOPMENT PLAN - SCHEME B OPT 1

1 1"= 50'-0"

LAND USE DATA:

LAND AREA: 121,009.91 S.F.

PROPOSED RETAIL 1: 15,500 S.F.

PROPOSED RETAIL 2: 5 - 9,000 S.F

PROPOSED FAST FOOD: 2,950 - 4,000 S.F

PARKING REQUIRED:

PARKING SHALL COMPLY WITH THE FOLLOWING PARKING RATIOS IN LIEU OF THE ZONING ORDINANCE

RETAIL: 1 SPACE/250 S.F.

RESTAURANT: 1 SPACE/125 S.F.

OFFICE: 1 SPACE/300 S.F.

PARKING PROVIDED: 144 CARS

GENERAL NOTES:

1. THIS PARCEL SHALL BE ALLOWED 3 DRIVE THROUGH BUSINESSES.
2. 10' MINIMUM SET BACK AT ALL PROPERTY LINES.
3. THIS DEVELOPER SHALL NOT BE REQUIRED TO BUILD 2 STORY STRUCTURES. 1 STORY STRUCTURES ARE ALLOWED.
4. NO MAXIMUM BUILDING SETBACKS ARE REQUIRED. 20' MINIMUM BUILDING SET BACK.
5. NO MINIMUM BUILDING COVERAGE IS REQUIRED.
6. CITY OF LOUISVILLE SHALL NOT REQUIRE ON SITE DETENTION FOR THIS PARCEL.
7. NO MAXIMUM PARKING RESTRICTIONS SHALL BE ENFORCED.

0 25' 50' 100 200'

[illegible] COTTLLA AVE SUITE [illegible] GREENWOOD VILLAGE, CO [illegible]	LOUISVILLE RETAIL CENTER	DATE / NO. / DESCRIPTION	DRAWINGS PREPARED FOR: TEBO DEVELOPMENT CO [illegible] BOULDER, CO	PROJECT NUMBER [illegible]	SITE PLAN - SCHEME B OPT 1
	NW CORNER HWY 42 & SOUTH ST.			PROJECT CODE LRC	SHEET NUMBER
				MANAGER M.O.	SP.4
				ARCHITECT NOOK	

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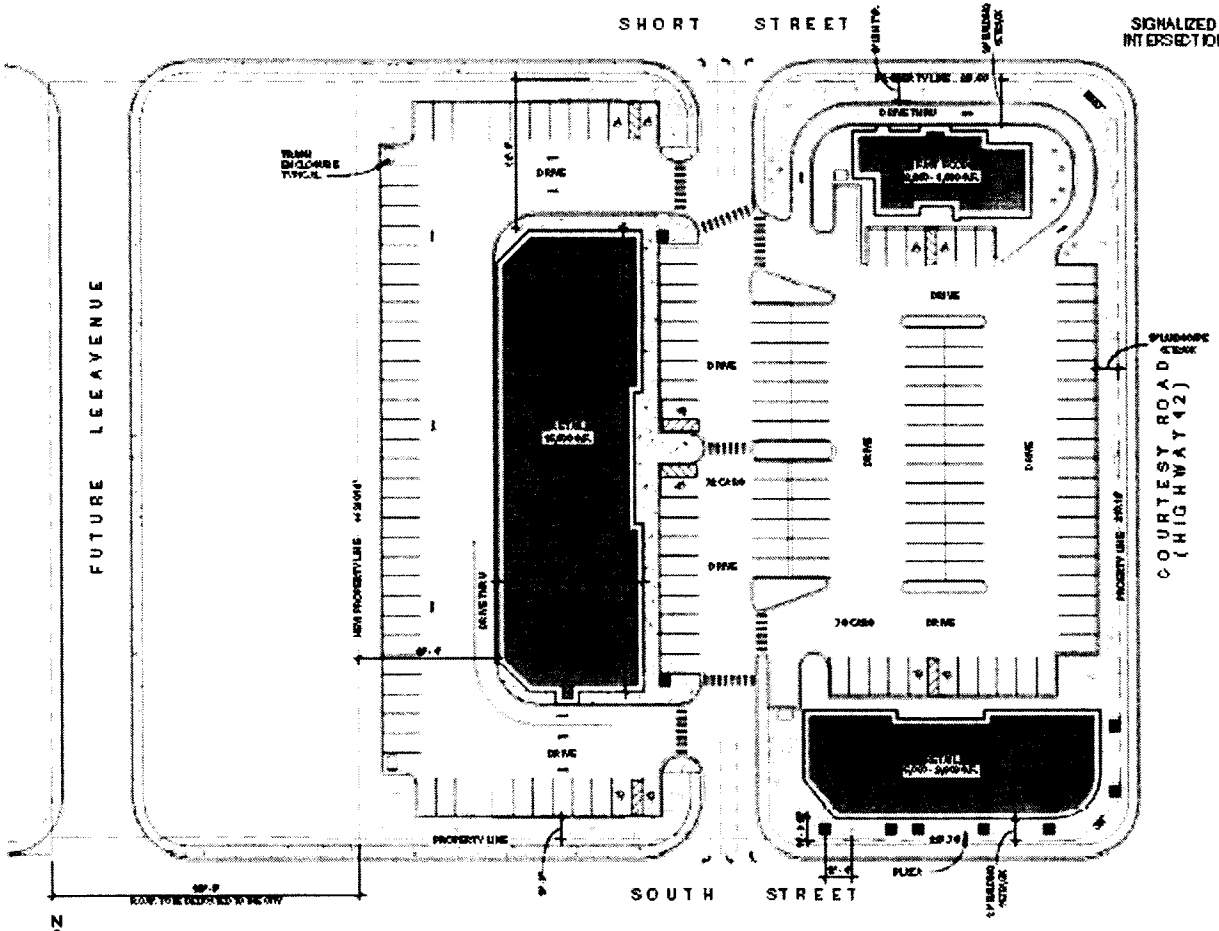

LAND USE DATA:

LAND AREA: 121,009.81 S.F.

PROPOSED RETAIL 1: 15,500 S.F.

PROPOSED RETAIL 2: 5 - 9,000 S.F

PROPOSED FAST FOOD: 2@50 - 4,000 S.F

PARKING REQUIRED:

PARKING SHALL COMPLY WITH THE FOLLOWING PARKING RATIOS IN LIEU OF THE ZONING ORDINANCE:

RETAIL: 1 SPACE/250 S.F.

RESTAURANT: 1 SPACE/125 S.F.

OFFICE: 1 SPACE/300 S.F.

PARKING PROVIDED: 151 CARS

GENERAL NOTES:

1. THIS PARCEL SHALL BE ALLOWED 3 DRIVE THROUGH BUSINESSES.
2. 10' MINIMUM SETBACK AT ALL PROPERTY LINES.
3. THIS DEVELOPER SHALL NOT BE REQUIRED TO BUILD 2 STORY STRUCTURES. 1 STORY STRUCTURES ARE ALLOWED.
4. NO MAXIMUM BUILDING SET BACKS ARE REQUIRED. 20' MINIMUM BUILDING SET BACK.
5. NO MINIMUM BUILDING COVERAGE IS REQUIRED.
6. CITY OF LOUISVILLE SHALL NOT REQUIRE ON SITE DETENTION FOR THIS PARCEL.
7. NO MAXIMUM PARKING RESTRICTIONS SHALL BE ENFORCED.

N

1 **SITE DEVELOPMENT PLAN - SCHEME B OPT 2**

1" = 50'-0"

0' 25' 50' 100' 200'

[illegible]	LOUISVILLE RETAIL CENTER	DATE / NO. / DESCRIPTION	DRAWINGS PREPARED FOR: TEBO DEVELOPMENT CO	PROJECT NUMBER 0W00W	SITE PLAN - SCHEME B OPT 2
	NW CORNER HWY 42 & SOUTH ST.			PROJECT CODE LRC	
				MANAGER M.O.	SHEET NUMBER SP.5
				ARCHITECT NOOK	

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IN WITNESS WHEREOF, the parties to this Agreement have set forth their hand, to be effective as of the Effective Date.

PURCHASER:

CITY OF LOUISVILLE, COLORADO

By: _____
Robert P. Muckle, Mayor

ATTEST:

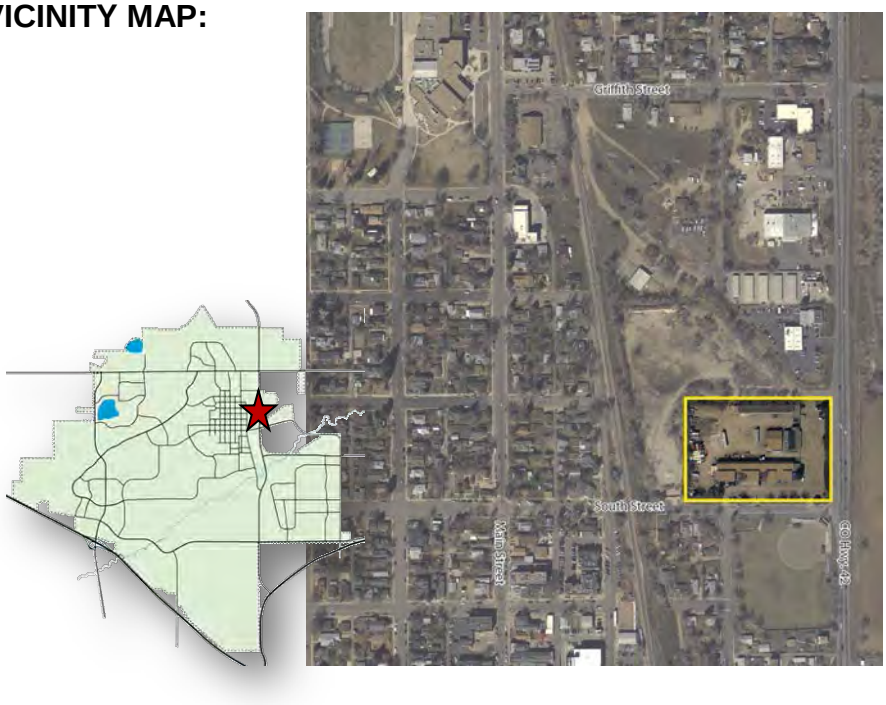
By: _____
Nancy Varra

SELLER:

By: _____
Stephen D. Tebo

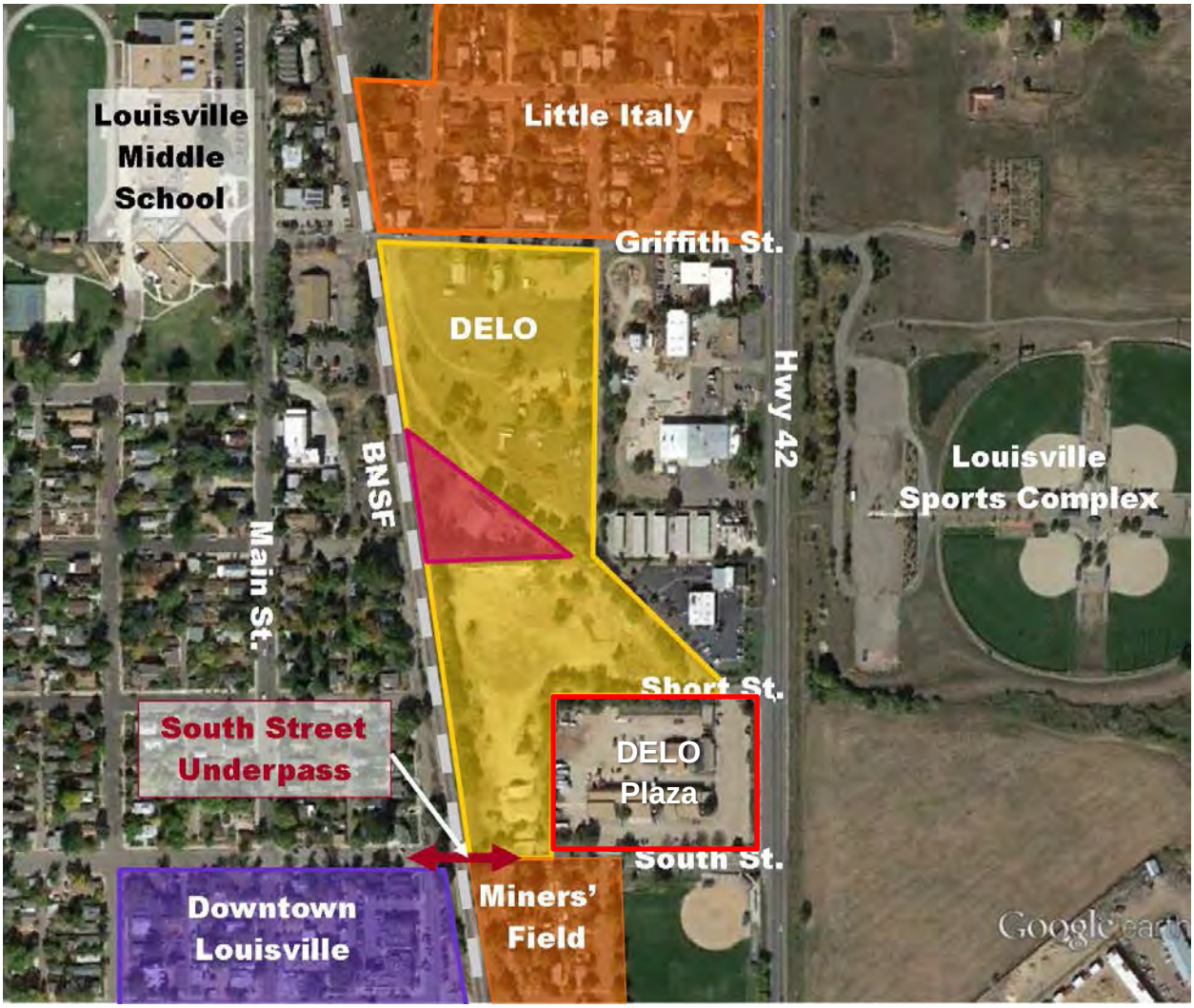
ITEM:	Case #14-035-FS/FP/ZN/UR, DELO Plaza
PLANNER:	Sean McCartney, Principal Planner
APPLICANT:	Tebo Properties, Inc. 3111 28th Street Boulder, CO, 80301
OWNER:	Tebo Properties, Inc. (Steven Tebo) 3111 28th Street Boulder, CO, 80301
REPRESENTATIVE:	Justin McClure
ZONING:	Industrial (I)
LOCATION:	1055 Courtesy Road (NW corner of Hwy. 42 and South St.)
LEGAL DESCRIPTION:	Block 18, less 200 SF in NE corner & less 200 SF in SE corner, Caledonia
TOTAL AREA:	3.9 acres
REQUEST:	A request to approve Resolution 11, Series 2015, a resolution recommending approval of a Rezoning, final Plat, final Planned Unit Development (PUD), and Special Review Use (SRU) for the redevelopment of a 3.9 acre property within the Highway 42 Revitalization Area.

VICINITY MAP:



SUMMARY

The applicant, Tebo Properties, Inc., has submitted a rezoning request, final Plat, final Planned Unit Development (PUD), and Special Review Use (SRU) application for the redevelopment of a 3.9 acre property in the Hwy. 42 Revitalization District. The proposed project, known as Downtown East Louisville (DELO) Plaza, includes the development of up to 23,000 sf of commercial space.



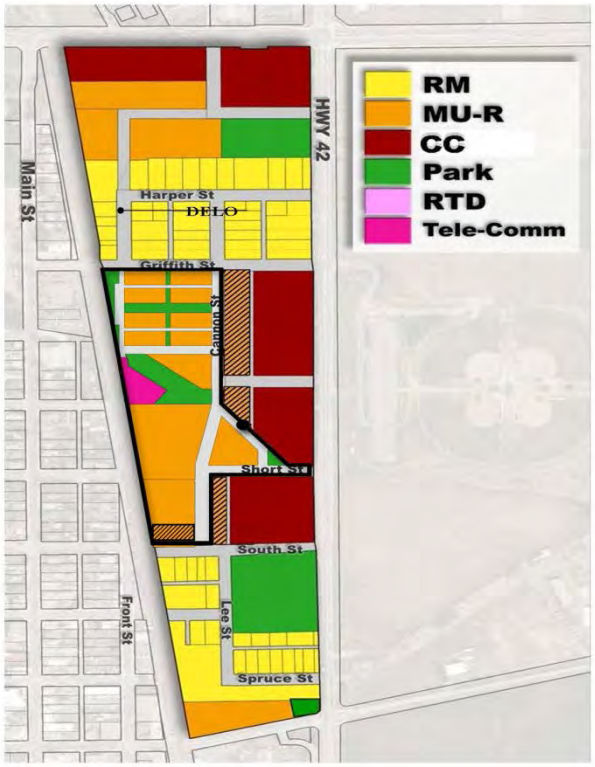
Louisville Municipal Code (LMC) requires this redeveloping property be rezoned from the Industrial (I) Zone District to: the Mixed Use Community Commercial (MU-CC) Zone District along Highway 42, and to the Mixed-Use Residential (MU-R) Zone District along Cannon Street.

BACKGROUND

Highway 42 Revitalization Area, Highway 42 Framework Plan and Mixed Use Development Design Standards and Guidelines (MUDDSG)

The City developed the Highway 42 Framework Plan in 2003 to define a vision for the area compatible with Downtown Louisville, adjacent neighborhoods, and oriented toward the future RTD investment. The Framework Plan included a requirement to continue Louisville's interconnected traditional street network.

EXHIBIT A



In 2007, the City of Louisville created the Mixed Use Overlay District (Sec. 17.14 of the LMC) and the MUDDSG to provide the regulation tools necessary to guide the character of future development in the area.

Downtown/Old Town Parking Action Plan

City Council adopted the Downtown / Old Town Parking Action Plan in August of 2014. The Parking Action Plan is intended to accomplish the following:

1. Eliminate the 325 parking space deficit in Downtown by adding 221 permanent public parking spaces and 109 evening leased public spaces in the next three years (330 total);

2. Ensure the Louisville Police Department has the capacity to regularly enforce parking rules in both Downtown and Old Town in 2015 and beyond;

3. Explore neighborhood parking permit programs oriented at enhancing the livability of Old Town while sustaining the economic vitality of Downtown;

4. Maintain and enhance the small town character of Downtown and Old Town with distributed parking facilities intended to serve current parking deficits throughout Downtown;

5. Establish a framework for a long-term parking strategy necessary to ensure future parking demand in Downtown is accommodated in Downtown, not Old Town; and,

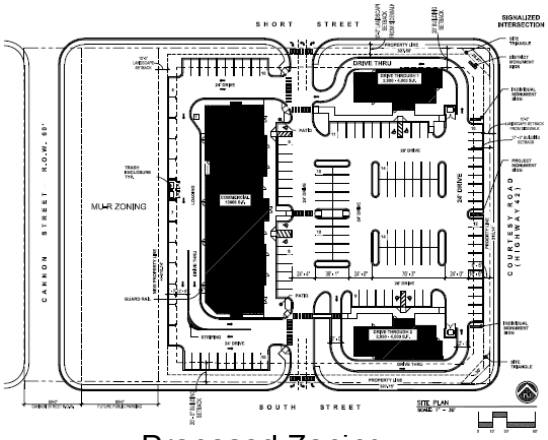
6. Continue to improve the walkability and bicycle friendliness of Downtown and Old Town.

One of the key early objectives of the plan was for the City to acquire up to 70 parking spaces in the Hwy 42 Revitalization District. The purpose of this acquisition, with the access provided by the South Street Gateway (BNSF Underpass), was to provide immediate special event parking relief for Downtown Louisville and a parking supply for future transit investments along Hwy 42.

PARKING AREA PURCHASE AND SALE AGREEMENT
City Council approved a Purchase and Sale Agreement between the City and Stephen D. Tebo, allowing for the City to acquire a .638 acre portion of property (facing Cannon Street) at 1055 Courtesy Road for future public parking within the Highway 42 Redevelopment Area. This .638 acre parcel is included in this DELO Plaza land development application. The purchase agreement is not binding unless City Council approves this Plat, PUD and SRU with the following land use entitlement conditions:

- Cannon Street will be dedicated to the City at no cost to the City;
- No public land dedication is required;
- City Staff will recommend within the rezoning agreement the following conditions;
    - Allowance for three (3) drive-thru restaurant parcels on the Land;
    - No required two story minimum building height **(waiver required)**;
    - No minimum lot coverage ratio in the Community Commercial portion of the Property;
    - Minimum 15 foot setback in the Community Commercial portion of the Property;
    - No required maximum parking restrictions **(waiver required)**;
    - Match the criteria listed on site plans for the Land as shown in Exhibit B; and,
    - Stormwater detention will be accommodated within a proposed regional detention facility. Should the detention facility be financed through a TIF Revenue Bond, no fee-in-lieu payment is required. If the TIF Revenue bond is not funded, Tebo has the option to provide for stormwater detention on-site or pay to the City a fee-in-lieu payment of up to $100,000 to provide detention off-site.

REQUEST:
Rezoning
The required rezoning of this property must be consistent with the Land Use Exhibit A of the Mixed Use Development Design Standards and Guidelines (MUDDSG). A side-to-side comparison of the requested rezoning and the adopted Exhibit A of the MUDDSG are shown below.



Proposed Zoning

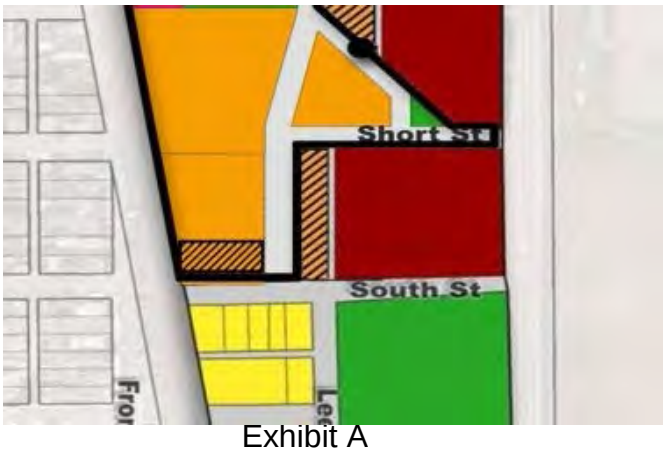


Exhibit A

The applicant is seeking the following zone district classifications:

<u>Commercial Community Zone District (CC)</u> – Section 17.14.030 of the MUDDSG states *"The Mixed Use Commercial Community (CC) Zone District is intended to provide zoning which would encourage the development of a limited range of highway oriented commercial uses adjacent to Highway 42. The Commercial Community Zoning is intended to address the market demand for highway-oriented commercial development in a form that would protect the existing residential neighborhoods as well as interface effectively with the future mixed use development of the neighborhood."*

<u>Mixed-Use Residential Zone District (MU-R)</u> – Section 17.14.0303 of the MUDDSG states *"The Residential Mixed Use (MU-R) District is intended to implement the residential mixed use land use and planning goals depicted and discussed in the Highway 42 Revitalization Area Plan. Areas zoned MU-R should be used predominantly for higher density multi-family residential, with subsidiary commercial uses and civic uses that cater to the needs of residents and transit commuters."*

The MUDDSG was created to implement the Highway 42 Revitalization Area plan. According to Section 17.14.010 of the MUDDSG, the Purpose and Intent of the MUDDSG is to:

A. Implement the Highway 42 Revitalization Area Comprehensive Plan;
B. Strengthen and enhance adjacent residential neighborhoods while protecting them from potential adverse impacts associated with new development;
C. Complement and integrate the area with historic downtown Louisville through the establishment of strong pedestrian, and multimodal connections;
D. Capture the potential for high-quality, mixed use development that will serve adjacent neighborhoods and the citizens of Louisville and enhance the city's long-term tax base;
E. Avoid incompatible industrial and large-scale or heavy commercial growth;
F. Adopt a regulatory framework which promotes and encourages redevelopment to integrate principles of sustainable architecture and energy conservation;
G. Provide for design standards for the development of a commuter rail station which shall promote the public health and safety, adequate ingress and egress, parking,

and surface parking which shall be decentralized. Surface parking shall be decentralized in a manner which does not overwhelm the redevelopment area; and

H. Capture the potential for highway commercial development adjacent to State Highway 42 while providing a restricted range of retail sales and services;

The MU-CC component of this development proposes to provide highway oriented commercial uses adjacent to Highway 42. The MU-R component of this development is proposed by the applicant to function as a municipal surface parking lot.

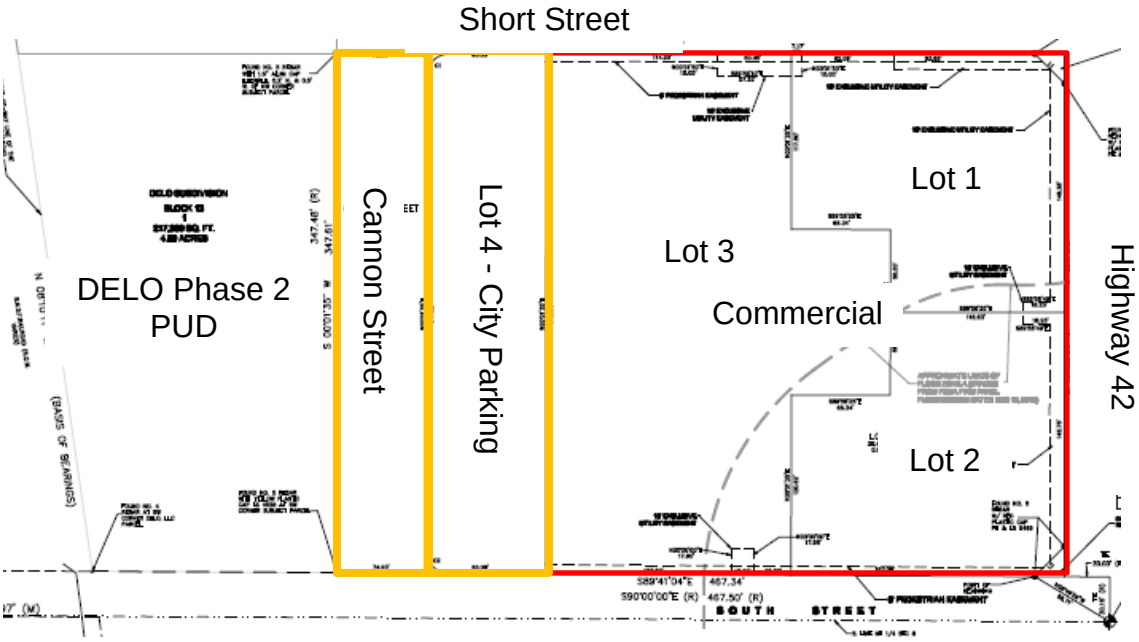
The proposed rezoning matches Exhibit A of the MUDDSG.

Final Subdivision Plat
The proposed final subdivision plat provides a replat of the Caledonia Place Subdivision, which was originally approved in 1890. The subdivision component of this request is regulated by Chapter 16 of the LMC.

Lots
The applicant is requesting to subdivide the parcel into four Lots:

Lots 1, 2, and 3 comprise the commercial component of the property:

- Lot 1 (27,775 SF or .64 acres) – Lot 1 is shown on the PUD as a drive thru use. This lot will have access from Short Street and South Street.
- Lot 2 (28,426 SF or .65 acres) – Lot 2 is shown on the PUD as a drive thru use. This lot will also have access from Short Street and South Street.
- Lot 3 (64,639 SF or 1.48 acres) – Lot 3 is shown with a multi-unit commercial building. This lot will have a drive-thru use and will have access from Short and South Street.



Lot 4 (27,752 SF or .64 acres), if approved would be owned by the City of Louisville and is intended for the development of a 79 space municipal parking lot serving an accessory parking function for events at Miners' Field and special events Downtown. This property would be zoned MU-R and City municipal uses are permitted as a special review use (SRU). Lot 4 is proposed to be accessed from South Street. The parking lot would be accessible from Downtown Louisville via the South Street Underpass.

The Cannon Street right-of-way proposed in the replat will create the instrument for Cannon Street to extend from E. Lafayette Street to South Street, thereby allowing for the creation of the "woonerf" established in DELO Phase 2 and complete the street network connectivity required for the successful implementation of the Hwy 42 Corridor Plan.

Block Design
The proposed block design is in compliant with the MUDDSG providing a 393 foot east/west Block from Highway 42 to Cannon Street. The CC zone district permits a 400 foot block.

Public Land Dedication
The property was originally platted as part of the Caledonia Place Subdivision (1890). It has been staff's historic practice to recommend City Council waive the land dedication requirements identified in Section 16.16.060 of the LMC for projects that have been previously platted in the City.

Final PUD Development Plan
The PUD development plan illustrates highway oriented commercial development, providing between 19,308 SF and 21,608 SF of commercial / retail / office / restaurant uses. The proposal consists of three buildings with a private surface parking lot on Lots 1, 2, and 3. As mentioned previously, a municipal surface parking lot, open to the public, is proposed on Lot 4.

The larger multi-use commercial building on Lot 3 would be allowed to be constructed between 13,608 and 15,000 SF in size, while smaller, drive thru buildings ranging between 2,850 – 4,000 SF each would be built on Lots 1 and lot 2 if approved

The redevelopment of this parcel proposes land uses complimentary to the surrounding neighborhood; providing services within walking distance to residential, businesses and sports complexes.

Land Use
The proposed land uses of this development (retail, restaurant, office, municipal parking) are listed in Table 1 of Section 17.14.050 of the MUDDSG. Municipal uses require an SRU in the MU-R zone district.

Zone District	Use(s)	Building Area	Height	Parking Required	Parking Provided	Parking Ratio
MU-CC	*Commercial Retail*	Max. 15,000 SF	1 Story	1/300 SF = 45 spaces	143 total	1/250
	Drive Thru 1 Eating	Max. 4,000 SF	1 Story	Min.1/300 SF Max.125% of minimum req'd spaces		1/125
	Drive Thru 2 Commercial (Bank)	Max. 4,000 SF	1 Story	Min.1/400 Max.125% of minimum req'd spaces		1/125
MU-R	*Municipal Public Parking*	N/A	N/A		79 spaces	

The redevelopment of this parcel proposes land uses complimentary to the surrounding neighborhood; providing services within walking distance to residential, businesses and sports complexes.

Parking
The MUDDSG states the following intent for off-street parking: *"An adequate supply of off-street parking is necessary for the commercial viability and success of new development in the MU-R and CC Districts. However, commuter rail located within easy walking distance of the entire Highway 42 Revitalization Area may reduce the amount of off-street parking required or supplied in developments where the only travel mode option is the automobile. The city's adopted street design for the Highway 42 Revitalization Area will also ensure that on-street parking spaces can serve the district's visitors and users."*

The proposed development provides a total of 143 parking spaces, but only 77 parking spaces are needed for the maximum floor area, an excess supply of 66 spaces. The MUDDSG requires a maximum parking standard of *"125% of minimum required spaces",* which means this development should have a maximum of 96 spaces (77 parking spaces X 1.25=96.25). The 143 parking space provision is 178% of the minimum required. Refer to staff's discussion of the parking waiver in the Waiver Section below.

Section 4.2.C.1, of the MUDDSG, permits the following:
"Off-street parking may be permitted between the buildings front façade and Highway 42 frontage, subject to parking lot landscape screening requirement for properties zoned MU-CC." Sheet 8 of the PUD shows the proposed landscape plan. The applicant has provided a 10' landscape buffer between the parking lot and the adjacent right-of-way, as well as landscape islands complete with trees and shrubs. Refer to the discussion of the parking lot landscaping in the Waiver Section below.

Bulk and Dimension Standards
The proposed development complies with the majority of the bulk and dimension standards established in the MUDDSG. Exceptions highlighted below require a waiver:

CC zone district	**Required**	**Proposed – DELO Plaza**
Min. Lot Width	N/A	40'
Min. Building Coverage	30%	*N/A*
Min. Landscape Coverage	20%	*10%*
Max. Footprint	50,000 SF	15,000 SF
Max. Bldg. Length along street	350'	*N/A*
Min. % of street frontage	N/A	N/A
Building setbacks		
Min. & max. street setback (principal use)	Minimum: 15' Max: 60'	*Minimum: 10'* *Max: N/A*
Min. side yard setback (principal and accessory uses)	10'	*0'*
Min. rear yard setback (principal uses)	20'	*5'*
Min. rear yard setback (accessory uses)	20'	*5' (lane)*
Maximum Building Height		
Principal Uses	Min: 2 stories/35' Max: 3 stories/45'	Min: *1 story/16'* Max: 3 stories/45'
Accessory Uses	20'	20' max.

X – The yellow color denotes waivers being requested

Site Plan
The MUDDSG describes the intent of site planning as follows: *"The orientation of a principal building is a major influence on the public realm environment created at the public sidewalk or street edge. When buildings are set back far from the public sidewalk or street, or when a building turns its back on the primary abutting street, the pedestrian experience at the sidewalk or on the street suffers in quality. These building orientation and siting standards are intended to accommodate and invite pedestrians to walk to and between destinations within the MU-R, and CC Districts, to feel safe and comfortable doing so, and to support the use and security of the commuter rail line and transit station located in the Highway 42 plan area."*

The proposed site plan includes three buildings:

1) two drive-thru uses located along Highway 42, and
2) one multi-use, auto-oriented building set back approximately 225 feet from Highway 42.

The property has approximately 310 feet of frontage along Highway 42 and provides approximately 80 feet of building frontage, or 25% of the street property line containing a

building facade. Although the MUDDSG is silent in regards to the amount of buildings facing a street in the MU-CC zone district (the MU-CC has a maximum building length along a street, not a minimum), staff believes the intent of the MUDDSG is to have most of the commercial development along the street frontage.

Section 4.2.C.1, of the MUDDSG permits off-street parking to be located between the building and Highway 42 as long as adequate landscaping is provided.

Pedestrian Circulation
Pedestrian users along Highway 42 have safe access to the commercial development, along Short Street and South Street, but will not have any mid-block access, unless they travel through the parking lot. Staff requests the proposed sidewalk match the sidewalk design included in the Highway 42 Plan (see attached). Please see staff's discussion regarding parking lot landscaping in the "Waiver Analysis" below.

Signs
The applicant is requesting building mounted signs on all buildings within the commercial development, as well as monument signage along Highway 42. Sign design in the MU-CC zone district is regulated by Chapter 7 of the Commercial Development Design Standards and Guidelines (CDDSG), as well as Section 17.24 of the LMC.

Building Mounted Signs – According to the CDDSG commercial users are permitted one SF of sign area per linear footage of an individual business. Sign copy, including trademarks, logos, etc. may not exceed 24 inches in height. On sheet 17 the applicant requests the following building mounted sign variance (Staff has highlighted the non-conforming elements of the request in yellow):

1. "Maximum area of building mounted signs per building façade surface shall be limited to 2 square feet of sign area per linear foot of the individual business, with not individual sign being larger than 200 square feet, including retailer's logos. Building mounted signs shall be allowed on all sides of the building."

2. Character height of building mounted signs shall be 30 inches maximum.

The CDDSG requires the following:

1. One square feet of sign area per linear foot,

2. All copy, including retailer's logo's and character height, shall not exceed 24 inches in height.

Staff recommends all building mounted signs must follow the standards established in Chapter 7 of the CDDSG and Section 17.24 of the LMC.

Monument Signs – The CDDSG states "For retail zones individual monument signs may be located at primary entries to freestanding buildings to provide individual businesses identifications and building addresses." The proposed development shows a total of 4 monument signs (2 individual monument signs, one project monument sign, and one district monument sign), all located along Highway 42. The applicant has asked for the following sign variances for the monument signs (Staff has highlighted the non-conforming elements of the request in yellow):

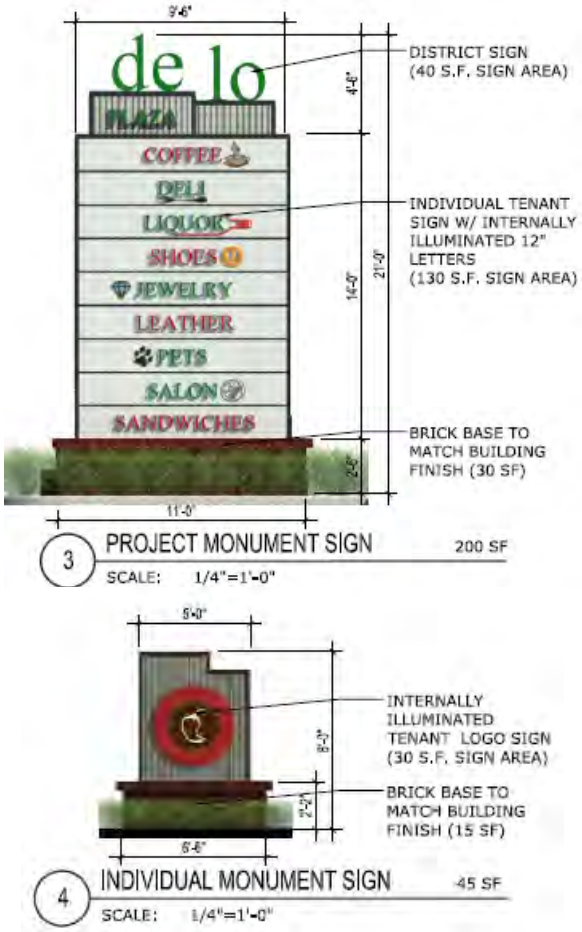
2. Maximum height of monument signs shall be 21 feet,

3. Maximum area of monument signs shall be 200 square feet,

3. One (1) project monument sign that contains the name of the project and names of the individual tenants shall be provided,

4. Two (2) individual monument signs for free standing buildings shall be provided,

5. One (1) district monument sign shall be provided,



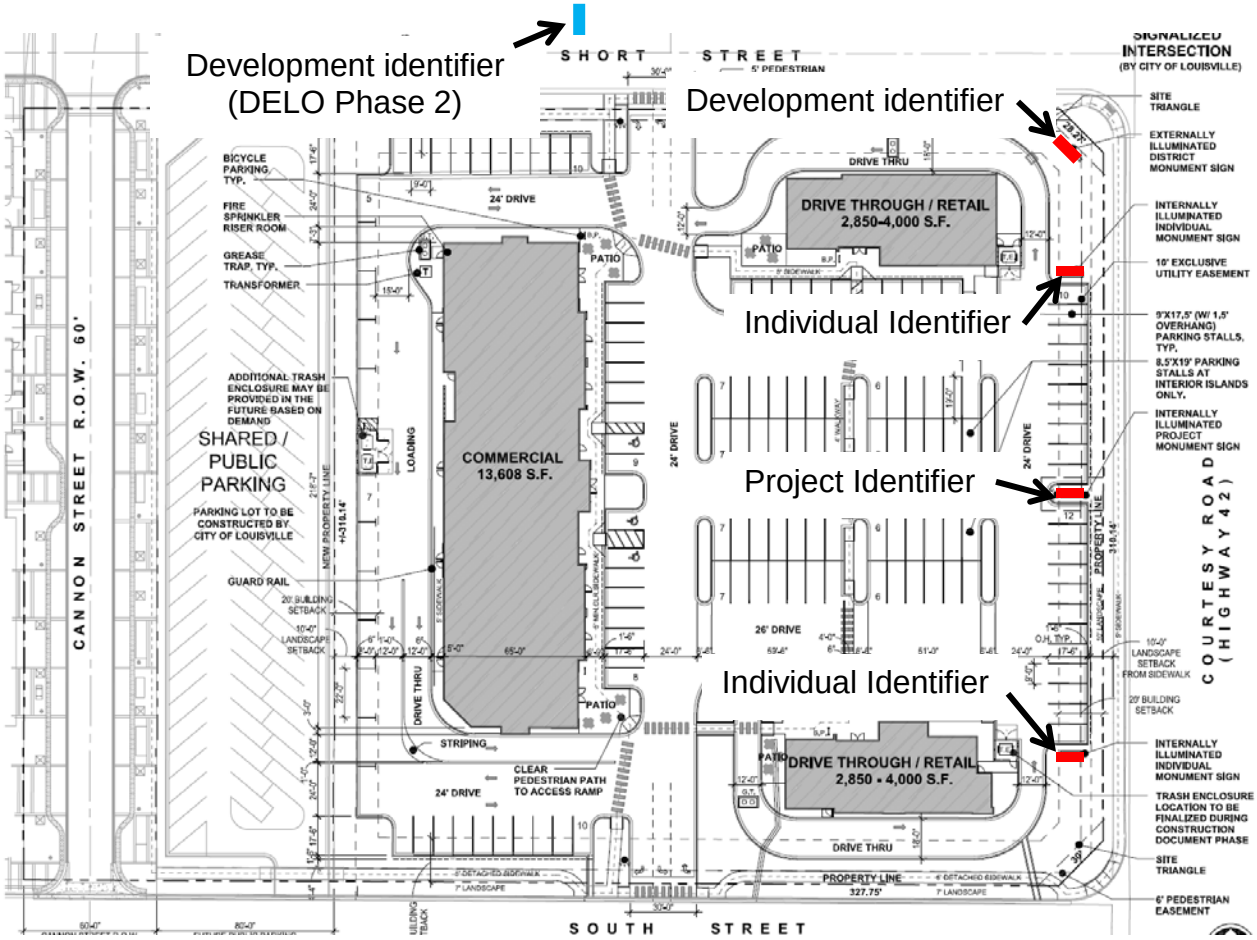
The CDDSG requires the following:

1. The maximum height of a monument sign in the commercial district is 12 feet,

2. The maximum area of a monument sign in the commercial district is 60 square feet,

3. "One monument sign per public street frontage, if authorized as part of the final PUD development plan. If so authorized, project monument signs may be located at the street or primary entries to commercial developments to provide the overall project identity." The above statement results in 3 monument signs for this development.

Staff believes the request for four monument signs creates sign clutter for this property. Also, staff believes the placement of a development identifier, the "DELO" sign, is redundant since the DELO Phase 2 PUD has provided a development identifier on Short Street. The monument signs may not be located within any utility easements.



By following the standards in the CDDSG and LMC, the development could have three 12 foot tall, 60 SF monument signs, located along Highway 42, setback 10 feet from the adjacent right-of-way. Staff recommends all proposed monument signs must follow the standards established in Chapter 7 of the CDDSG and Section 17.24 of the LMC.

Architecture and Building Design

The MUDDSG is fairly specific on architectural and building design standards (Section 9 of MUDDSG). According to the MUDDSG, the standards are intended to "promote high-quality building, streetscape, and open area design and construction that will give the MU-R and CC Zone Districts an identifiable character and unique physical image."

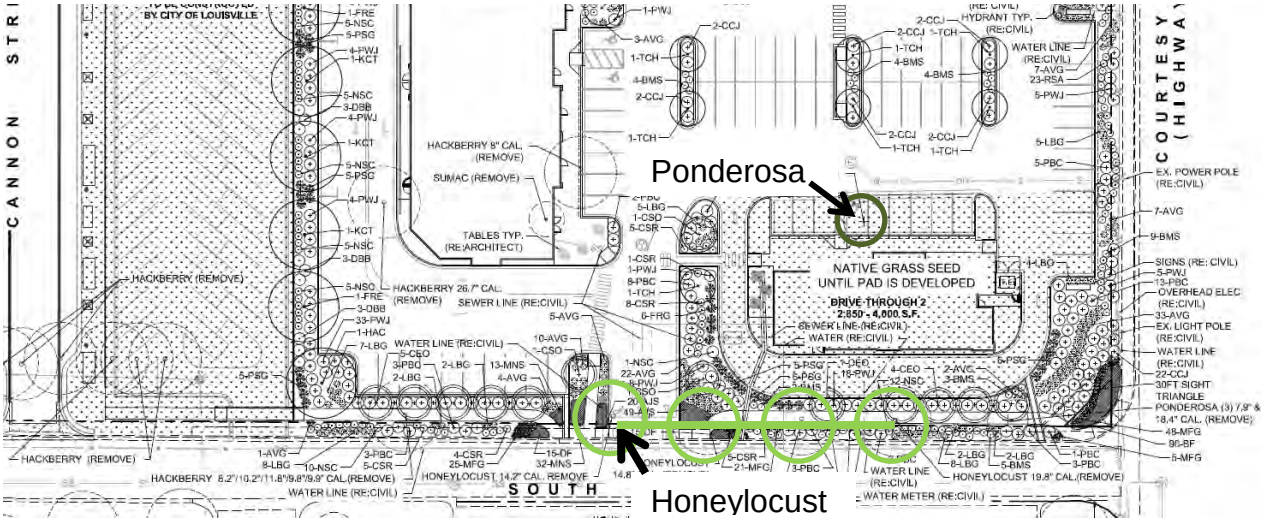
The intent is also *to "create the appearance of development that occurred over a period of time, architectural features of new developments, including rooflines, materials, colors, door and window patterns, and decorative elements, should vary in form and style."* The requirement of creating architecture *"that occurred over a period of time"* is difficult to attain without creating a theme-based architectural style.

Staff believes the proposed architecture is an improvement on the architecture which was originally proposed:

During the referral project, the Louisville Revitalization Commission (LRC) asked the applicant to revise the architectural style. Staff worked with the applicant to achieve an architectural style not only reflecting the standards established in the MUDDSG, but also reflects some of the architectural materials which may have been found in previous industrial development in the area:

Height
Section 17.14.060 of the LMC requires a minimum building height of 35 feet and two stories, while allowing a maximum height of 45 feet and three stories in the MU-R districts. The proposed development is requesting a waiver to allow a 26'3" one-story building. Staff understands development changes over time and acknowledges this development, with the parking overages, could allow for the future development of a two story structure. Staff is supportive of the height variance request.

Landscaping
The applicant is asking for a waiver to the required landscaping coverage (10% coverage instead of 20%). The reduction in landscaping coverage allows for a more flexible internal circulation and flexibility for future land uses. Also, according to the City of Louisville Parks Project Manager, there are four existing Honeylocust trees along the south side of the property that need to be preserved, as well as some Ponderosa Pines:

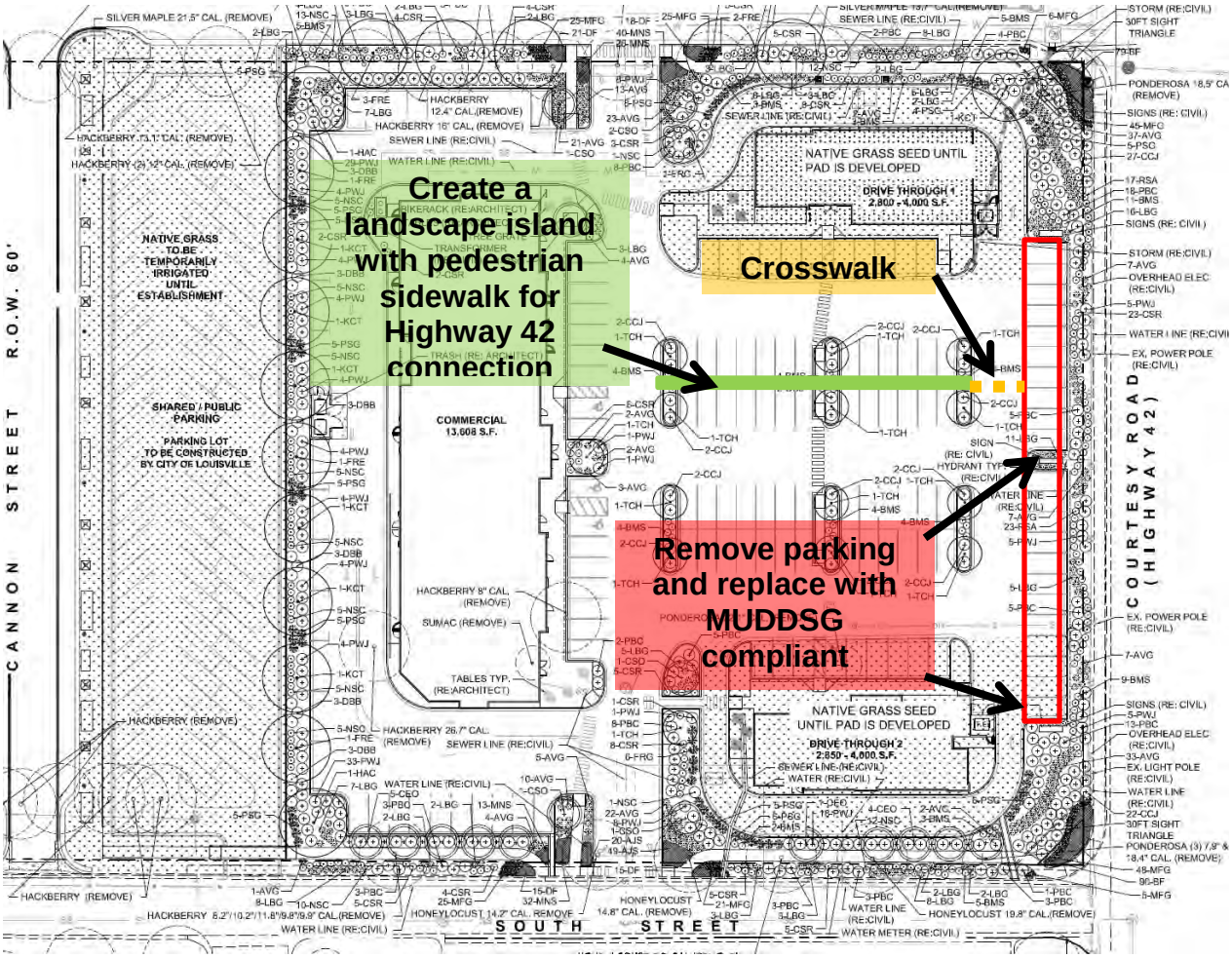


Staff understands some of the existing trees must be removed for the property to be redeveloped, such as the Ponderosa. However, some of the Honeylocusts along South Street could be saved if the sidewalk design is modified at the construction drawing phase.

WAIVERS
The proposed development includes the following waivers to the MUDDSG:

Design Element	Required	Proposed
Site Plan		
Min. building Coverage	30%	20%
Min. landscape coverage	20%	10%
Max. street setback	60 feet	Approx.. 225 feet
Min. Side setbacks	10 feet	0
Min. Rear setback	20 feet	5 feet
Height	2 stories and 35 feet	1 story and 27 feet
Signs		
Monument	Max. Number: 3 Max. Height: 12 feet	Max. Number: 4 Max. Height: 21 feet
Building Mounted Signs	Sign Area: 1/1 ratio Character Size: 24 inches	Sign Area: 2/1 ratio Character Size: 30 inches
Parking Ratio		
Commercial/Retail	1/300 SF	1/250
Eating	Min.1/300 SF Max.125% of minimum req'd spaces	1/125
Office (Bank)	Min.1/400 Max.125% of minimum req'd spaces	1/125

Site Plan
Staff acknowledges a typical auto-oriented design will not be able to comply with every design standard of the pedestrian-oriented MUDDSG. By waiving the maximum street setback requirement the applicant is requesting to set the largest commercial building further west, allowing for more parking along Highway 42. The MUDDSG does not specifically prohibit parking between the building and Highway 42 since Section 4.2.C.1 allows for parking between the building and the street. Staff would support this action if the parking stalls, located along Highway 42, were removed and replaced with MUDDSG compliant landscaping, and an east/west pedestrian sidewalk was created within a new landscape island. A new sidewalk, at mid-block, would improve the pedestrian-oriented design of the development. The drive aisles are 26 feet in width and only need to be 24 feet to be compliant with Fire Safety regulations so there is room for placement of a sidewalk.



Signs
The sign requirements in the CDDSG are designed for auto-oriented developments, such as those found in the South Boulder and McCaslin Corridors. This development is similar to a development found in either of those corridors and therefore should not receive any additional sign allowances than found on a standard commercial development. Staff does not support any of the sign waiver requests.

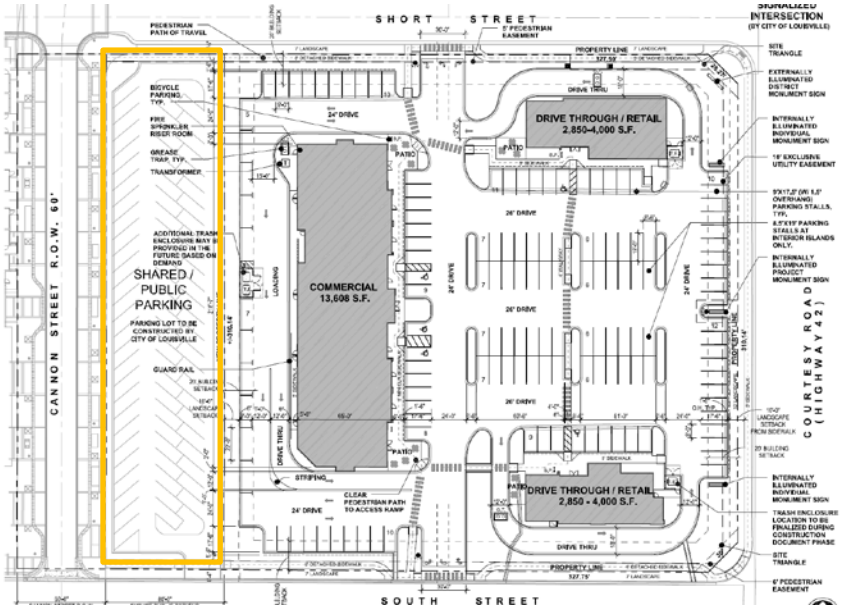
Parking Ratio
The request of a greater parking ratio allows the developer more flexibility in commercial land uses. However, an increase in parking ratio also decreases the amount of landscaping coverage. Staff would support the parking increase with two conditions:

1) The applicant and City enter into a share parking agreement so that events at Minors' Field and Downtown could utilize the extra parking when needed; and

2) Remove the parking along Highway 42 and replace with MUDDSG compliant landscaping, and preserve as many of the existing trees as possible (see image above).

Although there are a number of waivers being requested in this development, staff believes the public will benefit from the property being improved, the development of a City public parking lot, and the construction of the “woonerf” on DELO Phase 2. Also, the inclusion of commercial services on this site provides the residents, business owners, and sports complex users shopping conveniences within a safe, walking environment. Of the waivers being recommended for approval, staff believes the public benefit discussion in Section 17.28.120 has been met.

Special Review Use Criteria:
A special review use (SRU) is required to permit a municipal parking facility.



Louisville Municipal Code § 17.40.100.A lists five criteria to be considered by the Planning Commission in reviewing a Special Review Use application, which follow. The Planning Commission is authorized to place conditions on their recommendation of approval, if they believe those are necessary to comply with all of the criteria.

1. *That the proposed use / development is consistent in all respects with the spirit and intent of the comprehensive plan and of this chapter, and that it would not be contrary to the general welfare and economic prosperity of the city or the immediate neighborhood;*

The establishment of the City’s public parking lot, together with the South Street Gateway, provides economic prosperity for Downtown Louisville by providing for additional parking options without further impacting the surrounding Old Town Neighborhood. Both the economic anticipated economic and neighborhood benefits support the Core Values of the Comprehensive Plan.

Staff believes the criterion has been met.

2. *That such use / development will lend economic stability, compatible with the character of any surrounding established areas;*

The establishment of the City's public parking lot complies with the intent established in the MUDDSG by providing a suitable public (shared) parking facility within walking distance to Downtown Louisville and Miners' Field. Additional public parking will, with the opening of the South Street Gateway and ongoing utilization of Miners' field, alleviate immediate and future parking pressure on the Miners' Field neighborhood. The additional parking will also assist in lowering parking impacts of Downtown Louisville has on the Old Town Neighborhood.

Staff believes this criterion has been met.

3. *That the use / development is adequate for the internal efficiency of the proposal, considering the functions of residents, recreation, public access, safety and such factors including storm drainage facilities, sewage and water facilities, grades, dust control and such factors directly related to public health and convenience;*

The City's public parking lot is designed to accommodate public access, safety, and convenience. The City's public parking lot will also provide additional parking option for visitors to downtown and the nearby recreational facilities, which can be attributed to public health and convenience.

Staff believes this criterion has been met.

4. *That external effects of the proposal are controlled, considering compatibility of land use; movement or congestion of traffic; services, including arrangement of signs and lighting devices as to prevent the occurrence of nuisances; landscaping and other similar features to prevent the littering or accumulation of trash, together with other factors deemed to affect public health, welfare, safety and convenience;*

The City's public parking lot is designed to be compatible with the surrounding land use in terms of landscaping, lighting, movement and limiting nuisances.

Staff believes this criterion has been met.

5. *That an adequate amount and proper location of pedestrian walks, malls and landscaped spaces to prevent pedestrian use of vehicular ways and parking spaces and to separate pedestrian walks, malls and public transportation loading places from general vehicular circulation facilities.*

The City's public parking lot is has a sidewalk on three of the four sides and has vehicular access on the south side of the lot (along South Street). Both attributes provide a controlled movement.

Staff believes this criterion has been met.

FLOODPLAIN DEVELOPMENT PERMIT
There is a limited portion of this property located within the 100 year floodplain. The applicant received a flood plain development permit from the Board of Adjustment on November 19, 2014.

STAFF RECOMMENDATION:
Cities evolve overtime. While it is a goal that every development application exceeds the City's criteria for investment, the LMC allows incremental developments, with waivers justified by public improvements and opportunities which position the property and the surrounding neighborhood to excel in the long-term, to be recommended by staff for Planning Commission and City Council consideration.

The proposal submitted and waivers requested alone do not meet the City's criteria for investment. Staff believes this property, with the soon to be constructed South Street Gateway (putting Downtown Louisville within a five minute walk), the approved Hwy 42 Plan, and the recommended DELO mixed use development, could facilitate higher development intensities with a more walkable environment.

Staff also believes this proposal, with the land purchase opportunity for public parking, the platting of Cannon Street, and recommended conditions of approval, meets the LMC requirements and positions this property and the surrounding neighborhood for continued private investments which will eventually exceed expectations established in the Hwy 42 Framework Plan and the MUDDSG.

Staff acknowledges some elements of the PUD plan are not in line with the intent of the MUDDSG, such as having a setback greater than 60 feet from Highway 42 and no building entrances facing Highway 42. However, staff believes the City will benefit from the property being improved, the platting of Cannon Street, and the opportunity to create public parking for Miners' Field and Downtown Louisville. The additional retail opportunities proposed on this site provide residents, business owners, and sports complex users new shopping conveniences within a safe walking environment.

Staff recommends approval of the requested rezoning, final plat, final PUD, and SRU for DELO Plaza, with the following conditions prior to recordation of the plat:

1. The City and the applicant shall develop a shared parking agreement for the private surface parking lot for events at Miners' Field and larger downtown special events.
2. All signs, including any monument sign, shall comply with Chapter 7 of the CDDSG, as well as Section 17.24 of the LMC, including a 10 foot setback form right-of-way.
3. The applicant shall continue to work with Public Works on addressing the comments shown in the February 11, 2015 memo.
4. The proposed sidewalks shall match the sidewalk design included in the Highway 42 Plan.

5. Because the Hwy 42 sidewalk is required, the applicant shall modify the landscape sheets prior to recordation to remove the parking stalls, located along Highway 42, and be replaced with landscaping in compliance with the MUDDSG. The applicant shall also include an east/west sidewalk, connecting Highway 42 to the larger commercial building, via a sidewalk located within a landscape island.
6. Staff requests the applicant preserve as many of the existing trees as possible. The applicant shall work with the City Forester and Parks Project Manager, at time of construction drawings, to determine which trees may be preserved.

ATTACHMENTS:

1. Resolution No. 11, Series 2015
2. Application documents – Land Use Application, Letter of Intent, etc.
3. Final Plat
4. Final PUD
5. Public Works Memo – dated February 11, 2015
6. Highway 42 Sidewalk Exhibit
7. Resolution 62, Series 2014 (Land Purchase Agreement)

- **DELO Plaza: Resolution 11, Series 2015:** A resolution recommending approval of a Rezoning, Final Plat, Final Planned Unit Development (PUD) and Special Review Use (SRU).
    - Applicant and Representative: Justin McClure, RMCS, LLC.
    - Owner: TEBO Properties
    - Case Manager: Sean McCartney, Principal Planner

Conflict of Interest and Disclosure:
None.

Public Notice Certification:
Published in the Boulder Daily Camera on February 22, 2015. Posted in City Hall, Public Library, Recreation Center, Courts, and Police Building on February 20, 2015. Mailed to surrounding property owners and property posted on February 20, 2015.

Staff Report of Facts and Issues:
McCartney presented from Power Point:

- DELO Plaza property is at the northwest corner of South Street and Highway 42, bounded on the north by Short Street. It has proximity to Miners Field, South Street Underpass, Downtown Louisville, Little Italy, and Highway 42 Louisville Sports Complex.
- **Parking area Purchase and Sale Agreement**
    - Council approved Purchase and Sale Agreement to acquire .638 acre parcel to be used for overflow parking, 79 spaces.
    - Purchase not binding unless Council approves this plat, PUD and SRU with the following conditions:
        - Cannon Street dedicated to the City at no cost to the City
        - No public land dedication req'd on Plat
        - Rezoning Agreement permitting the following:
            3 drive-thru's; No two story requirement; No minimum lot coverage (CC); Minimum 15' setback (CC); A 5 year reprieve on Industrial uses No required parking maximum; Stormwater in regional facility; Match site plan shown in Exhibit B
- **Rezoning**
    - Property currently zoned Industrial
    - Redevelopment of this parcel requires rezoning to comply with Exhibit A
    - Requesting to Rezone to CC – Hwy 42 and MU-R – Parking
    - Purpose of the request for:
        - 23,000 SF commercial development
        - 79 space City parking lot
        - Extension of Cannon Street
    - Zoning complies with Exhibit B of Section 17.14
- Final Plat -- Creates Four Lots
    - <u>Lot 1 (27,775 SF or .64 acres)</u> – Lot 1 is shown on the PUD as a drive thru use.
    - <u>Lot 2 (28,426 SF or .65 acres)</u> – Lot 2 is shown on the PUD as a drive thru use.
    - <u>Lot 3 (64,639 SF or 1.48 acres)</u> – Lot 3 is shown with a multi-unit commercial building.
        - Lots 1-3 achieve access from Short and South Street
    - <u>Lot 4 (27,752 SF or .64 acres)</u> – 79 space municipal parking lot
    - <u>Cannon Street Right-of-way</u> – DeLo Phase 2 Woonerf
        - <u>Block Design</u> – complies with MUDDSG
- Final PUD Request
    - *23,000 SF Max. commercial*

        - *Two 4,500 SF drive-thru*
        - *One 15,000 SF multi-tenant commercial (with drive-thru option)*
    - Redevelopment will be complimentary to the surrounding land uses
    - Lends to the pedestrian-oriented nature
- Parking
    - MUDDSG states "an adequate supply of off-street parking is necessary for the commercial viability and success of new development in the MU-R and CC Districts."
        - Providing 143 parking spaces
        - 77 required; 125% maximum (96 spaces)
    - Additional parking provides:
        - Flexibility on future land uses
        - Ability for parking agreement for adjacent Miner's Field
- *Bulk and Dimension Standards*
- The proposed development complies with the majority of the bulk and dimension standards established in the MUDDSG. Exceptions highlighted below require a waiver:

CC zone district	**Required**	**Proposed – DELO Plaza**
Min. Lot Width	N/A	*40'*
Min. Building Coverage	30%	*N/A*
Min. Landscape Coverage	20%	*10%*
Max. Footprint	50,000 SF	15,000 SF
Max. Bldg. Length along street	350'	*N/A*
Min. % of street frontage	N/A	N/A
Building setbacks		
Min. & max. street setback (principal use)	Minimum: 15' Max: 60'	*Minimum: 10'* *Max: N/A*
Min. side yard setback (principal and accessory uses)	10'	*0'*
Min. rear yard setback (principal uses)	20'	*5'*
Min. rear yard setback (accessory uses)	20'	*5' (lane)*
Maximum Building Height		
Principal Uses	Min: 2 stories/35' Max: 3 stories/45'	Min: *1 story/16'* Max: 3 stories/45'
Accessory Uses	20'	20' max.

        - X – The yellow color denotes waivers being requested
- Site Plan
    - MUDDSG states "The orientation of a principal building is a major influence on the public realm. . ."
        - Two buildings located along Hwy 42
        - One multi-use, auto oriented building setback approximately 225 feet from Hwy 42
        - Staff believes the two buildings along Hwy 42 meet the intent of the MUDDSG
        - MUDDSG does not prohibit parking between building and street
- Pedestrian Circulation
  Pedestrian users along Highway 42 have safe access to the commercial development, along Short Street and South Street, but will not have any mid-

block access, unless they travel through the parking lot. Staff requests the proposed sidewalk match the sidewalk design included in the Highway 42 Plan.

- Signs
  - Building Mounted Signs
    - CDDSG permits:
      1 SF of sign area per linear foot
      All copy shall not exceed 24 inches
    - Applicant proposing:
      2 SF of sign area per linear foot
      All copy shall be 30 inches
    - Proposed building mounted signs do not comply with CDDSG
  - Four Monument Signs
    - Two individual identifiers, 8 feet tall, 45 SF, complies with CDDSG
    - One development identifier, 8 feet tall, 100 SF, does not comply with CDDSG in area and number
    - One Project Identifier, 21 feet tall (12 feet permitted), 200 SF (60 SF permitted) does not comply with CDDSG
- Landscape
  - MUDDSG 20% landscape coverage
  - Applicant proposing 10% landscape coverage
    - Staff acknowledges the reduction of landscaping allows for more flexible internal circulation and future land uses
    - Staff requires the following: Work with City Forester and Parks Project Manager to save as many trees as possible.
    - Staff also requires the parking on the east, along Hwy 42, be removed and replaced with a landscape buffer. This will increase the overall landscaping by 3,500 SF or 3% over the entire property.
- Architecture and Building Design Height
  - 35 feet, 26'3" proposed
  - Two stories–to promote mixed use on top, One story proposed
- Special Review Use
  - The MUDDSG requires an SRU for "City, state and federal uses and building"
  - This property is proposed to be used as a City parking lot
  - All five criteria must be met. Staff believes they are met.
- Waivers
  - The proposed development includes the following waivers to the MUDDSG:

Design Element	Required	Proposed
Site Plan		
Min. building Coverage	30%	20%
Min. landscape coverage	20%	10%
Max. street setback	60 feet	Approx.. 225 feet
Min. Side setbacks	10 feet	0
Min. Rear setback	20 feet	5 feet
Height	2 stories and 35 feet	1 story and 27 feet
Signs		
Monument	Max. Number: 3 Max. Height: 12 feet	Max. Number: 4 Max. Height: 21 feet
Building Mounted Signs	Sign Area: 1/1 ratio Character Size: 24 inches	Sign Area: 2/1 ratio Character Size: 30 inches
Parking Ratio		

Commercial/Retail	1/300 SF	1/250
Eating	Min.1/300 SF Max.125% of minimum req'd spaces	1/125
Office (Bank)	Min.1/400 Max.125% of minimum req'd spaces	1/125

- Recommendations:
  - Staff acknowledges the development does the following:
  - Redevelopment is an investment in the community
  - Proposed use provides needed services within walking distance to surrounding residential, office and sports complex users
  - City will benefit from:
    - the platting of Cannon Street
    - City public parking (Downtown overflow and Miner's Field)

Staff Recommendations:
Staff recommends approval of the requested rezoning, final plat, final PUD, and SRU for DELO Plaza, with the following conditions prior to recordation of the plat:

1. The City and the applicant shall develop a shared parking agreement for the private surface parking lot for events at Miners' Field and larger downtown special events.
2. All signs, including any monument sign, shall comply with Chapter 7 of the CDDSG, as well as Section 17.24 of the LMC, including a 10 foot setback from right-of-way.
3. The applicant shall continue to work with Public Works on addressing the comments shown in the February 11, 2015 memo.
4. The proposed sidewalks shall match the sidewalk design included in the Highway 42 Plan.
5. Because the Hwy 42 sidewalk is required, the applicant shall modify the landscape sheets prior to recordation to remove the parking stalls, located along Highway 42, and be replaced with landscaping in compliance with the MUDDSG. The applicant shall also include an east/west sidewalk, connecting Highway 42 to the larger commercial building, via a sidewalk located within a landscape island.
6. Staff requests the applicant preserve as many of the existing trees as possible. The applicant shall work with the City Forester and Parks Project Manager, at time of construction drawings, to determine which trees may be preserved.

Commission Questions of Staff:
Moline asks whether the parking agreement lock in the location in the plat. He is concerned that there will not be enough commercial surrounding the Woonerf.
McCartney answers affirmative. There are 79 parking spaces and it was chosen primarily for its connectivity to the South Street Underpass and proximity to Downtown.
Russ says that during the negotiation of the site, Staff agreed with you, and wanted it to be in turn an asset for more intense development. The landowner refused and this is the settlement, and the only solution Staff could get.

Brauneis talks about the back of the building with a drive alley facing the parking area and the Woonerf. To activate a space and be pedestrian-oriented, he does not see it.
McCartney says there is a landscape buffer between the back of the building to the parking area. It is fairly thick with dense trees.

Moline asks why the parking and the street need the MUR designation.

McCartney says the zoning establishes it.
Russ says the “hatching” on the diagram represents ground floor retail within the MUR as mandatory.
Moline says that the commercial/retail on the first floor, residential bring above it and adjacent to the road, he found this appealing. He is concerned it has become parking.
Russ says Staff agrees in terms of this product and its relation to the Woonerf. There are a number of good things coming out of the development such as parking and Cannon plat that are critical to the long term success of the redevelopment district in Downtown.

Brauneis asks about the amount of parking, the waiver to go from a 20% landscape to a 10% landscape, and dropping the project from two stories to one stories. Why is the amount of parking needed or desired?
McCartney says Staff had the same concerns when working with the applicant. They wished to move forward without modifying the site plan. Staff is bringing forth their request for the overall parking area. This project can develop over time which gives it more opportunity to add additional uses and additional square footage.
Brauneis asks about saving the trees. Is the language strong enough?
McCartney says Staff will work with the City Forester and Parks Project Manager to see what is currently out there, look at the proposed plan, and see if the trees along South Street and Short Street are close to being reused.

Rice asks about Staff recommendation which states “The proposal submitted and waivers requested alone do not meet the City’s criteria for investment.” He asks for clarification.
McCartney says it states “proposal submitted and waivers requested alone.” Staff believes this property with the soon constructed South Street Gateway, the approved Highway 42 plan, and the recommended DELO mixed use could facilitate higher development intensity. Staff believes there is additional potential along with this. The development alone does not necessarily follow the intent, but the future opportunities do lend to that.
Rice asks what are the criteria for investment we are talking about?
Russ says they are the Mixed Used Guidelines. When we want someone to invest in our City, we want them to meet our standards.
Rice says the second sentence in the paragraph is “Staff believes this property, ….. could facilitate higher development intensities with a more walkable environment.” He clarifies that more could be built on this property.
McCartney answers affirmative.

Russell says the City requires a maximum street setback of 60 feet. Why would the City require that.
McCartney answers that the idea was to bring the buildings as far forward as possible to lend pedestrian activity to the sidewalks. The site plan has two buildings along Highway 42 that lend some of that activity.
Russell asks about minimum side setbacks of 10 feet. Why would we require those?
McCartney says if the developer has a corner lot where the front might be Highway 42, it allows the building to be closer to the side street.
Russ says the 60 feet is fronting Highway 42, an arterial road. This gives businesses some relief instead of a zero setback seen in most pedestrian environments.
Russell asks about the two stories and 35 feet. What is the purpose of that?
McCartney says the two stories are to promote the mixed use, such as living on top and working below.
Russell says because we have these design guidelines, does this project advance that vision in any substantive way based on what we are being presented?

McCartney says yes, with the site plan and intent. Probably two of the three just discussed do comply. Having only a single story does not lend itself to mixed use. Having additional parking allows for the possibility of it should the economy request it.
Russ says the wants of mixed use versus the reality of economics, rezoning and marketing sometimes don't work well together.
Russell says the market drives product and a mix of uses and scale. Does it drive site plan?
McCartney says Staff feels the same, but the applicant has brought forth the site plan and insists on the locations.
Russ says site plan is influenced heavily by a number of factors in the market such as the number of roof tops within walking distance. With DELO going in and the activity Downtown has and the proximity to this is less than 500 feet away with the South Street Gateway, Staff believes the 225 feet setback request is more reflective of a suburban environment depended on highway arterial only.

O'Connell summarizes her thoughts. First of all, the City negotiated this purchase agreement, arrived at the conditions, and then City Council was presented with Resolution 62 signed back in October 2014. She asks if the PC has any power over this based on Resolution 62 to make any changes? She has read Resolution 62 in conjunction with the Sales Agreement and says it appears to be a "done deal". She thinks anything PC does is inconsequential.
Russ says this is how it was presented by the landowner. There are conditions that Staff has put on that were silent in the agreement that Staff feels there is room to get better out and gain parking. We are not bound by the Purchase Agreement of this parking.
O'Connell says that based on what the Resolution says, City Council has an obligation to pursue and make sure this Purchase Agreement goes through. So if we, as PC and Planning Department make recommendations otherwise, City Council is still bound by what they have agreed to under the Resolution.
Russ says the agreement is contingent on approval of the PUD. If the PUD is approved by City Council with terms that are inconsistent with the agreement, then the agreement is null and void.
O'Connell asks if the City Attorney has reviewed the Resolution and the Purchase Agreement?
Russ says this is his understanding.

Applicant Presentation:
Justin McClure, RMCS, 105 Cherrywood Lane, Louisville, CO 80027

In presenting DELO Phase 2 on February 12, 2015, he stated that the site plan included the DELO Plaza redevelopment opportunity as well as the Boom redevelopment opportunity. In context discussing consistency of site plan with DELO Phase 2, he wishes to discuss consistency of the site plan of DELO Plaza.

The site plan is the original site plan presented with the Resolution 62 and Purchase Agreement. In his opinion, the MUDDSG is present for good reasons but in hindsight, the hatched areas were modified. The hatching was included to eliminate the requirement for retail on the ground floor. Why was that eliminated? Because it was not viable. The internal mid block of Cannon Street was not viable to actually support retail uses. The residential densities and neighborhood create the market condition. Exhibit A was modified. There are architectural conditions put in place in DELO Phase 2 that essentially look retail. As a correlation, when looking at MUDDSG as it relates to an auto-oriented highway development, this is an incredibly difficult corridor to put retail on.

McClure is presenting tonight as the owner's representative for Tebo Properties. They own and manage over 2 million square feet of retail space. They are knowledgeable on how to maximize profitability of projects. Tebo Properties owns Christopher Village and other developments in Louisville. The upper floor in Christopher Village almost never leases out and there are consistent issues with vacancy. From an investment perspective, how do you make a property developer want to put dollars into an area? What works on Highway 42? As the chief developer of DELO, how does that area redevelop? The property is located at DELO's front door. Considering the entire Highway 42 corridor, what development proposals are being presented with retail projects? Using the Boom project as an example, it is several months away from a mixed use redevelopment proposal. It will not be submitted as the entire Boom property but half, since some is developed, produces good cash flow, and has long term tenants.

Regarding the DELO Plaza proposal, he feels it is "above and beyond" what is currently situated at the site. He feels this area has been the "eyesore" of Highway 42 and is not indicative of the quality of the larger community. McClure states that the DELO Plaza is a catalyst project and will encourage other property owners to come forward. Stephen Tebo and Tebo Properties are submitting this development of 100% retail and they are encouraging the Boom family to redevelop their property. McClure shows photos of the property in 2010 which was an old concrete batch plant. He feels the photos show the property to be blight. He shows the view from DELO Phase 2 development with the back of Alpine Lumber.

McClure shows photos of a McCaslin development that previously was office use (Cherry and McCaslin). Koelbell redeveloped the project with minimal landscape intrusion, parking in the front, the building situated diagonally and not 225 feet back, and maximum street frontage to the corridor. The building is now anchored by Qdoba, Starbucks, Dickies, and Smiling Moose. He thinks this is the most successful retail property in the McCaslin corridor. He feels you can see where to park and see the tenants.

He then shows development along McCaslin farther north with large buffers, signage not easily seen, and no visible parking. There are vacancies in these buildings.

McClure discusses signage, landscaping, and buffering setbacks in regard to a viable retail development. He is concerned that a developer will not build a project that will not attract tenants or cause tenants that leave because it is not profitable and successful. He shows "birds eye views" of before and after the proposed DELO Plaza.

Condition 2 states: All signs, including any monument sign, shall comply with Chapter 7 of the CDDSG, as well as Section 17.24 of the LMC, including a 10 foot setback from right-of-way.
McClure says they are open for conversation but respectively request the condition be removed. Good signage and visibility are necessary since it is auto-oriented.

Condition 3 states: The applicant shall continue to work with Public Works on addressing the comments shown in the February 11, 2015 memo.
McClure says there is one comment in the memo specific to drainage. There is a crown in the middle of the property. The southern portion drains to Highway 42 infrastructure. The northern portion will drain into the twin 60 inch RCP that are being improved as part of the DELO Phase 2 project. They are trying to preserve natural grade and minimize expense. The 60 inch RCP will drain in the core area pond. It adds a $70,000 additional cost to the project.

Condition 4 states: The proposed sidewalks shall match the sidewalk design included in the Highway 42 Plan.

McClure says that instead of making improvements now and then have them removed when the City implements sidewalk construction adjacent to Highway 42, they wish to contribute funds to the Access Control Plan Improvements.

Condition 5 states: Because the Hwy 42 sidewalk is required, the applicant shall modify the landscape sheets prior to recordation to remove the parking stalls, located along Highway 42, and be replaced with landscaping in compliance with the MUDDSG. The applicant shall also include an east/west sidewalk, connecting Highway 42 to the larger commercial building, via a sidewalk located within a landscape island.
McClure says if the buffer is installed, parking is removed, and then landscaped, retail will not be visible. The landowner wants to develop the property with retail visibility and opportunity for the project. Site lines and visibility on Highway 42 show it is auto-oriented. They are agreeable to the east/west sidewalk.

Condition 6 states: Staff requests the applicant preserve as many of the existing trees as possible. The applicant shall work with the City Forester and Parks Project Manager, at time of construction drawings, to determine which trees may be preserved.
McClure wants to add at the end "However, no eventual modifications be made to the property line or hard lines as a result of preserving existing trees." Preserving the trees may be affected by horizontal infrastructure with new water lines, new sewer, and new storm drains. The tree root structure could be damaged. They will save and preserve as many trees as possible, but it cannot modify property lines.

Commission Questions of Applicant:
Russell asks about 60 feet versus 225 feet, about showing parking spaces to vehicles driving by the site. He asks if the MUDDSG does not work or is there a place in the City where they would work? Russell says that the Highway 42 Plan is generally supportive of the MUDDSG in bringing property closer to the highway. Is this plan fundamentally flawed as well?
McClure answers affirmative regarding 60 feet versus 225 feet. Regarding MUDDSG, at this time, they will not work. If they did, there would be additional redevelopment opportunities submitted. This property currently generates good rent income but the landowner is willing to come forward and take risk to redevelopment the property. Regarding the Highway 42 Plan, McClure says yes, the Plan is flawed because the densities permitted in the area do not support it.

Rice asks McClure about why the PC should waive the sign code limits. Rice asks if they are willing to consider some "between", what the limits are from the Code, and what you are proposing.
McClure says the sign issue is complicated. He thinks the City has been incorrect in addressing parking and signage. Retailers need an opportunity to be successful. If a project is auto-oriented, retailers need signage from the highway. If signage is a deal breaker, he will submit a number that will be more suitable. He feels that a 12 feet height is not sufficient.

Brauneis says he thinks this project resembles "an island unto itself". The history of the projects around it confirms this. He does not think it interfaces with the community around it. He feels it does not live up to the high level of quality of the surrounding projects. Brauneis asks Staff if they have seen the yellow text to the conditions submitted this evening.
Russ says yes.
Brauneis says the proposal is single story, appears only auto-oriented, turns its back on three sides to the neighborhood and its interface with the Woonerf, and it is so over parked.

McClure speaks about the Woonerf. He feels this is a viable opportunity. He thinks pushing the Woonerf treatments into the parking lot for public events. It could turn into a public space

Moline asks about the rationale of the parking.
McClure says restaurants use 6-8 parking spaces per 1000 square feet ratio. He thinks DELO Plaza will be restaurant-heavy due to proximity to Downtown. The landowner wants to maximize the success on the investment.

Russell says this appears to be a suburban template adapted to the site (minimal obstruction between road and building, and lots of parking). Using Hobby Lobby as an example with lots of storefront and lots of parking, nothing obstructing the view, he thinks it is a grossly under-performing property. Why will that model work here?
McClure says to address the vacancies in Louisville, many times it is access to get into a project. With this project, we have access issues. He hears there are funds to signal Short Street which is important for the property. DELO Plaza would not be developing without DELO. Regarding King Soopers and Hobby Lobby, there is zero walkability. This project will be an auto-oriented development and it is adjacent to a pedestrian-friendly project. The over parking will benefit Miner's Field in a significant capacity.

Public Comment:
Sherry Sommer, 910 South Palisade Court, Louisville, CO 80027
It appears to her that the City wants parking from this project, yet who gets the parking develops "organically" with no rules. If more residential is built, then parking will be claimed by them. Parking is valuable. She says she is not thrilled by the development with another restaurant and a big expanse of parking. Is it pedestrian friendly because it has sidewalks across it? Why walk across a parking lot? Why use the McCaslin example, which she thinks is ugly, and say "this is how it could be?" The extra landscaping could be made into a sitting area and a feeling of nature. She feels there is loss of potential for something better. The Cultural Council is looking for more art in Louisville. Why just restaurants? She does not like the signage. Louisville is a conversational place. Big signs are like a huge scream (come to our place) and a big brassy shout-out.

John Leary, 1116 Lafarge Avenue, Louisville, CO 80027
He feels this is a situation where the "chickens have come home to roost". Development of this area was pushed on an ideological basis with mixed use. Never did the market research support the concept of mixed use. This will be a car-oriented development. It is important to make it look as good as possible, but there are certain realities. Ideology can make you feel good for a time, but this whole area was characterized from Day One. He feels the agreement that City Council signed with the landowner makes a mockery of this quasi-judicial process. The Council chose to do it. He feels the PC is in a bad position.

Randy Caranci, 441 Elk Trail, Lafayette, CO 80027
He is not opposed to seeing commercial development in this area. He has expressed his issues with Justin McClure and other people at different meetings. He agrees with Commissioner Brauneis. He feels there are two front doors to this development, Highway 42 and the South Street Gateway. The backside of the buildings will not sit well. The redesign of Highway 42 was presented at an LRC meeting and he did not agree with it at the time. After studying it, he now agrees with it. The difference is that it is not funded and there is no projection date on the funding. There will still be 45 mph traffic instead of 35 mph. The street landscaping will not be there. The design of the buildings themselves is cookie-cutter (they look like Aurora). He is a long-time resident. This design is a strip mall. It is a gateway to the east side of Louisville and is

is not inviting. He is confused with square footage for commercial. One stated 13,000 sf and another of 31,000 sf in an LRC meeting, and 23,000 sf presented tonight. He feels a level of disappointment from the Commissioners. It appears tied to getting Cannon Street through by DELO Phase 1, not DELO Phase 2. He wants to see the area redeveloped, but wants it to be a higher standard than seen right now.

Summary and request by Staff and Applicant:
Regarding landscaping standards, Russ says that the most successful shopping center on McCaslin has 40 feet of landscaping between the sidewalk and the parking. Staff is requesting 30 feet in this plan.
Regarding sign standards, Russ says the McCaslin shopping center complies with the CDDSG sign guidelines. This project is requesting a sign 8 feet taller. Staff agrees with the signage for Chipotle and Bean and Berry. They do not meet the standards. The PUD restricts those properties from meeting the City standards.
Russ says the shared parking for DELO Plaza does not need a note in the PUD. The applicant was concerned about this. The parking agreement shall be included in the subdivision agreement. Staff feels that Miner's Field and Downtown will benefit for the excess parking.
Regarding Public Works, Staff has had detailed conversations with Engineering. Staff thinks there is a design solution that can meet their concerns. The proposed design is not it. Staff thinks the water can go north and east. The Public Works Director and City Engineer made it clear the water should not go south. Staff feels the solution can be worked out before it goes before City Council.
Regarding the sidewalk and proposed sidewalk, Staff agrees with the timing concerns. Staff is proposing "The proposed sidewalk, to the extent practical, shall match the sidewalk design included in the Highway 42 Plan. The applicant will contribute funds for the construction of the sidewalk, in concert with Highway 42 and Short Street Intersection Improvements." The City is moving forward with improvements to the South Street intersection. The City does not have the warrant from CDOT so no signal can be put in, but the City can affect all the geometrics around it. The City will use the CDOT money to get footings and foundations for the signal as well as get the sidewalks and curbing installed.
Regarding the 20 foot parking addition would create a 30 foot buffer, 10 feet less than the McCaslin shopping center. There is flexibility if necessary to relocate the 3% elsewhere on the site. Staff is working on a northwest mobility study to get an RTD bus route on Highway 42. The bus route would run from the Broomfield Event Center through Interlocken, through the Colorado Technology Center, up Highway 42 to serve Downtown, and a stop may come in on Cannon or on South Street, hence the midblock crossing. RTD says the route is viable, it just needs connection to the CTC. Staff is working to punch a road from 95th Street to Arthur in the CTC at the railroad bridge. It has been conceptually engineered. In the next three to five years, the bus route will be operating.
Regarding preservation of existing trees along Short and South Streets, Russ says there are existing high quality hackberry and honey locust trees in their sidewalk greenway. Staff wants to specifically look at right-of-ways.

Russ apologizes for this conversation in front of the PC. Staff made the presentation to the applicant that it needs to be continued in order to work it out. The applicant has a right to continue the hearing. The applicant feels the clock is running low from their perspective. Staff recommends continuance rather than denial.

McClure says it is Conditions 2, 5, and 6 that are problematic. Conditions 1, 3, and 4 are okay. Condition 2 is a height sign issue for the project identifier of 21 feet. They are willing to compromise.

McClure says Condition 5 is the landscaping and increased buffer. The landowner will not remove the parking and is non-negotiable. They will add sidewalks but the removal of the parking and associated landscape buffer is non-negotiable.
McClure says Condition 6 with Staff's addition of "along Short and South Streets" is more restrictive. If during construction process, the root ball is damaged and the tree dies, they do not want to be committed to an obligation. The project landscape architect says it will not be possibility as proposed. He requests going back to the original language of Condition 6.

Russ says that Staff agrees with the blight observation existing on this particular site. What is proposed is significantly better than what is currently there. The City is getting an asset for the parking and getting cooperative framework along the block. Staff feels this property will, over time, get to the MUDDSG. Staff is not comfortable with the signage. PC and City Council can decide it. Staff recommends approval for this project. Staff recognizes its shortcomings. Staff does not agree with the applicant's perception of the MUDDSG. Staff recommends this project be approved with the conditions as negotiated but are intractable on the signage.

McClure says the sign issue can be negotiated to splitting the difference. The applicant suggests 16.5 feet as opposed to 21 feet. The applicant does not want to go below.

Closed Public Hearing and discussion by Commission:
O'Connell feels strongly about this issue and is strongly against negotiating with it. She feels the developer is trying to hold the City hostage. The state of the property according to the applicant is almost blight. If it is blight, the City should be able to do something to correct it without developing it. Once DELO is developed as a housing development, the situation will change. The developers for DELO will pull put pressure on the surrounding properties for improvement. The MUDDSG are in place and if this development is accepted, we are disregarding them. We should not go with something that works for now as something better may come forward. This area may become more pedestrian-oriented than car-oriented. The PC is being asked to approve a "sea of waivers". The developer under the agreement is supposed to receive $217,000 for 0.6 acres. The development will make a lot more money once the surrounding areas are built. She agrees with Mr. Leary that the PC is in a less than ideal situation where the agreements have already been worked out.

Rice has mixed emotions about the proposed entire development as well as the manner it was discussed. He wants to see the property developed because it has a lot of potential from a commercial standpoint. It will drive a lot of revenue for the City. The City Council has established it a priority to get public parking and here is an opportunity. This is a proposal with more conditions usually seen and now with modified conditions. This project is not ready for the PC consideration.

Russell says it has been an interesting conversation with lots of critical issues at stake. He remembers granting flexibility regarding the McCaslin property. It needs to conform to the vision the public has articulated. There is a desire to skew away from highly car-oriented development. It doesn't feel ready to him. He wants to continue it.

Moline says he appreciates McClure's comments and thoughtful dialogue. Part of this property should and could be auto-oriented facing Highway 42. The part facing Cannon Street and the Woonerf needs to look differently. He thinks the creativity and development of DELO deserves a little more from this proposal.

Brauneis says that with the new signal, this is a new gateway to DELO and the South Street Gateway to Downtown. He appreciates that auto-oriented development in this location would probably be very successful. He feels this is a strip mall proposal. The site is rich enough particularly with the development around it. The City can do more with that site. The short term thought of “we need to do something so let’s settle for this” is not a position he is comfortable with at this point. He is not in support.

Pritchard says the City of Louisville is on a time line. The financing for business improvement is funded through tax increment financing (TIF). The clock is ticking. This area has been discussed for over 20 plus years. The owner can walk away and the City can look at old Alpine Lumber for another 15 years. Downtown residents are in need in additional downtown parking, especially during events. DELO and their commitments are starting the process. He is not happy with six conditions. He is looking for a continuance. He wants further clarification on the City’s position.

Further discussion between six Commissioners discussing continuance versus motion to vote.

Russ says from a procedural perspective, if the PC chooses to continue the project, Staff requests it is cleared by the applicant. If PC chooses to deny the project, Staff will come at the next PC meeting with a resolution of denial with findings of fact.

Motion made by O’Connell to approve DELO Plaza: Resolution 11, Series 2015: A resolution recommending approval of a Rezoning, Final Plat, Final Planned Unit Development (PUD) and Special Review Use (SRU), with six conditions. Seconded by Brauneis. Roll call vote.

Name	Vote
Chris Pritchard	No
Jeff Moline	No
Ann O’Connell	No
Cary Tengler	----
Steve Brauneis	No
Scott Russell	No
Tom Rice	No
Motion passed/failed:	Fail

Motion denied 6-0.

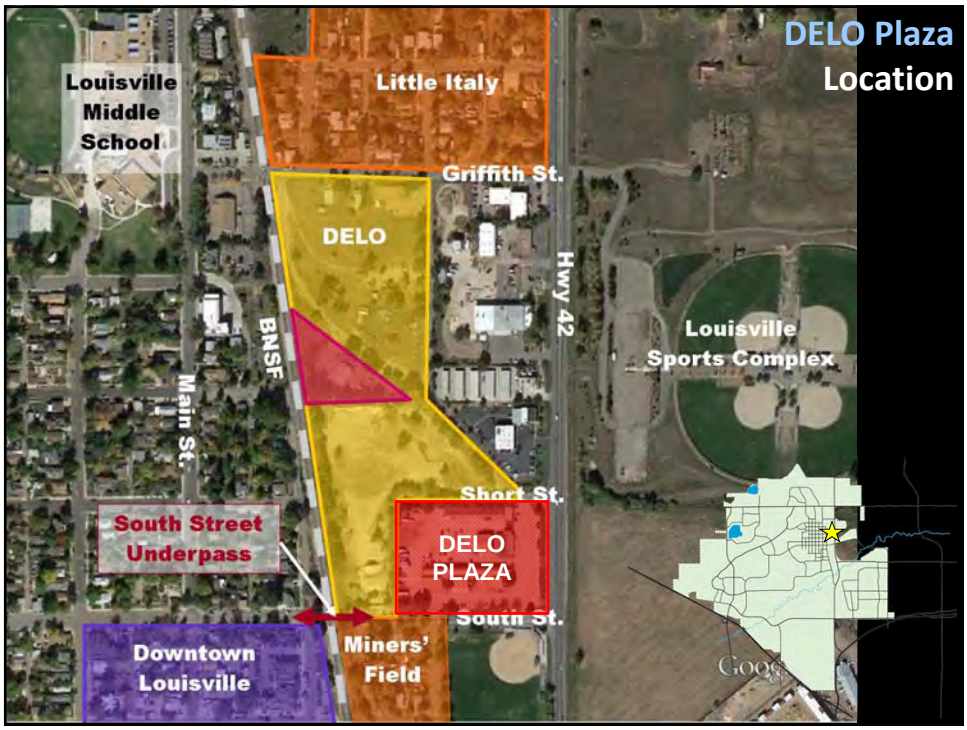
City Council - Public Hearing

DELO Plaza

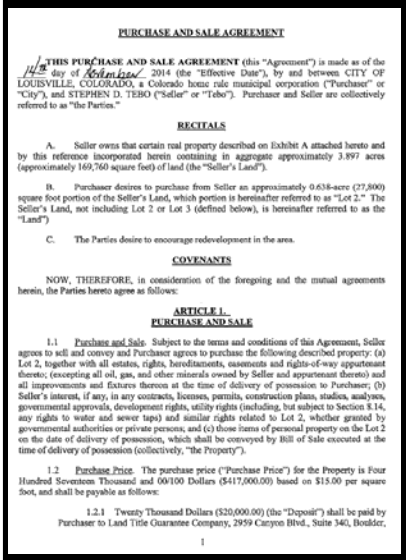
Rezoning, Final Plat, Final PUD, and SRU

RESOLUTION NO. 28, SERIES 2015: **– A RESOLUTION DENYING A REZONING, FINAL PLAT, FINAL PLANNED UNIT DEVELOPMENT (PUD), AND SPECIAL REVIEW USE (SRU) FOR THE REDEVELOPMENT OF A 3.9 ACRE PROPERTY WITHIN THE CORE PROJECT AREA OF THE HIGHWAY 42 REVITALIZATION AREA. THE REDEVELOPMENT INCLUDES THE ADDITION OF APPROXIMATELY 19,208-23,000 SQ. FT. OF COMMERCIAL SPACE**

Presented By:
Department of Planning and Building Safety



DELO Plaza
Parking area Purchase and Sale Agreement



PURCHASE AND SALE AGREEMENT

14th THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made as of the day of November, 2014 (the "Effective Date"), by and between CITY OF LOUISVILLE, COLORADO, a Colorado home rule municipal corporation ("Purchaser" or "City"), and STEPHEN D. TEBO ("Seller" or "Tebo"). Purchaser and Seller are collectively referred to as "the Parties."

RECITALS

A. Seller owns that certain real property described on Exhibit A attached hereto and by this reference incorporated herein containing in aggregate approximately 3.897 acres (approximately 169,760 square feet) of land (the "Seller's Land").

B. Purchaser desires to purchase from Seller an approximately 0.638-acre (27,800) square foot portion of the Seller's Land, which portion is hereinafter referred to as "Lot 2." The Seller's Land, not including Lot 2 or Lot 3 (defined below), is hereinafter referred to as the "Land")

C. The Parties desire to encourage redevelopment in the area.

COVENANTS

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements herein, the Parties hereto agree as follows:

ARTICLE 1.
PURCHASE AND SALE

1.1 Purchase and Sale. Subject to the terms and conditions of this Agreement, Seller agrees to sell and convey and Purchaser agrees to purchase the following described property: (a) Lot 2, together with all estates, rights, hereditaments, easements and rights-of-way appurtenant thereto; (excepting all oil, gas, and other minerals owned by Seller and appurtenant thereto) and all improvements and fixtures thereon at the time of delivery of possession to Purchaser; (b) Seller's interest, if any, in any contracts, licenses, permits, construction plans, studies, analyses, governmental approvals, development rights, utility rights (including, but subject to Section 8.14, any rights to water and sewer taps) and similar rights related to Lot 2, whether granted by governmental authorities or private persons; and (c) those items of personal property on the Lot 2 on the date of delivery of possession, which shall be conveyed by Bill of Sale executed at the time of delivery of possession (collectively, "the Property").

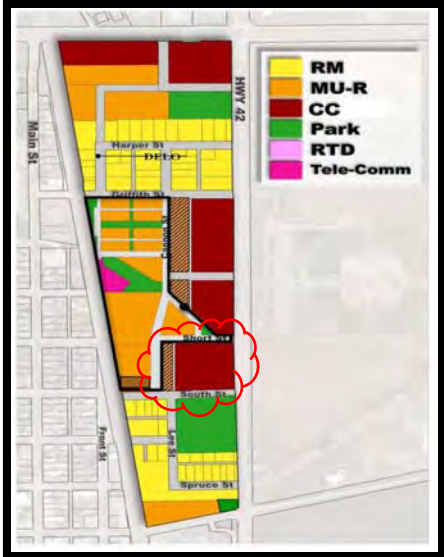
1.2 Purchase Price. The purchase price ("Purchase Price") for the Property is Four Hundred Seventeen Thousand and 00/100 Dollars ($417,000.00) based on $15.00 per square foot, and shall be payable as follows:

1.2.1 Twenty Thousand Dollars ($20,000.00) (the "Deposit") shall be paid by Purchaser to Land Title Guarantee Company, 2959 Canyon Blvd., Suite 340, Boulder,

1

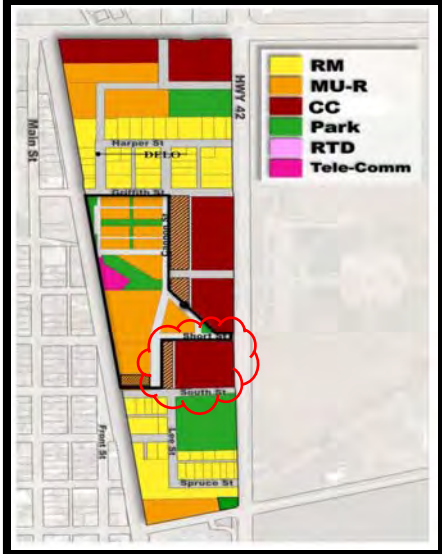
- Council approved Purchase and Sale Agreement to acquire .638 acre parcel
- Purchase not binding unless Council approves this plat, PUD and SRU with the following conditions:
  - Cannon Street dedicated to the City at no cost to the City
  - No public land dedication req'd on Plat
  - Rezoning Agreement permitting the following:
    - 3 drive-thru's
    - No two story requirement
    - No minimum lot coverage (CC)
    - Minimum 15' setback (CC)
    - A 5 year reprieve on Ind. uses
    - No req'd parking max.
    - Stormwater in regional facility
    - Match site plan shown in Exhibit B

DELO Plaza
Rezoning, Final Plat, PUD, and SRU



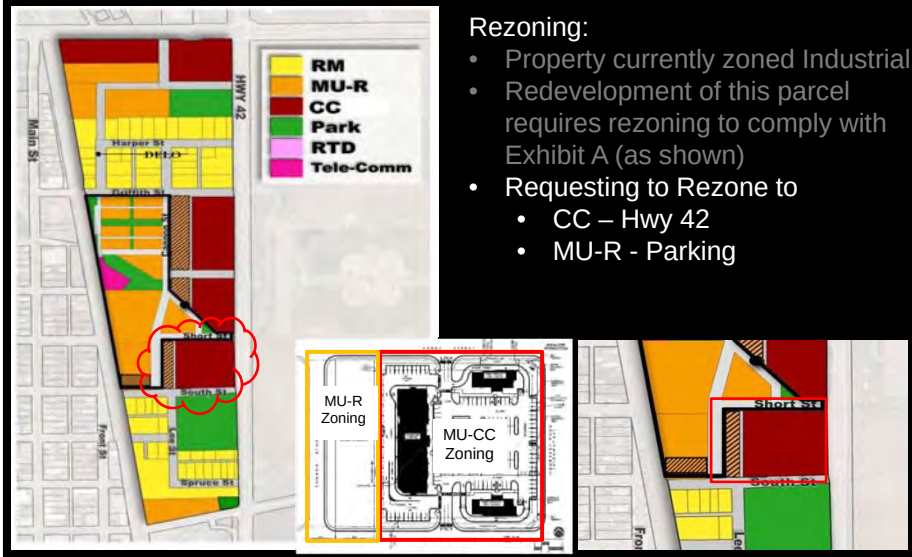
Rezoning:
- Property currently zoned Industrial

DELO Plaza
Rezoning, Final Plat, PUD, and SRU



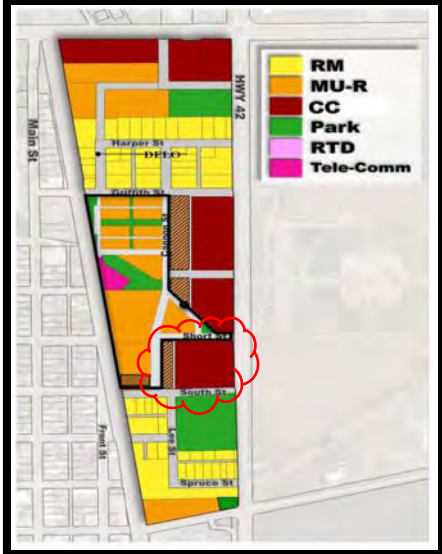
Rezoning:
- Property currently zoned Industrial
- Redevelopment of this parcel requires rezoning to comply with Exhibit A (as shown)

DELO Plaza
Rezoning, Final Plat, PUD, and SRU



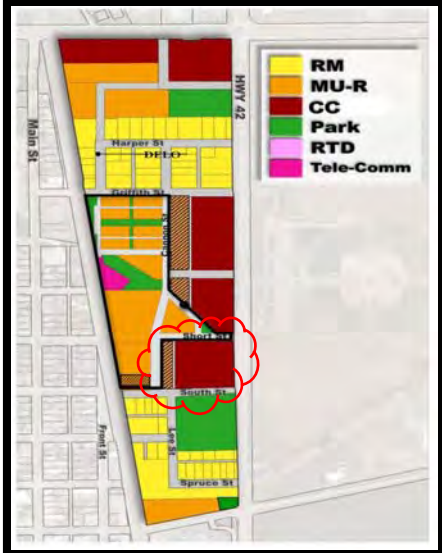
Rezoning:
- Property currently zoned Industrial
- Redevelopment of this parcel requires rezoning to comply with Exhibit A (as shown)
- Requesting to Rezone to
  - CC – Hwy 42
  - MU-R - Parking

DELO Plaza
Rezoning, Final Plat, PUD, and SRU



Rezoning:
- Property currently zoned Industrial
- Redevelopment of this parcel requires rezoning to comply with Exhibit A (as shown)
- Requesting to Rezone to
  - CC – Hwy 42
  - MU-R - Parking
- Purpose of the request for
  - 23,000 SF commercial development
  - 79 space City parking lot
  - Extension of Cannon Street

DELO Plaza
Rezoning, Final Plat, PUD, and SRU



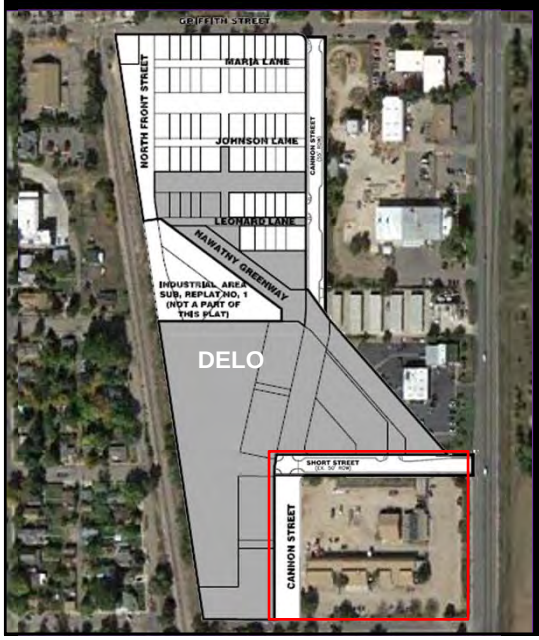
Rezoning:
- Property currently zoned Industrial
- Redevelopment of this parcel requires rezoning to comply with Exhibit A (as shown)
- Requesting to Rezone to
  - CC – Hwy 42
  - MU-R - Parking
- Purpose of the request for
  - 23,000 SF commercial development
  - 79 space City parking lot
  - Extension of Cannon Street
- Zoning complies with Exhibit B of Section 17.14

DELO Plaza

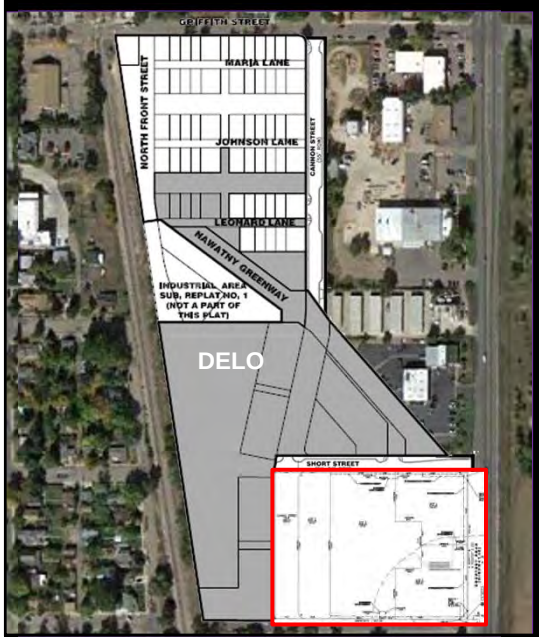
Final Plat

DELO Plaza
Final Plat

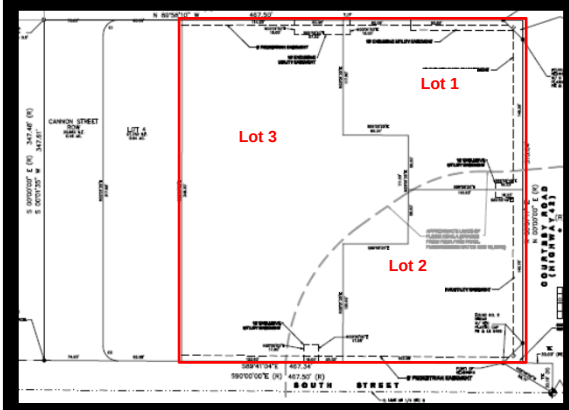
DELO Plaza
Final Plat



DELO Plaza
Final Plat



DELO Plaza
Final Plat

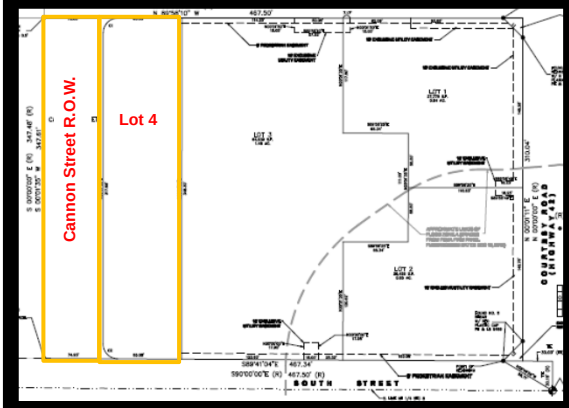


Creates 4 lots:

- Lot 1 (27,775 SF or .64 acres) – Lot 1 is shown on the PUD as a drive thru use.
- Lot 2 (28,426 SF or .65 acres) – Lot 2 is shown on the PUD as a drive thru use.
- Lot 3 (64,639 SF or 1.48 acres) – Lot 3 is shown with a multi-unit commercial building.

Lots 1-3 achieve access from Short and South Street

DELO Plaza
Final Plat



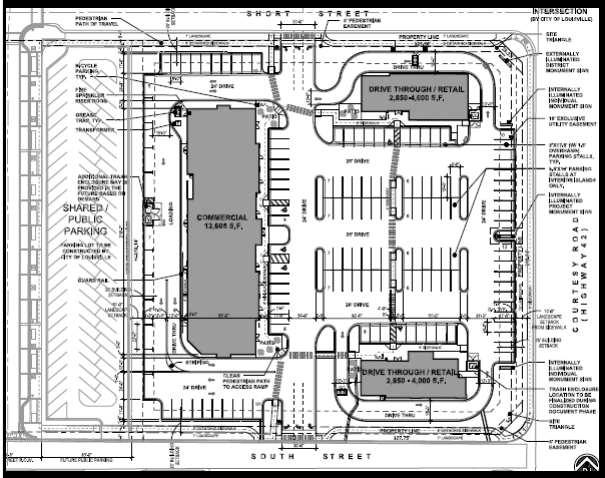
- Lot 4 (27,752 SF or .64 acres) – 79 space municipal parking lot
- Cannon Street Right-of-way – DeLo Phase 2 Woonerf

Block Design – complies with MUDDSG

DELO Plaza

Final PUD

DELO Plaza
Request



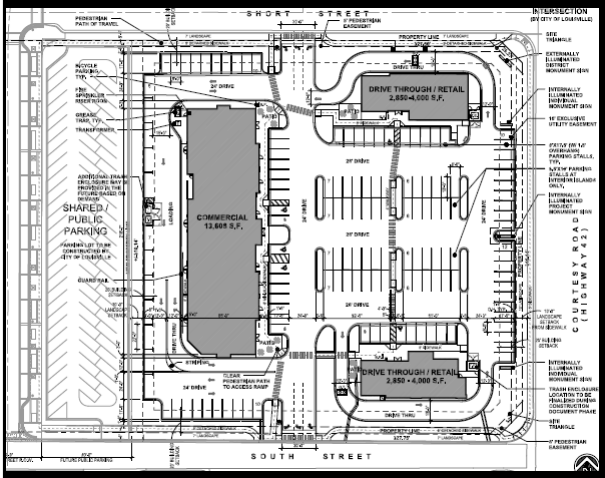
23,000 SF Max. commercial
- *Two 4,500 SF drive-thru*
- *One 15,000 SF multi-tenant commercial (with drive-thru option)*

- Redevelopment will be complimentary to the surrounding land uses
- Lends to the pedestrian oriented nature

DELO Plaza
Land Uses

Zone District	Use(s)	Building Area	Height	Parking Required	Parking Provided	Parking Ratio
MU-CC	Commercial Retail	Max. 15,000 SF	1 Story	1/300 SF = 45 spaces	143 total	1/250
	Drive Thru 1 Eating	Max. 4,000 SF	1 Story	Min.1/300 SF Max.125% of minimum req'd spaces		1/125
	Drive Thru 2 Commercial (Bank)	Max. 4,000 SF	1 Story	Min.1/400 Max.125% of minimum req'd spaces		1/125
MU-R	Municipal Public Parking	N/A	N/A		79 spaces	

DELO Plaza
Parking



MUDDSG states "an adequate supply of off-street parking is necessary for the commercial viability and success of new development in the MU-R and CC Districts."

- Providing 143 parking spaces
- 77 required; 125% maximum (96 spaces)

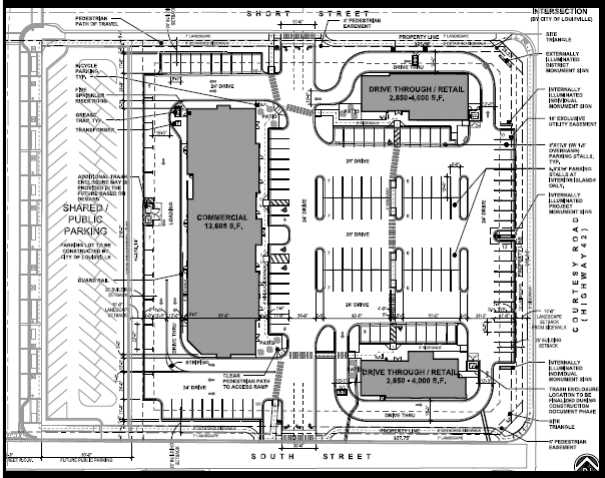
Additional parking provides:

- Flexibility on future land uses
- Ability for parking agreement for adjacent Miner's Field

DELO Plaza
Bulk and Dimension Standards

CC zone district	Required	Proposed – DELO Plaza
Min. Lot Width	N/A	40'
Min. Building Coverage	30%	N/A
Min. Landscape Coverage	20%	10%
Max. Footprint	50,000 SF	15,000 SF
Max. Bldg. Length along street	350'	N/A
Min. % of street frontage	N/A	N/A
Building setbacks		
Min. & max. street setback (principal use)	Minimum: 15' Max: 60'	Minimum: 10' Max: N/A
Min. side yard setback (principal and accessory uses)	10'	0'
Min. rear yard setback (principal uses)	20'	5'
Min. rear yard setback (accessory uses)	20'	5' (lane)
Maximum Building Height		
Principal Uses	Min: 2 stories/35' Max: 3 stories/45'	Min: 1 story/16' Max: 3 stories/45'
Accessory Uses	20'	20' max.

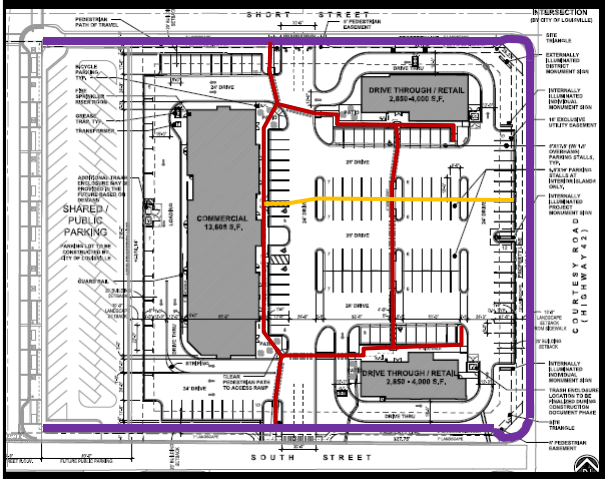
DELO Plaza
Site Plan



MUDDSG states "The orientation of a principal building is a major influence on the public realm. . ."

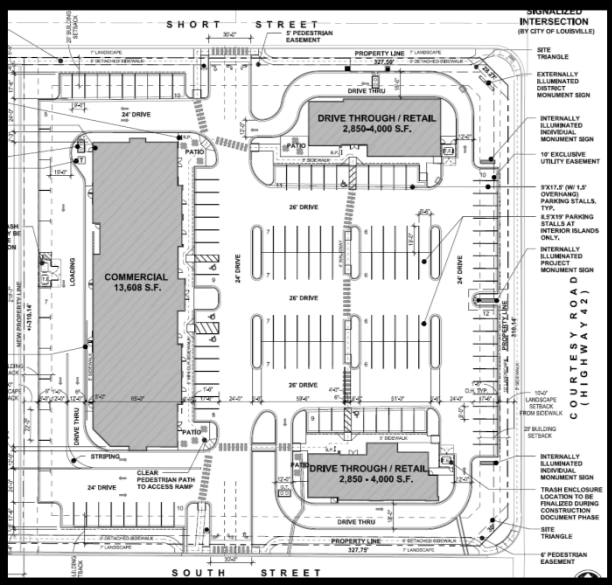
- Two buildings located along Hwy 42
- One multi-use, auto oriented building setback approximately 225 feet from Hwy 42
- Staff believes the two buildings along Hwy 42 meet the intent of the MUDDSG
- MUDDSG does not prohibit parking between building and street

DELO Plaza
Pedestrian Circulation



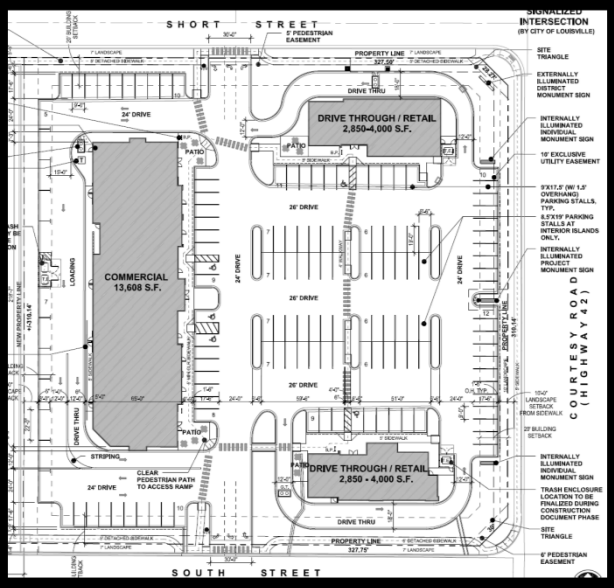
- Sidewalks
  - Internal
  - External
- Staff recommends the following modification to enhance pedestrian connection
  - Include crosswalk
  - Place sidewalk in landscape island (if possible)

DELO Plaza
Signs



Signs must comply with CDDSG

DELO Plaza Signs



Building Mounted Signs

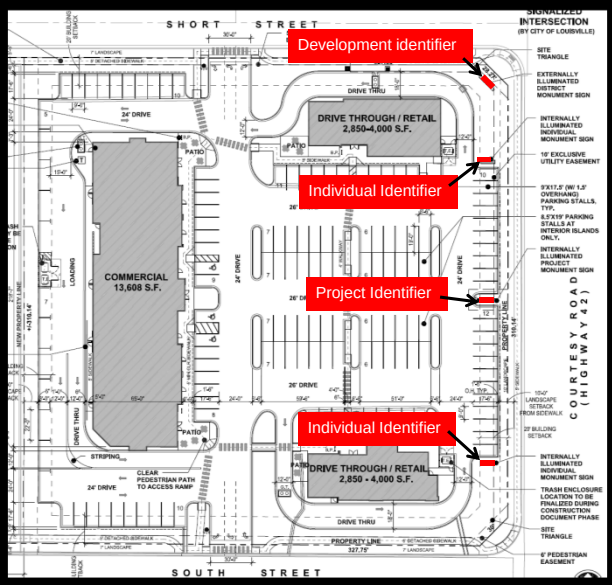
- CDDSG permits:
  - 1 SF of sign area per linear foot
  - All copy shall not exceed 24 inches

DELO Plaza Signs

Building Mounted Signs

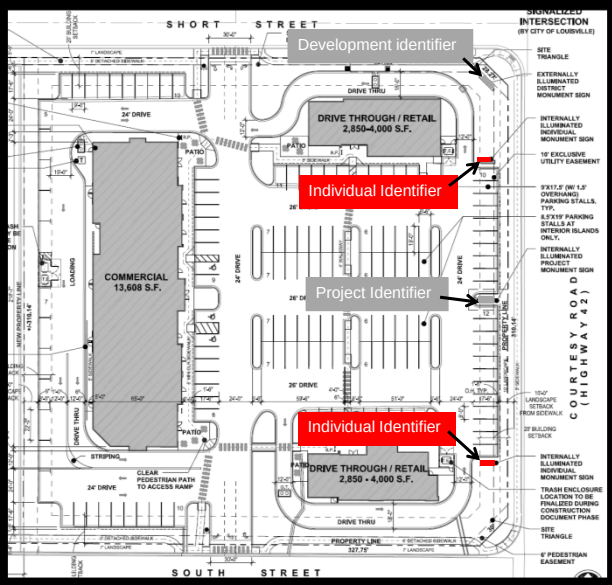
- CDDSG permits:
  - 1 SF of sign area per linear foot
  - All copy shall not exceed 24 inches
- Applicant proposing:
  - 2 SF of sign area per linear foot
  - All copy shall be 30 inches
- Proposed building mounted signs do not comply with CDDSG

DELO Plaza Signs



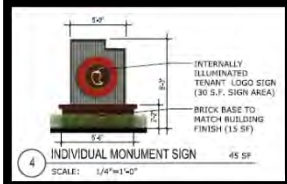
4 monument signs proposed:

DELO Plaza Signs

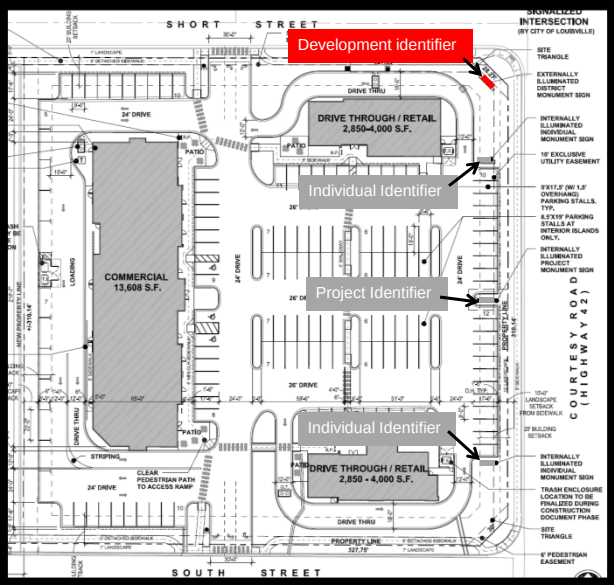


4 monument signs proposed:

- Two individual identifiers
  - 8 feet tall
  - 45 SF
  - Complies with CDDSG



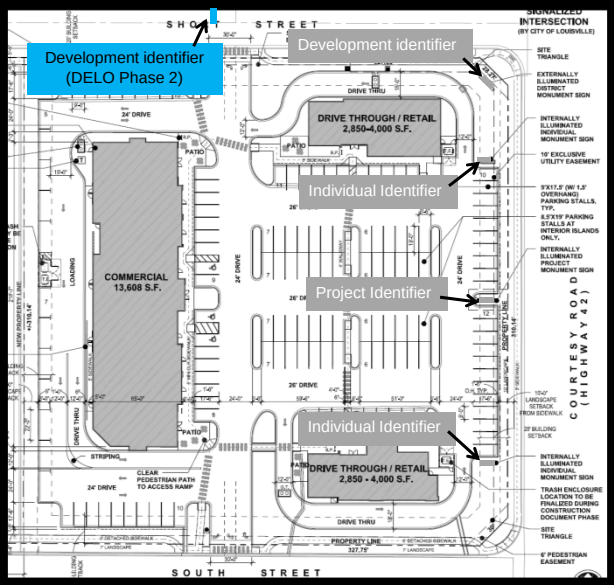
DELO Plaza Signs



4 monument signs proposed:

- Two individual identifiers
- One development identifier
  - 8 feet tall
  - 100 SF
  - Does not comply with CDDSG in area and number

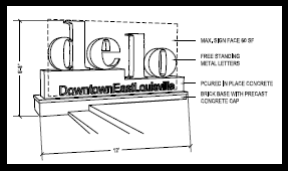
DELO Plaza Signs



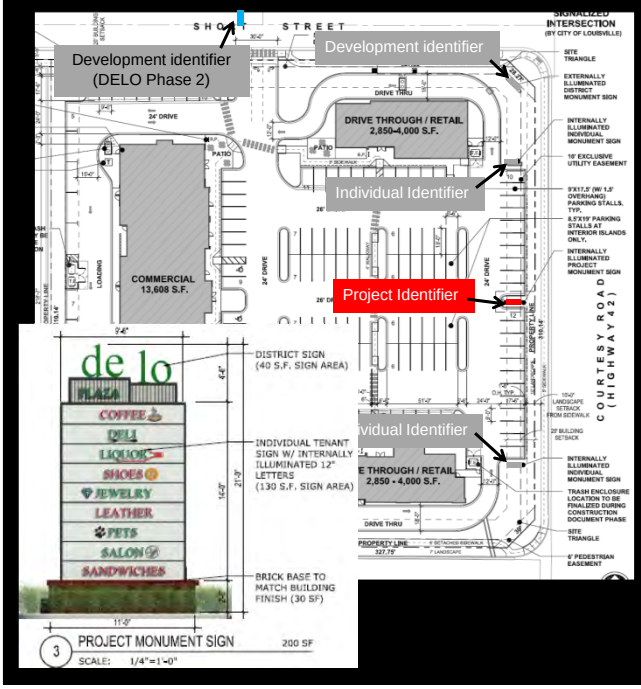
4 monument signs proposed:

- Two individual identifiers
- One development identifier

Development Identifier already provided in DeLo Phase 2



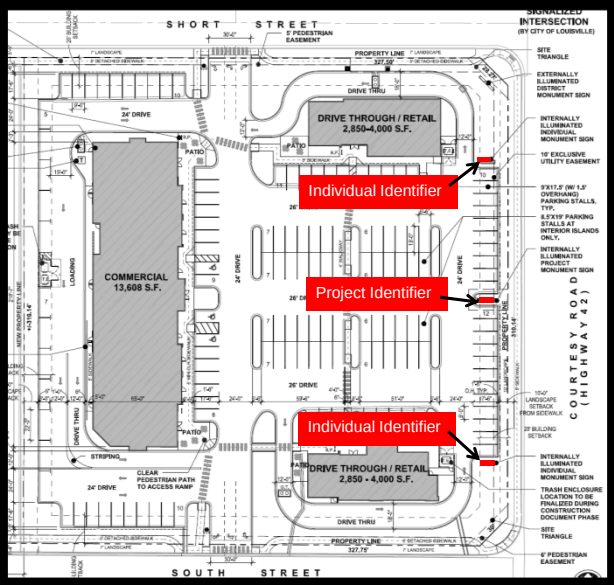
DELO Plaza Signs



4 monument signs proposed:

- Two individual identifiers
- One development identifier
- One Project Identifier
  - 21 feet tall
    - 12 feet permitted
  - 200 SF
    - 60 SF permitted
  - Does not comply with CDDSG

DELO Plaza Signs

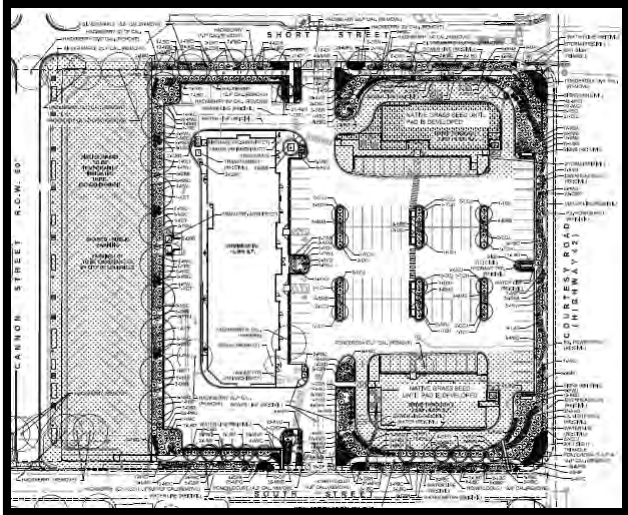


The CDDSG would permit the following:

- 1/1 wall signs at 24 inches in height
- 3 monument signs
  - 12 feet tall
  - 60 SF in area

Staff does not support the sign waivers as presented

DELO Plaza
Landscaping



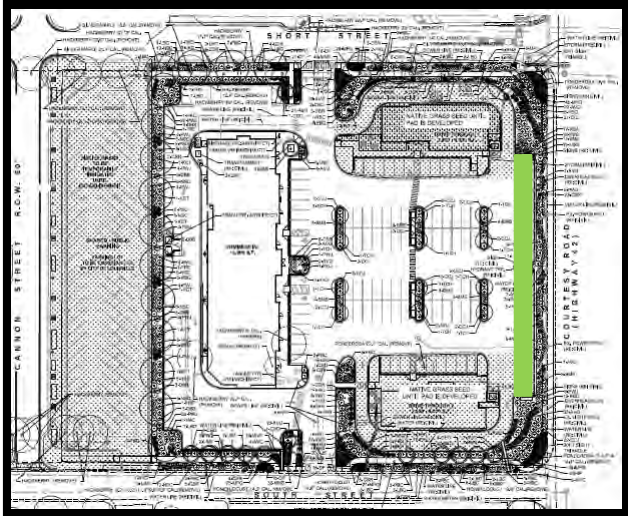
MUDDSG
- 20% landscape coverage

Applicant proposing
- 10% landscape coverage

Staff acknowledges the reduction of landscaping allows for more flexible internal circulation and future land uses

Staff requires the following:
- Work with City Forester and Parks Proj. Mgr. to save as many trees as possible.

DELO Plaza
Landscaping



Staff also requires the parking on the east, along Hwy 42, be removed and replaced with a landscape buffer.
- This will increase the overall landscaping by 3,500 SF or 3% over the entire property

DELO Plaza
Architecture and Building Design

MUDDSG states "promote high-quality building, streetscape, and open area design and construction that will give the MU-R and CC zone districts an identifiable character and unique physical image."

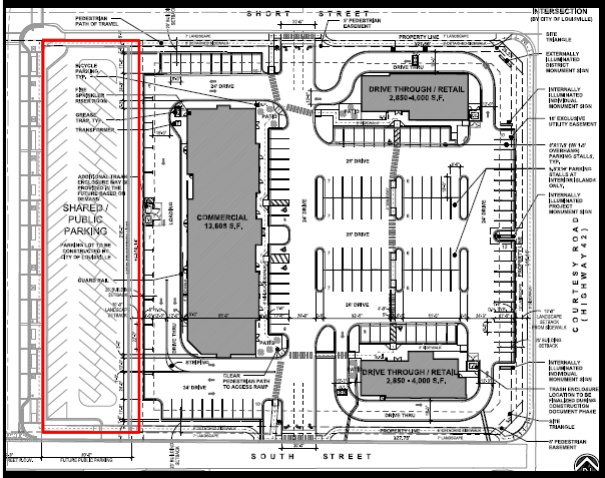
"create the appearance of development that occurred over a period of time, architectural features of new developments, including rooflines, materials, colors, door and window patters, and decorative elements, should vary in form and style."

DELO Plaza
Architecture and Building Design

Height
- 35 feet
  - 26'3" proposed
- Two stories – to promote mixed use on top
  - One story proposed

DELO Plaza
Special Review Use

DELO Plaza
Specials Review Use



The MUDDSG requires an SRU for “City, state and federal uses and building”

This property is proposed to be used as a City parking lot

DELO Plaza
Specials Review Use

1. *That the proposed use / development is consistent in all respects with the spirit and intent of the comprehensive plan and of this chapter, and that it would not be contrary to the general welfare and economic prosperity of the city or the immediate neighborhood;*

The establishment of the City's public parking lot, together with the South Street Gateway, provides economic prosperity for Downtown Louisville by providing for additional parking options without further impacting the surrounding Old Town Neighborhood. Both the economic anticipated economic and neighborhood benefits support the Core Values of the Comprehensive Plan.

Staff believes the criterion has been met.

DELO Plaza
Specials Review Use

2. *That such use / development will lend economic stability, compatible with the character of any surrounding established areas;*

The establishment of the City's public parking lot complies with the intent established in the MUDDSG by providing a suitable public (shared) parking facility within walking distance to Downtown Louisville and Miners' Field. Additional public parking will, with the opening of the South Street Gateway and ongoing utilization of Miners' field, alleviate immediate and future parking pressure on the Miners' Field neighborhood. The additional parking will also assist in lowering parking impacts of Downtown Louisville has on the Old Town Neighborhood.

Staff believes this criterion has been met.

DELO Plaza
Specials Review Use

3. *That the use / development is adequate for the internal efficiency of the proposal, considering the functions of residents, recreation, public access, safety and such factors including storm drainage facilities, sewage and water facilities, grades, dust control and such factors directly related to public health and convenience;*

The City's public parking lot is designed to accommodate public access, safety, and convenience. The City's public parking lot will also provide additional parking option for visitors to downtown and the nearby recreational facilities, which can be attributed to public health and convenience.

Staff believes this criterion has been met.

DELO Plaza
Specials Review Use

4. *That external effects of the proposal are controlled, considering compatibility of land use; movement or congestion of traffic; services, including arrangement of signs and lighting devices as to prevent the occurrence of nuisances; landscaping and other similar features to prevent the littering or accumulation of trash, together with other factors deemed to affect public health, welfare, safety and convenience;*

The City's public parking lot is designed to be compatible with the surrounding land use in terms of landscaping, lighting, movement and limiting nuisances.

Staff believes this criterion has been met.

DELO Plaza
Specials Review Use

5. *That an adequate amount and proper location of pedestrian walks, malls and landscaped spaces to prevent pedestrian use of vehicular ways and parking spaces and to separate pedestrian walks, malls and public transportation loading places from general vehicular circulation facilities.*

The City's public parking lot is has a sidewalk on three of the four sides and has vehicular access on the south side of the lot (along South Street). Both attributes provide a controlled movement.

Staff believes this criterion has been met.

DELO Plaza

Waivers

DELO Plaza
Waivers

Design Element	Required	Proposed
Site Plan		
Min. building Coverage	30%	20%
Min. landscape coverage	20%	10%
Max. street setback	60 feet	Approx.. 225 feet
Min. Side setbacks	10 feet	0
Min. Rear setback	20 feet	5 feet
Height	2 stories and 35 feet	1 story and 27 feet
Signs		
Monument	Max. Number: 3 Max. Height: 12 feet	Max. Number: 4 Max. Height: 21 feet
Building Mounted Signs	Sign Area: 1/1 ratio Character Size: 24 inches	Sign Area: 2/1 ratio Character Size: 30 inches
Parking Ratio		
Commercial/Retail	1/300 SF	1/250
Eating	Min.1/300 SF Max.125% of minimum req'd spaces	1/125
Office (Bank)	Min.1/400 Max.125% of minimum req'd spaces	1/125

DELO Plaza
Waivers

Design Element	Required	Proposed
Site Plan		
Min. building Coverage	30%	20%
Min. landscape coverage	20%	10%
Max. street setback	60 feet	Approx.. 225 feet
Min. Side setbacks	10 feet	0
Min. Rear setback	20 feet	5 feet
Height	2 stories and 35 feet	1 story and 27 feet

Staff supports the site plan waivers as long as the parking along Hwy 42 is removed and replaced with landscaping and an east/west pedestrian connection is created.

DELO Plaza
Waivers

Design Element	Required	Proposed
Site Plan		
Min. building Coverage	30%	20%
Min. landscape coverage	20%	10%
Max. street setback	60 feet	Approx.. 225 feet
Min. Side setbacks	10 feet	0
Min. Rear setback	20 feet	5 feet
Height	2 stories and 35 feet	1 story and 27 feet
Signs		
Monument	Max. Number: 3 Max. Height: 12 feet	Max. Number: 4 Max. Height: 21 feet
Building Mounted Signs	Sign Area: 1/1 ratio Character Size: 24 inches	Sign Area: 2/1 ratio Character Size: 30 inches

Staff does not support the sign waivers

DELO Plaza
Waivers

Design Element	Required	Proposed
Site Plan		
Min. building Coverage	30%	20%
Min. landscape coverage	20%	10%
Max. street setback	60 feet	Approx.. 225 feet
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Parking Ratio		
Commercial/Retail	1/300 SF	1/250
Eating	Min.1/300 SF Max.125% of minimum req'd spaces	1/125
Office (Bank)	Min.1/400	1/125

Staff supports the parking waiver if the applicant agrees to parking agreement for Miner's Field and replaces Hwy 42 parking with landscaping/tree preservation

DELO Plaza

March 12, 2015 PC Meeting

DELO Plaza
Recommendation

At the March 12, 2015 PC meeting, Staff recommended approval of the requested rezoning, final plat, final PUD, and SRU for DELO Plaza, with the six conditions (prior to recordation of the plat).

The applicant did not accept staff conditions.

The planning Commission reviewed the application without conditions

DELO Plaza
Recommendation (continued)

Planning Commission denied the request based on the following findings (please refer to Resolution of Denial for specifics):

The project proposed by the application does not meet criteria A.1, A.7, A.9, B.1, B.5, and B.15 of Section 17.28.120 of the LMC. In particular, the Planning Commission concludes that the proposed PUD is not compatible with surrounding designs and neighborhoods, nor is it designed or oriented toward the pedestrian.

DELO Plaza
City Council Action

DELO Plaza
Recommendation

According to Sec. 17.28.170 of the Louisville Municipal Code (LMC), the City Council has four options following completion of its hearing:

1) Deny the application;
2) Approve the application;
3) Approve the application with conditions; or
4) Remand the application to the Planning Commission.

If the City Council chooses to remand the proposal to the Planning Commission, a public hearing will be scheduled appropriately.

If City Council chooses to deny the project, or approve the project, staff requests City Council direct staff to prepare a draft resolution of denial, or approval for Council consideration at a subsequent meeting and that Council continue the public hearing to that future meeting date.

City of Louisville
COLORADO • SINCE 1878

CITY COUNCIL COMMUNICATION
AGENDA ITEM 8L

SUBJECT: **GRAIN ELEVATOR FINAL PLAT, FINAL PLANNED UNIT DEVELOPMENT, SPECIAL REVIEW USE, AND LANDMARK – REQUEST CONTINUANCE TO 05/19/2015**

DATE: **MAY 5, 2015**

PRESENTED BY: **SCOTT ROBINSON, AICP, PLANNING AND BUILDING SAFETY**

SUMMARY:
The applicant, Louisville Mill Site LLC, has requested a continuance for the Grain Elevator final plat, final planned unit development, special review use, and landmark to the May 19 City Council meeting. The continuance would allow the applicant to address conditions from the Planning Commission recommendation of approval and some final items with Public Works.

RECOMMENDATION:
Staff recommends Council continue the hearing on the Grain Elevator final plat, final planned unit development, special review use, and landmark to the May 19, 2015 meeting.

SUBJECT: **ORDINANCE NO. 1691, SERIES 2015 – AN ORDINANCE AMENDING TITLE 17 OF THE LOUISVILLE MUNICIPAL CODE TO DEFINE LIVE-WORK USES AND ALLOW THEIR DEVELOPMENT IN THE MIXED USE ZONE DISTRICTS AND DOWNTOWN LOUISVILLE – 1ST Reading – Set Public Hearing 05/19/2015**

DATE: **MAY 5, 2015**

PRESENTED BY: **TROY RUSS, AICP, PLANNING AND BUILDING SAFETY**

SUMMARY:

Downtown Louisville's history is filled with examples of residents living and working on a single premise. Storekeepers, trades people, doctors, lawyers, and others commonly lived upstairs from, or adjacent to (typically behind), their shops or offices.

The modern land use classification of such activity is referred to as "live-work". Over the years, as the city planning profession evolved and zoning regulations emerged, a wide range of economic, societal, and political factors resulted in such live-work arrangements becoming uncommon and even outlawed.

In 1962, when Louisville first adopted a zoning code, the best practices of the city planning profession at that time aimed at separating land uses by category, not allowing a mixture of traditional land uses like live-work to occur.

Today, the Louisville Municipal Code (LMC) allows a mixture of commercial and residential uses (in the form of multi-family) as a special review use in downtown Louisville. However, the LMC does not allow a mixture of commercial activity and a single residential unit on a single premise in any commercial zone district.

Live work units are typically small in scale and could fit nicely into walkable commercial environments like downtown Louisville. Staff believes it is time for City Council to consider an amendment to the LMC to allow live-work in downtown and the Mixed Use (MU) zone districts in the Highway 42 Revitalization District. If approved, a live-work ordinance could benefit Louisville with the following:

1) Support a small-town feel by allowing business owners to live on premise;
2) Provide an incentive to preserve historic commercial structures;
3) Present an economically viable small scale development pattern;
4) Provide incentives for commercial development on smaller parcels; and,
5) Provide new development with lower parking and transportation impacts.

REQUESTED AMENDMENTS TO TITLE 17

Staff is proposing modifications to Title 17 of the LMC in three key areas to define the live-work land use and allow its development in Louisville.

1. Definitions
2. Zoning District Regulations; and,
3. General Regulations.

Definitions

Chapter 17.08 of the LMC defines specific words used in the City's zoning code. Staff is suggesting the following definition of live-work be added to clarify exactly what live-work means in the City of Louisville.

Live-work means a single lot with one or more structures that combine a commercial activity allowed by-right in the underlying zone district with a single residential living unit.

District Regulations

Chapter 17.12 of the LMC identifies which land uses are allowed in the City, where they can be located, and how they may fit on a specific property. Staff is suggesting the land use table in Section 17.12.030 be expanded, as shown below, to include live-work as the 61st use group and allow it to be located in Downtown Louisville and the MU zone districts in the Highway 42 Revitalization District.

Use Group		Zoning Districts																	
		A	AO	BO	AOT	RRR	SFR	SFE	RRRERL	SFLD SFMD SFHD	RM	RH	CN	CC	CB	I	PCZD	MUR/CC	OS
61	**Live-Work**	**N**	**N**	**N**	**N**	**N**	**N**	**N**	**N**	**N**	**N**	**N**	**N**	**********	**********	**N**	**N**	**Y**	**N**

Notes:

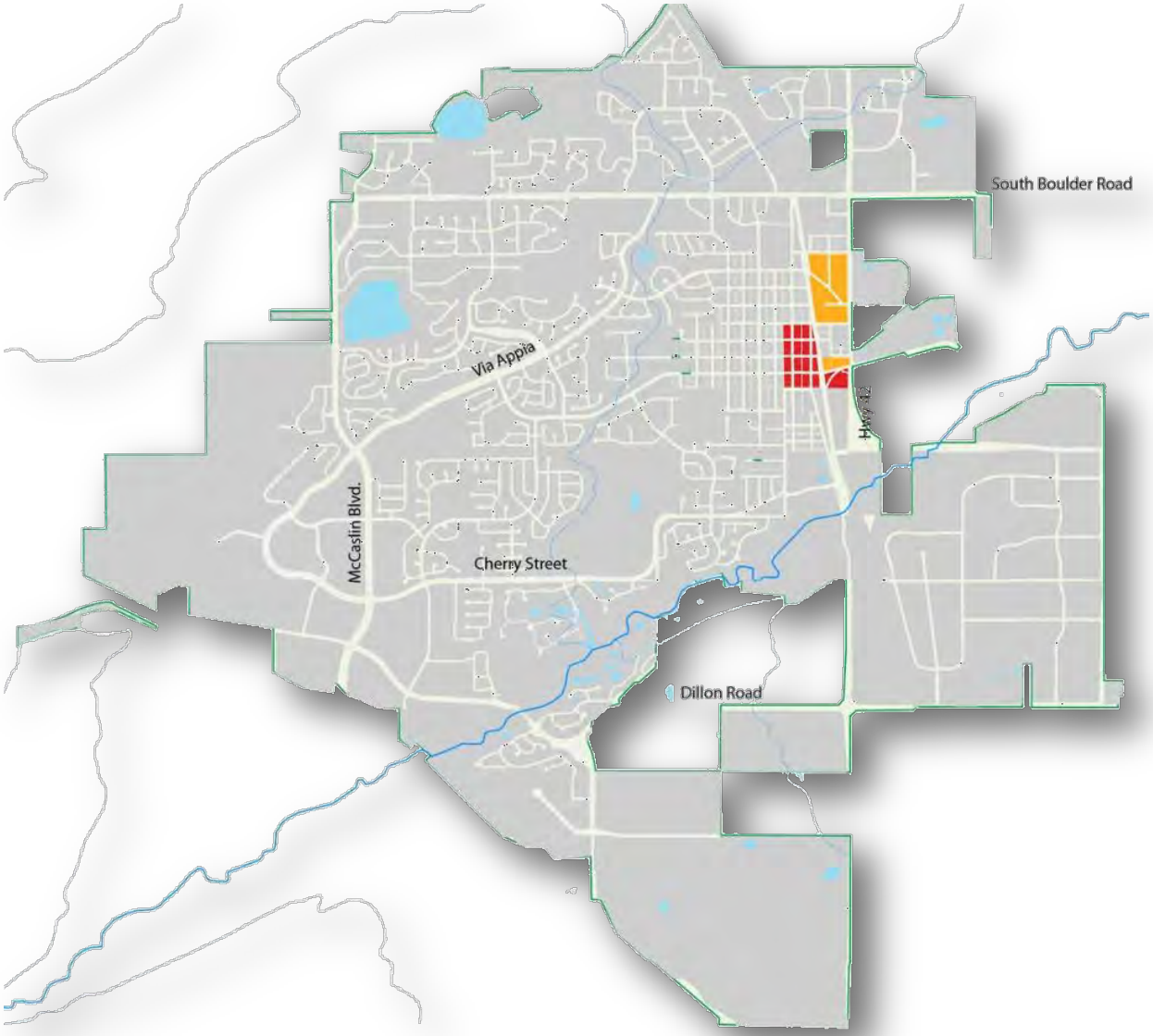
****** A live-work use and development is allowed only within the portions of the Community Commercial and Community Business Zone Districts within the area designated as Downtown Louisville, as defined in Chapter 17.08.113.

Chapter 17.14 of the LMC identifies which land uses are allowed within the City's MU zone district, where they can be located, and how they may fit on a specific property. Staff is suggesting the land use table in Section 17.14.050 be expanded (shown below)

to include live-work in both the community commercial and residential portions of the MU zone district.

TABLE 1: PRINCIPAL USES ALLOWED IN THE MIXED USE ZONE DISTRICTS		
PRINCPLE USES	**CC**	**MU-R**
Commercial Use Group		
Live-Work	Yes	Yes

The following map illustrates the areas where live-work would be allowed in Louisville if approved.

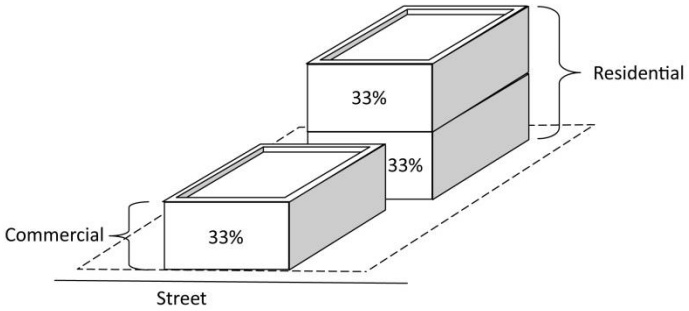


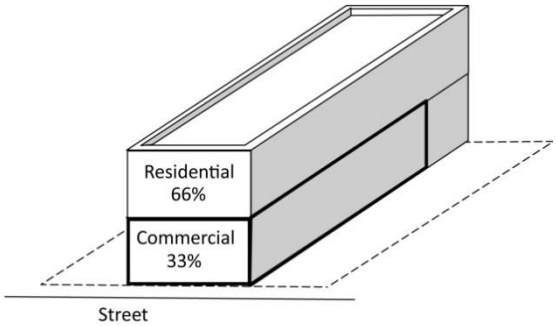
General Regulations

Chapter 17.16 of the LMC is used to clarify performance standards of specific uses which cannot be fully regulated within the yard and bulk standards presented in the district regulations. Staff suggests a new section be added to this chapter to clarify performance standards associated with the proposed live-work land use. Staff is suggesting the live-work land use be required to adhere to the following:

1) The commercial and residential portions of the live-work use shall remain under single ownership and shall not be subdivided, used as condominiums or otherwise divided in ownership.

2) The residential portion of the live-work use shall not exceed 66 percent of the total floor area of the development.





3) The residential portion of the live-work use shall not be located in the lower level of the building facing the front lot line of the parcel.

4) Parking requirements for a live work use shall be as follows:
   a. The commercial portion of the development shall provide a parking space for every 500sf of the floor area rounded to nearest 500 sf.
   b. 1-bedroom minimum: 1 space per unit; maximum: 2 spaces per unit; 2-or-more-bedroom: 2 spaces per unit.
   c. A parking requirement waiver may be requested when a demonstrated shared parking analysis for the parcel is provided.
   d. The parking requirements of this subsection 17.16.320.A.4.d are waived for properties incorporating live-work that are designated as a Louisville landmark pursuant to chapter 15.36 of this code.

5) All live-work commercial development within the area designated as Downtown Louisville, as defined in Chapter 17.08.113, shall also comply with this title and all requirements of the Design Handbook for Downtown Louisville, as adopted and amended from time to time.

6) All live-work development in the mixed use zone districts shall comply with the development and design standards stated in this title and the Louisville Mixed Use Development Design Standards and Guidelines (MUDDSG), as adopted and amended from time to time, except as expressly waived or modified by the city in a planned unit development plan approved according to chapter 17.28 and subject to the limitations stated in section 17.14.090.

FISCAL IMPACT
Amending the LMC to define a live-work land use and allow its development in Louisville should have minimal fiscal impact on the City.

PLANNING COMMISSION ACTION
The Planning Commission held a public hearing April 8, 2015. The Planning Commission voted unanimously (7-0) to recommend the amendment to Title 17 be forwarded to City Council for consideration.

RECOMMENDATIONS
Staff recommends City Council approve Ordinance No. 1691, Series 2015, an ordinance amending title 17 of the Louisville Municipal Code to define and allow live-work uses in the Mixed Use Zone Districts and Downtown Louisville – 1st Reading – Set 2nd Reading and Public Hearing for May 19, 2015

ATTACHMENTS:
1. Ordinance No. 1691, Series 2015
2. Planning Commission minutes (April 9, 2015)

ORDINANCE NO. 1691
SERIES 2015

AN ORDINANCE AMENDING TITLE 17 OF THE LOUISVILLE MUNICIPAL CODE TO DEFINE LIVE-WORK USES AND ALLOW THEIR DEVELOPMENT IN THE MIXED USE ZONE DISTRICTS AND DOWNTOWN LOUISVILLE

WHEREAS, the City of Louisville is a Colorado home rule municipal corporation duly organized and existing under laws of the State of Colorado and the City Charter; and

WHEREAS, live-work uses are defined as a single property with one or more structures that combine a commercial activity allowed by-right in the underlying zone district with a single residential living unit; and

WHEREAS, the popularity of live-work uses has increased significantly in recent years; and

WHEREAS, the zoning ordinances within the Louisville Municipal Code (LMC) do not specifically recognize live-work uses nor allow their unique characteristics be developed in the City; and

WHEREAS, the City Council desires to define and establish a live-work use category and allow development of live-work uses those areas within the Commercial Community (C-C) and Commercial Business (C-B) zone districts that are within Downtown Louisville, and in the mixed use zone districts, as defined in the LMC; and

WHEREAS, a core value of the City in the 2013 Comprehensive Plan promotes: "*A Healthy, Vibrant, and Sustainable Economy . . . where the City understands and appreciates the trust our residents, property owners, and business owners place in it when they invest in Louisville, and where the City is committed to a strong and supportive business climate which fosters a healthy and vibrant local and regional economy for today and for the future",* and defining live-work uses and allowing their development within Louisville will introduce another investment opportunity for the City; and

WHEREAS, a second core value of the City in the 2013 Comprehensive Plan promotes: "*Our Livable Small Town Feel . . . where the City's size, scale, and land use mixture … encourage personal and commercial interactions",* and the introduction of live-work uses further enables business owners to also be residents in the City; and

WHEREAS, a third core value of the City in the 2013 Comprehensive Plan promotes: "*A Connection to the City's Heritage . . . where the City recognizes, values, and encourages the promotion and preservation of our history and cultural heritage, particularly our mining and agricultural past",* and the introduction of live-work uses creates an additional economic incentive to preserve the City's historic store fronts; and

WHEREAS, after a duly noticed public hearing held April 9, 2015, where evidence and testimony were entered into the record, including the Louisville Planning Commission Staff Report dated April 9, 2015, the Louisville Planning Commission has recommended the City Council adopt the amendments to the Louisville Municipal Code set forth in this ordinance; and

WHEREAS, City Council has provided notice of a public hearing on said ordinance by publication as provided by law and held a public hearing as provided in said notice;

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

Section 1. Chapter 17.08 of the Louisville Municipal Code is hereby amended by the renumbering of Section 17.08.262 to Section 17.08.261 and by the addition of a new Section 17.08.262 to read as follows:

Sec. 17.08.262. Live-work.

Live-work means a single lot with one or more structures that combine a commercial activity allowed by-right in the underlying zone district with a single residential living unit.

Section 2. Section 17.12.030 of the Louisville Municipal Code is hereby amended by the addition of a new use group 61 to read as follows:

Use Group		Zoning Districts																	
		A	AO	BO	AOT	RRR	SFR	SFE	RR RE RL	SFLD SFMD SFHD	RM	RH	CN	CC	CB	I	PCZD	MU R/CC	OS
61	Live-Work	N	N	N	N	N	N	N	N	N	N	N	N	******	******	N	N	Y	N

Notes:

****** A live-work use and development is allowed only within the portions of the Community Commercial and Community Business Zone Districts within the area designated as Downtown Louisville, as defined in Chapter 17.08.113.

Section 3. Section 17.14.050 of the Louisville Municipal Code is hereby amended to add to Table 1 in said Section an additional use within the Commercial Use Group, as follows:

TABLE 1: PRINCIPAL USES ALLOWED IN THE MIXED USE ZONE DISTRICTS		
PRINCPLE USES	**CC**	**MU-R**
Commercial Use Group		
Live-Work	Yes	Yes

Section 4. Chapter 17.16 of the Louisville Municipal Code is hereby amended by the addition of a new Section 17.16.320 to read as follows:

Sec. 17.16.320. Live-work.

A. *Live-work uses* are permitted in specific locations in the designated zoning districts subject to the applicable regulations of the district in which the use is located, and subject to the following requirements:

1. The commercial and residential portions of the live-work use shall remain under single ownership and shall not be subdivided, used or condominiums or otherwise divided in ownership.

2. The residential portion of the live-work use shall not exceed 66 percent of the total floor area of the development.

3. The residential portion of the live-work use shall not be located in the lower level of the building facing the front lot line of the parcel.

4. Parking requirements for a live-work use shall be as follows:

a. The commercial portion of the development shall provide a parking space for every 500 square feet of the floor area rounded to nearest 500 square feet.

b. The residential portion of the development shall adhere to the following:

1-bedroom minimum: 1 space per unit; maximum: 2 spaces per unit
2-or-more-bedroom: 2 spaces per unit

c. A parking requirement waiver may be requested when a demonstrated shared parking analysis is provided for the individual parcel.

d. The parking requirements of this subsection 17.16.320.A.4.d are waived for properties incorporating live-work that are designated as a Louisville landmark pursuant to chapter 15.36 of this code.

5. All live-work commercial development within the area designated as Downtown Louisville, as defined in Chapter 17.08.113, shall also comply with

this title and all requirements of the Design Handbook for Downtown Louisville, as adopted and amended from time to time.

6. All live-work development in the mixed use zone districts shall comply with the development and design standards stated in this title and the Louisville Mixed Use Development Design Standards and Guidelines (MUDDSG), as adopted and amended from time to time, except as expressly waived or modified by the city in a planned unit development plan approved according to chapter 17.28 and subject to the limitations stated in section 17.14.090.

Section 5. If any portion of this ordinance is held to be invalid for any reason such decisions shall not affect the validity of the remaining portions of this ordinance The City Council hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part be declared invalid.

Section 6. The repeal or modification of any provision of the Municipal Code of the City of Louisville by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Section 7. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portions hereof are hereby repealed to the extent of such inconsistency or conflict.

INTRODUCED, READ, PASSED ON FIRST READING, AND ORDERED PUBLISHED this 5th day of May, 2015.

_____

Robert P. Muckle, Mayor

ATTEST:

_____

Nancy Varra, City Clerk

APPROVED AS TO FORM:

_____

Light, Kelly, P.C.

City Attorney

PASSED AND ADOPTED ON SECOND AND FINAL READING this 19th day of May, 2015.

_____

Robert P. Muckle, Mayor

ATTEST:

_____

Nancy Varra, City Clerk

Planning Commission

Meeting Minutes

April 9, 2015
City Hall, Council Chambers
749 Main Street
6:30 PM

- **Live/Work Ordinance–CC zone district, Resolution No. 13, Series 2015,** A Resolution recommending City Council approval of an ordinance amending Title 17 of the Louisville Municipal Code to define Live-Work uses and allow their development in the community commercial and mixed use zone districts throughout Louisville.

Public Notice Certification:
This is a legislative action. Public notice was posted the agenda of this item. The actual public notice of any ordinance comes through the first reading of the ordinance done by the City Clerk. The agenda was posted in City Hall, Public Library, Recreation Center, and the Courts and Police Building on April 3, 2015.

Staff Report of Facts and Issues:
Russ presented from Power Point:

- The proposed definition is *Live-Work* means a single property with one or more structures that combine a commercial activity allowed by-right in the underlying zone district with a single residential living unit.
- It is a common Planning term. Every historic community has Live-Work environments. Examples in Louisville are 801 Main Street which was a Post Office and residence (moved to 721 Grant Avenue). The City Hall parcel had a barber with a dwelling unit. The Blue Parrot parcel had a drug store with a dwelling unit behind it. A current example is 901 Main Street which is an office commercial building with an attached single family dwelling.
- In 1967 when Louisville implemented the Zoning Code, it was made an illegal activity in the City.
- How do we create a Mixed Use environment? Live-Work is somewhat Mixed Use. It is supposed to be one residential unit and one commercial unit. There is home occupation allowed in all residential units. If you live in a house, you are allowed to conduct business. Home occupations are for small scale, non-disruptive commercial activities within neighborhoods.
- In Community Commercial Zone Districts, there is a commercial component allowed by right. The residential component is only multi-family as an option, not single family, and is allowed by Special Review.
- In Mixed Use Zone District, commercial allowed by right. Residential, multi-family allowed by right in MU-R, but not allowed in CC. Single family dwelling is not allowed in either.

- The draft ordinance before the PC and will go before City Council says the Commercial Community (CC) and Mixed Use (MU) Zone Districts will be the only two districts in the City where Life-Work would be allowed.
- Performance standards.
    - The commercial and residential portions of the live-work use shall remain under single ownership and shall not be subdivided.
    - The residential portion of the Live-Work use shall not exceed sixty six percent (66%) of the total floor area of the development.
    - The residential portion of the Live-Work use is prohibited in the lower level of the building facing the front lot line of the parcel.
    - Parking requirements for a Live-Work use shall be as follows:
        - The commercial portion of the development shall provide a parking space for every 500sf of the floor area rounded to nearest 500 sf.
        - The residential portion of the development shall adhere to the following:
          - 1-bdrm unit min: 1 space per unit; max: 1.25 spaces per unit
          - 2-bdrm unit min: 2 spaces per unit
          - 3-or-more-bedroom unit min: 2 spaces per unit
        - A parking requirement waiver may be requested when a demonstrated shared parking analysis is provided.
        - The parking requirement is waived for Louisville Landmarked structures with approved alteration certificate.
    - Commercial Community (CC) zone district shall comply with:
        - Outside of Downtown - Commercial Development Design Standards and Guidelines (CDDSG).
        - In Downtown – The Downtown Handbook

Staff Recommendations:
Resolution No. 13, Series 2015, recommending City Council approval of an ordinance amending the Louisville Municipal Code (LMC) to define Live-Work uses and allow their development in the Community Commercial and Mixed Use Zone Districts throughout Louisville with two conditions.

1. The draft ordinance shall be modified to allow Live-Work in the area defined as Downtown Louisville and the Mixed Use Zone District.
2. The draft ordinance shall be modified to add a note in the parking requirements stating "the parking requirement is waived for Louisville Landmarked structures incorporating Live-Work."

Commission Questions of Staff:
O'Connell makes motion to enter emails from Peter Stewart, Thursday, April 9, 2015, and revised Resolution No. 13, seconded by Brauneis, voice vote, passes.

Rice asks from a property tax standpoint, using commercial property both in a commercial and a residential style, how does that affect the classification for purposes of property tax?
Russ says he doesn't know, but he would refer that to the City Finance Director. The Finance Director was referred this project and he felt comfortable with the ordinance that he could implement it.

Russell asks if there is an expectation that requires there be a connection between who is living there and who is working there?
Russ says there is not in this ordinance. In theory, the intent is the shop-owner lives and works in the same site. In reality, that may not happen. There is a condition that it shall not subdivide.

A number of scenarios could be owner on site, rents out commercial, or rents out residential and works on site, or rent out both. Only one owner.

Russell asks what is the ordinance trying to accomplish?
Russ says it gives a tremendous economic value to the smaller lots of Downtown. On long narrow lots, you can retain a smaller scale investment and give economic value. There is a strong demand for single family. It is lower demand on the school district than multi-family. It gives the economic value of residential but commercial remains. Downtown's unique commercial storefronts, being the scale they are, will be able to get incentives for preservation.

Moline asks if this could dilute the amount of commercial Downtown? How would the Planning Department track the viability of the commercial of one of these properties?
Russ says the Finance Department of the City and the City Manager's office track the performance of sales and properties taxes. There are aggregate summaries and individual summaries of tax performance. In terms of economic diluting, in terms of upper floors and back portion of a site, the street front in this ordinance can be retail or office. The front and most vibrant part of the building is saved for commercial activities. Staff does not feel the upper floors are viable for retail.

Brauneis asks from a water savings perspective typically, the closer the feedback loop to the occupant, the better the water savings. If people living a space know how much water they've used the previous month or over the course of a year, there will be more water savings rather than hidden within one bill to a landlord. A way to minimize the fees associated with it is probably what is driving a lot of the concern. Separate meters for two very different occupant types are more appropriate.
Russ says Staff will bring this concern up as the ordinance is still being drafted and reviewed by the Finance Director and the Public Works Director. The intent of this is the owner is the same person seeing the bill. The reality is we can't discriminate that aspect in Chapter 17 of who rents and who owns. Can we make sure that the tenants of the buildings somehow receive the bill? Staff will work with it while still lowering the fees. The commercial rates are based on water usage. They believe office use is comparable to a residential use. The rate may not be different on this scale of investment. If a restaurant were to go in, they would be very different commercial rates because they are scalable on the commercial side, but not the residential side. We want to protect the City's water supply by making sure we charge a commercial rate.

Moline asks about the maximum parking requirement for the one-bedroom unit? 1.25 spaces?
Russ says one space is maximum. Staff is trying to put a parking maximum in Downtown because we don't want to see parking in a pedestrian-oriented environment. For this particular ordinance, he recommends deleting the 1.25 space because it is "odd" for a one bedroom. This was copied out of the Downtown Code where single units are illegal. Staff recommends 2 spaces because most residents have two cars.

Russell asks about parking. He wants maximum parking limits. The expectation is that the one bedroom needs one space and the two bedroom needs two spaces. This is on-site parking that will be addressed through a shared parking agreement, shared parking between the commercial and residential unit.
Russ says Staff is allowing them to be reduced in a shared parking environment. One space for 500 feet of commercial development. In commercial, there is a 998 square foot waiver for the first 1,000 square feet. If it is a 2,000 square foot building, they would owe two parking spaces. They would also owe the residential parking. If they demonstrate a shared parking agreement, that would give Staff assurance that if the owner of the shop is actually there, Staff would reduce the parking requirement accordingly.

Russell asks about the residential portion, when there is tight parking, high turnover really helps. He asks if introducing the Live-Work raises the likelihood that someone will park a car and leave it there. There are some streets where you can't do that. He doesn't know about side streets and residential streets. Setting a maximum for a site only allows a certain amount of parking, so other options will be sought. Are we creating a problem where there isn't adequate parking on-site and people try to find other accommodations for their vehicle in Old Town? Can we mitigate that?
Russ says these are the parking standards of Downtown. We are not creating anything different.
Russell asks will we accept fee in lieu for parking?
Russ says that is a Downtown ordinance. This particular use does not provide that option.

Public Comment:
Debby Fahey, 1118 W Enclave Circle, Louisville, CO
She likes the idea of a residential-commercial combination on Main Street with a single family unit. Her concern is someone buying two or three adjoining businesses, combining them into one large single front, and then building a unit behind it. When giving the approval for zoning, can there be a tie where the owner has to maintain at least the minimum amount of retail square footage that existed in the old building? She is concerned that new buildings will be built and that old shops will be torn down. Perhaps this can be an incentive for landmarking; if you landmark, you can put a single family unit on the back.

Andy Johnson, 920 Lincoln Avenue, Louisville, CO
He is in support of this ordinance. He thinks this is a self-correction from modern zoning and separation of uses across our town and landscape. This is a use type that is no stranger to towns across the United States, and certainly not to the heritage of Louisville. Troy Russ demonstrated this with a few site plans taken from very old maps. He supports the inclusion of the MU district. While there are certain parts of Louisville that are designated MU, he thinks some of the newer parts are intriguing to keep as a consideration. One of the most important things this ordinance does in bringing Live-Work back to Louisville is that it offers a diversification of building types within our Downtown. He thinks the way it is written is very well done. It promotes and encourages the landmarking of existing building, which is very important, particularly for our iconic Main Street. It also protects our Main Street from future development in that we will probably not see another three story building on our Main Street. The viability economically is retail, restaurants, and offices to some degree. The scale of what happens on Main Street is somewhat protected by having the use be defined as commercial on Main Street and residential in back. He thinks this is a really important distinction worth of further thought and consideration. When you are thinking about the implication architecturally on Main Street, he thinks the scale of buildings will remain low. Also with a Live-Work model, there typically is a diversification within the sites so the commercial buildings will have a certain look. The residential building is probably going to be something different. He thinks it offers a unique character, both to Main Street, Front Street, and our alleys as well. The parking is obviously an important consideration. The waiver for landmarked buildings is very important. It is a great bone to throw at commercial building owners. It is also a great bone to throw at people who buy a commercial building and consider redevelopment. Parking is expensive to buy. Parking obviously takes up a lot of real estate and takes away from the economic vitality of smaller properties around Old Town. He does have a specific concern that he doesn't think the PC can address but it does come out of the Municipal Code. It is Chapter 13 which deals with water. With a Live-Work project, he thinks it is important to allow a single owner to have a single tap and a single bill. If you have the same owner paying the water bill, it can be structured for the ease of billing from the City's perspective. The issue can be remedied by having a single bill, look at it as a commercial water tap, and do it based on demand. He knows the PC won't address it, but he does want it part of public record to be read at a later date. This is something

that will correct moderate planning for Downtown. He thanks Planning for bringing it to the table.

Sherry Sommer, 910 S Palisade Court, Louisville, CO
She has a question more than a comment. Will this change the footprint of buildings and the height of buildings? Will it remain about the same? If it does, she is concerned the Downtown area would feel very dense if it allows larger footprints.
Russ says there is nothing in the ordinance that modifies the yard bulk standards. The floor area allowances would be unchanged from what is currently allowed. This simply gives another economic opportunity for investment and he believes it is a strategy for smaller parcels to retain commercial structures up front. It would not change heights. It would allow a lower density than is currently allowed to be considered. Currently, multi-family is allowed to be considered and single family is not allowed to be considered as part of the Downtown Zoning District. He does not believe it will change the intensity of Downtown. The effect will actually change the difference. It will give economic opportunity for lower density to have viable uses. Staff knows that what is done to Chapter 17 will affect Chapter 13. Staff does not believe this affects this particular issue in Chapter 16, but Staff is aware of Chapter 13. Draft ordinances have been sent to the Finance Director who runs utility billing as well as Water Engineer and Public Works Director modifying some of the water ordinances that require separate distinct taps. Under one owner such as a shopping center with multiple tenants, the Code reads every premise needs a separate connection. There is no ordinance for Live-Work. The Finance Director has reviewed it from a public utility billing perspective and is comfortable requiring only one tap to serve a building. The Water and Resource Engineer as well as the City's Public Works Director both feel comfortable that this would not impact water supply. There is consensus among all of them that the water rates would be charged at a commercial rate, not residential rate. These types of ordinances will be married under City Council.

Camilla W. Donnelly, 2366 Senator Court, Louisville, CO
She may be confused but the Downtown has grown in a nice way over the last 10-12 years. She wonders if we might have more control if people have to "ask" to do things, rather than start tweaking with it. Perhaps she is misunderstanding things but we are suddenly trying to do Work-Family rather than focusing on the commercial. She looks at Bittersweet and how they moved back with a lot of commercial things that bring people from outside. This is where we get our tax dollars. She thinks most people don't work in Louisville, but work outside. It seems like a strange thing to start doing now.

Barney Funk, 1104 Hillside Lane, Louisville, CO
He thinks this is an excellent idea. There is a town in western PA called Ligonier, PA. It has Work-Live standards in its town. In the center of town, there is a Main Street coming in north-south, and a street running east-west, and they have Live-Work homes on the Main Streets and the sub-streets leading in. It has created Work-Life home environments where the owner of the property and the resident of the Live part own a piano store giving lessons, an antique store, a gift store, and a florist. There are little stores east and west, north and south, and it brings in a lot of additional sales tax to the community. It brings in a home environment. He didn't think Louisville was thinking about it, but he compliments you. To do any research, the zip code is 15658, Ligonier, PA. It is 60 miles east of Pittsburgh. They have this and it is working very well.

Laurie Bija, 3169 Oak Circle North, Broomfield, CO
She is attending for a school assignment. She highly supports this. It supports a reduction of sprawl for people coming into Louisville and causing more traffic and commotion. If they can live where they are actually employed, it is very awesome. Well done, Louisville.

Closed Public Hearing and discussion by Commission:

Brauneis is in support of Live-Work. With the advent of smart homes and monitoring different things, the water issue has the potential to provide the capability for people in these units to have information come to them. At a minimum, if we can't cost effectively require separate meters for two very different uses, we can require from a plumbing perspective that the two different areas within a building can be sub-metered, not within the City purview but outside of City purview, so the pipes are in place. Long term, we talk about Louisville having plenty of water but when we're in a 10 year drought seen elsewhere in the country, it becomes a real issue. With the growth of electronic smart homes, this is something to be made available with minimal cost at this time. He thinks Live-Work makes a lot of sense. The question was raised about why we want to tinker with this now? Actually, it goes back to 1967 when we tinkered with it. While organically we have a nice feel to Downtown, this change doesn't threaten that organic feel, but rather it supports continued occupancy following those traditional patterns. As far as the other areas Mr. Stewart raised in his email, he doesn't have as much of an issue with it as he does. He is comfortable moving forward as it have been written and not working to limit only to our historic Downtown area. If builders and developers were to approach the PC with projects in those other areas on South Boulder Road and McCaslin, if we feel as a City it doesn't work well there, we would find ways to deal with it at the time. He is not convinced we need to exclude South Boulder Road and McCaslin from this. He is excited by it.

Moline is in support. He can foresee this playing out project by project basis because we have had some projects in Downtown apply to this issue. He has trouble visualizing how it will play out across Downtown. It makes him agree with Mr. Stewart's comment and think that trying it in Downtown is a good starting place to see how it works. It is an interesting concept and excited to give it a shot. He is comfortable with parking.

O'Connell is in support. She thanks Commissioner Brauneis for thinking long term. She is in favor with the way it is written and no issue with the parking.

Rice wants the property tax issue resolved before he votes on it because to him, it is a significant issue. He understands the intent of the ordinance which is, conceptually, to foster a Live-Work environment for people. If someone has a commercial property and is living on-site, this is the historical context alluded to in introducing the measure. He has a real question about whether it will really play out. Instead, what will happen is this will be an opportunity for a commercial property owner to add that residential component. He is fully cognizant of the reasons of why you wouldn't want to be involved in an enforcement situation where you would have to link the two. In fact, he doesn't know if you can do that. In terms of the practical side, believing that this will foster a lot of people to own commercial real estate Downtown and then live there on-site, he has real reservations about whether that would happen in reality. That reservation is less important to him than the property tax issue. He is concerned about that and knows the ramifications of that before he votes.

Russell is in support and he likes this policy. He thinks we will be refining and correcting it as it progresses. There could be some unintended consequences. He is not worried about the disconnected use of the residential. Anything that creates value for owners in a way that is compatible with community expectations is great. Anything that adds a residential population to Downtown recognizing that any number of these new residents will come to us and complain about patios that were there when they moved in, that is fine and part of life in Downtown. He thinks it is a great program.

Pritchard asks the fellow Commissioners in regard to Comm. Rice's comments, do you feel comfortable enough that this matter can be voted on this evening or do you feel the issue on property taxes needs to be addressed further before you could feel comfortable. He believes Comm. Rice has a valid point for clarification.

Brauneis appreciates Comm. Rice raising the point. It is good to have it as part of the conversation. He is not convinced at this point that it will make or break his vote on the proposal. He is comfortable believing that it is not hugely significant from a revenue standpoint for the City.

Moline is agreement with Comm. Brauneis. He thinks it is an important consideration, but he is comfortable moving it on and letting City Council address it with any additional information they may have at their hearing.

O'Connell comfortable moving forward. Russell comfortable moving forward.
Pritchard says that he wants Comm. Rice's concerns are noted to City Council and an answer is prepared for him.

Russ says that this is one of many potential dynamos of any single ordinance much like the water ordinance. Chapter 3 in the Municipal Code governs revenue and finance of the City and that is why it was referred to the Finance Director. If there are necessary modifications to clarify property taxes and how they work, that would be an ordinance brought forward to City Council. Planning Commission does not have jurisdiction. Russ can pass PC concern on to the Finance Director, but he assures Comm. Rice that the Finance Director has reviewed this ordinance.

Rice clarifies that the Finance Director's answer that there was "zero" fiscal impact. What was the answer? What is the need to move forward now as opposed to in a month? Is this something that has time sensitivity to it?

Russ states there was no net change and no significant impact to the fiscal resources to the City. There is some private interest to it from a City perspective, so we want to get it right. If there are concerns that you think affect Chapter 17 in the LMC, I would recommend you wait. Chapter 3 is the Finance and Revenue section of the City and it is under the City Council subcommittee called the Finance Committee that reviews all recommended ordinances that impact that portion of the City. We can delay this if it is important to you.

Rice clarifies that the PC is voting on land use under Chapter 17 and not anything having to do with fiscal impact. Why is fiscal impact part of our discussion when it has nothing to do with what PC is considering?

Russ says the City Manager has directed that whenever there is communication affecting the Municipal Code or change in zoning or amendment to the Comp Plan, Staff must document for information purposes. It is continued to City Council who has a direct job in assessing it.

Motion made by Brauneis to approve Resolution No. 13, Series 2015, seconded by O'Connell. Roll call vote.

Name	Vote
Chris Pritchard	Yes
Jeff Moline	Yes
Ann O'Connell	Yes
Cary Tengler	N/A
Steve Brauneis	Yes
Scott Russell	Yes
Tom Rice	Yes with reservations passed to City Council
Motion passed/failed:	Pass

Motion passes 6-0.

City of Louisville
COLORADO • SINCE 1878

CITY COUNCIL COMMUNICATION
AGENDA ITEM 8N

SUBJECT: **ORDINANCE NO. 1692, SERIES 2015 – AN ORDINANCE FOR THE REGULATION OF TRAFFIC BY THE CITY OF LOUISVILLE, COLORADO; AMENDING CERTAIN SECTIONS OF THE LOUISVILLE MUNICIPAL CODE CONCERNING FLASHING YELLOW SIGNALS AND DRIVING THROUGH PRIVATE PROPERTY – 1st Reading – Set Public Hearing 05/19/2015**

DATE: **MAY 5, 2015**

PRESENTED BY: **KURT KOWAR, PUBLIC WORKS**

SUMMARY:
The attached ordinance includes two provisions amending the City's Traffic Code. The two additions are as follows:

Flashing Yellow Light
The first change would amend Section 10.04.020 to include the regulatory meaning for the flashing yellow arrow traffic signal. On March 20, 2006, the Federal Highway administration (FHWA) issued a memorandum granting interim approval for the optional use of the flashing yellow arrow as a means of signaling permissive left turns. The flashing yellow arrow traffic signal indication was subsequently incorporated into the 2009 Edition of the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), as published by the FHWA. Since the flashing yellow arrow is now the prescribed national standard traffic signal indication to be used where permissive turns are allowed from dedicated turn lanes, it is necessary to update Section 10.04.020 to include the meaning for this type of signal indication. This new flashing yellow arrow will be used at new traffic signals including the installation planned for the Dillon Rd. and St. Andrews Lane intersection. The exact text of the provision is set forth in the ordinance.

Driving Through Private Property or Driveways
The second change would amend Section 10.04.020 to make driving across private property from a public street to another public way unlawful. For example, drivers often cut across private property or driveways in order to avoid a traffic signal or stop sign in an effort to save time or avoid traffic. To further protect public health and safety, staff recommends adding this prohibition to the City's Model Traffic Code. The exact text of the provision is set forth in the attached ordinance.

FISCAL IMPACT: None.

RECOMMENDATION:
Staff recommends the City Council approve Ordinance No. 1692, Series 2015 on first reading and set a public hearing for May 19, 2015.

ATTACHMENT(S):

1. Ordinance No. 1692, Series 2015

ORDINANCE NO. 1692
SERIES 2015

AN ORDINANCE FOR THE REGULATION OF TRAFFIC BY THE CITY OF LOUISVILLE, COLORADO; AMENDING CERTAIN SECTIONS OF THE LOUISVILLE MUNICIPAL CODE CONCERNING FLASHING YELLOW SIGNALS AND DRIVING THROUGH PRIVATE PROPERTY.

WHEREAS, pursuant to section 42-4-110(1)(b), C.R.S., municipalities may in the manner prescribed by article 16 of title 31, C.R.S., adopt by reference all or any part of a model municipal traffic code that embodies the rules of the road and vehicle requirements as set out in the state traffic laws; and

WHEREAS, the City has adopted the 2010 edition of the Model Traffic Code for Colorado promulgated and published by the Colorado Department of Transportation for the purpose of providing a system of traffic regulations consistent with state law and generally conforming to similar regulations throughout the state and the nation; and

WHEREAS, the City has adopted certain additions, amendments and deletions to specific sections of Parts 1-19 of the Model Traffic Code to further clarify traffic laws; and

WHEREAS, the Federal Highway Administration published the 2009 Edition of the Manual on Uniform Traffic Control Devices for Streets and Highways defining and prescribing a flashing yellow arrow as a national traffic signal indication to be used where permissive turns are allowed from dedicated turn lanes; and

WHEREAS, the City Council desires to amend the Louisville Municipal Code to add the regulatory meaning of a flashing yellow arrow and to further protect public health and safety by prohibiting drivers from driving across private property to avoid traffic signals or to save time.

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

Section 1. Section 10.04.020 of the Louisville Municipal Code is hereby amended by the addition of the following provisions, which shall be added to such section in numerical order:

Section 904, Flashing Yellow Signal, is added to read as follows:

904. Flashing Yellow Signal,

(1) It is unlawful to proceed on a yellow flashing arrow unless it is safe to do so. A driver facing a traffic control signal when the yellow arrow lens of the signal is illuminated with rapid intermittent flashes is warned that opposing traffic has the right of way and the driver should proceed with caution.

(2) A person who operates a motor vehicle in violation of this section commits a class B traffic infraction.

(3) This section does not apply to railroad signs or signals.

Section 1416, Driving Through Private Property or Driveways, is added to read as follows:

1416. Driving Through Private Property or Driveways,

(1) It is unlawful for any person to drive from a public street or public way of this City over, across or through any private property or driveway to avoid traffic-control signals, stop signs, or other traffic-control devices or as a route or shortcut from one public street or public way to another.

(2) As used in this section, "Private Property" includes but is not limited to any property not dedicated as a public street or public way, alley, right-of-way or easement.

(3) A person who operates a motor vehicle in violation of this section commits a class B traffic infraction.

Section 2. If any section, paragraph, sentence, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 3. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 4. The repeal or modification of any provision of the Municipal Code of the City of Louisville by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

INTRODUCED, READ, PASSED ON FIRST READING, AND ORDERED PUBLISHED this _____ day of _____, 2015.

_____
Robert P. Muckle, Mayor

ATTEST:

_____
Nancy Varra, City Clerk

APPROVED AS TO FORM:

_____
Light | Kelly, P.C.
City Attorney

PASSED AND ADOPTED ON SECOND AND FINAL READING, this _____ day of _____, 2015.

_____
Robert P. Muckle, Mayor

ATTEST:

_____
Nancy Varra, City Clerk

City of Louisville
COLORADO • SINCE 1878

City Council
Meeting Packet
May 5, 2015

Addendum #1
Items presented at the meeting.

Exhibit B-2
Service Call Request Report Template

SERVICE CALL REQUESTS	Quarter Ending

Service Problem by Category:

Headend

Includes:

- Program Supplier (Fault of Programmer)
- Equipment (All Non-Digital Headend Equipment From Antenna To Headend Output, Excluding Any Fiber Equipment)
- Electrical Service Failure
- Headend In The Sky Related
- Digital Headend
- Comcast Internet Related (Headend Equipment Only, Plant Excluded)
- High Speed Data Headend (Plant Excluded)
- Comcast Local Network Services Provisioned Switch
- Host Digital Terminal Problem
- Navigator (Programming Not Matching Guide on Digital Cable Terminal)

Cut or Malfunctioning Fiber Plant

Includes:

- Optical Transmitter, Optical Receiver And Optical Connector
- Fiber Cable

Cut or Malfunctioning Coaxial Plant

Includes:

- Power Supply And Power Pack
- Trunk Amplifiers And Distribution Amplifiers
- Node
- Underground And Aerial Coaxial Cable
- Distribution Connectors And Distribution DC/Splitters
- Fuse
- Commercial Power
- Taps
- Power Inserter
- Amplifier Levels
- Hardware (Strand, Lashing Wire, 3-Bolt Clamp, Pedestal, Etc.)
- Cut, Damaged Or Vandalized Coaxial Cable

Bad or Cut House Drop

Includes:

- Vandalized Drop
- Repair Or Replace Underground Cable
- Repair Or Replace Aerial Cable
- Connector-Drop Out
- Bonding (Includes bonding block, bond wire and bond connector)
- DC/Splitter-Drop Out

Hardware-Drop (P-Hook, Q-Clamp, Etc.)

Converter, Addressable

Includes:

Addressable Converter And Addressable Remote

Addressable Converter Needs To Be Re-Authorized

Converter, Non-Addressable

Includes:

Non-Addressable Converter And Non-Addressable Remote

Inside Wiring

Includes:

Cable Drop Inside House

Connector-Drop In (Inside Drop)

Passives (Includes A/B Switches, Splitters, DC's, etc. Found Inside Home)

Wireless Phone Jack

Repair or Replace Digital Cable Terminal Telephone Line Return Path

Customer Equipment

Includes:

Includes Customer Owned TV, VCR, Telephone, Computer, House Amplifier, Converter, DMX, Remotes, Ingenious Modem, SEGA, Stereo, Etc.

Total Service Call Requests: 0

Meredyth Muth

From: Alan Sobel <alansobel@earthnet.net>
Sent: Sunday, May 3, 2015 12:04 PM
To: neighbors@lists.riseup.net; louisvillecolorado2@yahoogroups.com; cctv@lists.riseup.net; City Council; Planning
Subject: Cable Franchise Update: Cable Customers Not Notified

Friends & Neighbors,

There are about 4,500 cable customers in Louisville.

That's four thousand five hundred customers.

Yet due to the efforts of the Louisville City Council, Comcast and the Boulder Daily Camera, the vast majority of them have no clue that council will be voting on the final approval of the new cable franchise this Tuesday night.

None of these 3 entities thought it necessary, or important, to notify or involve the people most directly concerned with and most directly affected by the new franchise.

Alan Sobel

Here is the response from the City to a Colorado Open Records Act request for information about notifications sent to cable customers by the City and the cable company:

"The City did not send a specific notice to each Comcast customer regarding the franchise public hearing. As with all of our public hearings the documents are available on the City's web site in the City Council packet. A notice was placed on the City's web site and an email blast was sent to the 341 people registered for the City Council news eNotifications.

I do not know if Comcast sent a notice to their customers. They have not provided me with a copy of any notice of this type."

[The cable company is required by law to provide the City with copies of any notices of this type that it sends to cable customers. The City could also have just called the cable person they have been dealing with on franchise matters to verify if they had notified their customers, but apparently preferred to give this answer instead.]

Meredyth Muth

From: Aquiles <adlagrave@gmail.com>
Sent: Sunday, May 3, 2015 12:24 PM
To: City Council; louisvillecolorado2@yahoogroups.com; Alan Sobel; neighbors@lists.riseup.net; Planning; cctv@lists.riseup.net
Cc: City Council
Subject: Re: Cable Franchise Update: Cable Customers Not Notified

Alan,

As you know I've long been a champion of proper notification. Earlier this year I participated in the communication task force which identified endemic and systemic failures in the city's outreach and public notice process. One which the city's attorney himself publicly criticized as "non-effective" at an HPC meeting and a comment which staff refused to enter into the public meeting records (I suggest you ask to hear the recording from the only meeting last year for which the HPC did not to approve the minutes).

At that time the council not only chose to completely ignore the recommendations of the task force they appointed but further to my recollection several council members, let by Mr. Dalton publicly denied that in their studied opinion any issues existed. It would seem to me that there exists an atmosphere in council of wanton disregard and denial on this issue which can only be cured by a voter initiative, as council has proven itself peculiarly uninterested in comprehensive reform.

Sincerely,

Aquiles La Grave

MailDeck
Better email for iOS

------ In Reply To: ------
From: Alan Sobel <alansobel@earthnet.net>
To: neighbors@lists.riseup.net <neighbors@lists.riseup.net>, louisvillecolorado2@yahoogroups.com <louisvillecolorado2@yahoogroups.com>, City Council <council@louisvilleco.gov>, cctv@lists.riseup.net <cctv@lists.riseup.net>, Planning <planning@louisvilleco.gov>
Sent: Sunday, May 03, 2015 12:03
Subject: Cable Franchise Update: Cable Customers Not Notified

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Meredyth Muth

From:	Lawrence Crowley <magic@ecentral.com>
Sent:	Sunday, May 3, 2015 12:51 PM
To:	Alan Sobel
Cc:	neighbors@lists.riseup.net; louisvillecolorado2@yahoogroups.com; cctv@lists.riseup.net; City Council; Planning
Subject:	Re: [cctv] Cable Franchise Update: Cable Customers Not Notified

Alan,

Does anybody else care? I am not sensing irate citizens pounding on City Council doors or ringing Council phones off the hook. Once again, thank you for keeping this where we can see it.

Larry

On May 3, 2015, at 12:03 PM, Alan Sobel wrote:

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Meredyth Muth

From: Bollinger <bolo@ecentral.com>
Sent: Sunday, May 3, 2015 3:59 PM
To: Lawrence Crowley; Alan Sobel
Cc: Neighbors Neighbors; Louisville Citizens Issues; CCTV54List TV; City Council; Planning
Subject: Re: [neighbors] [cctv] Cable Franchise Update: Cable Customers Not Notified

Hi all:

One potentially important detail on the Lsvl cable franchise contract relates to ensuring that future public access TV can revive again.
That is when the time is ripe and when there is an ongoing organization company that can manage all its financial & technical challenges. I've heard there is a real possibility that this could happen for a East Boulder County public access TV station being available again.

Specifically, the Franchise contract would need to maintain a sufficiently large PEG funding, at the very minimum.
Best would be to budget a modest amount for the operation & management of a public access TV also, per Comcast & its Franchise.
There are probably significantly more contract details needed for this, although I know nothing about the Lsvl cable franchise.

* Who in Louisville might like to ask about and encourage Franchise contract details that would enable a future reviving of the public access TV station?

Thanks for your concerns & help!
John (J) Bollinger
Lafayette

On May 3, 2015, at 12:51 PM, Lawrence Crowley wrote:

Alan,

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Larry

On May 3, 2015, at 12:03 PM, Alan Sobel wrote:

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Meredyth Muth

From: sdasdona@juno.com
Sent: Monday, May 4, 2015 6:56 AM
To: alansobel@earthnet.net
Cc: neighbors@lists.riseup.net; louisvillecolorado2@yahoogroups.com; cctv@lists.riseup.net; City Council; Planning
Subject: Re: [neighbors] Cable Franchise Update: Cable Customers Not Notified
Attachments: [neighbors] Cable Franchise Update: Cable Customers Not Notified

Since this site "Neighbors" is unwilling to post dissenting points of view I am asking to be removed from your list. Freedom and democracy require open dialog of all views. Randy Luallin

Its time to order Maroons a Human Epic. Go to Amazon.com and enter ISB no 1-4392-4275-5 visit site http://Maroons.yolasite.com Or just call me 303=665=4995

"Rightful liberty is unobstructed action according to our will within limits drawn around us by the equal rights of others. I do not add 'within the limits of the law,' because the law is often but the tyrant's will, and always so when it violates the rights of the individual."
Thomas Jefferson

Please note: message attached

From: Alan Sobel <alansobel@earthnet.net>
To: neighbors@lists.riseup.net, louisvillecolorado2@yahoogroups.com, cctv@lists.riseup.net, City Council <council@louisvilleco.gov>, Planning <planning@louisvilleco.gov>
Subject: [neighbors] Cable Franchise Update: Cable Customers Not Notified
Date: Sun, 3 May 2015 12:03:57 -0600

Nancy Varra

From: J. Erik Hartronft, AIA <erik@hapcdesign.com>
Sent: Tuesday, May 05, 2015 9:04 AM
To: City Council
Cc: Malcolm Fleming; Troy Russ; Kurt Kowar
Subject: FW: DRAFT Memo to Council regarding Railroad lease area

Mayor, and City Council,

We reviewed the Council packet for Tuesday 5/5/15 and noted Agenda Item 8E regarding the Agreement between the City and BNSF for the South Street Underpass. We understand that the focus of that resolution, and related agreements is regarding the actual underpass, and improvements adjacent to it. However, the safety fence and/or lease of railroad right of way from Griffith south to the area adjacent to the Grain Elevator and 500 County Road is also included in the exhibits. The staff report indicates: "The exact parking area to be memorialized in the lease agreement has not been determined, but is shown generally on the fence exhibit." That exhibit indicates a fence location near the South Street underpass to Pine Street at 18 feet from centerline of the tracks, and a fence location south of Pine Street to the Grain Elevator site at 25 feet from centerline of the tracks.

We do not understand why the available leased area for parking is proposed to be less to the south of Pine Street, but clearly the City, or adjacent property owners will be able to provide more parking if the lease area is 32' wide instead of 25' wide. Specifically related to our PUD for the Mill Site Subdivision, a portion of the parking we are planning, as well as a drive lane around the east side of the grain elevator is based on an existing lease that RCC has with the railroad, which is 28' wide from the east property line (22' from centerline of tracks). We specifically indicated to staff that if the City was able to negotiate a lease that provided more clearance (32' width) than the existing lease (28' width) that we would be interested in pursuing that in conjunction with the City. A leased area of 25 feet in width is not adequate for the parking we have currently planned along the existing 28 foot wide lease area. Therefore, we object to the proposed location of the fence and lease area shown adjacent to the proposed Mill Site Subdivision in these documents. Instead we would again request that the fence location be consistent north and south of Pine Street at 18' from the centerline of the tracks.

We are surprised to be seeing this exhibit for the first time in this Council packet for action at the 5/5/15 Council meeting. We have been in communication for over a year with planning staff regarding the existing railroad ROW lease with RCC, and our desire to expand that leased area to the north. As you know, this has been included in our preliminary PUD and is also included in our final PUD. We have requested to be included on any discussions of the ROW lease area adjacent to the proposed Mill Site PUD, but have never been included in any of these discussions, or been asked to give input to the proposal that is included in your packet regarding the railroad lease area and fence location. We are very concerned that discussions have now progressed without consideration of our input which will impact our plans for the Mill Site. We would request that staff be directed to work with us to accommodate the proposed Mill Site PUD as well as the existing railroad lease area into any agreements, planning or engineering regarding the proposed lease area and fence location adjacent to the proposed Mill Site Subdivision.

We do applaud the City of Louisville for being proactive regarding the Downtown parking situation and working through this somewhat difficult task of negotiating with BNSF. We know that has taken a lot of time and effort to get to this point, and we believe the benefits to Downtown will be significant if this can be properly planned. Thank you for your attention to this matter.

Erik Hartronft Randy Caranci

Manager Manager

Louisville Mill Site LLC

950 Spruce Street, Suite 1A

Louisville, CO 80027

p. 303.673.9304

f. 303.673.9319

erik@hapcdesign.com

randy@carancicorp.com

Copy to: Malcolm Fleming, Troy Russ, Kurt Kowar