

# **City Council**

## **Agenda**

**TUESDAY, FEBRUARY 5, 2013**  
**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**

It is requested that public comments be limited to 3 minutes. When several people wish to speak on the same position on a given item, they are requested to 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 January 22, 2013 Minutes**
- C. Approval of 2013 Annual Fuel Purchase**
- D. Approval of 2013 Chemical Purchase for Water Treatment Plant Facilities**
- E. Approval of Assignment of Ricco's Burritos Business Assistance Agreement to MC Sterling, LLP**
- F. Approval of Resolution No. 6, Series 2013 – A Resolution Accepting the Donation of and Quit Claim Deed for a Remnant Parcel Located in Section 8, Township 1 South, Range 69 West of the 6<sup>th</sup> P.M. and Generally Identified as 0 Harper Street in Louisville**
- G. Approval of Resolution No. 7, Series 2013 – A Resolution Approving Agreements Between the City of Louisville and Dutko Washington, LLC and the City of Louisville and Boyagian Consulting, LLC to Furnish Lobbyist Services to the US 36 Mayors and Commissioners Coalition**

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**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.

**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. BI-MONTHLY ECONOMIC DEVELOPMENT UPDATE**

Staff Presentation

Public Comments (Please limit to three minutes each)

Council Questions & Comments

Action

**B. DISCUSSION/DIRECTION/ACTION – MAIN STREET PATIO DESIGN CONTRACT**

Staff Presentation

Public Comments (Please limit to three minutes each)

Council Questions & Comments

Action

**C. RESOLUTION NO. 8, SERIES 2013 – A RESOLUTION APPROVING AN AMENDMENT TO A FINAL SUBDIVISION PLAT AND FINAL PLANNED UNIT DEVELOPMENT TO ALLOW FOR STEEL RANCH MARKETPLACE – A COMMERCIAL/RETAIL DEVELOPMENT *continued from 1/08/2013***

Staff Presentation

Public Comments (Please limit to three minutes each)

Council Questions & Comments

Action

**D. DISCUSSION/DIRECTION/ACTION – CITY OF LOUISVILLE MEMBERSHIP IN THE COLORADO COMMUNICATIONS AND UTILITY ALLIANCE**

Staff Presentation

Public Comments (Please limit to three minutes each)

Council Questions & Comments

Action

- E. ORDINANCE NO. 1626, SERIES 2013 – AN ORDINANCE EXTENDING THE TERMS OF A NONEXCLUSIVE FRANCHISE GRANTED BY THE CITY OF LOUISVILLE, COLORADO 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 – 1<sup>st</sup> Reading – Set Public Hearing 02/19/2013**

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: 81666 Period: 01/17/13

Vendor/ Remit#	Invoice Number	Description	Invoice Date	Due Date	Discount Date	Invoice Amount	Discount Amount	Payment Amount	Check Amount
FOR BANK ACCOUNT:			4 FIRST NATIONAL BANK OF COLORAD			Control Disbursement Account			
13640-1	CHILD SUPPORT ENFORCE OFFICE								
	011813	EMPLOYEE GARNISHMENT PP#02	01/18/13	02/17/13	01/18/13	255.23	0.00	255.23	255.23
11298-1	DELTA DENTAL OF COLORADO								
	DELTA0213	#007562-0000 FEB 13 EMPL PREM	01/15/13	02/14/13	01/15/13	10,774.33	0.00	10,774.33	10,774.33
6455-1	KAISER PERMANENTE								
	0014791656	05920-01-16 FEB 13 EMPLOY PREM	01/07/13	02/06/13	01/07/13	110,395.73	0.00	110,395.73	110,395.73
10951-1	PINNACOL ASSURANCE								
	16496373	WORKERS COMP DEDUCTIBLE	01/03/13	02/02/13	01/03/13	802.23	0.00	802.23	802.23
55	BOULDER CREEK BUILDERS								
	U!00000842	17764/462001550: UTILITY REFUN	01/15/13	01/15/13	01/15/13	7.82	0.00	7.82	
	U!00000842	17764/462001550: UTILITY REFUN	01/15/13	01/15/13	01/15/13	9.13	0.00	9.13	
	U!00000842	17764/462001550: UTILITY REFUN	01/15/13	01/15/13	01/15/13	2.61	0.00	2.61	
	U!00000842	17764/462001550: UTILITY REFUN	01/15/13	01/15/13	01/15/13	7.82	0.00	7.82	27.38
BANK TOTAL PAYMENTS						122,254.90	0.00	122,254.90	122,254.90
GRAND TOTAL PAYMENTS						122,254.90	0.00	122,254.90	122,254.90

City of Louisville  
 Cash Disbursement Edit List

Batch: 81736 Period: 01/24/13

Vendor/ Remit#	Invoice Number	Description	Invoice Date	Due Date	Discount Date	Invoice Amount	Discount Amount	Payment Amount	Check Amount
FOR BANK ACCOUNT:			4 FIRST NATIONAL BANK OF COLORAD			Control Disbursement Account			
11343-1	BRIDGET BACON 121812	EXPENSE REPORT 2/13-10/29/12	12/18/12	01/17/13	12/18/12	140.19	0.00	140.19	140.19
11094-1	WESTERN DISPOSAL SERVICES 010113RES	DEC 12 RESIDENTIAL TRASH SERV	01/01/13	01/31/13	01/01/13	93,702.19	0.00	93,702.19	93,702.19
11371-1	XCEL ENERGY 352504515	DEC 12 STREET LIGHTS	01/02/13	02/01/13	01/02/13	39,131.49	0.00	39,131.49	
	352505065	DEC 12 TRAFFIC LIGHTS	01/02/13	02/01/13	01/02/13	1,250.12	0.00	1,250.12	
	352505931	DEC 12 FLASHERS	01/02/13	02/01/13	01/02/13	5.97	0.00	5.97	40,387.58
BANK TOTAL PAYMENTS						134,229.96	0.00	134,229.96	134,229.96
GRAND TOTAL PAYMENTS						134,229.96	0.00	134,229.96	134,229.96

City of Louisville  
Cash Disbursement Edit List

Batch: 81737 Period: 01/24/13

Vendor/ Remit#	Invoice Number	Description	Invoice Date	Due Date	Discount Date	Invoice Amount	Discount Amount	Payment Amount	Check Amount
FOR BANK ACCOUNT: 4 FIRST NATIONAL BANK OF COLORAD			Control Disbursement Account						
12668-1	FITNESS SYSTEMS INC 6568	KEISER M3 SPIN BIKE 50% DOWN	01/18/13	02/17/13	01/18/13	937.50	0.00	937.50	937.50
7735-1	LINCOLN FINANCIAL GROUP LIFE0213	000010008469 FEB 13 LIFE/AD&D	02/01/13	03/03/13	02/01/13	4,595.42	0.00	4,595.42	
	LTD0213	000010008470 FEB 13 LTD PREM	02/01/13	03/03/13	02/01/13	2,785.33	0.00	2,785.33	7,380.75
6559-1	METRO CITY & COUNTY MANAGEMENT ASSOC 010113	2013 MEMBERSHIP FLEMING/BALSER	01/01/13	01/31/13	01/01/13	150.00	0.00	150.00	150.00
1131-1	MINES AND ASSOCIATES PC 020113-41	FEB 13 EAP PREMIUMS	02/01/13	03/03/13	02/01/13	414.00	0.00	414.00	414.00
55	JON ANDERSON U!00000843	335/134064111: UTILITY REFUND	01/18/13	01/18/13	01/18/13	16.78	0.00	16.78	
	U!00000843	335/134064111: UTILITY REFUND	01/18/13	01/18/13	01/18/13	19.60	0.00	19.60	
	U!00000843	335/134064111: UTILITY REFUND	01/18/13	01/18/13	01/18/13	5.59	0.00	5.59	
	U!00000843	335/134064111: UTILITY REFUND	01/18/13	01/18/13	01/18/13	16.78	0.00	16.78	58.75
55	CAREN LEIGH PILZ U!00000844	6245/443018401: UTILITY REFUND	01/18/13	01/18/13	01/18/13	7.34	0.00	7.34	7.34
8442-1	VISION SERVICE PLAN VSP0213	12 059727 0001 FEB 13 EMP PREM	01/18/13	02/17/13	01/18/13	2,366.11	0.00	2,366.11	2,366.11
	BANK TOTAL PAYMENTS					11,314.45	0.00	11,314.45	11,314.45
	GRAND TOTAL PAYMENTS					11,314.45	0.00	11,314.45	11,314.45

City of Louisville  
Cash Disbursement Edit List

Batch: 81807 Period: 02/05/13

Vendor/ Remit#	Invoice Number	Description	Invoice Date	Due Date	Discount Date	Invoice Amount	Discount Amount	Payment Amount	Check Amount
FOR BANK ACCOUNT: 4 FIRST NATIONAL BANK OF COLORAD			Control Disbursement Account						
8791-1	ACA DENVER BOILER C641719	HVAC PREVENTIVE MAINT CH	12/14/12	01/13/13	12/14/12	505.25	0.00	505.25	505.25
13598-1	ALFRED BENESCH & CO 59035	BRIDGE REPAIR DESIGN	01/02/13	02/01/13	01/02/13	7,564.50	0.00	7,564.50	7,564.50
1006-1	ALL CURRENT ELECTRIC INC 2789	REPLACE VFD'S LRC	01/08/13	02/07/13	01/08/13	1,544.85	0.00	1,544.85	1,544.85
12162-1	ANALYTICA GROUP 142534	COLIFORM BACTERIA TESTING	11/29/12	12/29/12	11/29/12	126.00	0.00	126.00	126.00
13724-1	APPLEONE EMPLOYMENT SERVICES 01-2709327	TEMP CO EXEC ASSISTANT	01/09/13	02/08/13	01/09/13	809.60	0.00	809.60	809.60
10150-1	ARAPAHOE ROOFING & SHEET METAL INC 18033	GUTTER REPAIR SENIOR CTR	01/04/13	02/03/13	01/04/13	1,790.00	0.00	1,790.00	1,790.00
248-1	CDW GOVERNMENT T874522	FIBER MODULE SWITCHES	12/03/12	01/02/13	12/03/12	3,822.30	0.00	3,822.30	3,822.30
11459-1	CENTURA HEALTH 4000352	SANE EVIDENCE COLLECTION	01/05/13	02/04/13	01/05/13	600.00	0.00	600.00	600.00
13352-1	CGRS INC 2-10242-39510	FUEL TANK MONITORING/POLLING	12/31/12	01/30/13	12/31/12	25.00	0.00	25.00	
	2-13363-38687	ANNUAL TANK INSPECTION WWTP	12/26/12	01/25/13	12/26/12	150.00	0.00	150.00	175.00
1005-1	CHEMATOX LABORATORY INC 6840	DUI BLOOD TEST	01/07/13	02/06/13	01/07/13	17.50	0.00	17.50	17.50
1120-1	COLORADO ANALYTICAL LABORATORY 121211034	LAB ANALYSIS FEES	01/16/13	02/15/13	01/16/13	300.00	0.00	300.00	300.00
11582-1	COLORADO CARPET CENTER INC 35905	CARPET TILES CH	12/28/12	01/27/13	12/28/12	2,499.50	0.00	2,499.50	2,499.50
10916-1	COLORADO CODE CONSULTING LLC 4543	ELEVATOR INSPECTIONS	12/27/12	01/26/13	12/27/12	8,460.00	0.00	8,460.00	8,460.00
13742-1	COLORADO DEPT OF LABOR & EMPLOYMENT 011113	CIPSEA MICRO DATA BLDR CNTY	01/11/13	02/10/13	01/11/13	230.00	0.00	230.00	230.00
1280-1	COLORADO STATE TREASURER 012513	132653-00-6-124 4THQ UNEMPLOY	01/25/13	02/24/13	01/25/13	4,440.42	0.00	4,440.42	4,440.42
13383-1	DAVIDSON FIX INCOME MANAGEMENT CM5110	DEC 12 INVEST FEES WF#23858800	01/14/13	02/13/13	01/14/13	237.60	0.00	237.60	
	CM5110	DEC 12 INVEST FEES WF#23858800	01/14/13	02/13/13	01/14/13	3.05	0.00	3.05	
	CM5110	DEC 12 INVEST FEES WF#23858800	01/14/13	02/13/13	01/14/13	1.79	0.00	1.79	
	CM5110	DEC 12 INVEST FEES WF#23858800	01/14/13	02/13/13	01/14/13	34.88	0.00	34.88	
	CM5110	DEC 12 INVEST FEES WF#23858800	01/14/13	02/13/13	01/14/13	371.76	0.00	371.76	
	CM5110	DEC 12 INVEST FEES WF#23858800	01/14/13	02/13/13	01/14/13	18.64	0.00	18.64	
	CM5110	DEC 12 INVEST FEES WF#23858800	01/14/13	02/13/13	01/14/13	19.06	0.00	19.06	

City of Louisville  
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Batch: 81807 Period: 02/05/13

Vendor/ Remit#	Invoice Number	Description	Invoice Date	Due Date	Discount Date	Invoice Amount	Discount Amount	Payment Amount	Check Amount
	CM5110	DEC 12 INVEST FEES WF#23858800	01/14/13	02/13/13	01/14/13	3.72	0.00	3.72	
	CM5110	DEC 12 INVEST FEES WF#23858800	01/14/13	02/13/13	01/14/13	79.99	0.00	79.99	
	CM5110	DEC 12 INVEST FEES WF#23858800	01/14/13	02/13/13	01/14/13	193.47	0.00	193.47	
	CM5110	DEC 12 INVEST FEES WF#23858800	01/14/13	02/13/13	01/14/13	67.26	0.00	67.26	
	CM5110	DEC 12 INVEST FEES WF#23858800	01/14/13	02/13/13	01/14/13	268.14	0.00	268.14	
	CM5110	DEC 12 INVEST FEES WF#23858800	01/14/13	02/13/13	01/14/13	430.88	0.00	430.88	
	CM5110	DEC 12 INVEST FEES WF#23858800	01/14/13	02/13/13	01/14/13	106.22	0.00	106.22	
	CM5110	DEC 12 INVEST FEES WF#23858800	01/14/13	02/13/13	01/14/13	10.93	0.00	10.93	
	CM5110	DEC 12 INVEST FEES WF#23858800	01/14/13	02/13/13	01/14/13	0.25	0.00	0.25	
	CM5110	DEC 12 INVEST FEES WF#23858800	01/14/13	02/13/13	01/14/13	22.99	0.00	22.99	
	CM5110	DEC 12 INVEST FEES WF#23858800	01/14/13	02/13/13	01/14/13	13.31	0.00	13.31	
	CM5110	DEC 12 INVEST FEES WF#23858800	01/14/13	02/13/13	01/14/13	54.88	0.00	54.88	
	CM5110	DEC 12 INVEST FEES WF#23858800	01/14/13	02/13/13	01/14/13	52.77	0.00	52.77	1,991.59
13392-1	DESIGN MECHANICAL INC								
	4046909	HVAC SERVICE ART CTR	01/21/13	02/20/13	01/21/13	291.00	0.00	291.00	291.00
13685-1	DEWBERRY ENGINEERS INC								
	954366	FACILITIES PLAN WWTP	12/28/12	01/27/13	12/28/12	10,173.55	0.00	10,173.55	10,173.55
12843-1	EXEMPLA PHYSICIAN NETWORK								
	11812	DRUG SCREEN	08/31/12	09/30/12	08/31/12	31.50	0.00	31.50	31.50
13615-1	FELSBURG HOLT & ULLEVIG INC								
	8652	US36/MCCASLIN DESIGN PART 2	01/09/13	02/08/13	01/09/13	10,565.27	0.00	10,565.27	10,565.27
6847-1	GENERAL AIR SERVICE & SUPPLY								
	90657517-1	TANK RENTALS SHOPS	12/31/12	01/30/13	12/31/12	104.50	0.00	104.50	
	90657519-1	TANK RENTALS WWTP	12/31/12	01/30/13	12/31/12	25.20	0.00	25.20	129.70
10003-1	GEOCAL INC								
	8791	MCCASLIN/DILLON CONST MGMT	01/10/13	02/09/13	01/10/13	500.00	0.00	500.00	500.00
13492-1	GOLDER ASSOCIATES INC								
	341491	SCADA LOGGING REPORT	01/16/13	02/15/13	01/16/13	625.00	0.00	625.00	625.00
13142-1	HAYNES MECHANICAL SYSTEMS INC								
	196469	HVAC SERVICE LRC	01/18/13	02/17/13	01/18/13	282.00	0.00	282.00	282.00
13732-1	HC PECK & ASSOCIATES INC								
	8886A	CITY OWNED PROPERTY SEARCH	12/28/12	01/27/13	12/28/12	821.25	0.00	821.25	821.25
645-1	HUMANE SOCIETY OF BLDR VALLEY								
	121203	4TH QTR ANIMAL IMPOUND FEES	01/14/13	02/13/13	01/14/13	1,250.00	0.00	1,250.00	1,250.00
13471-1	INTEGRATED CONTROL SYSTEMS INC								
	12-1325	POLICE/COURT BLDG AUTOMATION	10/15/12	11/14/12	10/15/12	4,743.90	0.00	4,743.90	
	12-1325A	LRC POWER MONITORING	10/15/12	11/14/12	10/15/12	1,800.00	0.00	1,800.00	6,543.90
9087-1	LORIS AND ASSOCIATES INC								
	8594	MCCASLIN/WASHINGTON UNDERPASS	01/07/13	02/06/13	01/07/13	3,732.60	0.00	3,732.60	
	8594	MCCASLIN/WASHINGTON UNDERPASS	01/07/13	02/06/13	01/07/13	2,635.19	0.00	2,635.19	

City of Louisville  
Cash Disbursement Edit List

Batch: 81807 Period: 02/05/13

Vendor/ Remit#	Invoice Number	Description	Invoice Date	Due Date	Discount Date	Invoice Amount	Discount Amount	Payment Amount	Check Amount
	8594	MCCASLIN/WASHINGTON UNDERPASS	01/07/13	02/06/13	01/07/13	1,317.21	0.00	1,317.21	7,685.00
15	MARKEL HOMES								
	012413	VALUATION ERROR #C12-0312	01/24/13	02/23/13	01/24/13	440.10	0.00	440.10	
	012413	VALUATION ERROR #C12-0312	01/24/13	02/23/13	01/24/13	50.63	0.00	50.63	
	012413	VALUATION ERROR #C12-0312	01/24/13	02/23/13	01/24/13	16.87	0.00	16.87	
	012413	VALUATION ERROR #C12-0312	01/24/13	02/23/13	01/24/13	405.00	0.00	405.00	912.60
10	MARTIN MARIETTA MATERIALS								
	11274023	ASPHALT	12/17/12	01/16/13	12/17/12	50.40	0.00	50.40	50.40
13597-1	NORTH LINE GIS LLC								
	619	GIS TRAINING	12/27/12	01/26/13	12/27/12	2,250.00	0.00	2,250.00	
	626	ADDRESS DATABASE IMPORT PREP	12/19/12	01/18/13	12/19/12	1,600.00	0.00	1,600.00	3,850.00
1201-1	NORTHERN COLORADO PAPER								
	279777718	JANITORIAL SUPPLIES LRC	12/31/12	01/30/13	12/31/12	1,261.06	0.00	1,261.06	
	279777726	JANITORIAL SUPPLIES NWTP	12/31/12	01/30/13	12/31/12	79.61	0.00	79.61	
	279777734	JANITORIAL SUPPLIES LIB	12/31/12	01/30/13	12/31/12	399.01	0.00	399.01	
	279777742	JANITORIAL SUPPLIES SHOPS	12/31/12	01/30/13	12/31/12	177.28	0.00	177.28	
	279777759	JANITORIAL SUPPLIES ART CTR	12/31/12	01/30/13	12/31/12	62.55	0.00	62.55	1,979.51
11261-1	OFFICE SCAPES								
	739526	PERFORMANCE TABLES	01/15/13	02/14/13	01/15/13	729.20	0.00	729.20	729.20
13668-1	RESOURCE BASED INTERNATIONAL								
	3	WATER RIGHTS TRANSFER SUPPORT	01/25/13	02/24/13	01/25/13	3,335.00	0.00	3,335.00	3,335.00
13714-1	SITWORKS SERVICES INC								
	01	OUTDOOR FITNESS EQUIPMENT	12/28/12	01/27/13	12/28/12	39,910.00	0.00	39,910.00	
	01A	FITNESS EQUIP CONCRETE PADS	12/28/12	01/27/13	12/28/12	5,325.00	0.00	5,325.00	45,235.00
13415-1	TECTA AMERICA COLORADO LLC								
	921255	SWP ROOF REPLACEMENT	12/31/12	01/30/13	12/31/12	7,072.40	0.00	7,072.40	7,072.40
11624-1	TOWN OF SUPERIOR								
	011413	JOINT WATER SERV EXPLORATION	01/14/13	02/13/13	01/14/13	5,820.00	0.00	5,820.00	5,820.00
13426-1	UNIQUE MANAGEMENT SERVICES INC								
	232276	COLLECTION SERVICES	01/01/13	01/31/13	01/01/13	214.80	0.00	214.80	214.80
5115-1	WL CONTRACTORS INC								
	20765	FIBER INSTALLATION	12/14/12	01/13/13	12/14/12	34,019.45	0.00	34,019.45	
	20872	DEC 12 TRAFFIC SIGNAL MAINT	01/08/13	02/07/13	01/08/13	2,155.15	0.00	2,155.15	
	20875	TRAFFIC SIGNAL UPGRADES	01/29/13	02/28/13	01/29/13	9,133.75	0.00	9,133.75	
	20876	TRAFFIC SIGNAL UPGRADES	01/08/13	02/07/13	01/08/13	13,709.00	0.00	13,709.00	
	20877	TRAFFIC SIGNAL UPGRADES	01/08/13	02/07/13	01/08/13	425.00	0.00	425.00	
	20878	TRAFFIC SIGNAL UPGRADES	01/08/13	02/07/13	01/08/13	5,750.00	0.00	5,750.00	
	20977	MCCASLIN/VIA APPIA PULL BOX	01/18/13	02/17/13	01/18/13	1,875.00	0.00	1,875.00	67,067.35
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	BANK TOTAL PAYMENTS					210,040.94	0.00	210,040.94	210,040.94

Batch: 81807 Period: 02/05/13

Vendor / Remit#	Invoice Number	Description	Invoice Date	Due Date	Discount Date	Invoice Amount	Discount Amount	Payment Amount	Check Amount
						----- 210,040.94	----- 0.00	----- 210,040.94	----- 210,040.94
		GRAND TOTAL PAYMENTS							

City of Louisville  
Cash Disbursement Edit List

Batch: 81808 Period: 02/05/13

Vendor/ Remit#	Invoice Number	Description	Invoice Date	Due Date	Discount Date	Invoice Amount	Discount Amount	Payment Amount	Check Amount
FOR BANK ACCOUNT: 4 FIRST NATIONAL BANK OF COLORAD			Control Disbursement Account						
13547-1	A G WASSENAAR INC								
	220279	SOUTH ST UNDERPASS GEOTECH	01/11/13	02/10/13	01/11/13	465.00	0.00	465.00	
	220279	SOUTH ST UNDERPASS GEOTECH	01/11/13	02/10/13	01/11/13	35.00	0.00	35.00	500.00
1-1	A WAY OF LIFE FITNESS CONSULTING								
	1310022-1	CONTRACTOR FEES GREAT START	01/19/13	02/18/13	01/19/13	252.00	0.00	252.00	
	1316000-1	CONTRACTOR FEES BEG R-BALL	01/15/13	02/14/13	01/15/13	224.00	0.00	224.00	
	1316001-1	CONTRACTOR FEES INT R-BALL	01/15/13	02/14/13	01/15/13	112.00	0.00	112.00	
	1317001-1	CONTRACTOR FEES WEIGHT TRAIN	01/17/13	02/16/13	01/17/13	451.50	0.00	451.50	1,039.50
12838-1	ACCOMTEMPS								
	37154906	TEMP FINANCE	01/17/13	02/16/13	01/17/13	918.38	0.00	918.38	918.38
5369-1	ACCUTEEST MOUNTAIN STATES INC								
	D1-33858	LAB ANALYSIS FEES	01/09/13	02/08/13	01/09/13	114.00	0.00	114.00	
	D1-33896	LAB ANALYSIS FEES	01/11/13	02/10/13	01/11/13	90.00	0.00	90.00	
	D1-34081	LAB ANALYSIS FEES	01/18/13	02/17/13	01/18/13	1,470.00	0.00	1,470.00	
	D1-34188	LAB ANALYSIS FEES	01/23/13	02/22/13	01/23/13	778.00	0.00	778.00	2,452.00
12251-1	ACZ LABORATORIES INC								
	10069	MERCURY LAB ANALYSIS FEES	01/09/13	02/08/13	01/09/13	285.00	0.00	285.00	285.00
8882-1	ALLMAX SOFTWARE INC								
	17649	SOFTWARE SUPPORT	01/07/13	02/06/13	01/07/13	2,130.00	0.00	2,130.00	2,130.00
9891-1	AMBIANCE								
	10015	JAN 13 PLANT MAINT	01/10/13	02/09/13	01/10/13	195.00	0.00	195.00	195.00
13724-1	APPLEONE EMPLOYMENT SERVICES								
	01-2709327A	TEMP CMO EXEC ASSISTANT	01/09/13	02/08/13	01/09/13	1,069.47	0.00	1,069.47	
	01-2725992	TEMP CMO EXEC ASSISTANT	01/16/13	02/15/13	01/16/13	1,572.55	0.00	1,572.55	2,642.02
480-1	AV-TECH ELECTRONICS INC								
	0051242-IN	EMERGENCY EQUIP PATROL VEH	01/24/13	02/23/13	01/24/13	21,256.74	0.00	21,256.74	21,256.74
13631-1	BARBARA OLSON								
	012013	LAP ROBE SUPPLIES	01/20/13	02/19/13	01/20/13	52.32	0.00	52.32	52.32
12306-1	BEACON ATHLETICS								
	0423510-IN	PORTABLE PITCHING MOUND	12/27/12	01/26/13	12/27/12	3,335.63	0.00	3,335.63	3,335.63
13621-1	BOLDER STAFFING INC								
	36578	TEMP IT/OPS ADMIN	01/17/13	02/16/13	01/17/13	1,827.75	0.00	1,827.75	
	36578	TEMP IT/OPS ADMIN	01/17/13	02/16/13	01/17/13	288.00	0.00	288.00	
	36660	TEMP IT/OPS ADMIN	01/24/13	02/23/13	01/24/13	2,009.10	0.00	2,009.10	
	36660	TEMP IT/OPS ADMIN	01/24/13	02/23/13	01/24/13	284.40	0.00	284.40	4,409.25
12322-1	BROWN BEAR CORP								
	018687	AUGER BLADE	01/16/13	02/15/13	01/16/13	658.12	0.00	658.12	658.12
13147-1	CAROL LONG								
	012013	LAP ROBE SUPPLIES	01/20/13	02/19/13	01/20/13	21.00	0.00	21.00	21.00





City of Louisville  
Cash Disbursement Edit List

Batch: 81808 Period: 02/05/13

Vendor/ Remit#	Invoice Number	Description	Invoice Date	Due Date	Discount Date	Invoice Amount	Discount Amount	Payment Amount	Check Amount
	MAP018-CE-12	KUBOTA MOWER PLOW BLADE	01/09/13	02/08/13	01/09/13	2,744.60	0.00	2,744.60	2,744.60
13692-1	LIGHTNING MOBILE INC 55268	SWEEP LIBRARY PARKING GARAGE	01/14/13	02/13/13	01/14/13	320.00	0.00	320.00	320.00
13493-1	MAINTENANCE CONNECTION INC 19973	JAN 13 SOFTWARE SERVICE	01/01/13	01/31/13	01/01/13	198.00	0.00	198.00	198.00
13123-1	MARGARET M NOVAK 1302	FULL BURIAL GUSKOVA	01/21/13	02/20/13	01/21/13	932.00	0.00	932.00	932.00
3285-1	MEURER RESEARCH INC 13-5069	CABLE SENSOR/BRACKET	01/10/13	02/09/13	01/10/13	228.00	0.00	228.00	228.00
12049-1	MOVIE LICENSING USA 1758914	2013 COPYRIGHT COMPLIANCE LIC	12/03/12	01/02/13	12/03/12	480.00	0.00	480.00	480.00
1201-1	NORTHERN COLORADO PAPER 280364076	JANITORIAL SUPPLIES LRC	01/10/13	02/09/13	01/10/13	91.91	0.00	91.91	91.91
11477-1	P.R.O.S. INC LO1301	YOUTH BASKETBALL REFEREES	01/09/13	02/08/13	01/09/13	260.00	0.00	260.00	260.00
11329-1	POLYDYNE INC 777539	CE-879 POLYMER	01/16/13	02/15/13	01/16/13	5,290.00	0.00	5,290.00	5,290.00
13723-1	PORTER INDUSTRIES 011513	JAN 13 JANITORIAL SERVICES	01/15/13	02/14/13	01/15/13	13,049.00	0.00	13,049.00	
	011513	JAN 13 JANITORIAL SERVICES	01/15/13	02/14/13	01/15/13	570.00	0.00	570.00	
	011513	JAN 13 JANITORIAL SERVICES	01/15/13	02/14/13	01/15/13	130.00	0.00	130.00	13,749.00
3810-1	POSTMASTER 2013-2	UTB PERMIT #4 POSTAGE	01/15/13	02/14/13	01/15/13	1,000.00	0.00	1,000.00	
	2013-2	UTB PERMIT #4 POSTAGE	01/15/13	02/14/13	01/15/13	1,000.00	0.00	1,000.00	2,000.00
12374-1	PREMIER PAVING INC 4474	ASPHALT	01/08/13	02/07/13	01/08/13	47.53	0.00	47.53	
	4486	ASPHALT	01/09/13	02/08/13	01/09/13	128.29	0.00	128.29	
	4497	ASPHALT	01/10/13	02/09/13	01/10/13	46.61	0.00	46.61	222.43
11307-1	PROQUEST LLC 70198845	ELECTRONIC DATABASES	01/01/13	01/31/13	01/01/13	2,325.00	0.00	2,325.00	2,325.00
99	AMANDA FREDERICK 770033	ACTIVITY REFUND	01/16/13	02/15/13	01/16/13	108.00	0.00	108.00	108.00
99	LIZ FEENEY 770640	ACTIVITY REFUND	01/22/13	02/21/13	01/22/13	45.00	0.00	45.00	45.00
99	NATALIA CAMACHO 771056	ACTIVITY REFUND	01/25/13	02/24/13	01/25/13	235.00	0.00	235.00	235.00
99	LIZ HUXLEY 771348	ACTIVITY REFUND	01/28/13	02/27/13	01/28/13	20.00	0.00	20.00	20.00
99	DIANE MAGNUSSEN 771351	ACTIVITY REFUND	01/28/13	02/27/13	01/28/13	18.00	0.00	18.00	18.00

City of Louisville  
Cash Disbursement Edit List

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Vendor/ Remit#	Invoice Number	Description	Invoice Date	Due Date	Discount Date	Invoice Amount	Discount Amount	Payment Amount	Check Amount
10243-1	RHOMAR INDUSTRIES INC 74748	NEUTRO WASH/LUBRA SEAL	01/10/13	02/09/13	01/10/13	1,823.21	0.00	1,823.21	1,823.21
13127-1	RL SECURITY & SUPPLY C32124	LOCK REPAIR CH	01/15/13	02/14/13	01/15/13	80.00	0.00	80.00	80.00
8020-1	ROCKY MOUNTAIN RECREATION INC 3591	RECYCLE RECEPTACLES	01/09/13	02/08/13	01/09/13	2,471.00	0.00	2,471.00	2,471.00
4230-1	SEACREST GROUP 313007.A 313009.A	LAB ANALYSIS FEES LAB ANALYSIS FEES	01/14/13 01/15/13	02/13/13 02/14/13	01/14/13 01/15/13	10.00 20.00	0.00 0.00	10.00 20.00	30.00
13714-1	SITWORKS SERVICES INC 01B	FITNESS TRAIL CONCRETE WORK	12/28/12	01/27/13	12/28/12	2,720.00	0.00	2,720.00	2,720.00
11026-1	STANLEY ACCESS TECH LLC 902473610	DOOR REPAIR LRC	01/09/13	02/08/13	01/09/13	616.69	0.00	616.69	616.69
4100-2	TERMINIX 320741615 321047924	2013 PEST CONTROL PD 2013 PEST CONTROL LIB	01/15/13 01/15/13	02/14/13 02/14/13	01/15/13 01/15/13	570.36 1,105.80	0.00 0.00	570.36 1,105.80	1,676.16
11466-1	THE RUNNING GROUP LLC 012813	CONT FEES LOCO FIT DROP INS	01/28/13	02/27/13	01/28/13	32.00	0.00	32.00	32.00
8508-1	TIRE DISTRIBUTION SYSTEMS INC 757-22499	REPAIR TIRE	01/11/13	02/10/13	01/11/13	258.02	0.00	258.02	258.02
11442-1	TRAVIS PAINT & RESTORATION INC 1002	PAINTING HR KIOSK	01/16/13	02/15/13	01/16/13	149.80	0.00	149.80	149.80
13241-1	UNITED REPROGRAPHIC SUPPLY INC 0280831-IN	JAN 13 MAINT FEE OCE PRINTER	01/21/13	02/20/13	01/21/13	97.00	0.00	97.00	97.00
6548-1	UNIVERSITY OF ARIZONA 2124	LAB ANALYSIS FEES	01/11/13	02/10/13	01/11/13	400.00	0.00	400.00	400.00
4870-1	VWR INTERNATIONAL 8052682998	LAB SUPPLIES	01/07/13	02/06/13	01/07/13	419.33	0.00	419.33	419.33
6210-1	W BRUCE JOSS 012513	JAN 13 MUNICIPAL JUDGE SALARY	01/25/13	02/24/13	01/25/13	2,000.00	0.00	2,000.00	2,000.00
11053-1	WATER TECHNOLOGY GROUP 5279638	REBUILD RECYCLE PUMP NWTP	01/28/13	02/27/13	01/28/13	3,602.64	0.00	3,602.64	3,602.64
10884-1	WORD OF MOUTH CATERING INC 2013-02	MEAL SITE PROG 1/14-1/25/13	01/25/13	02/24/13	01/25/13	1,861.00	0.00	1,861.00	1,861.00
13558-1	ZIONS CREDIT CORP 496061 496061	JAN 13 SOLAR POWER EQUIP LEASE JAN 13 SOLAR POWER EQUIP LEASE	01/22/13 01/22/13	02/21/13 02/21/13	01/22/13 01/22/13	1,767.62 883.81	0.00 0.00	1,767.62 883.81	2,651.43
	BANK TOTAL PAYMENTS					475,457.18	0.00	475,457.18	475,457.18

Batch: 81808 Period: 02/05/13

Vendor / Remit#	Invoice Number	Description	Invoice Date	Due Date	Discount Date	Invoice Amount	Discount Amount	Payment Amount	Check Amount	
						475,457.18	0.00	475,457.18	475,457.18	
GRAND TOTAL PAYMENTS						475,457.18	0.00	475,457.18	475,457.18	

# ***City Council Meeting Minutes***

**January 22, 2013  
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: Ron Sackett, Susan Loo,  
Emily Jasiak and Frost Yarnell*

**Absent:** *Council member Jay Keany*

**Staff Present:** *Malcolm Fleming, City Manager  
Heather Balser, Deputy City Manager  
Kevin Watson, Finance Director  
Joe Stevens, Parks and Recreation Director  
Kurt Kowar, Director of Public Works  
Aaron DeJong, Director of Economic Development  
Troy Russ, Planning Director  
Gavin McMillan, Planner III  
Nancy Varra, City Clerk*

**Others Present:** *Sam Light, City Attorney*

## **PLEDGE OF ALLEGIANCE**

All rose for the pledge of allegiance.

## **APPROVAL OF AGENDA**

Mayor Muckle called for changes to the agenda and hearing none, moved to approve the agenda, seconded by Council member Sackett. All were in favor. Absent: Council member Keany.

## **PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA**

Alan Sobel, 1408 Kennedy, Louisville, CO voiced his concern over the City Manager's Office ability and intent to represent Louisville resident's interest in cable and Internet matters. The City Manager recommended the City Council delay the Franchise Agreement negotiations until after Denver and Aurora have negotiated their contracts with Comcast by bringing forward an ordinance to extend the Franchise Agreement for one year. He noted Louisville was a member of the GMTTC and the City Manager recommended Council withdraw from the organization. He felt the City Manager does not represent the interests of the citizens of Louisville in cable and Internet matters.

### **APPROVAL OF THE CONSENT AGENDA**

Mayor Muckle moved to approve the consent agenda, seconded by Council member Jasiak. All were in favor. Absent: Council member Keany.

- A. *Approval of Bills***
- B. *Approval of January 8, 2013 Minutes***
- C. *Award Contract to Milo Construction for Coal Creek Golf Course Clubhouse Upgrades Required for American's with Disabilities Act Compliance***
- D. *Approval of 2013 City of Louisville Insurance Renewal***
- E. *Approval of Purchase of Portable Vehicle Lift***
- F. *Approval of Purchase of Complex Chloride (Ice Slicer)***
- G. *Approval of Renewal of the Intergovernmental Agreement for Implementation of the Keep it Clean Partnership Plan***
- H. *Approval of 2013 Non-Profit Grant Awards***

### **COUNCIL INFORMATIONAL COMMENTS ON PERTINENT ITEMS NOT ON THE AGENDA**

Mayor Muckle addressed Mr. Sobel's comments relative to delaying the Cable Television Franchise Agreement and noted smaller organizations will not have as much influence as cities of Denver and Aurora combined. He explained the GMTTC was in the process of disbanding to become a non-profit organization and the City was asked not to obstruct that process.

He commended President Obama and the Presidential inauguration ceremony.

### **CITY MANAGER'S REPORT**

City Manager Fleming addressed the South Boulder Road construction/road closures and requested Public Works Director Kowar provide an update. Public Works Director Kowar explained the Steel Ranch South project is connecting to the City's storm sewer system and eventually to the City's water system. Due to the nature of work and the location of the utilities, South Boulder Road was closed. The closure was between 3:00 and 9:00 p.m. on the westbound lane. The detour took traffic on Highway 42, Pine,

Main and back to South Boulder Road. He explained this was a safer route for the public. The water line locate has not been made yet, therefore the closures will be in the next two weeks and occur for approximately two nights. A two day notice of closure will be provided to businesses.

Doug Harper, owner of Union Jack Liquor, explained the detour went through his property, which was problematic for his customers. He stated workers directing traffic at the intersection acted inappropriately and failed to provide a safe passage for customers entering his store. Public Works Director Kowar stated he would contact the contractor about the situation and Public Works staff would work to improve the situation.

City Manager Fleming highlighted items on the consent agenda approved by the City Council. 1) The Coal Creek Golf Club House improvements, bunker renovations and sprinkler heads replacement. 2) Keep it Clean Partnership, which provides public education and awareness on water quality. 3) Non-profit grant awards for 15 organizations, all of whom provide excellent services to the residents of Louisville.

## **REGULAR BUSINESS**

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### **APPROVAL OF GREAT OUTDOORS COLORADO GRANT FOR FIRESIDE ELEMENTARY SCHOOL PLAYGROUND**

City Attorney Light outlined the documents before the Council are associated with the approval of the Great Outdoors Colorado Grant for Fireside Elementary School Playground. Those documents include: Resolution No. 5, Series 2013 – A Resolution Supporting the Agreement between the City and GOCO; an Intergovernmental Agreement between the City and the Boulder Valley School District and a Grant Agreement between the City of Louisville and the State Board of GOCO.

Mayor Muckle requested a staff presentation.

Parks and Recreation Director Stevens explained that this is the third grant application the City has submitted to Great Outdoors Colorado (GOCO) on behalf of Fireside Elementary School to assist with funding improvements to the grade school's intermediate playground. GOCO awarded a \$42,750.00 mini grant to the City for the elementary school's playground project. He noted part of the grant requirement is to work with the Youth Conservation Corp, for which there is not funding. The grant funding allows \$2,300 for the Youth Conservation Corp, therefore leaving a shortfall of \$9,825. He recommended moving forward with an agreement with the Boulder County Youth Conservation Corp, for six youths and one team leader, who will assist with this project and additional parks and open space projects in Louisville. He recommended Parks and Open Space budget line items be adjusted to accommodate the expenditure. He noted there is a big demand for participation in the Youth Corp in Louisville.

Pat Heinz-Pribyl, Fireside Principal thanked the Council for their patience and noted the grant has been written three times. She thanked parents who worked on the grant writing. She explained this application was different from past applications as it was a request for a mini grant, which is less competitive. The City will donate in-kind services, the Boulder County Youth Corp will be involved and the Boulder Valley School District will contribute \$2,000 and the Project Manager. She stated they are close to raising the \$60,000 for this project. She stated this playground will benefit the community as well as the school. They hope to dedicate the playground in August.

**i. RESOLUTION No. 5, SERIES 2013 – A RESOLUTION SUPPORTING AN AGREEMENT BETWEEN THE CITY OF LOUISVILLE AND THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND**

Motion: Council member Jasiak moved to approve Resolution No. 5, Series 2013, seconded by Council member Loo. All were in favor. Absent: Council member Keany.

**ii. INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOUISVILLE AND THE BOULDER VALLEY SCHOOL DISTRICT**

Motion: Council member Jasiak moved to approve the IGA between the City and the Boulder Valley School District, seconded by Mayor Pro Tem Dalton. Roll call vote was taken. The motion carried by a vote of 6-0. Absent: Council member Keany.

**iii. GRANT AGREEMENT BETWEEN THE CITY OF LOUISVILLE AND THE STATE BOARD OF THE GREAT OUTDOORS COLORADO**

Motion: Council member Jasiak moved to approve the Grant Agreement between the City of Louisville and the State Board of the Great Outdoors Colorado, seconded by Mayor Pro Tem Dalton. Absent: Council member Keany.

**DISCUSSION/DIRECTION/ACTION – HIGHWAY 42 GATEWAY UPDATE**

Mayor Muckle requested a staff presentation.

Planning Director Russ presented the 42 Gateway Integrated Infrastructure Implementation Plan. The first part of the project was presented on December 18. The 42 Gateway Project is a partnership between the City of Louisville, the Colorado Department of Transportation (CDOT), Boulder County, and the Regional Transportation District (RTD) to complete an Integrated Infrastructure Implementation Plan for the Louisville FasTracks Station Area and Highway 42 Corridor. He explained this has been a year-long planning process. Alternatives considered include no action; three-lanes or five-lanes. The three-lane option meets all the project goals. Five lanes would impact the adjacent neighborhoods and Miner's Field. The components of the 3-lane option include a roundabout at Locke Street; offset left turn lanes, ¾ access

intersections, and right-in, right-out intersections, the closure of Spruce Street and the opening of Lee Avenue. The goal of this project is connectivity along the corridor, not mobility. Staff recommended 1) a new road running north from South Boulder Road (behind the Shamrock Gas Station) through Christopher Plaza and the Alkonis Property, connecting to Summit View Drive and Kaylix Avenue in the Steel Ranch neighborhood and 2) an extension of Lee Avenue to the south to connect with Pine Street.

Planning Director Russ stated there is wide support for the 3-lane option and the access management strategy on Highway 42, however there is controversy over the local network connections. The recommended 3-lane design of Hwy 42 is dependent on additional transportation improvements in the Miners Field, Little Italy, and Steel Ranch Neighborhoods. Specifically, staff is recommending three new neighborhood street connections, which would provide the following opportunities:

- Neighborhood accessibility and visibility
- Transportation choices; long-term revitalization of Pine Street
- Commercial Access and Visibility
- Emergency response
- Crime prevention through environmental design
- Property values and neighborhood stability

Planning Director Russ explained the Lee Avenue extension was not part of the original revitalization district plan. Staff recommended the City Council direct staff to finalize the 30% design concept for the 3-lane Highway 42 and supporting local street network connections as proposed. This direction would enable staff and the project team to complete the 30% design for the Highway and the final implementation plan of all corridor improvements by April of 2013.

A staged implementation of the Lee Avenue connection to Pine Street would create a livable solution for the adjacent property owners, the neighborhood, the Hwy 42 Corridor and City-wide in the near-term as well as the long-term build-out of the Corridor. Specifically, staff recommended the City Council support the following design Phasing Plan for the Lee Avenue Connection to Pine Street.

1. Acquire the property – Staff negotiate with the property owner to acquire the property as the opportunity is presented.
2. Design/Construct – Design/ build a one-way southbound connection between Lee Avenue and Pine Street concurrent with Hwy 42 Improvements associated with the Boulder County Sales Tax (after 2018). The design of the connection shall not preclude a simple restriping of the connection to a two-lane street.
3. Add Left-Turn Lane – As the properties along Pine Street redevelop add a southbound left turn lane if traffic warrants it.

PUBLIC COMMENT

Barbara Hesson, 411 County Road, Louisville, CO explained Front Street is impacted with traffic noise and carbon monoxide. She felt the Highway 42 Plan would impact Lee Avenue the same way. She urged Council to deny this proposal.

Bob Tofte, 1417 Courtesy Road, Louisville, CO explained the proposed plan would remove parking, prohibit access to driveways and eliminate street parking in front of homes. He felt rear entry to homes was not appropriate. A local realtor estimated his home's value would decrease by 10% if the front access to his home was eliminated.

A.J. Gemer, 1200 Spruce Street, Louisville, CO expressed his concern for the Lee Avenue extension and voiced his belief it would impact the area with traffic and noise.

Steve Poppitz, 1036 Walnut Street, Louisville, CO was in favor of the Highway 42 Revitalization project, but voiced concern over the impact to the Gemer and Peterson properties. He suggested mitigating the impacts by erecting a wall to protect the homes from car collisions and installing a sound wall at Miner's Field. He suggested realigning the roadway on the east side of Highway 42 near the old recycling center. He requested Lee Avenue not be extended as 21 properties would be impacted. He stated additional traffic is not needed on Lee Avenue. He did not support the proposed fencing.

John Damico, 2727 Madison Drive, Longmont, CO stated he is the owner of the 4-plex apartment building on Spruce Street. He supported the Highway 42 Plan for the safety measures this proposal brings. He supported the closure of Spruce Street only if Lee Avenue is extended in both directions. He requested Council allocate funds for landscaping improvements to the Spruce Street closure area.

Jean Morgan, 1131 Spruce Street, Louisville, CO a 42 year resident of the area voiced her support for a three-lane highway. She stated the Miner's neighborhood is a quiet, historic district, containing 21 homes and a 4-plex. She felt the underpass will provide access to downtown for bicyclists and pedestrians. She requested an emergency vehicle assess and a traffic study on Highway 42. She asked Council not to impact the neighborhood and read comments from her neighbors who oppose the plan. Those written comments were from the following neighbors:

John Mathes, 1190 Spruce Street  
Carrie DeGraw, 1109 Spruce Street  
Liz O'Neil, 1011 Walnut Street  
Joe Gomes, 833 Courtesy Road  
Josh Stone & Jim Moffit, 824 Lee Avenue  
Brian Brooker, 1101 Spruce Street  
Jeff Scott, 1032 South Street  
Laura Wright, 1201 Spruce Street  
Ann Lezberg & Angela Headley, 1117 Spruce Street  
Susan Buggraf, 1210 Spruce Street #B

Jason McLaughlin, 1013 Walnut Street  
Michael Galko, 817 Lee Avenue  
John Hahn, 1021 Walnut Street  
Rachael Knudson, 1210 Spruce Street  
Stella Merciez, 1133 Pine Street  
Barbara Starr, 10080 Empire Road, Lafayette, CO  
Sam and Bea Duran, 1109 Pine Street  
Ryan Hanneman, 1324 Lincoln Avenue, (former address: 1201 Spruce Street)

Brad Peterson, 1207 Spruce Street, Louisville, CO voiced his enthusiasm for the project. He felt it would revitalize the area and bring the value back to the neighborhood homes. He and his wife fully supported the plan.

John Leary, 1116 LaFarge Avenue, Louisville, CO attended multiple meetings on the Highway 42 Revitalization and felt the homeowners were promised their property would not be impacted. He addressed the overpass and noted there are other routes to the Recreation Center and downtown. He urged Council to respect the wishes of the neighborhood.

#### COUNCIL COMMENTS

Council member Loo requested Ms. Morgan forward all the written comments from the Miner's Field neighborhood to the City Council.

Mayor Muckle inquired whether there was a way to preserve the driveway access. Planning Director Russ explained managing driveways, alleys and streets is difficult. There are a number of commercial driveways and a number of driveways, alleys and streets, which have been identified as safety risks. The 3-lane option will make the roadway safer by narrowing the width of the onsite parking on Harper and Griffith. If the property in question were to expand, access would be required from the alley. He stated a road is not designed for a driveway, it is designed for safety and noted those homes already have alley access.

Council member Jasiak requested clarification on the driveways in old town. Planning Director Russ explained in the current Old Town Overlay, only corner lots are allowed driveways on secondary streets. Houses having alley access are required to eliminate their driveways with redevelopment. Little Italy is in the Old Town Overlay. He asked Council to err on the side of safety.

Mayor Muckle inquired about the modeling of the streets. Planning Director Russ explained a micro simulation of the corridor was completed from Paschal to Locke Streets to project a 20-year forecast. Another simulation will be done when the redevelopment district comes forward. The DELO project will determine the number of trips generated against the Highway 42 corridor.

Mayor Muckle inquired about the five-lane option. Planning Director Russ stated the 5-lane option would begin at the curb line and would have no green spaces.

Mayor Muckle asked Planning Director Russ to address Mr. Poppitz's suggestion to move the roadway further to the east. Planning Director Russ explained the roadway cannot be moved in just one area. Right-of-way access for realigning the entire roadway would impact the Mayhoffer property, the Louisville Glass Company, City property, Xcel property and the Lafayette Sports Complex.

Mayor Pro Tem Dalton asked for the approximate percentage of owner occupied homes in the Miner's field and Little Italy. Planning Director Russ estimated approximately 40% renter occupied for both the Miner's field neighborhood and Little Italy.

Mayor Muckle inquired whether Christopher Village and Steel Ranch are supportive of the Kaylix Avenue proposal. Planning Director Russ confirmed they are supportive.

Mayor Muckle noted the Miner's field neighborhood had been promised by previous Council's that their property would not be impacted. He looked favorably on all the roadway and connection improvements except for the Tofte driveway issue.

Council member Jasiak addressed the Tofte driveway and erring on the side of safety. She noted the challenges with the alley access to those properties and asked if there were some measures the City could take to make it easier. Planning Director Russ stated staff is recommending improving the paving, lighting and snow removal in the alleyways.

Council member Jasiak encouraged Mr. Tofte to continue to work with the City. She thanked Jean Morgan for being so proactive and gathering comments from the neighbors. She asked Planning Director Russ to address the zoning limitations on the properties on Pine Street. Planning Director Russ explained they are rezoned for mixed-use residential. If the property were to be expanded or damaged 50% by fire, they could no longer be a residential unit.

Mayor Pro Tem Dalton asked for justification of the Lee Street connection. Planning Director Russ explained the Lee Street connection primarily provides alternative routing options to Miner's Field and within the Revitalization District directly north of South Street. The secondary reason is to allow neighbors to get in and out of the neighborhood after the closure of Spruce Street.

Council member Loo asked if the Lee Street extension is not approved, would the project be jeopardized. Planning Director Russ responded no and explained the principal is connectivity, which CDOT supports. The plan gives the residents a choice on whether to use Highway 42 or local roads.

Council member Loo inquired about the funding for the staging plan. Planning Director Russ explained the funding for this project is not available until 2018. Staff is requesting the staging plan for the project when the funds become available in 2018. He explained the Highway 42 saturation point is forecasted to be in 20 years. Council member Loo asked for clarification that the City staff is recommending the City Council approve a plan for the future.

Council member Yarnell asked when the Lee Avenue connection would be built. Planning Director Russ recommended the Lee Avenue connection be built in coordination with the closure of Spruce Street because of their proximity, when the Boulder County funds become available in 2018. Deputy City Manager Balser noted this project is incremental and depending what other matching funds might be available, staff will request the funding from Boulder County be provided as it becomes available.

Council member Jasiak inquired about the pedestrian gateway and the required fencing. Planning Director Russ stated the BNSF Railroad requires fencing along Griffith Street. If the fencing requirement is removed, a different bridge structure will be required at a much higher cost.

Council member Jasiak inquired about the timing of the gateway pedestrian project. Planning Director Russ explained the package has been delivered to BNSF. They hope to get the 30% design from BNSF. In the next four months, the Public Works Department will issue an RFP for a design team.

Council member Jasiak asked if there is any harm in revisiting the Lee Avenue connection later. Planning Director Russ explained CDOT endorsed the plan because of its connectivity. Staff would have to discuss delaying the connection with CDOT.

Mayor Pro Tem Dalton stated the Council could approve the plan and the Lee Avenue connection could be revisited in 10 or more years. Planning Director Russ explained one strategy could include placing the Lee Avenue connection in the plan as a requirement, as the properties redevelop. Mayor Pro Tem Dalton and Mayor Muckle concurred.

Mayor Pro Tem Dalton suggested putting it in the plan as a thought piece when Pine Street redevelops. Planning Director Russ explained if a private developer came forward with a proposal and the requirements are not adopted within the municipal code, the City would have limited tools to make the developer comply. City Attorney concurred the legal guidelines are adopted in the municipal code.

Mayor Pro Tem Dalton suggested the Lee Avenue connection be included in the plan and when redevelopment proposals come forward if it was not needed it could be abandoned. He noted the redevelopment area is between the Highway 42 and the tracks. Planning Director Russ explained it would depend on how the parcels are assembled and how and when they come forward.

Council member Yarnell asked for the number of properties or parcels it would take to initiate the Lee Avenue connection. Planning Director Russ explained the Highway 42 Revitalization Plan contains a land use map and a street network map, which any new development must follow. Staff recommended updating the zoning code, which applies to Pine Street. He noted this roadway is a critical piece to the redevelopment of Pine Street. City Attorney Light explained the document could be part of the comprehensive plan, or a street network plan so in the event a developer comes forward with a proposal there is an overall access plan to the community. He added if a document for development is contingent upon a specific event, it may complicate other events, such as the Highway 42 20-year saturation point. He suggested retaining flexibility in the plan.

Council member Sackett noted Ms. Morgan asked Council to work with the neighbors. He supported a compromise and looking for common ground.

Council member Loo inquired whether a continuance would affect a time sensitive deadline with CDOT. Planning Director Russ responded no.

#### PUBLIC COMMENT

Jean Morgan, 1131 Spruce Street, Louisville, CO supported the safety measures proposed for Highway 42. She addressed the narrow width of Lee Avenue west of Miner's Field and the shallow parking and noted children will be impacted if Lee Avenue is open. She felt there should be a way to get emergency vehicles to Spruce Street or the alley. She suggested making the intersections from Short to Pine Streets, right-turns only to resolve the Lee Avenue issue. She asked if future Council's will be asked to determine the Lee Avenue connection as the need arises. She did not see the connection between closing Spruce Street and opening Lee Avenue.

Council member Jasiak asked for clarification on the right-turn only intersections from Short to Pine Street. Ms. Morgan proposed an added lane on southbound Highway 42 to accommodate right turns only.

John Damico, 2727 Madison Drive, Longmont, CO stressed the importance of maintaining the three minute rule as a measure of fairness to the public who wish to speak, and to allow them to plan their evening. He stated it is not all about extending Lee Avenue or closing Spruce Street, it is all about the plan. He supported the plan and the professionals who developed the plan.

Joel Haze, 187 Harper Street, Louisville, CO stated he does not live in the Miner's Field area but supports the neighbors. He felt the extension of Lee Avenue would violate the promises made to the neighbors.

Bob Tofte, 1417 Courtesy Road, Louisville, CO was supportive of the plan, but noted there is a great difference between access from a commercial site to the Highway and

access to a residential home. He stated there have been a number of accidents in the area as a result of the high rates of speed.

Brad Peterson, 1201 Spruce Street, Louisville, CO voiced his belief in the project. He noted he would be inconvenienced, but none-the-less could see the larger picture and trusted the professionals.

Steve Poppitz, 1036 Walnut Street, Louisville, CO stated the neighbors use Lee Avenue for safety reasons and felt the connection would be a mistake. He liked living in a pedestrian friendly environment.

Bill Statton, 2296 McKinley Avenue, Louisville, CO voiced his concern for the safety of the children playing at Miner's Field. He felt emergency vehicles can get to the area using Spruce Street. He suggested the Council pass the plan without the Lee Avenue connection.

#### COUNCIL COMMENT

Mayor Muckle stated there is not any question the Council trusts and believes in their planning staff. He stated there were promises made by previous Council's and noted whatever this Council chooses to do, a future Council could decide to change. He explained the Council can imply their consent but cannot bind future Councils to agree. He asked if emergency vehicles get through the underpass. Planning Director Russ stated they could get to the underpass, but not through it in any acceptable condition.

Mayor Muckle asked about widening the road by Miner's field as described by Ms. Morgan. Planning Director Russ explained currently Highway 42 is six feet above Miner's field and due to its vertical nature, in order to add a right turn lane it would require taking out the ball field. He explained the Lee Avenue connection provides pedestrian access to the Pine Street Plaza, Lucky Pie, Sweet Cow and downtown, where the pedestrian gateway does not. Other streets bordering parks carry more traffic than Lee Street, such as Heritage, Community and Memory Square Parks. He stated Main Street is the same width of Lee Avenue, thirty eight feet. The connection proposes to reduce the width to twenty feet to reduce the speed of traffic.

Mayor Pro Tem Dalton supported going forward with the plan as is with the 30% design and directing staff to notify CDOT and the design team to proceed.

Council member Yarnell stated she was leaning toward events, which could trigger the Lee Avenue connection. She suggested when either Pine Street redevelops or when Highway 42 reaches the saturation point. She asked what the Pine Street redevelopment entails. Planning Director Russ explained the timing of the road would be when the parcel that provides the connection comes forward.

Council member Jasiak asked what would happen if 1125 Pine Street became available. Her concern centered on the east and west property owners. Planning Director Russ stated the City would have to make a decision on purchasing the property or letting the road go away.

Council member Loo asked if CDOT wants Spruce Street closed. Planning Director Russ stated CDOT wants to close Spruce Street when they work on Pine Street.

Council member Loo noted without Lee Avenue, there would not be an emergency access. She asked what emergency access could be provided. Planning Director Russ stated there could be through-medians built exclusive for emergency vehicles.

Mayor Muckle felt there might be Council support for a triggering mechanism for the Lee Avenue connection. Council member Loo felt if triggering events are considered, it should be the Spruce Street closure tied to Lee Avenue for the emergency access. Planning Director Russ explained Highway 42 is proposed for 3-lanes and will reach a level of service saturation point in 20 years. He suggested a triggering event be when the 3-lane roadway level of service reaches the saturation point.

Mayor Pro Tem Dalton felt the triggering mechanism should be when the properties are redeveloped, assembled, or when they become available. Mayor Muckle concurred.

Mayor Muckle requested a show of hands of Council members who favored a triggering event based on the redevelopment of the properties. There was consensus.

Council member Loo asked if Council was interested in two triggering events, whichever comes first. Council members Yarnell and Jasiak expressed their support.

Council member Jasiak suggested the traffic volume be one and assemblage of the properties be the other. She requested the availability of 1125 Pine Street also be a triggering method, and reiterated her concern for the rights of east and west property owners. Mayor Muckle concurred. He stated he is also sensitive to Mr. Tofte's concerns.

Mayor Pro Tem Dalton did not support the traffic volume as a triggering event. He favored the closure of Spruce Street and the alley or the redevelopment of the properties. Council member Jasiak favored the triggering event be the property owners on Pine Street.

Council member Yarnell inquired if the triggering event could be the parcels on Pine Street. Planning Director Russ stated the City's concern would be not knowing when and how those properties would come forward. He explained the City must look at the applications as they come forward.

City Attorney Light concurred and stated the City must look at the applications submitted. He explained this triggering event will go into a planning document and

future Councils can change it. He recommended Council authorize staff to proceed with the 30% design and suggested the following language: The intent of the plan is for the Lee Avenue extension to be made at the time of redevelopment of the parcel over which the extension is planned or at the time of the closure of Spruce Street and the alley connection to Highway 42. If it was volume based, he recommended a level of service.

Mayor Pro Tem Dalton suggested it be triggered by the property. Mayor Muckle concurred.

Mayor Muckle proposed the Council accept the plan as presented with the exception of the Lee Avenue extension, which would trigger when the property needed for the extension redevelops. There was Council consensus.

**DISCUSSION/DIRECTION/ACTION – A MEMORANDUM OF UNDERSTANDING  
BETWEEN THE REGIONAL TRANSPORTATION DISTRICT AND STAKEHOLDERS  
REGARDING THE NORTHWEST AREA MOBILITY STUDY**

Mayor Muckle reviewed the Memorandum of Understanding (MOU) between the Regional Transportation District and Stakeholders regarding the northwest area mobility study. The RTD Board committed the remaining financial/debt capacity of the FasTracks program to the I-225 light rail line. Without additional revenues, RTD does not have financial capacity to complete the remaining components of the FasTracks program, most notably the Northwest and North Metro Commuter Rail lines far into the future.

The Northwest Corridor Stakeholders, including the U.S. 36 Mayors and Commissioners Coalition (MCC), have been exploring alternative approaches to the Northwest Commuter Rail project and have been asking for information, analysis and further discussion on how to keep the project moving. RTD will fund a \$2 million planning study in 2013 to help determine the path forward. The Northwest Area Mobility Study (NAMS) proposes to develop consensus amongst RTD, the Colorado Department of Transportation and Northwest Corridor Stakeholders on cost effective mobility improvements to serve the northwest area.

The (MOU) defines commitments and understandings regarding preparation and implementation of the NAMS. It is not legally binding, but is meant to establish the groundwork for effective and efficient collaboration on this study. The first task in the NAMS is to establish a “Stakeholder Involvement Plan.” This will be accomplished through a Policy Committee and Louisville will have a seat on that committee.

Mayor Pro Tem Dalton expressed his support for former Mayor Sisk to fill the current RTD Board position vacated by John Tayer. He noted Chuck Sisk will serve the City and RTD District well. Mayor Muckle concurred.

MOTION: Mayor Pro Tem Dalton moved to approve the MOU between the Regional Transportation District and Stakeholders, seconded by Council member Sackett. All were in favor. Absent: Council member Keany.

**EXECUTIVE SESSION – REAL PROPERTY ACQUISITIONS AND DISPOSITIONS**  
(Louisville Charter, Section 5-2 (c) - Authorized Topics – Consideration of real property acquisitions and dispositions, only as to appraisals and other value estimates and strategy, and C.R.S.. 24-6-402(4)(a)).

### **REGULAR BUSINESS ITEMS SUSPENDED**

City Attorney Light explained the City Manager requested the City Council convene an executive session for the purpose of consideration of potential real property disposition – parcels of real property in Louisville.

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

City Attorney Light stated the authority for conducting an executive session is the Louisville Charter, Section 5-2 (c) - Authorized Topics – Consideration of real property acquisitions and dispositions, only as to appraisals and other value estimates and strategy, and C.R.S. 24-6-402(4)(a) under the open meetings law. He explained there are two matters for discussion in executive session; 1) a potential trade of property and 2) potential disposition of property owned by the City.

MOTION: Mayor Muckle moved the City Council convene an executive session for the purpose of consideration of potential real property disposition, but only as to appraisals, value estimates and strategy for such property acquisition and the executive session include the City Council, City Manager, City Attorney, Economic Development Director, Parks and Recreation Director and Deputy City Manager. Council member Sackett seconded the motion. All were in favor. Absent: Council member Keany.

MOTION: Mayor Muckle moved the City Council convene an executive session for the purpose of consideration of potential disposition of real property owned by the City disposition but only as to appraisals, value estimates and strategy for such property disposition and the executive session include the City Council, City Manager, City Attorney, Economic Development Director, Parks and Recreation Director and Deputy City Manager. Council member Sackett seconded the motion. All were in favor. Absent: Council member Keany. The City Council adjourned to executive session at 10:25 p.m. The regular meeting reconvened at 11:10 p.m.

### **REPORT – DISCUSSION/DIRECTION/ACTION – REAL PROPERTY ACQUISITIONS AND DISPOSITIONS**

City Attorney Light reported in executive session the City Council discussed real property acquisitions and dispositions. The City Council gave direction to the staff on

possible strategies on two separate matters: 1) on potential disposition on property owned by the City and 2) a potential trade resulting in a possible acquisition and disposition. He noted if negotiations result in a proposal or contract, the matter would come back for City Council review at a future meeting.

### **CITY ATTORNEY'S REPORT**

No items to report.

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

Mayor Muckle reported the Water Committee will meet on January 31.

### **ADJOURN**

MOTION: Mayor Muckle moved for adjournment, seconded by Council member Yarnell. All were in favor. Absent: Council member Keany. The meeting was adjourned at 11:17 p.m.

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Robert P. Muckle, Mayor

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Nancy Varra, City Clerk

**SUBJECT: APPROVAL OF 2013 ANNUAL FUEL PURCHASE**

**DATE: FEBRUARY 5, 2013**

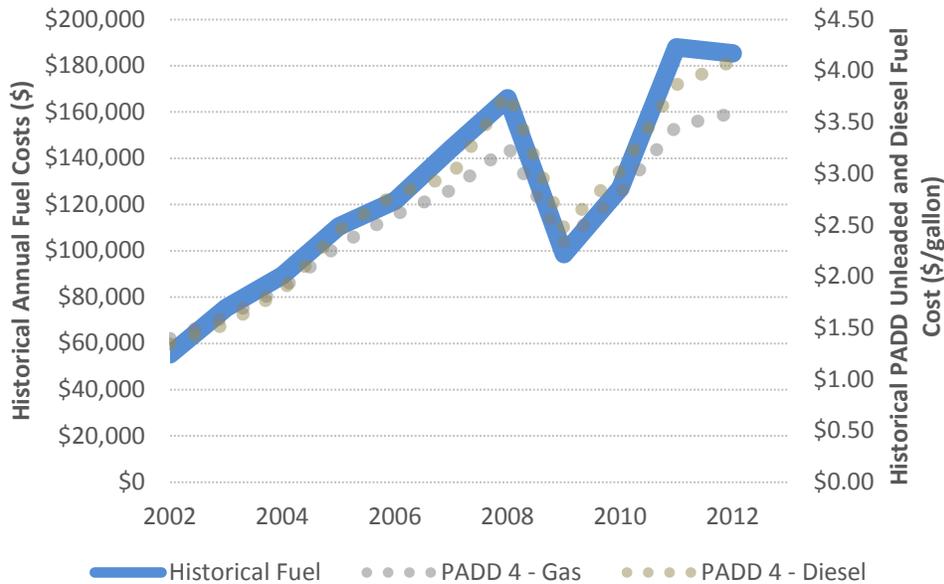
**PRESENTED BY: KURT KOWAR, P.E., PUBLIC WORKS DIRECTOR**

**SUMMARY:**

The Public Works Fleet Operations purchases Gasoline and Diesel fuel on a monthly basis throughout the year for the City Vehicle Fleet.

The Supplier for the City’s Fuel is based upon the lowest bid available for the Colorado Municipal Assembly of Procurement Officials (MAPO). This bid, currently RFP-09-52-MAPO, was hosted by Arapahoe County in 2009 with Hill Petroleum as the successful bidder for Fuel Delivery Services.

Hill Petroleum has supplied fuel to the City since at least 2002 (the extent of the historical research for this communication).



**Figure 1**

Figure 1 illustrates the City’s historical annual fuel costs vs. the Rocky Mountain Petroleum Administration for Defense Districts (PADD 4) Retail Gasoline and Diesel Price statistics.

**SUBJECT: APPROVAL OF 2013 ANNUAL FUEL PURCHASE**

**DATE: FEBRUARY 5, 2013**

**PAGE 2 OF 2**

Over the course of the last few years, the City averages 45,000 gallons in Unleaded Gasoline and 13,000 gallons of Biodiesel fuel.

The City has budgeted \$163,150 for fuel purchase in 2013. Budgeting for City fuel purchases is done by department and allocated across various cost centers within the operational budget. Traditionally, historical costs are reviewed to estimate future costs. The 2009-2011 historical fuel costs at the time of the 2013-2017 operational budget development were \$137,825.

Review of the current three year average for fuel costs indicates an increase to \$166,737 with a two year stabilized average of \$186,600.

Given the variable nature of fuel costs, actual need may be over or under budgeted funds. City Staff monitor fuel costs in conjunction with overall citywide budget trends to manage expenditures for each fiscal year.

**FISCAL IMPACT:**

The approved 2013 Operations Budget provides for \$163,150 for Fuel purchases.

**RECOMMENDATION:**

Approve the existing practice to purchase fuel from Hill Petroleum under the guidelines and price structure of the current RFP-09-52-MAPO agreement.

**ATTACHMENT(S):**

1. 2009 MAPO RFP
2. 2009 MAPO Bid Tabulation
3. 2012 Arapahoe County/MAPO Extension of Agreement



Arapahoe County Finance Department  
Purchasing Division  
5334 South Prince Street, Room 480  
Littleton, Colorado 80120  
**REQUEST FOR PROPOSAL**  
**COVER SHEET**

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Date: May 1, 2009  
Proposal: 09-52-MAPO  
Proposal title: **FUEL DELIVERY SERVICES**  
Proposal will be received until: June 1, 2009, 2:00 p.m., local time  
at 5334 S. Prince St., Room 480  
Goods or services to be delivered to or performed at: Various Locations  
For additional information please contact: Keith Ashby, CPPO, Purchasing Manager  
303-795-4435  
Email Address: kashby@co.arapahoe.co.us

The Participating Agencies include Arapahoe County; the City and County of Broomfield; the Cities of Arvada, Thornton, Northglenn, Glendale, and Wheat Ridge; and Adams County School District #50 and Jefferson County R-1 School District, acting collectively through their authorized procurement officials respectfully request separate sealed Proposals for the purchase and delivery of fuel.

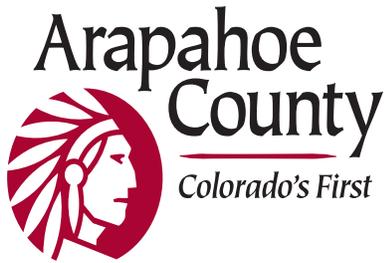
No Proposals will be considered which are received after the time mentioned, and any Proposals so received shall be returned to the Offeror unopened and will not be considered under any circumstances. Sole responsibility rests with the Offeror to see that their Proposal is received on time at the stated location.

Any modifications or withdrawal of a Proposal, prior to the opening of Proposals, is subject to the same conditions stated above, except that withdrawal of a Proposal by telegraphic or electronic transmission is acceptable. A Proposal may also be withdrawn in person by an Offeror or its authorized representative, provided identification is supplied and a receipt is signed for the Proposal, but only if the withdrawal is made prior to the exact time set for receipt of Proposals.

Proposals submitted must meet or exceed specifications contained in the Proposal document.

The Agencies collectively or individually reserve the right to reject any and all Proposals or any part thereof, to waive any formalities or informalities and further, to award the Proposal to the responsive and responsible Offeror(s) as deemed in the best interest of the Agencies.

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Arapahoe County Finance Department  
Purchasing Division  
5334 South Prince Street, Room 480  
Littleton, Colorado 80120

**REQUEST FOR PROPOSAL  
GENERAL TERMS AND CONDITIONS**

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- I. APPLICABILITY.** These General Terms and Conditions apply, but are not limited, to all bids, proposals, qualifications and quotations (hereinafter referred to as "Offers" or "Responses") made to Arapahoe County (hereinafter referred to as "County") by all prospective suppliers (herein after referred to as "Vendors") in response, but not limited, to Invitations to Bid, Requests for Proposals, Requests for Qualifications, and Requests for Quotations (hereinafter referred to as "Solicitations").
- II. CONTENTS OF OFFER**
- A. GENERAL CONDITIONS.** Vendors are required to submit their Offers in accordance with the following expressed conditions:
1. Vendors shall make all investigations necessary to thoroughly inform themselves regarding the plant and facilities affected by the delivery of materials and equipment as required by the conditions of the Solicitation. No plea of ignorance by the Vendor of conditions that exist or that may hereafter exist as a result of failure to fulfill the requirements of the contract documents will be accepted as the basis for varying the requirements of the County or the compensation to the Vendor.
  2. Vendors are advised that all County contracts are subject to all legal requirements contained in the County's Purchasing Division's Policies and state and federal statutes. When conflicts between the Solicitation and these legal documents occur, the highest authority will prevail.
  3. Vendors are required to state exactly what they intend to furnish to the County via this Solicitation and must indicate any variances to the terms, conditions, and specifications of this Solicitation no matter how slight. If variations are not stated in the Vendor's Offer, it shall be construed that the Vendor's Offer fully complies with all conditions identified in this Solicitation.
  4. Arapahoe County intends and expects that the contracting processes of the County and its Vendors provide equal opportunity without regard to gender, race, ethnicity, religion, age or disability and that its Vendors make available equal opportunities to the extent third parties are engaged to provide goods and services to the County as subcontractors, vendors, or otherwise. Accordingly, the Vendor shall not discriminate on any of the foregoing grounds in the performance of the contract, and shall make available equal opportunities to the extent third parties are engaged to provide goods and services in connection with performance of the contract. **Joint ventures are encouraged.** The Vendor shall disseminate information regarding all subcontracting opportunities under this contract in a manner reasonably calculated to reach all qualified potential subcontractors who may be interested. The Vendor shall maintain records demonstrating its compliance with this article and shall make such records available to the County upon the County's request.
  5. All Offers and other materials submitted in response to this Solicitation shall become the property of Arapahoe County. Information that is considered proprietary should be marked as such and will be returned to the Vendor(s) after the award is made.
- B. INSURANCE.** In part to assure the County that the Contractor is always capable of fulfilling the specified indemnification obligations, the Contractor must purchase and maintain insurance of the kind and in the minimum amounts specified below, unless indicated otherwise in Section 4 of Exhibit A.

1. Contractor agrees to procure and maintain, at its own expense, for all work covered by this Agreement, the following policies of insurance:
  - a. Worker's Compensation Insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Agreement:

Worker's Compensation

Each accident	Statutory
Each employee for disease	Statutory

Contractor shall comply with the requirements of the Worker's Compensation Act of Colorado and shall provide Worker's Compensation Insurance to protect the Contractor from and against any and all Worker's Compensation claims arising from performance of work under the Agreement. The requirements of this provision shall apply to the Contractor and to all subcontractors.

- b. Commercial 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. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage must be on an "occurrence" basis as opposed to a "claims made" basis. This insurance must pay on behalf of the Contractor all sums which the Contractor shall become legally obligated to pay as damages because of bodily injury or property damage caused by an occurrence up to the specified limits of liability for each occurrence.
- c. Commercial Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than One Million Dollars (\$1,000,000) each occurrence with respect to each of Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision. Commercial Automobile Liability insurance must cover the Contractor for all sums which the Contractor shall become legally obligated to pay as damages because of bodily injury or property damage caused by an occurrence up to the specified limits of liability for each occurrence. This insurance coverage must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Agreement, both on and off the work site, and must include non-ownership and hired cars coverage.
- d. If indicated in Section 5 of Exhibit A, Errors and Omissions or Professional Liability Insurance with a minimum coverage as specified in Section 5 of Exhibit A, and for two years beyond the completion of all services under this agreement.
  - (1) The above-mentioned coverages shall be procured and maintained with insurers with an A- or better rating, as determined by Best's Key Rating Guide. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor.
  - (2) The policies required above shall be primary insurance, and any insurance carried by the County, its officers, or its employees shall be excess and not contributory insurance to that provided by Contractor. No additional insured endorsement to the policy required above shall contain any exclusion for bodily injury or property damage arising from completed operations. The Contractor shall be solely responsible for any deductible losses under any policy required above.
  - (3) The Commercial General Liability and Commercial Automobile Liability policies shall be endorsed to name the County, and its elected officials, officers, employees and agents as additional insureds. When Worker's Compensation and Professional Liability are required a certificate should be provided as evidence of such coverage.

The policies shall provide that the County will receive notice no less than 30 days prior to cancellation, termination or a material change to the policies.

- (4) The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to the Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types.
- (5) Failure on the part of the Contractor to procure or maintain policies providing the required coverages, conditions and minimum limits shall constitute a material breach of contract upon which County may immediately terminate this Agreement, or at its discretion, County may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by County shall be repaid by Contractor to County upon demand, or County may offset the cost of the premiums against any monies due to Contractor from County.
- (6) The County reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

#### C. INSURANCE CERTIFICATES

1. The Contractor shall, prior to commencing services, deliver to the County Certificates of Insurance as evidence that policies providing any and all required coverages and limits are in full force and effect.
2. These certificates will serve as an indication to the County that the Contractor has acquired all necessary insurance; however, the County may require that certified copies of the insurance policies be submitted and may withhold payment for services until the applicable insurance policies are received and found to be in accordance with the Agreement.
3. Insurance limits must be on each Certificate of Insurance. Each Certificate of Insurance shall be reviewed and approved by County prior to commencement of services under the Agreement. The certificates shall identify this Agreement and shall state the project number where applicable.

Worker's Compensation Insurance. Each contractor and subcontractor shall maintain at its own expense until completion of its work and acceptance thereof by the County, Worker's Compensation Insurance, including occupational disease provisions, covering the obligations of the contractor or subcontractor in accordance with the provisions of the laws of the State of Colorado. The contractor shall furnish the County with a certificate giving evidence that it is covered by the Worker's Compensation Insurance herein required, each certificate specifically stating that such insurance includes occupational disease provisions and provisions preventing cancellation without thirty (30) days prior notice to the County in writing.

#### D. CLARIFICATION AND MODIFICATIONS IN TERMS AND CONDITIONS

1. Where there appear to be variances or conflicts between the General Terms and Conditions, the Special Terms and Conditions and the Technical Specifications outlined in this Solicitation, the Technical Specifications then the Special Terms and Conditions will prevail.
2. If any Vendor contemplating submitting an Offer under this Solicitation is in doubt as to the true meaning of the specifications, the Vendor must submit a **written request** for clarification to the County's Purchasing Manager. The Vendor submitting the request shall be responsible for ensuring that the request is received by the County at least five calendar days prior to the scheduled Solicitation opening.

**Any official interpretation of this Solicitation must be made by an agent of the County's Purchasing Division who is authorized to act on behalf of the County. The**

**County shall not be responsible for interpretations offered by employees of the County who are not agents of the County's Purchasing Division.**

The County shall issue a written addendum if substantial changes which impact the technical submission of Offers are required. A copy of such addenda will be mailed or distributed via facsimile transmission to each Vendor receiving the Solicitation. The Vendor shall certify its acknowledgment of the addendum by signing the addendum and returning it with its Offer. In the event of conflict with the original contract documents, addenda shall govern all other contract documents to the extent specified. Subsequent addenda shall govern over prior addenda only to the extent specified.

**E. PRICES CONTAINED IN OFFER-DISCOUNTS, TAXES, COLLUSION**

1. Vendors may offer a cash discount for prompt payment. Discounts will be considered in determining the lowest net cost for the evaluation of Offers; discounts for periods of less than twenty days, however, will not be considered in making the award. Vendors are encouraged to provide their prompt payment terms in the space provided on the Solicitation's Specification and Pricing Form. If no prompt payment discount is being offered, the Vendor shall enter a zero (0) for the percentage discount to indicate net thirty days. If the Vendor does not enter a percentage discount, it is hereby understood and agreed that the payment terms shall be net thirty days, effective on the date that the County receives an accurate invoice or accepts the products, whichever is the later date. Payment is deemed to be made on the date of the mailing of the check.
2. Vendors shall not include federal, state, or local excise or sales taxes in prices offered, as the County is exempt from payment of such taxes.
3. The Vendor, by affixing its signature to this Solicitation, certifies that its Offer is made without previous understanding, agreement, or connection either with any persons, firms or corporations making an Offer for the same items, or with the County. The Vendor also certifies that its Offer is in all respects fair, without outside control, collusion, fraud, or otherwise illegal action. To insure integrity of the County's public procurement process, all Vendors are hereby placed on notice that any and all Vendors who falsify the certifications required in conjunction with this section will be prosecuted to the fullest extent of the law.

**III. PREPARATION AND SUBMISSION OF OFFER**

**A. PREPARATION**

1. The Offer must be typed or legibly printed in ink. The use of erasable ink is not permitted. All corrections made by the Vendor must be initialed **in blue ink** by the authorized agent of the Vendor.
2. Offers must contain, **in blue ink**, a manual signature of an authorized agent of the Vendor in the space provided on the Solicitation cover page. **The original cover page of this Solicitation must be included in all Offers. If the Vendor's authorized agent fails to sign and return the original cover page of the Solicitation, its Offer may be invalid and may not be considered.**
3. Unit prices shall be provided by the Vendor on the Solicitation's Specification and Pricing Form when required in conjunction with the prescribed method of award and **shall be for the unit of measure requested**. Prices that are not in accordance with the measurements and descriptions requested shall be considered non-responsive and shall not be considered. Where there is a discrepancy between the unit price and the extension of prices, the unit price shall prevail.
4. Alternate Offers will not be considered unless expressly permitted in the Specification's Special Terms and Conditions.
5. The accuracy of the Offer is the sole responsibility of the Vendor. No changes in the Offer shall be allowed after the date and time that the Offers are due.

## B. SUBMISSION

1. The Offer shall be sealed in an envelope with the vendor's name and the solicitation number on the outside. The County's Specification and Pricing form, which is attached to this Solicitation, must be used when the Vendor is submitting its Offer. The Vendor shall not alter this form (e.g. add or modify categories for posting prices offered) unless expressly permitted in the addendum duly issued by the County. No other form shall be accepted.
2. Offers submitted via facsimile machines will not be accepted.
3. Vendors, which qualify their Offers by requiring alternate contractual terms and conditions as a stipulation for contract award must include such, alternate terms and conditions in their Offers. The County reserves the right to declare Vendors' Offers as non-responsive if any of these alternate terms and conditions are in conflict with the County's terms and conditions, or if they are not in the best interests of the County.

C. LATE OFFERS. Offers received after the date and time set for the opening shall be considered non-responsive and returned unopened to the Vendor.

## D. VENDOR APPLICATION AND RETENTION ON BID LIST

1. All Vendors are required to have a current vendor application on file with the County's Purchasing Division prior to issuance of any Purchase Order or Notice of Award. It is the Vendor's responsibility to update its application with new addresses, telephone numbers, contact persons, and a listing of commodities and services provided by the Vendor.

Vendors may register themselves online by visiting <http://www.govbids.com>, then click on the link to the Rocky Mountain E-Purchasing System. The County (along with the other participating agencies shown on the Rocky Mountain System), posts all bids, quotes, amendments and award information on this website. If you need assistance when registering, or do not have Internet access, please contact BidNet<sup>®</sup> at 1-800-677-1997, ext #214. BidNet provides all technical and customer support for the RMEPS system and will be happy to assist you.

2. Once you are registered in the Rocky Mountain database you are automatically placed on the County's bid list. You will continue to receive Solicitation notifications for the commodities your firm has specified.
3. Vendors may view and print all formal bids and amendments online. Under no circumstances, however, will the County accept Offers for formal bids submitted via facsimile machines.
4. For those vendors that opt to register for the automatic notification service of fax or e-mail, the County (along with all other participating agencies on the Rocky Mountain System), will also notify your company of new quotes (purchases less than \$25,000), for the commodities your firm has specified. Vendors may respond to quotes either online, or by fax.

## IV. MODIFICATION OR WITHDRAWAL OF OFFERS

A. MODIFICATIONS TO OFFERS. Offers may only be modified in the form of a written notice on company letterhead and must be received prior to the time and date set for the Offers to be opened. Each modification submitted to the County's Purchasing Division must have the Vendor's name and return address and the applicable Solicitation number and title clearly marked on the face of the envelope. If more than one modification is submitted, the modification bearing the latest date of receipt by the County's Purchasing Division will be considered the valid modification.

## B. WITHDRAWAL OF OFFERS

1. Offers may be withdrawn prior to the time and date set for the opening. Such requests must be made in writing on company letterhead.

2. In accordance with the Uniform Commercial Code, Offers may not be withdrawn after the time and date set for the opening for a period of ninety calendar days. If an Offer is withdrawn by the Vendor during this ninety-day period, the County may, at its option, suspend the Vendor from the bid list and may not accept any Offer from the Vendor for a six-month period following the withdrawal.

**V. REJECTION OF OFFERS**

A. REJECTION OF OFFERS. The County may, at its sole and absolute discretion:

1. Reject any and all, or parts of any or all, Offers submitted by prospective Vendors;
2. Re-advertise this Solicitation;
3. Postpone or cancel the process;
4. Waive any irregularities in the Offers received in conjunction with this Solicitation; and/or
5. Determine the criteria and process whereby Offers are evaluated and awarded. No damages shall be recoverable by any challenger as a result of these determinations or decisions by the County.

B. REJECTION OF A PARTICULAR OFFER. In addition to any reason identified in subsection A above, the County may reject an Offer under any of the following conditions:

1. The Vendor misstates or conceals any material fact in its Offer;
2. The Vendor's Offer does not strictly conform to the law or the requirements of the Solicitation;
3. The Offer expressly requires or implies a conditional award that conflicts with the method of award stipulated in the Solicitation's Special Terms and Conditions;
4. The Offer does not include documents, including, but not limited to, certificates, licenses, and/or samples, which are required for submission with the Offer in conjunction with the Solicitation's Special Terms and Conditions and/or Technical Specifications; or
5. The Offer has not been executed by the Vendor through an authorized signature on the Specification's Cover Sheet.

C. ELIMINATION FROM CONSIDERATION

1. An Offer may not be accepted from, nor any contract be awarded to, any person or firm which is in arrears to the County upon any debt or contract or which is a defaulter as surety or otherwise upon any obligation to the County.
2. An Offer may not be accepted from, nor any contract awarded to, any person or firm which has failed to perform faithfully any previous contract with the County, state or federal government, for a minimum period of three years after this previous contract was terminated for cause.

**VI. AWARD OF BID.** The County shall award the bid to the successful Vendor through the issuance of a Notice of Award. The General Terms and Conditions, the Special Terms and Conditions, any Technical Specifications, the Vendor's Offer, and the Purchase Order or Notice of Award are collectively an integral part of any agreement between Arapahoe County and the successful Vendor. Accordingly, these documents shall be incorporated into a separate contract for services or a Purchase Order. No services shall be provided until the Agreement for Services has been signed by the County and no products shall be provided until the Purchase Order has been signed by the Vendor.

**VII. APPEAL OF AWARD.** Solicitations are awarded based on several conditions, price being just one of

the elements. Please check the Solicitation's Special Terms and Conditions to see what elements the award will be based on. Vendors may appeal by submitting, **in writing**, a request for reconsideration to the County's Purchasing Manager within 72 hours after the Notice of Award is posted on the Rocky Mountain E-Procurement System, provided that the appeal is sought by the Vendor prior to the County finalizing a contract with the selected Vendor.

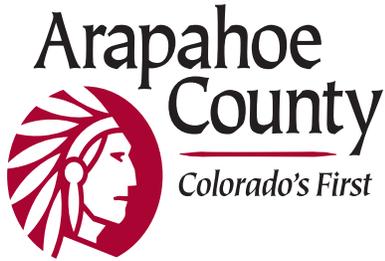
#### **VIII. CONTRACTUAL OBLIGATIONS**

- A. **LOCAL, STATE AND FEDERAL COMPLIANCE REQUIREMENTS.** Successful Vendors shall be familiar and comply with all local, state, and federal directives, ordinances, rules, orders, and laws applicable to, and affected by, this contract including, but not limited to, Equal Employment Opportunity (EEO) regulations, Occupational Safety and Health Act (OSHA), and Title II of the Americans with Disabilities Act (ADA).
- B. **DISPOSITION.** The Vendor shall not assign, transfer, convey, sublet, or otherwise dispose of this contract, including any or all of its right, title or interest therein, or its power to execute such contract to any person, company or corporation, without prior written consent of the County or the participating Agency.
- C. **EMPLOYEES.** All employees of the Vendor shall be considered to be, at all times, employees of the Vendor, under its sole direction, and not an employee or agent of the County. The County may require the Vendor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable, and whose continued employment on County property is not in the best interest of the County. In accordance with the County's policy regarding the use of tobacco products, no employee of the Vendor shall be permitted to use tobacco products when performing work on County property.
- D. **DELIVERY.** Prices, quotes and deliveries are to be **FOB destination, freight prepaid**, and shall require inside delivery unless otherwise specified in the Solicitation's Special Terms and Conditions. Title and risk of loss shall pass to the County upon inspection and acceptance by the County at its designated point of delivery, unless otherwise specified in the Special Terms and Conditions. In the event that the Vendor defaults on its contract or the contract is terminated for cause due to performance, the County reserves the right to re-procure the materials or services from the next lowest Vendor or from other sources during the remaining term of the terminated/defaulted contract. Under this arrangement, the County shall charge the Vendor any difference between the Vendor's price and the price to be paid to the next lowest Vendor, as well as any costs associated with the re-solicitation effort
- E. **MATERIAL PRICED INCORRECTLY.** As part of any award resulting from this process, Vendor(s) will discount all transactions as agreed. In the event the County discovers, through its contract monitoring process or formal audit process, that material was priced incorrectly, Vendor(s) agree to promptly refund all overpayments and to pay all reasonable audit expenses incurred as a result of the non-compliance.

**IX. MODIFICATIONS TO EXISTING CONTRACT.** Terms and conditions may be added, modified, and deleted upon mutual agreement between agents of the County and the Vendor provided that such terms and conditions remain within the scope and original intent of the Solicitation. Said terms and conditions may include, but are not limited to, additions or deletions of service levels and/or commodities and/or increases or decreases in the time limits for an existing contract. Any and all modifications must be expressed in writing through a Memorandum of Understanding and executed by authorized agents of the County and the Vendor prior to the enactment of such modifications.

#### **X. TERMINATION OF CONTRACT**

- A. The County may, by written notice to the successful Vendor, terminate the contract if the Vendor has been found to have failed to perform its service in a manner satisfactory to the County as per specifications, including delivery as specified. The date of termination shall be stated in the notice. The County shall be the sole judge of non-performance.
- B. The County may cancel the contract upon thirty days written notice for reason other than cause. This may include the County's inability to continue with the contract due to the elimination or reduction of funding.



Arapahoe County Finance Department  
Purchasing Division  
5334 South Prince Street, Room 480  
Littleton, Colorado 80120

**REQUEST FOR PROPOSAL  
SPECIAL TERMS AND CONDITIONS**

**SUBMISSION OF OFFERS:** The original Proposal must be received before the due date and time as specified in this request. The Vendor is responsible for addressing the envelope as indicated below. If the proposal arrives late, it will be returned unopened. Address the envelope as follows:

Arapahoe County  
Purchasing Division  
5334 South Prince Street, Room 480  
Littleton, CO 80166

ATTN: Keith Ashby CPPO  
Purchasing Agent  
**FUEL DELIVERY SERVICES RFP 09-52-MAPO**

**SCHEDULE OF ACTIVITIES:** The following activities outline the process to be used to solicit vendor responses and to evaluate each vendor proposal.

May 1, 2009 ..... Issue Request for Proposal  
May 14, 2009 .....Deadline for submitting questions  
June 2, 2009 .....Proposal submittal deadline

**PURPOSE: TO ESTABLISH A CONTRACT FOR SERVICES:** The purpose of this Solicitation is to select a qualified firm(s), acceptable to Participating Agencies, to furnish high quality gasoline and diesel fuels and provide a comprehensive program for monitoring tanks and providing fuel treatment services as described herein. Participating Agencies will contract independently with the awarded Vendor(s).

**TERM OF AWARD:** The term of the award shall be from July 1, 2009 through June 30, 2010.

**OPTION TO RENEW FOR SUBSEQUENT YEARS:** The prices or discounts quoted in this Solicitation shall prevail for term of the contract, at which time the Participating Agencies shall have the option to renew the contract for subsequent one year periods. The optional renewal periods shall not exceed three years. The award may be renewed annually for additional one-year periods if mutually agreed upon by Participating Agencies and the Contractor. Pricing and/or specification changes, if any, shall be negotiated by, and agreed to by, both parties. Continuation of the contract beyond the initial period is a Participating Agency prerogative and not a right of the Vendor. This prerogative will be exercised only when such continuation is clearly in the best interest of the Participating Agency.

**PURCHASE OF OTHER RELATED ITEMS NOT LISTED IN THIS SOLICITATION:** While the major items have been listed on the solicitation that is utilized by the Agencies in conjunction with their operations, there may be ancillary items that may be purchased during the term of this contract. Under these circumstances, Agencies reserve the right to obtain price quotes from the awarded Bidder and to award these ancillary items separately.

**INDEMNIFICATION OF PARTICIPATING AGENCIES BY SUCCESSFUL VENDOR:** The successful Vendor shall indemnify and save the Participating Agencies harmless from any and all claims, liabilities, losses and causes of action which may arise out of the fulfillment of the Vendor's contractual obligations as outlined in this Solicitation. The Vendor shall pay all claims and losses of any nature whatever in connection therewith, and shall defend all suits, in the name of the Participating Agencies when applicable, and shall pay all costs and judgments which may issue thereon.

**MATERIAL PRICED INCORRECTLY:** As part of any award resulting from this process, Vendor(s) will discount all transactions as agreed. In the event the any Participating Agency discovers, through their contract monitoring process or formal audit process, that material was priced incorrectly, Vendor(s) agree to promptly refund all overpayments and to pay all reasonable audit expenses incurred as a result of the non-compliance.

**EQUAL OPPORTUNITY:** Participating Agencies intend and expect the contracting processes of the Participating Agencies and its Vendors provide equal opportunity without regard to gender, race, ethnicity, religion, age or disability and that its Vendors make available equal opportunities to the extent third parties are engaged to provide goods and services to the Participating Agencies as subcontractors, vendors, or otherwise. Accordingly, the Vendor shall not discriminate on any of the foregoing grounds in the performance of the contract, and shall make available equal opportunities to the extent third parties are engaged to provide goods and services in connection with performance of the contract. **Joint ventures are encouraged.** The Vendor shall disseminate information regarding all subcontracting opportunities under this contract in a manner reasonably calculated to reach all qualified potential subcontractors who may be interested. The Vendor shall maintain records demonstrating its compliance with this article and shall make such records available to the Participating Agencies upon the Participating Agency's request.

**SUBMISSION OF OFFERS:** Five (5) copies of **STATEMENT OF INTEREST AND QUALIFICATIONS, PROPOSAL RESPONSE FORM, and PROPOSAL RESPONSE FORM - SIGNATURE PAGE** shall be submitted. One original copy of the complete package shall be included. All six (6) documents shall be sealed. Failure to submit the required number of copies shall deem the vendor non-responsive.

**MODIFICATION OF AGREEMENT:** No modification of award shall be binding upon any Participating Agency unless made in writing and signed by authorized agents of each Participating Agency.

**WARRANTIES:** Offeror warrants that all articles, materials and work will conform within applicable drawings, specifications, samples and/or other descriptions given to Participating Agencies, and will be free from defects. Without limitation of any rights which Participating Agencies may have by reason of any breach of warranty, goods which are not as warranted may be returned at Offeror's expense at reasonable time after delivery, for either credit or replacement, as each Participating Agency may direct.

**OVERSHIPMENTS:** Material shipped in excess of quantity ordered may be returned at Offeror's expense.

**CANCELLATION:** Either party may cancel the award in the event that a petition, either voluntary or involuntary, is filed to declare the other party bankrupt or insolvent or in the event that such party makes an assignment for the benefit of creditors.

**PATENT GUARANTEE:** Offeror shall, with respect to any device or composition of Offeror's design or Offeror's standard manufacture, indemnify and hold harmless each Participating Agency, its employees, officers, and agents, from costs and damage as finally determined by any court of competent jurisdiction for infringement of any United States Letters Patent, by reason of the sale of normal use of such device or composition, provided that Offeror is promptly notified of all such actual or potential infringement suits, and is given an opportunity to participate in the defense thereof by the Participating Agencies.

**TERMINATION OF AWARD FOR CAUSE:** If, through any cause, the successful Offeror shall fail to fulfill in a timely and proper manner its obligations or if the successful vendor shall violate any of the covenants, agreements or stipulations of the award, the Participating Agency shall thereupon have the right to terminate the award by giving written notice to the successful Offeror of such termination and specifying the effective date of termination. In that event, all finished or unfinished services, reports or other materials prepared by the successful Offeror shall, at the option of the Participating Agency, become its property, and the successful Offeror shall be entitled to receive just, equitable compensation for any satisfactory work completed, prepared documents or materials as furnished.

Notwithstanding the above, the successful firm shall not be relieved of liability to the Participating Agency for damage sustained by the Participating Agency by virtue of breach of the award by the successful firm and the Participating Agency may withhold any payments to the successful firm for the purpose of set off until

such time as the exact amount of damages due the Participating Agency from the successful firm is determined.

**NON-APPROPRIATION.** Pursuant to C.R.S. 29-1-110, as amended, the financial obligations of Arapahoe County and all other participating agencies as set forth herein after the current fiscal year are contingent upon funds for the purpose being appropriated, budgeted and otherwise available. This Agreement is automatically terminated on the first fiscal year for which funds are not appropriated. The Arapahoe County and all participating agencies shall give the Contractor written notice of such non-appropriation.

**TERMINATION OF AWARD FOR CONVENIENCE:** The Participating Agency may terminate the award at any time by giving written notice to the successful firm of such termination and specifying the effective date thereof, at least thirty (30) working days before the effective date of such termination. In that event, all finished or unfinished services, reports, material(s) prepared or furnished by the successful Offeror under the award shall at the option of each Participating Agency become its property. If the award is terminated by each Participating Agency as provided herein, the successful firm will be paid an amount which bears the same ratio to the total compensation as the services actually performed or material furnished bear to the total services/materials the successful Offeror covered by the award, less payments of compensation previously made. If the award is terminated due to the fault of the successful Offeror, termination of award for cause, relative to termination shall apply.

**ACCEPTANCE OF TERMS BY SHIPMENT:** Shipment of all or any portion of the goods covered by an order arising from this Proposal shall be deemed an acceptance of the Proposal upon the terms and prices set forth herein.

**ASSIGNMENT:** Offeror shall not assign this order or any monies to become due hereunder without the prior written consent of each Participating Agency. Any assignment or attempt at assignment made without such consent of the Participating Agency shall be void.

**TAXES:** The Participating Agencies are exempt from City, County, State and Federal Sales/Excise Taxes. Certificates will be issued upon request. Any appropriate taxes shall be shown as a separate item on your Proposal. Offeror shall obtain all appropriate tax exemption certificates from the Participating Agencies.

**AMERICANS WITH DISABILITIES ACT:** It shall be a condition that any company, firm or corporation supplying goods or services, must be in compliance with the appropriate areas of the Americans With Disabilities Act of 1990 as enacted, and from time to time amended, and any other applicable Federal regulation. A signed, written certificate stating compliance with the Americans With Disabilities Act may be required, upon request, by any Participating Agency.

**COMMON LANGUAGE:** Unless otherwise specified in this document, all words shall have a common language unless the context in which they are used clearly requires a different meaning. Words in the singular number include the plural, and in the plural include the singular. Additionally, words in the masculine gender include the feminine and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

**PROPRIETARY INFORMATION:** All information included in any Proposal that is of a proprietary nature must be clearly marked as such. Each Participating Agency shall be held harmless from any claims arising from the release of proprietary information not clearly designated as such by the proposing firm.

Because of the need for public accountability, the following information concerning the Proposal will not be considered proprietary, even if such information is clearly marked as such: prices of Proposal, non-financial information concerning compliance with specifications, guarantees and warranties.

**COMPETITIVENESS AND INTEGRITY:** The collective Participating Agencies have assigned control of this acquisition process to the Host Agency identified in the Proposal Notice of this document, to prevent biased evaluations and to preserve the competitiveness and integrity of such acquisition efforts. Offerors are to direct all communications regarding this Proposal to the designated Host Agency, unless otherwise specifically noted. Attempts by offering firms to circumvent this requirement will be viewed negatively and may result in rejection of the offer of the firm found to be in non-compliance. The Host Agency may refer communications to other Participating Agencies for clarification.

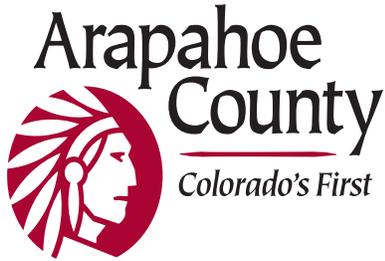
**FOB POINT:** The FOB point shall in all cases be the destination(s). If freight is charged to any of the Participating Agencies, the vendor will prepay and add.

**CREDIT:** If a Vendor places any dollar limitations for credit extended on a purchase order, the Participating Agencies will consider such limitations in the evaluation of the Proposals. Any credit limits without justification may cause the Participating Agencies to disqualify the Proposal. Additionally, MAPO Agencies will not complete credit applications.

**METHOD OF AWARD - BEST EVALUATIVE SCORE BASED ON WRITTEN RESPONSE:** It is the intent of the Participating Agencies to award this Contract to the Vendor who receives the highest score when the Responses submitted by interested Vendors are reviewed by the Participating Agencies' Response Evaluation Committee. For this Solicitation, the Evaluation Committee will score Responses based on the following criteria:

- Responsiveness, Experience
- Technical Assistance
- Quality of Response
- References
- Corporate Stability
- Pricing Rate (Freight, Margin and Fuel Treatment Program).

The Participating Agencies reserve the right to conduct negotiations with Vendors and to accept revisions of proposals. During this negotiation period, the Participating Agencies will not disclose any information derived from proposals submitted, or from discussions with other Vendors. Once an award is made, the solicitation file and the proposals contained therein are in the public record.



Arapahoe County Finance Department  
Purchasing Division  
5334 South Prince Street, Room 480  
Littleton, Colorado 80120

**REQUEST FOR PROPOSAL  
SPECIAL INSTRUCTIONS TO OFFERORS  
COLLECTIVE**

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**I. OBJECTIVES OF THE PROPOSAL**

The objective of this request is to select a qualified firm(s), acceptable to Participating Agencies, to furnish high-quality gasoline and diesel fuels and provide a comprehensive program for monitoring tanks and providing fuel treatment services as described herein.

**II. PROGRAM OBJECTIVES**

The fuel service program is intended to assure that Participating Agencies receive the highest quality fuel, 24-hour delivery, and fuel monitoring and treatment services. This includes monitoring and treatment for fuel contamination, bacteria, fungus, water, as well as diesel and gasoline blending. Firms submitting proposals for this service must be able to give participating MAPO agencies priority for fuel deliveries and 24-hour delivery service.

**III. QUALIFICATIONS**

To be considered for award of this Work, the following minimum qualifications and conditions must be met:

- A. The firm must be engaged in providing the services as outlined in these RFP documents.
- B. The firm must have a successful history of having provided these service requirements.
- C. The firm must possess appropriate state and local licenses.
- D. The firm must be available 24-hours a day to provide emergency delivery service as may be requested by Police, Sheriff, Fire or other public service agencies. This includes delivery during snowstorms or other natural disasters.
- E. The firm must have sufficient personnel and local resources to support the agencies' fuel service programs.
- F. The firm must evidence their ability to provide the insurance requirements specified herein.

**IV. FUEL SPECIFICATIONS**

The firm must include specifications for fuels they intend to supply as a result of this proposal. Include specifications for no lead and premium no lead gasoline, Bio diesel, #1 diesel, #2 diesel, and premium diesel products. ETHANOL IS NOT AN ACCEPTABLE PRODUCT.

**V. SELECTION CRITERIA**

Each proposal will be evaluated in the following areas:

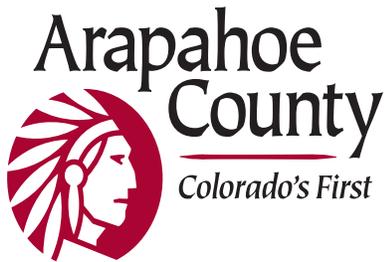
	<u>MAXIMUM POINTS</u>
A. <u>Responsiveness</u> Responsiveness to the needs of the MAPO agencies, relative to time requirements and scope of services offered.	15
B. <u>Experience</u> Responsibility of the proposing firm and its experience in dealing with city and county governments in projects of similar size, scope and nature.	25
C. <u>Technical Assistance</u> Vendor must demonstrate to the satisfaction of the MAPO agencies its ability to provide technical assistance with its products.	15
D. <u>Quality of Response</u> The degree to which the proposal meets or exceeds the requirements of the Request for Proposal.  All items must be discussed clearly and succinctly.	15
E. <u>Assurance</u> The proposing firm's ability and assurance that adequate product can be delivered in situations of emergency and/or shortage.	5
F. <u>References</u> References will be contacted and rated based upon their satisfaction with services provided.	15
G. <u>Corporate Stability</u> Current audited financial reports for the previous fiscal year must be submitted with the proposal.	5
H. <u>Pricing Rate (Freight, Margin and Fuel Treatment Program)</u>	5

The total number of points scored for items "A" through "H."

The award(s) will be made to the firm(s) whose proposal is (are) determined to be most advantageous to each participating MAPO Agency based upon proposal criteria provided herein.

Each Participating Agency reserves the right to base their award not necessarily to the firm(s) with the best price, but to the firm(s) that demonstrate the best ability to fulfill the requirements of this project. The successful firm(s) will be chosen based upon the qualifications and selection criteria in Sections III and V of this document.

Firms whose proposals do not meet the mandatory requirements may be considered non-responsive and may be rejected.



Arapahoe County Finance Department  
Purchasing Division  
5334 South Prince Street, Room 480  
Littleton, Colorado 80120

**REQUEST FOR PROPOSAL  
INSTRUCTIONS TO OFFERORS**

1. **PROPOSAL OPENING AND AWARD:** Proposals will be examined promptly after opening, and summary evaluation scoring will be provided upon request after an award has been made. (Supply a self-addressed, stamped envelope with your Proposal.) **NO PROPOSAL RESULTS WILL BE GIVEN OVER THE TELEPHONE.** No Proposal may be withdrawn for a period of sixty (60) calendar days of the Proposal Due date.
2. **AGENCIES:** The Host Agency is the Agency who is facilitating this Proposal. "Agencies" is defined as all Agencies participating in the Proposal.
3. **OFFEROR QUALIFICATIONS:** No Proposal shall be accepted from and no contract will be awarded to any person, firm or corporation that is in arrears to any Participating Agency, upon debt or contract that is a defaulter, as surety or otherwise, upon any obligation to the Participating Agencies or that is deemed irresponsible or unreliable by the individual Participating Agencies. If requested, Offerors shall be required to submit satisfactory evidence that they have a practical knowledge of the particular supply/service Proposed upon and that they have the necessary financial resources to provide the proposed supply/service called for as described in the attached Technical Specifications.
4. **PROPOSAL FORM:** Each Offeror must submit an original Proposal and additional copies as required on the forms attached. The Offeror shall sign his Proposal correctly, and the Proposal may be rejected if it shows any omissions, alterations of the form, additions not called for, conditional Proposal, or any irregularities of any kind.

In case of a discrepancy between the unit price and the extended price, the unit price shall prevail.

5. **SPECIFICATION DEVIATIONS BY THE OFFEROR:** Any deviation from this specification **MUST** be noted in detail, and submitted in writing on the Proposal Form. Completed specifications should be attached for any substitutions offered, or when amplifications are desirable or necessary. The absence of the specification deviation statement and accompanying specifications will hold the Offeror strictly accountable to the specifications as written herein. Failure to submit this document of specification deviation, if applicable, shall be grounds for rejection of the item when offered for delivery. If specifications or descriptive papers are submitted with Proposals, the Offeror's name should be clearly shown on each document.
6. **OFFEROR REPRESENTATION:** Each Offeror must sign the Proposal with their usual signature and shall give their full business address on the form provided in this Proposal. Proposals by partnerships shall be signed with the partnership name by one of the members or by an authorized representative. Proposals by corporations shall be signed with the name of the corporation followed by the signature and designation of the President, Secretary, or other person authorized to bind it in the matter and shall have the corporate seal affixed thereto.
7. **BROCHURES:** Proposals shall include adequate brochures, latest printed specifications and advertising literature, describing the product offered in such fashion as to permit ready comparison with our specifications on any item-by-item basis where applicable.
8. **SPECIFICATION CHANGES, ADDITIONS AND DELETIONS:** All changes in Proposal documents shall be through written addendum and furnished to all Offerors. Verbal information obtained otherwise will **NOT** be considered in awarding of Proposals.
9. **PROPOSAL CHANGES:** Proposals, amendments thereto, or withdrawal requests received after the time advertised for Proposal Due Date, will be void regardless of when they were mailed. It shall be the

Vendor's responsibility to be informed of all addenda issued. All documents may be obtained through the Rocky Mountain E-Purchasing System @ [www.govbids.com](http://www.govbids.com).

10. **BASIS OF PROPOSAL AWARD:** Award of this Proposal shall be made in accordance with the selection criteria outlined in the attached Special Instructions to Offerors.

Each Participating Agency will be responsible for awarding the Proposal individually; and will be responsible for sending their Purchase Order(s) or Contract(s) to the successful firm(s). Each Participating Agency will make every attempt to award the Proposal cooperatively; however, each Participating Agency will follow its own requirements as stated in its "Individual Special Instructions to Offerors" and "Specifications" sections.

11. **INSURANCE:** For **SERVICES** requiring contractor's presence on any Participating Agency property, the successful Offeror shall, during the term of this Agreement and until completion thereof, provide and maintain the minimum coverage. (Reference Page 2, B. Insurance)

The successful Offeror shall obtain insurance policies with a company or companies and in a form satisfactory to the Participating Agencies. Before commencing any performance under this Agreement, the successful Offeror shall deliver, to each Participating Agency, Certificates of Insurance issued by the insurance company, and/or its duly authorized agents pertaining to the aforementioned insurance, and certifying that the policies stipulated above are in full force and effect.

**All policies and/or Certificates of Insurance shall include each individual entity as an additional named insured.**

Nothing herein shall be deemed or construed as a waiver of any of the protections to which the Agencies may be entitled pursuant to the Colorado Governmental Immunity Act, sections 24-10-101, C.R.S., as amended.

12. **DELIVERY DATE:** The delivery time, as stated in the Proposal Form, shall be the time required to deliver the complete item after the receipt of the order or award of the Contract. Where multiple items appear on a Proposal request, the Offeror shall, unless otherwise stated by the Participating Agencies, show the delivery time for each item separately. If only a single delivery time is shown, it will be assumed to mean that all items included in the Proposal can and will be delivered on or before the specified date. The Offeror agrees that the delivery will be completed in the time stated assuming that the time between the Proposal Due Date and the placing of the order, does not exceed the number of days so stipulated. The right is reserved to reject any Proposal in which the delivery time indicated is considered sufficient to delay the operational needs for which the commodity/service is intended.

13. **CASH DISCOUNTS:**

Cash discounts should be so stated on the Proposal Form. Prices proposed must, however, be based upon payment in thirty (30) days. In all cases, cash discounts will be calculated from the date of the invoice or the date of acceptance, whichever is later.

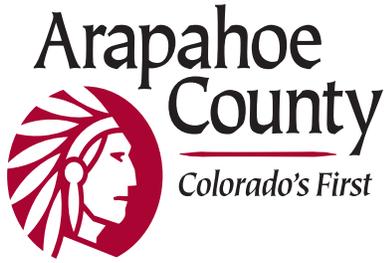
14. **TIE PROPOSALS:** In the case of tie Proposals, the Participating Agencies reserve the right to make the award based on the factors previously outlined in the attached Special Instructions to Offerors.

15. **PROPOSAL REJECTION OR PARTIAL ACCEPTANCE:** The Participating Agencies reserve the right to reject any or all Proposals. They further reserve the right to waive technicalities and formalities in Proposals received, as well as to accept in whole or in part such Proposal, or Proposals where they deem it advisable in protection of the best interests of the Participating Agencies.

16. **INVOICES:** Individual purchase orders will be assigned to the successful Offeror(s) from the Participating Agencies in this Proposal and each is to be invoiced separately. All invoices submitted must show the respective Participating Agency's purchase order number.

17. **PAYMENTS:** Payments will be made for all goods/services delivered within 30 days of receipt and acceptance of delivery. Any incentive discount should be noted in the Submittal Letter.

18. **MODIFICATION, ADDENDA AND INTERPRETATIONS:** Any apparent inconsistencies, or any matter seeming to require explanation or interpretation, must be inquired into by the Offeror at least 72 hours (excluding weekends and holidays) prior to the time set for the Proposal Due Date. Any and all such interpretations or modifications will be in the form of written addenda. All addenda shall become part of the Contract Documents and shall be acknowledged and dated on the Proposal Form. All requests for information should be in writing or telephoned to the Host Agency by the date and time indicated in the Notice.
19. **LAWS AND REGULATIONS:** All applicable State of Colorado and Federal laws, City and County ordinances, licenses and regulations of all Participating Agencies having jurisdiction shall apply to the award throughout and incorporated here by reference.
20. **SUBCONTRACTING:** No portion of this Proposal may be subcontracted without the prior written approval by each Participating Agency.
21. **TELEGRAPHIC/ELECTRONIC BID OR PROPOSAL SUBMITTAL:** Telegraphic and/or Proposal offers sent by electronic devices are not acceptable and will be rejected upon receipt. Proposing firms will be expected to allow adequate time for delivery of their Proposal either by airfreight, postal service, or other means.
22. **MISCELLANEOUS:** The Participating Agencies reserve the right, either collectively or separately, to reject any and all Proposals or parts thereof. The Participating Agencies reserve the right to inspect vendor's facilities prior to the award of this Proposal. The Participating Agencies reserve the right, either collectively or separately, to negotiate optional items with the successful Offeror.
23. **COOPERATIVE AGREEMENTS:** Other governmental agencies may be extended the opportunity to purchase off this Proposal with the agreement of the successful firm(s) and the participating MAPO and CEPC Agencies. Requests for participation of other Agencies will be coordinated by the MAPO Agency hosting the Proposal. The Host Agency will notify the firm(s) and the Agency wishing to participate, in writing.



Arapahoe County Finance Department  
 Purchasing Division  
 5334 South Prince Street, Room 480  
 Littleton, Colorado 80120

**REQUEST FOR PROPOSAL  
 SPECIAL INSTRUCTIONS TO OFFERORS**

**INDIVIDUAL- Jefferson County R-1 School District**

NOTE: Each Offeror may use contacts listed below to obtain information on physical delivery points and/or to schedule site visitations. The Agencies will not consider objections to handling facilities after Proposal opening.

AGENCY: Boulder Valley School District

CONTACT: Kirk

PHONE: (303) 447-5123

DELIVERY LOCATIONS:

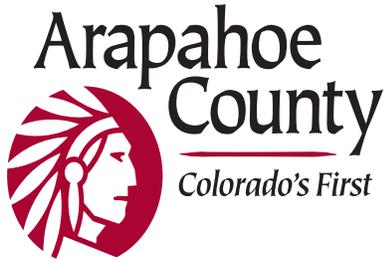
Boulder 6500 E. Arapahoe Boulder, Co.	2 - 12,000 Gallon Tank
Lafayette 1220 Rock Creek Cir. Lafayette, CO. 80026	1 - 12,000 Gallon Tanks
Nederland Nederland, CO	6,000/2,000 Split

ESTIMATED ANNUAL REQUIREMENT:

27,824 Gallons Unleaded

351,030 Gallons Dyed ULSD

8,005 Gallons Dyed WB ULSD



Arapahoe County Finance Department  
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**REQUEST FOR PROPOSAL  
 SPECIAL INSTRUCTIONS TO OFFERORS**

**INDIVIDUAL- Colorado Department of Human Services**

NOTE: Each Offeror may use contacts listed below to obtain information on physical delivery points and/or to schedule site visitations. The Agencies will not consider objections to handling facilities after Proposal opening.

AGENCY: Colorado Department of Human Services

CONTACT: Bill Ledbetter

PHONE: (303) 866-7152

DELIVERY LOCATIONS:

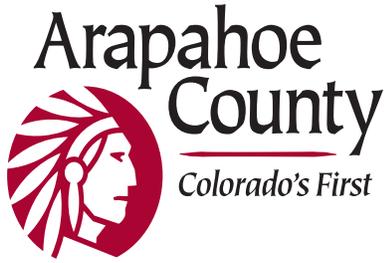
CDHS Fuel Storage Facility 4075 S. Lowell Blvd. Denver, CO 80236	1- 52,000 Gallon
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ESTIMATED ANNUAL REQUIREMENT:

Unleaded gasoline usage:

- July = 3,000
- August = 6,000
- September = 3,000
- October = 6,000
- November = 3,000
- December = 3,000
- January = 6,000
- February = 3,000
- March = 5,000
- April = 3,000
- May = 5,000
- June = 6,000

Total Yearly Usage = 52,000 gallons



Arapahoe County Finance Department  
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**REQUEST FOR PROPOSAL  
SPECIAL INSTRUCTIONS TO OFFERORS**

**INDIVIDUAL- Mapleton Public Schools**

NOTE: Each Offeror may use contacts listed below to obtain information on physical delivery points and/or to schedule site visitations. The Agencies will not consider objections to handling facilities after Proposal opening.

AGENCY: Mapleton Public Schools

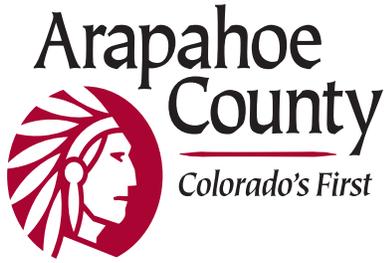
CONTACT: Jennifer Hussey

PHONE: (303) 853-1027

DELIVERY LOCATIONS:

591 E. 80 <sup>th</sup> Ave. Denver, CO 80229	7,800 Gallon Unleaded 42,000 Gallon Diesel
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ESTIMATED ANNUAL REQUIREMENT:



Arapahoe County Finance Department  
 Purchasing Division  
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**REQUEST FOR PROPOSAL  
 SPECIAL INSTRUCTIONS TO OFFERORS**

**INDIVIDUAL- City of Arvada**

NOTE: Each Offeror may use contacts listed below to obtain information on physical delivery points and/or to schedule site visitations. The Agencies will not consider objections to handling facilities after Proposal opening.

AGENCY: City of Arvada  
 CONTACT: Noel Polanycia  
 PHONE: (720) 898-7093

Deliveries must be made within 24 Hours after being advised of quantities required. Shipments must arrive at all destinations between the hours of 8:00 A.M. and 3:00 P.M. Monday through Friday; special after-hours and weekend deliveries may be required.

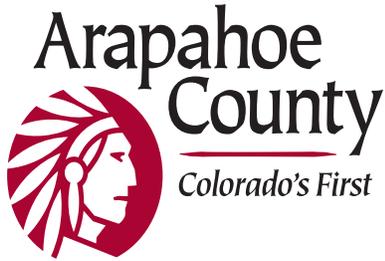
Any potential problems in supplying fuel must be brought to the attention of the Purchasing Division of the City of Arvada immediately. This will allow the City to seek other supplies.

DELIVERY LOCATIONS:

Auto Shop 6701 Indiana St.	1 - 12,000 Gallon Tank 1 - 4,000 Gallon Tank
Satellite Shop 6161 Olde Wadsworth	1 - 6,000 Gallon Tank 2 - 12,000 Gallon Tanks
Westwoods Golf Course Maintenance Shop 6844 Woods Circle	1 - 1,500 Gallon Tank 1 - 500 Gallon Tank
Lake Arbor Golf Course 8601 Wadsworth	1 - 300 Gallon Tank 1 - 2,000 Gallon Tank 1 - 350 Gallon Tank
Westwoods Golf Course Pro Shop 6655 Quaker	1 - 500 Gallon Tank
Ralston Water Treatment Plant 18975 W. 66 <sup>th</sup> Ave.	1 - 1,000 Gallon Tank

ESTIMATED ANNUAL REQUIREMENT:

5,502 Gallons Unleaded  
 150,881 Gallons 50/50 Gasahol  
 1,001 Gallons OXY Mid-Grade  
 70,091 Gallons 50/50 OXY Gasahol  
 64,857 Gallons Dyed ULSD  
 501 Gallons Dyed WB ULSD  
 8,110 Gallons Biodiesel



Arapahoe County Finance Department  
 Purchasing Division  
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**REQUEST FOR PROPOSAL  
 SPECIAL INSTRUCTIONS TO OFFERORS**

**INDIVIDUAL- City and County of Broomfield**

NOTE: Each Offeror may use contacts listed below to obtain information on physical delivery points and/or to schedule site visitations. The Agencies will not consider objections to handling facilities after Proposal opening.

AGENCY: City of Broomfield

CONTACT: Joyce Newberry

PHONE: (303) 464-5824 / (303) 438-6336

**DELIVERY LOCATIONS:**

Shop Facility 3001 W. 124 <sup>th</sup> Broomfield, Co	1 - 8,000 Gallon Tank Diesel 1 - 12,000 Gallon Tank Unleaded 1 - 8,000 Gallon Tank - Waist Oil
Wastewater Plant 2985 W. 124 <sup>th</sup> Ave. Broomfield, Co	1 - 2,000 Gallon Tank-Backup Diesel Fuel Generator
Municipal Building 1 DesCombes Drive Broomfield, Co	1 - 300 Gallon Tank-Backup Diesel Fuel Generator

**ESTIMATED ANNUAL REQUIREMENT:**

92,056 Gallons Unleaded Gasoline

4,226 Gallons OXY Unleaded

61,391 Gallons Dyed ULSD

915 Gallons Dyed WB ULSD



Arapahoe County Finance Department  
 Purchasing Division  
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**REQUEST FOR PROPOSAL  
 SPECIAL INSTRUCTIONS TO OFFERORS**

**INDIVIDUAL- City of Thornton**

NOTE: Each Offeror may use contacts listed below to obtain information on physical delivery points and/or to schedule site visitations. The Agencies will not consider objections to handling facilities after Proposal opening.

AGENCY: City of Thornton

CONTACT: Jennifer Tierney, Bonnie

PHONE: (720) 977-6360, (720) 977-6340

**DELIVERY LOCATIONS:**

Municipal Service Center 8651 Riverdale Road Thornton, CO 80229	1 - 10,000 Gallon Tank Diesel; 1 unleaded) 1 - 10,000 Gallon Tank Unleaded 1 - 4,000 Gallon Tank Unleaded 1 – 15,000 Gallon Tank Diesel - backup generator
Civic Center 9500 Ellen Court Thornton, CO 80229	1 – 5,000 Gallon Tank Diesel
Infrastructure Maintenance Center 12450 Washington Street Thornton, CO 80229	2 –12,000 Gallon Tanks Diesel – manifolded together 1 – 12,000 Gallon Tank Unleaded
Fire Station 2 9667 Huron Street Thornton, CO 80260	2 – 500 Gallon Tanks
Fire Station 4 1400 East 128 <sup>th</sup> Avenue Thornton, CO 80241	4 – 550 Gallon Tanks

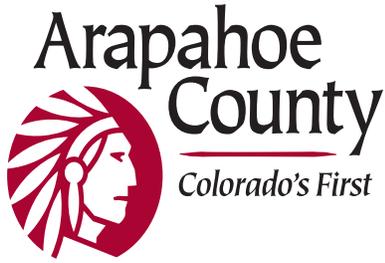
**ESTIMATED ANNUAL REQUIREMENT:**

169,817 Gallons Unleaded Gasoline

186,724 Gallons Dyed ULSD

10,751 Gallons Dyed WB ULSD

2,776 Gallons Biodiesel



Arapahoe County Finance Department  
 Purchasing Division  
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**REQUEST FOR PROPOSAL  
 SPECIAL INSTRUCTIONS TO OFFERORS**

**INDIVIDUAL- Arapahoe County**

NOTE: Each Offeror may use contacts listed below to obtain information on physical delivery points and/or to schedule site visitations. The Agencies will not consider objections to handling facilities after Proposal opening.

AGENCY: Arapahoe County

CONTACT: Don Carson

PHONE: (720) 874-6803

DELIVERY LOCATIONS:

7600 S Peoria St. Englewood, Co 80112	2 - 10,000 Diesel 1 - 10,000 Unleaded
7375 Potomac St. Englewood, CO 80112	1 - 8,000 Diesel
5686 S Court Pl. Littleton, CO 80120	1 - 3,000 Diesel
5334 S. Prince St. Littleton, CO 80120	1- 300 Diesel
4405 S. CR. 129, Bennett, CO. 80102	1 - 10,000 Diesel 1 – 5,000 NL

ESTIMATED ANNUAL REQUIREMENT:

50,804 Gallons Unleaded

27,701 Gallons Mid-grade Unleaded

9,605 Gallons OXY Unleaded

33,322 Gallons OXY Mid-grade

100,337 Gallons Dyed ULSD

5,999 Gallons Dyed WB ULSD



Arapahoe County Finance Department  
 Purchasing Division  
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**REQUEST FOR PROPOSAL  
 SPECIAL INSTRUCTIONS TO OFFERORS**

**INDIVIDUAL- City of Northglenn**

NOTE: Each Offeror may use contacts listed below to obtain information on physical delivery points and/or to schedule site visitations. The Agencies will not consider objections to handling facilities after Proposal opening.

AGENCY: City of Northglenn

CONTACT: Marcia Connon, Fleet Services

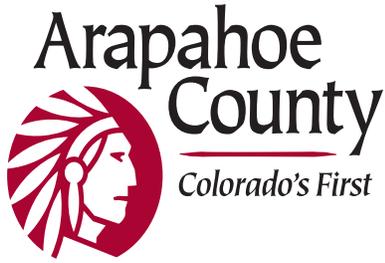
PHONE: (303) 450-4007 or (303) 451-8326

DELIVERY LOCATIONS:

City Hall 11701 Community Center Drive Northglenn, CO 80233	1 - 12,000 Gallon Tank
Eastlake Fueling Facility 12323 Claude Court Northglenn, CO 80233	1 - 10,000 Gallon Tank
N/A	1 - 4000 Diesel

ESTIMATED ANNUAL REQUIREMENT:

60,001 Gallons Dyed ULSD



Arapahoe County Finance Department  
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**REQUEST FOR PROPOSAL  
SPECIAL INSTRUCTIONS TO OFFERORS**

**INDIVIDUAL- Adams County School District #50**

NOTE: Each Offeror may use contacts listed below to obtain information on physical delivery points and/or to schedule site visitations. The Agencies will not consider objections to handling facilities after Proposal opening.

AGENCY: Adams County School District #50

CONTACT: Kelly Mickelson

PHONE: (303) 428-3535

DELIVERY LOCATIONS:

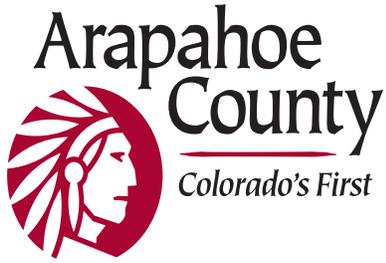
Auxillary Services 7002 Releigh St. Westminster, CO 80030	1 - 10,000 Gallon Low Sulfur Diesel 1 - 10,000 Gallon Unleaded Gasoline
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ESTIMATED ANNUAL REQUIREMENT:

8,001 Gallons Unleaded

3,127 OXY Unleaded

60,594 Gallons Dyed ULSD



Arapahoe County Finance Department  
Purchasing Division  
5334 South Prince Street, Room 480  
Littleton, Colorado 80120

**REQUEST FOR PROPOSAL  
SPECIAL INSTRUCTIONS TO OFFERORS**

**INDIVIDUAL- Adams County School District #12**

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NOTE: Each Offeror may use contacts listed below to obtain information on physical delivery points and/or to schedule site visitations. The Agencies will not consider objections to handling facilities after Proposal opening.

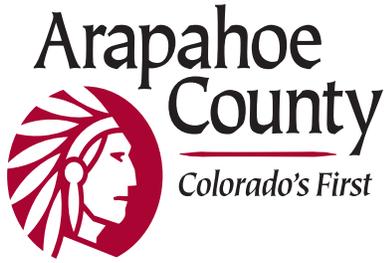
AGENCY: Adams County School District #12

CONTACT: N/A

PHONE: (720) 972-4370

DELIVERY LOCATIONS:

N/A	2 - 12,000 NL Diesel
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Arapahoe County Finance Department  
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**REQUEST FOR PROPOSAL  
 SPECIAL INSTRUCTIONS TO OFFERORS**

**INDIVIDUAL- City of Wheat Ridge**

NOTE: Each Offeror may use contacts listed below to obtain information on physical delivery points and/or to schedule site visitations. The Agencies will not consider objections to handling facilities after Proposal opening.

AGENCY: City of Wheat Ridge

CONTACT: Greg Knudsen or Sharon Richey or Steve

PHONE: (303) 205-7601 or (303) 205-7600 or (303) 205-7604

DELIVERY LOCATIONS:

11220 West 45 <sup>th</sup> Ave. Wheat Ridge, CO 80033	1 - 10,000 Gallon Tank 1 - 6,000 Gallon Tank
N/A	1 - 8,000 Diesel 1 -10,000 NL

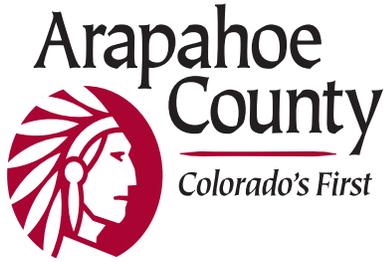
ESTIMATED ANNUAL REQUIREMENT:

5,999 Gallons Unleaded

39,004 Gallons 50/50 Gasahol

30,960 Gallons 50/50 OXY Gasahol

19,366 Gallons Dyed ULSD



Arapahoe County Finance Department  
 Purchasing Division  
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**REQUEST FOR PROPOSAL  
 SPECIAL INSTRUCTIONS TO OFFERORS**

**INDIVIDUAL- Denver Water**

NOTE: Each Offeror may use contacts listed below to obtain information on physical delivery points and/or to schedule site visitations. The Agencies will not consider objections to handling facilities after Proposal opening.

AGENCY: Denver Water

CONTACT: Jack

PHONE: (303) 628-6741

DELIVERY LOCATIONS:

Denver Water 1600 W. 12 <sup>th</sup> Ave. Denver, CO 80204	3 - 15,000 NL 1 - 15,000 Diesel 1 - 6,000 Diesel
Ralston Reservoir 6939 HWY 93 Golden, CO 80403	1 - 500 Diesel 1 - 500 NL
Waterton Canyon 4910 S. Platte River Rd.	1 - 500 Diesel 1 - 500 NL
Gross Reservoir 3817 Gross Dam Rd	1 - 500 Diesel 1 - 500 NL

ESTIMATED ANNUAL REQUIREMENT:

13,929 Gallons Unleaded

2,278 Gallons Premium

84,622 Gallons 50/50 Gasahol

4,226 Gallons OXY Unleaded

759 Gallons OXY Premium

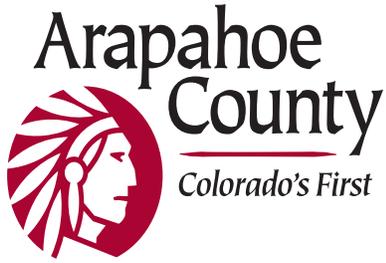
155,065 Gallons 50/50 OXY Gasahol

3,398 Gallons Clear ULSD

140,414 Gallons Dyed ULSD

19,509 Gallons Dyed WB ULSD

20,990 Gallons Biodiesel



Arapahoe County Finance Department  
 Purchasing Division  
 5334 South Prince Street, Room 480  
 Littleton, Colorado 80120

**REQUEST FOR PROPOSAL  
 SPECIAL INSTRUCTIONS TO OFFERORS**

**INDIVIDUAL- Boulder County**

NOTE: Each Offeror may use contacts listed below to obtain information on physical delivery points and/or to schedule site visitations. The Agencies will not consider objections to handling facilities after Proposal opening.

AGENCY: Boulder County

CONTACT: Ted

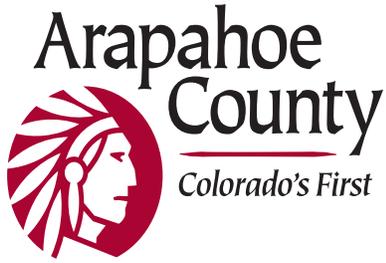
PHONE: (303) 682-6702

DELIVERY LOCATIONS:

Boulder County Fleet-Longmont 5201 St. St. Vrain Rd. Longmont, Co.	2 - 10,000 Gallon Tank
Boulder County Fleet Lee Hill-Boulder 320 Lee Hill Rd. Boulder, Co. 80302	1 - 4,000 Gallon Tank 1 - 6,000 Diesel

ESTIMATED ANNUAL REQUIREMENT:

60,001 Gallons Dyed ULSD



Arapahoe County Finance Department  
Purchasing Division  
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**REQUEST FOR PROPOSAL  
SPECIAL INSTRUCTIONS TO OFFERORS**

**INDIVIDUAL- City of Boulder**

NOTE: Each Offeror may use contacts listed below to obtain information on physical delivery points and/or to schedule site visitations. The Agencies will not consider objections to handling facilities after Proposal opening.

AGENCY: City of Boulder

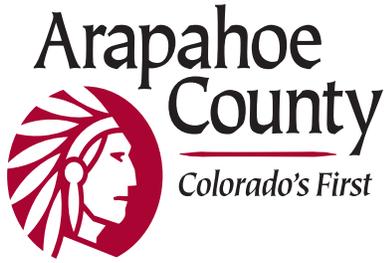
CONTACT: Chris

PHONE: (303) 413-7136

DELIVERY LOCATIONS:

City of Boulder- Fleet	1- 25,000 NL 1- 15,000 Diesel 1- 6000 Bio 1- 2000 E85
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ESTIMATED ANNUAL REQUIREMENT:



Arapahoe County Finance Department  
Purchasing Division  
5334 South Prince Street, Room 480  
Littleton, Colorado 80120

**REQUEST FOR PROPOSAL  
SPECIAL INSTRUCTIONS TO OFFERORS**

**INDIVIDUAL- City of Longmont**

NOTE: Each Offeror may use contacts listed below to obtain information on physical delivery points and/or to schedule site visitations. The Agencies will not consider objections to handling facilities after Proposal opening.

AGENCY: City of Longmont

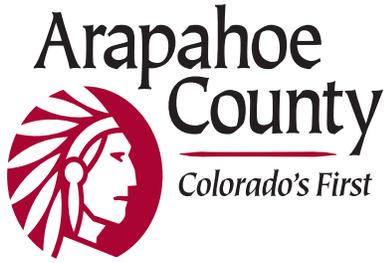
CONTACT: N/A

PHONE: N/A

DELIVERY LOCATIONS:

City of Longmont	2- 15,000 NL Diesel
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ESTIMATED ANNUAL REQUIREMENT:



Arapahoe County Finance Department  
Purchasing Division  
5334 South Prince Street, Room 480  
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**REQUEST FOR PROPOSAL  
SPECIAL INSTRUCTIONS TO OFFERORS**

**INDIVIDUAL- St. Vrain Schools**

NOTE: Each Offeror may use contacts listed below to obtain information on physical delivery points and/or to schedule site visitations. The Agencies will not consider objections to handling facilities after Proposal opening.

AGENCY: St. Vrain Schools

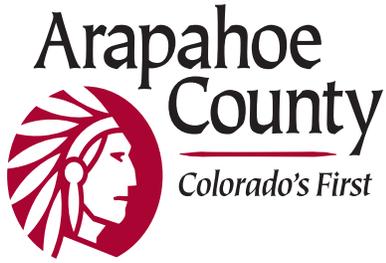
CONTACT: Bob

PHONE: (303) 702-7535

DELIVERY LOCATIONS:

St. Vrain Schools- Longmont	2- 10,000 NL Diesel
St. Vrain Schools- Mead	3- 2000 Diesel

ESTIMATED ANNUAL REQUIREMENT:



Arapahoe County Finance Department  
Purchasing Division  
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**REQUEST FOR PROPOSAL  
SPECIAL INSTRUCTIONS TO OFFERORS**

**INDIVIDUAL- City of Lafayette**

NOTE: Each Offeror may use contacts listed below to obtain information on physical delivery points and/or to schedule site visitations. The Agencies will not consider objections to handling facilities after Proposal opening.

AGENCY: City of Lafayette

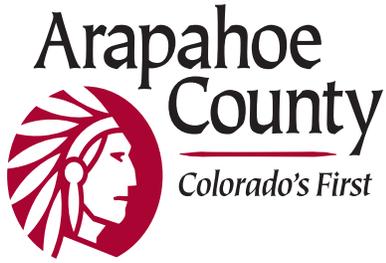
CONTACT: Amy

PHONE: (303) 665-6411

DELIVERY LOCATIONS:

City of Lafayette	2- 10,000 NL Diesel
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ESTIMATED ANNUAL REQUIREMENT:



Arapahoe County Finance Department  
 Purchasing Division  
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**REQUEST FOR PROPOSAL  
 SPECIAL INSTRUCTIONS TO OFFERORS**

**INDIVIDUAL- Jeffco Sheriff**

NOTE: Each Offeror may use contacts listed below to obtain information on physical delivery points and/or to schedule site visitations. The Agencies will not consider objections to handling facilities after Proposal opening.

AGENCY: Jeffco Sheriff

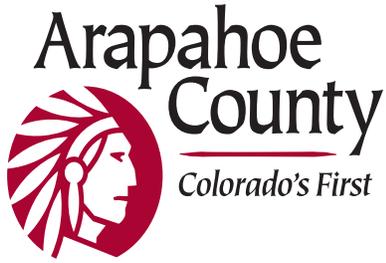
CONTACT: Rusty

PHONE: (303) 271-5371

DELIVERY LOCATIONS:

Jeffco Sheriff 100 Jefferson County Pkwy Golden, CO 80419	2- 10,000 NL 1- 40,000 Diesel
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ESTIMATED ANNUAL REQUIREMENT:



Arapahoe County Finance Department  
Purchasing Division  
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**REQUEST FOR PROPOSAL  
SPECIAL INSTRUCTIONS TO OFFERORS**

**INDIVIDUAL- City of Centennial**

NOTE: Each Offeror may use contacts listed below to obtain information on physical delivery points and/or to schedule site visitations. The Agencies will not consider objections to handling facilities after Proposal opening.

AGENCY: City of Centennial

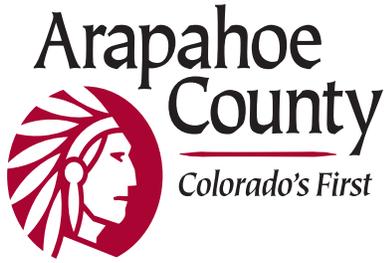
CONTACT: Liz

PHONE: (303) 745-3327

DELIVERY LOCATIONS:

N/A	1- 4000 Diesel 1- 2000 NL
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ESTIMATED ANNUAL REQUIREMENT:



Arapahoe County Finance Department  
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Littleton, Colorado 80120

**REQUEST FOR PROPOSAL  
SPECIAL INSTRUCTIONS TO OFFERORS**

**INDIVIDUAL- City of Federal Heights**

NOTE: Each Offeror may use contacts listed below to obtain information on physical delivery points and/or to schedule site visitations. The Agencies will not consider objections to handling facilities after Proposal opening.

AGENCY: City of Federal Heights

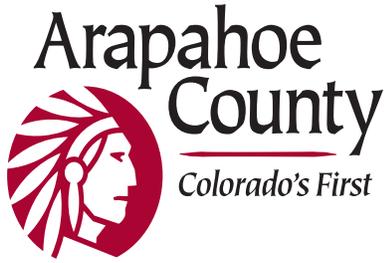
CONTACT: Bob

PHONE: (303) 412-3570

DELIVERY LOCATIONS:

N/A	1- 4000 NL 1- 2000 Diesel
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ESTIMATED ANNUAL REQUIREMENT:



Arapahoe County Finance Department  
Purchasing Division  
5334 South Prince Street, Room 480  
Littleton, Colorado 80120

**REQUEST FOR PROPOSAL  
SPECIAL INSTRUCTIONS TO OFFERORS**

**INDIVIDUAL- Town of Erie**

NOTE: Each Offeror may use contacts listed below to obtain information on physical delivery points and/or to schedule site visitations. The Agencies will not consider objections to handling facilities after Proposal opening.

AGENCY: Town of Erie

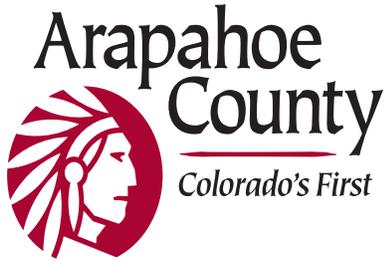
CONTACT: Raelynn

PHONE: (303) 926-2880

DELIVERY LOCATIONS:

N/A	1- 6000 split NL Diesel
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ESTIMATED ANNUAL REQUIREMENT:



Arapahoe County Finance Department  
Purchasing Division  
5334 South Prince Street, Room 480  
Littleton, Colorado 80120

**REQUEST FOR PROPOSAL  
SPECIAL INSTRUCTIONS TO OFFERORS**

**INDIVIDUAL- South Metro Fire Rescue**

NOTE: Each Offeror may use contacts listed below to obtain information on physical delivery points and/or to schedule site visitations. The Agencies will not consider objections to handling facilities after Proposal opening.

AGENCY: South Metro Fire Rescue

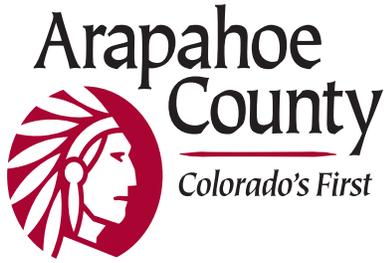
CONTACT: N/A

PHONE: (720)-488-7191

DELIVERY LOCATIONS:

N/A	1- 1,000 Diesel
-----	-----------------

ESTIMATED ANNUAL REQUIREMENT:



Arapahoe County Finance Department  
 Purchasing Division  
 5334 South Prince Street, Room 480  
 Littleton, Colorado 80120

**REQUEST FOR PROPOSAL  
 SPECIAL INSTRUCTIONS TO OFFERORS**

**INDIVIDUAL- West Metro Fire Protection**

NOTE: Each Offeror may use contacts listed below to obtain information on physical delivery points and/or to schedule site visitations. The Agencies will not consider objections to handling facilities after Proposal opening.

AGENCY: West Metro Fire Protection

CONTACT: Chief Lombardi

PHONE: (303) 989-4307

DELIVERY LOCATIONS:

West Metro Fire Protection- Roxborough 6220 N. Roxborough Park Rd. Littleton, CO 80125	1- 500 Diesel
West Metro Fire Protection- Field 3301 S. Field Lakewood, CO 80227	2- 4,000 NL Diesel
West Metro Fire Protection- Alamo 9990 W. Alamo Lakewood, CO 80227	2- 1000 NL Diesel

ESTIMATED ANNUAL REQUIREMENT:



Arapahoe County Finance Department  
Purchasing Division  
5334 South Prince Street, Room 480  
Littleton, Colorado 80120

**REQUEST FOR PROPOSAL  
SPECIAL INSTRUCTIONS TO OFFERORS**

**INDIVIDUAL- Jefferson County**

NOTE: Each Offeror may use contacts listed below to obtain information on physical delivery points and/or to schedule site visitations. The Agencies will not consider objections to handling facilities after Proposal opening.

AGENCY: Jefferson County

CONTACT: Buck

PHONE: (303) 271-5255

**DELIVERY LOCATIONS:**

Buffalo Creek	1- 2,100 Diesel 3+4
Buffalo Creek	1- 600 Unleaded 1
Buffalo Creek	1- 600 Unleaded 2
Central	1- 30,000 Diesel 2+3+5+6+7+8
Central	1- 15,000 Unleaded 1+4
Coal Creek	1- 1,100 Diesel 1
Coal Creek	1- 1,100 Diesel 2
Critchell	1- 1,100 Diesel 1
Critchell	1- 1,100 Diesel 2
Critchell	1- 600 Unleaded 3
Evergreen	1- 10,000 Diesel 2+3
Evergreen	1- 4000 Unleaded 1
Fairground	1- 600 Diesel
Fairground	1- 600 Unleaded
Fuel Truck	1- 2000
Golden Gate	1- 1,100 Diesel
Indian Hills	1- 1,100 Diesel 2
Indian Hills	1- 1,100 Diesel 3
Indian Hills	1- 1,100 Unleaded 1
Lookout Mtn	1- 1,100 Diesel 1
Lookout Mtn	1- 1,100 Diesel 2
Lookout Mtn	1- 1,100 Unleaded
New Government Center	1- 2,100 Diesel 2
New Government Center	1- 4,000 Unleaded 1
Reynolds Park	1- 600 Unleaded
Shaffers	1- 2,100 Diesel 1
Shaffers	1- 4,100 Diesel 2+3
Shaffers	1- 2,100 Unleaded 4
South Shop	1- 1,100 Diesel 1
South Shop	1- 4,100 Diesel 5
South Shop	1- 4,100 Diesel 6
South Shop	1- 1,100 Unleaded 2
South Shop	1- 10,000 Unleaded 7+8

**ESTIMATED ANNUAL REQUIREMENT:**



Arapahoe County Finance Department  
 Purchasing Division  
 5334 South Prince Street, Room 480  
 Littleton, Colorado 80120

**REQUEST FOR PROPOSAL  
 SPECIAL INSTRUCTIONS TO OFFERORS**

**INDIVIDUAL- City of Lakewood**

NOTE: Each Offeror may use contacts listed below to obtain information on physical delivery points and/or to schedule site visitations. The Agencies will not consider objections to handling facilities after Proposal opening.

AGENCY: City of Lakewood

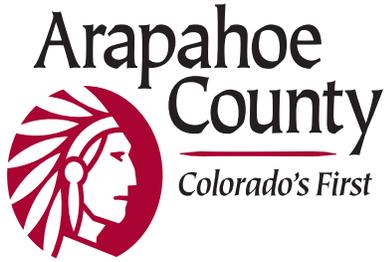
CONTACT: Phil

PHONE: (303) 987-7796

DELIVERY LOCATIONS:

City of Lakewood 809 Quail St. Lakewood, CO 80215	2- 20,000 NL 1- 20,000 Bio Diesel
City of Lakewood- Fox Hollow 13414 W. Morrison Rd. Lakewood, CO 80215	2- 500 Diesel 1- 1000 NL
City of Lakewood- Bear Creek Hampden & C470 Morrison, CO 80645	2- 1000 NL Diesel

ESTIMATED ANNUAL REQUIREMENT:



Arapahoe County Finance Department  
 Purchasing Division  
 5334 South Prince Street, Room 480  
 Littleton, Colorado 80120

**REQUEST FOR PROPOSAL  
 SPECIAL INSTRUCTIONS TO OFFERORS**

**INDIVIDUAL- City of Littleton**

NOTE: Each Offeror may use contacts listed below to obtain information on physical delivery points and/or to schedule site visitations. The Agencies will not consider objections to handling facilities after Proposal opening.

AGENCY: City of Littleton

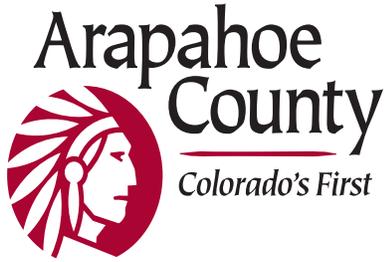
CONTACT: Alan Brown

PHONE: (303) 795-3982

DELIVERY LOCATIONS:

Littleton Fire 6290 W. Coalmine Littleton, CO 80165	1- 500 Diesel
Littleton Fire 6600 S. Colorado Blvd Lakewood, CO 80165	1- 500 Diesel
Littleton Fire 8119 Blakeland Littleton, CO 80165	1- 500 Diesel
Littleton Fire 9554 S. University Littleton, CO 80165	1- 500 Diesel 1- 500 NL

ESTIMATED ANNUAL REQUIREMENT:



**Arapahoe County Finance Department  
Purchasing Division  
5334 South Prince Street, Room 480  
Littleton, Colorado 80120**

**REQUEST FOR PROPOSAL  
SPECIAL INSTRUCTIONS TO OFFERORS**

**INDIVIDUAL- Larimer County**

NOTE: Each Offeror may use contacts listed below to obtain information on physical delivery points and/or to schedule site visitations. The Agencies will not consider objections to handling facilities after Proposal opening.

AGENCY: Larimer County

CONTACT: John Shepek

PHONE: (970) 498-5693

DELIVERY LOCATIONS:

Auxillary Services 7002 Releigh St. Westminster, CO 80030	1 - 10,000 Gallon Low Sulfur Diesel 1 - 10,000 Gallon Unleaded Gasoline
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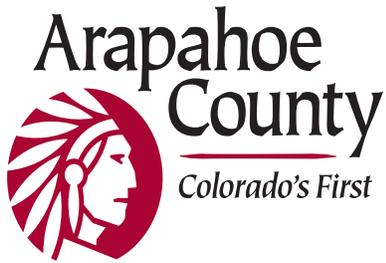
ESTIMATED ANNUAL REQUIREMENT:

9,220 Gallons Unleaded

19,023 Gallons OXY Unleaded

650 Gallons Dyed ULSD

26,597 Gallons Dyed WB ULSD



Arapahoe County Finance Department  
Purchasing Division  
5334 South Prince Street, Room 480  
Littleton, Colorado 80120

**REQUEST FOR PROPOSAL**  
**SCOPE OF WORK**

**I. PARTICIPATING AGENCIES' RESPONSIBILITIES**

Each participating MAPO or CEPC Agency will provide the successful vendor with a list of delivery locations and tank sizes.

Storage tanks will be stick-read by Participating Agency personnel before and after transport truck unloads.

Transport truck compartments may be inspected by Participating Agency personnel before tanker leaves the premises.

Participating Agencies will attempt to provide 48-hours notice when placing orders for fuel.

**II. CONTRACTOR'S RESPONSIBILITIES**

Provide a comprehensive program to monitor, test and treat fuel tanks for contamination, bacteria, fungus, and water at no additional cost.

Recommend and provide diesel and gasoline blending for all weather conditions. This includes the addition of fuel additives or diesel fuel blending to prevent gelling in cold weather.

Independent laboratory testing, and corrective action at the contractor's expense, will be required if MAPO or CEPC agencies experience fuel-related problems.

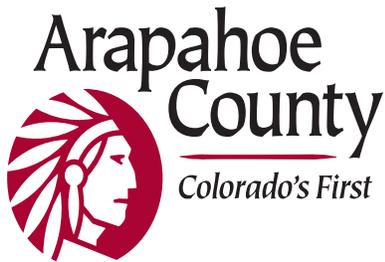
Contractor must be able to provide 24-hour delivery and technical assistance during snowstorms or emergencies. Contractor must also top-off all fuel tanks in the event of any weather forecast predicting four inches (4") or more of snow for any Participating Agency's respective location(s).

Contractor must deliver product in transport trucks that are used for low sulfur diesel and gasoline delivery exclusively. Delivery transport truck compartments must have seals installed in dump outlets at the refinery terminal. Upon entering the premises, delivery transport trucks must report to Participating Agency personnel for inspection.

Deliveries must be made between 8:00 AM and 3:00 PM, Monday through Friday, within 48 hours of notice, unless otherwise requested.

All bill of lading tickets must reflect the stick reading prior to filling the tank, the quantity of fuel delivered (specific to each tank to which fuel is being added), and the time of delivery. Only metered temperature recorded, official Bill of Lading from the issuing refinery shall be accepted and attached to the vendor's invoices." Participating Agencies reserve the right to "spot check" stick readings at the time of delivery to monitor the Vendor. All delivery tickets must also show the delivered price per gallon as well as an extended net total price per product.

The contractor will submit a copy of the D.T.N. printout, or equivalent, for each delivery to the Participating Agencies.



Arapahoe County Finance Department  
Purchasing Division  
5334 South Prince Street, Room 480  
Littleton, Colorado 80120

**REQUEST FOR PROPOSAL  
STATEMENT OF INTEREST AND QUALIFICATIONS**

If you feel your firm is interested and qualified to provide the services requested, complete all blanks indicated below, attach information requested, and return in accordance with instructions contained herein.

Submit six (6) copies and one (1) unbound original of this Statement of Interest and Qualifications (SOQ) and all attachments.

1. Submitted by: \_\_\_\_\_

a. Corporation  Partnership  Individual   
Joint Venture  Other  describe: \_\_\_\_\_

b. Office location which will be responsible for providing these services:

\_\_\_\_\_

c. Representative and Toll-free number for twenty-four hour emergency contact:

\_\_\_\_\_

2. Number of years your firm has been doing business in the state of Colorado under the name stated above: \_\_\_\_\_ years.

3. Number of years your firm has provided fuel, petroleum products and services described herein: \_\_\_\_\_ years.

4. If the duration stated in Items 2 and 3 above is not the same, what other services did you provide and what other name did your business use during that period which differs?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

5. Number of people in your organization at the location indicated in 1.b.: \_\_\_\_\_

6. Does your firm own its own fuel transport trucks?  YES  NO

7. Would your firm use common carriers to deliver fuel to MAPO and CEPC agencies?  YES  NO  
Comments:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

8. Do you haul high sulfur as well as low sulfur diesel in the same delivery trucks?  YES  NO



13. a. Can you provide fuel delivery on a 24-hour basis in the event of an emergency?  YES  NO  
Comments:

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b. Will there be an additional charge for after-hours delivery?  YES  NO  
If yes, explain additional charges:

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14. Does your firm have refueling facilities available for use by MAPO and CEPC agencies?  
 YES  NO

15. If answered yes to #14, location of refueling facilities:

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16. If a MAPO agency is non-compliant to State, Local, Federal or EPA regulations, will your firm advise the Participating Agency and recommend a solution?  YES  NO  
Comments:

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17. Specify the number of working days, after an award is made, within which your firm will be able to implement fuel program: \_\_\_\_\_ Days

18. What type of emergency response procedures do you have in place in case of a fuel spill during delivery?

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19. Has your firm been, or is your firm currently, involved in any formal court proceedings regarding any of your services?    ρ YES                    ρ NO

If yes, explain briefly:

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20. List other government entities and corporate accounts which your firm is providing or has previously provided fuel and services as described herein:

a. Company/Agency Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Brief Description of Service:

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b. Company/Agency Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Brief Description of Service:

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c. Company/Agency Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Brief Description of Service:

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d. Company/Agency Name: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Phone Number: \_\_\_\_\_

Brief Description of Service:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

e. Company/Agency Name: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Phone Number: \_\_\_\_\_

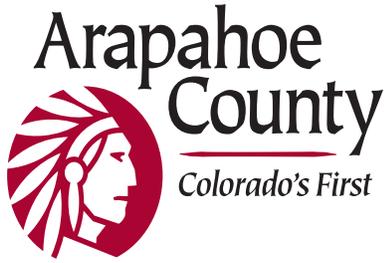
Brief Description of Service:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

21. List financial references and include a current annual report or financial statement. THIS IS A MANDATORY REQUIREMENT OF THE PROPOSAL. IF REVIEW IS TO BE RESTRICTED TO OUR SELECTION COMMITTEE OR FINANCIAL OFFICER, MARK THESE DOCUMENTS ACCORDINGLY AS PROPRIETARY.

a. Company Name: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Phone Number: \_\_\_\_\_

b. Company Name: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Phone Number: \_\_\_\_\_

c. Company Name: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Phone Number: \_\_\_\_\_



Arapahoe County Finance Department  
 Purchasing Division  
 5334 South Prince Street, Room 480  
 Littleton, Colorado 80120

**REQUEST FOR PROPOSAL  
 RESPONSE FORM**

**Company Name:** \_\_\_\_\_

Prices provided for margin and freight must be held firm for the term of the award.

**GASOLINE - Transport Delivery:**

A. \$ \_\_\_\_\_ Margin per gallon                      \$ \_\_\_\_\_ Freight per gallon

Additional margin and freight prices for tank wagon deliveries:

MARGIN	FREIGHT	
\$ _____	\$ _____	For 300-500 Gallons
\$ _____	\$ _____	For 500-1000 Gallons
\$ _____	\$ _____	For 1000-2000 Gallons
\$ _____	\$ _____	For 2000-3000 Gallons
\$ _____	\$ _____	For 3000-4000 Gallons
\$ _____	\$ _____	For 4000-7000 Gallons

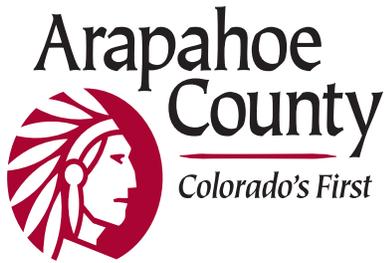
**DIESEL - Transport Delivery:**

B. \$ \_\_\_\_\_ Margin per gallon                      \$ \_\_\_\_\_ Freight per gallon

Additional margin and freight prices for tank wagon deliveries:

MARGIN	FREIGHT	
\$ _____	\$ _____	For 300-500 Gallons
\$ _____	\$ _____	For 500-1000 Gallons
\$ _____	\$ _____	For 1000-2000 Gallons
\$ _____	\$ _____	For 2000-3000 Gallons
\$ _____	\$ _____	For 3000-4000 Gallons
\$ _____	\$ _____	For 4000-7000 Gallons





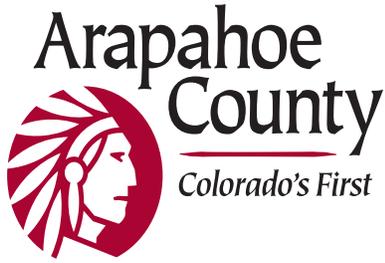
Arapahoe County Finance Department  
Purchasing Division  
5334 South Prince Street, Room 480  
Littleton, Colorado 80120

**REQUEST FOR PROPOSAL  
SUBMITTAL CHECKLIST**

The following documents must be returned with your proposal if it is to be considered or accepted.

PLACE A CHECK (3) BY EACH ITEM SUBMITTED

1. ( ) Submit **SIX (6)** copies and **ONE (1)** unbound original of all information requested herein, including all attachments.
2. ( ) Completed Statement of Interest and Qualifications (RFP Pages 32-37). In order to enable direct comparison of competing proposals, all forms and schedules must be completed according to instructions and on the forms provided herein (or in the identical format).
3. ( ) The completed and signed Proposal Response Form. (RFP Page 38 & 39)
4. ( ) Exceptions sheet, if applicable. (RFP Page 41)
5. ( ) Specifications for the gasoline and diesel fuels you are proposing. (RFP Page 12)
6. ( ) Letter of guarantee from fuel supplier or refinery assuring uninterrupted fuel supply to MAPO agencies (RFP Page 33)
7. ( ) A current financial statement (RFP Page 37). **Only one copy of the financial statement will be required.** Enclose financial information in a **separate envelope**; do not bind with other proposal copies. If review of the information is to be restricted to the evaluation committee or the Host Agency's financial officer, it must be marked accordingly.
8. ( ) Submit a certificate of insurance evidencing the required coverage types and limits specified herein. (It is not necessary that this certificate reflect MAPO agencies as an additional insured at this time.) (RFP Page 15)  
**Indicate your ability to comply with the following requirements:**
  - a. Individual MAPO agencies shall be added as an Additional Insured to all liability policies: Yes\_\_\_ No\_\_\_
  - b. Your property and liability insurance company is licensed to do business in Colorado: Yes\_\_\_ No\_\_\_
  - c. Indicate the name of your property and liability insurance company here:  
Name: \_\_\_\_\_
  - d. Your property and liability insurance company has an AM Best rating of not less than B+ VII: Yes\_\_\_ No\_\_\_.
9. ( ) Complete the Acknowledgement of Receipt of Addenda below, if applicable. (RFP Page 41)
10. ( ) Deliveries must be made between 8:00 AM and 3:00 PM, Monday through Friday, within 48 hours of notice, unless otherwise requested. (RFP Page 31)
11. Indicate the name of the authorized representative who will be assigned to this project:



Arapahoe County Finance Department  
Purchasing Division  
5334 South Prince Street, Room 480  
Littleton, Colorado 80120

**REQUEST FOR PROPOSAL  
SUBMITTAL CHECKLIST**

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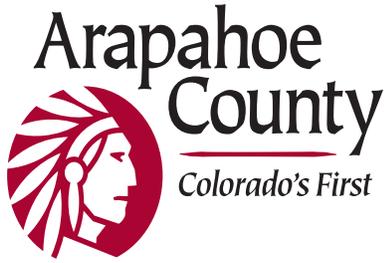
**EXCEPTIONS**

Print the words "no exceptions" here \_\_\_\_\_ if there are no exceptions taken to any of the terms, conditions, or specifications of these proposal documents or contract. If there are exceptions taken to any of the terms, conditions, or specifications of these proposal documents or contract, they must be clearly stated on a separate sheet of paper, attached to this sheet and returned with your proposal.

**ACKNOWLEDGMENT OF RECEIPT OF ADDENDA**

Your acknowledgment of any addendum issued for this RFP must be noted by signing below. This will serve as your acknowledgment that these clarifications/revisions have been taken into consideration during the preparation of your proposal.

Addendum Number: \_\_\_\_\_ Date: \_\_\_\_\_ Acknowledged by: \_\_\_\_\_  
Addendum Number: \_\_\_\_\_ Date: \_\_\_\_\_ Acknowledged by: \_\_\_\_\_  
Addendum Number: \_\_\_\_\_ Date: \_\_\_\_\_ Acknowledged by: \_\_\_\_\_



Arapahoe County Finance Department  
Purchasing Division  
5334 South Prince Street, Room 480  
Littleton, Colorado 80120

**REQUEST FOR PROPOSAL  
PROPOSAL RESPONSE FORM - SIGNATURE PAGE**

The undersigned Offeror, having examined these documents, and having full knowledge of the condition under which the work described herein must be performed, hereby proposes that he/she will fulfill the obligations contained herein in accordance with all terms, conditions, and specifications set forth; and that he/she will furnish all required products and pay all incidental costs in strict conformity with these documents, for the stated prices as payment in full.

Company Name: \_\_\_\_\_

Company Address: \_\_\_\_\_  
\_\_\_\_\_

EIN#: \_\_\_\_\_

PHONE: \_\_\_\_\_

FAX: \_\_\_\_\_

INTERNET ADDRESS: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name/Title: \_\_\_\_\_

Notary

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ )

\_\_\_\_\_ being duly sworn, deposes, and says that he/she is the  
(Company Authorized Signer)

\_\_\_\_\_ of \_\_\_\_\_, and that the answers to the  
(Title) (Company Name)

foregoing questions and all statements therein contained are true and correct.

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

SEAL

Notary public: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

My commission expires: \_\_\_\_\_



Arapahoe County Finance Department  
Purchasing Division  
5334 South Prince Street, Room 480  
Littleton, Colorado 80120

**REQUEST FOR PROPOSAL**  
**APPENDIX A – SAMPLE AGREEMENT FOR SERVICES**

- 
- I. The successful vendor will be required to sign an Agreement for Services substantially similar to the contract form in Appendix A. Arapahoe County reserves the right to add or delete provisions to the form prior to contract execution. Participating Agencies will contract independently.

Evaluation Criteria	OVERALL TOTAL	OVERALL TOTAL
	HILL PETROLEUM	COLORADO PETROLEUM
Responsiveness & Experience	234	210
Technical Assistance	76	60
Quality of Response	80	52
References	64	58
Corporate Stability	136	124
Pricing Rate (Freight, Margin & Fuel Treatment Program)	140	120
	0	0
Matrix Totals	730	624
	730	624

Rank

1

2



Department of Finance

Purchasing Division

5334 South Prince Street  
Littleton, Colorado 80166-0001  
Phone: 303-795-4430  
Fax: 303-738-7929  
www.co.arapahoe.co.us

May 14, 2012

JANET J. KENNEDY  
Director

Hill Petroleum  
ATTN: Mr. Troy Hill  
6301 Ralston Road  
Arvada, CO 80002

Subject: Extension of the Agreement for Services for Fuel Delivery Services  
RFP-09-52-MAPO

Dear Mr. Hill,

Arapahoe County and Hill Petroleum entered into an agreement for Fuel Delivery Services on July 1, 2009. The parties may mutually agree upon annual extension of the agreement pursuant to the provisions as set forth in the above referenced solicitation.

Hill Petroleum has agreed to maintain pricing without any increases, and all parties mutually agree upon an annual extension of this contract pursuant to the provisions set forth in the solicitation.

Staff has determined that it is to the best interest of the County to extend the agreement from July 1, 2012 through June 30, 2013.

By signing below, both parties agree to extend the term of the Agreement for Services.

Sincerely,

Traci L. Gorman, CPPB  
Purchasing Agent

Cc: Purchasing File

Consensus)

Keith Ashby, CPPO  
Purchasing Manager

5/17/12  
Date

Troy Hill, President  
Hill Petroleum

5/15/2012  
Date

**SUBJECT: APPROVAL OF 2013 CHEMICAL PURCHASE FOR WATER  
TREATMENT PLANT FACILITIES**

**DATE: FEBRUARY 5, 2013**

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

**SUMMARY:**

Annually the Public Works, Water Treatment Division, solicits bids for chemical purchases necessary to provide an uninterrupted supply of safe drinking water. Typically, chemicals are delivered in bulk via 4,000-gallon tanker trucks. The size of the City's chemical storage facilities necessitates a delivery every quarter. The timing and need for such deliveries are dictated by flow at the water treatment plants.

The cost is based upon annual bid solicitations (attached). Given the constraints in on-site inventory storage, the lead time associated with the City Council approval process, and variable lead times for delivery once approved, the timing of ordering chemicals would be an ongoing challenge and administrative time commitment if not approved on an annual basis.

**FISCAL IMPACT:**

The 2013 Budget provides for Water Treatment Plant Chemicals, #051-461-52200-01, in the amount of \$250,000.

**RECOMMENDATION:**

Direct the City Manager and Public Works Director to purchase Water Treatment Plant chemicals as required based upon an annual chemical bid tabulation approved by City Council.

**ATTACHMENT:**

1. Bid List

### 2013 Chemical Bids

	Aluminium Chlorohydrate	Chlorine	Aluminium Sulfate	Sodium Chlorite	Caustic Soda Drums	Caustic Soda Bulk	HTH Granular	Sodium Silicofluoride	Sodium Silicate
General Chemical	0.310/lb	NB	<b>\$1.168 per gal</b>	NB	NB	NB	NB	NB	NB
Nalco	NB	NB	NB	NB	NB	NB	NB	NB	NB
Univar	NB	NB	NB	NB	NB	<b>\$2.02 per gallon</b>	<b>\$1.5944/lb</b>	\$0.558/lb	\$0.2368/lb
DPC Industries	NB	<b>\$886/ton</b>	NB	NB	NB	\$2.45 per gallon	\$2.10/lb	\$0.60/lb	NB
Summit Research	\$0.315/lb	NB	NB	NB	NB	NB	NB	NB	NB
Industrial Chemicals	NB	NB	NB	NB	NB	\$2.297 per gallon	NB	NB	<b>\$0.22/lb</b>
CalChem	<b>\$0.292/lb</b>	NB	NB	NB	NB	NB	NB	NB	NB
Harcros Chemical	NB	NB	NB	NB	NB	NB	\$2.05/lb	<b>\$0.555/lb</b>	\$0.245/lb
PQ Corporation	NB	NB	NB	NB	NB	NB	NB	NB	NB
Siemens	NB	NB	NB	<b>\$0.655/lb ##</b>	NB	NB	NB	NB	NB
Du Pont	NB	NB	NB	NB	NB	NB	NB	NB	NB

**## Includes emergency and quarterly service on generators and minimum load of 3500 gallons**

**Price per 100 lb drum**

**SUBJECT: APPROVAL OF ASSIGNMENT OF RICCO'S BURRITOS  
BUSINESS ASSISTANCE AGREEMENT TO MC STERLING, LLP**

**DATE: FEBRUARY 5, 2013**

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

**SUMMARY:**

A Business Assistance Agreement for Ricco's Burritos, Inc. at 318 S. McCaslin was approved by City Council on July 5, 2011. The agreement provides a 40% rebate of Louisville's general sales tax paid by the business. The Agreement was executed with Ricco's Burritos, Inc. and signed by Rick LaRouche. The business has since been franchised and is being operated by MC Sterling, LLP.

An assignment of the Agreement is required to transfer the rights, duties, obligations and benefits of the Agreement to MC Sterling, LLP. All sales tax rebate payments will be made to MC Sterling, LLP. No payments have been made on this agreement as of this date.

**FISCAL IMPACT:**

The Business Assistance agreement provides a 40% sales tax rebate of the City's general sales tax for two years. Rebate payments shall not exceed \$7,500 or two years of operations, whichever comes first.

**RECOMMENDATION:**

Approval of the attached Assignment and Consent of the Business Assistance Agreement for Ricco's Burritos located at 318 S. McCaslin Blvd.

**ATTACHMENTS:**

1. Assignment of Business Assistance Agreement
2. Original Business Assistance Agreement

**ASSIGNMENT AND CONSENT  
BUSINESS ASSISTANCE AGREEMENT FOR  
RICCO'S BURRITOS – 318 SOUTH McCASLIN BLVD.**

THIS ASSIGNMENT AND CONSENT ("Assignment") is made and entered into between RICCO'S BURRITOS, INC., the CITY OF LOUISVILLE, a Colorado home rule municipal corporation (the "City"), and MC STERLING, LLP, a Colorado limited liability partnership.

WHEREAS, on July 5, 2011, the City approved a Business Assistance Agreement with Ricco's Burritos, Inc. ("Original Agreement"); and

WHEREAS, Ricco's Burritos, Inc. has transferred operation of the business to MC Sterling, LLP; and

WHEREAS, Ricco's Burritos, Inc. requests the Original Agreement be assigned to MC Sterling, LLP; and

WHEREAS, paragraph 10 of the Original Agreement requires City consent for any assignment;

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

1. The Original Agreement is hereby assigned to MC Sterling, LLP.
2. All rights, duties, obligations and benefits of the Original Agreement are transferred to MC Sterling, LLP as a result of such assignment.
3. Any and all rebate payments made by the City under the Original Agreement, whether made or accruing for periods before or after execution of this instrument, shall be made payable solely to MC Sterling, LLP and mailed to it at 318 South McCaslin Blvd., Louisville, CO 80027. The City shall have no obligation to make payment to any other party.
4. The City hereby consents to the assignment herein of the Original Agreement.
5. All other terms and conditions of the Original Agreement remain the same.

**MC STERLING, LLP**

**RICCO'S BURRITOS, INC.**

By: \_\_\_\_\_  
Patrick Schneider

By: \_\_\_\_\_  
Rick LaRouche, individually and  
on behalf of Ricco's Burritos, Inc.  
and its affiliated entities

**CITY OF LOUISVILLE:**

**ATTEST:**

By: \_\_\_\_\_  
Robert P. Muckle  
Mayor

\_\_\_\_\_  
Nancy Varra  
City Clerk

**BUSINESS ASSISTANCE AGREEMENT FOR  
RICCO'S BURRITOS, INC. IN THE CITY OF LOUISVILLE**

THIS AGREEMENT ("Agreement") is made and entered into as of the 5th day of July, 2011, between the CITY OF LOUISVILLE, a Colorado home rule municipal corporation (the "City"), and Ricco's Burritos, Inc., a Colorado limited liability company.

WHEREAS, the City wishes to provide certain business assistance in connection with leasing of approximately 1,400 square feet for a Ricco's Burritos restaurant at 318 South McCaslin Boulevard, Louisville (the project); and

WHEREAS, Rick LaRouche plans to invest \$7,000.00 to remodel the interior finish of 318 South McCaslin by 3<sup>rd</sup> quarter 2011; and

WHEREAS, Ricco's Burritos, Inc. plans for the project to generate new sales tax revenue by the attraction, opening and operation of a burrito restaurant in 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 the location of this economic development project within the City.

NOW THEREFORE, in consideration of the mutual promises set forth below, the City and Ricco's Burritos, Inc. agree as follows:

1. Sales Tax Rebates. The City shall rebate to Ricco's Burritos, Inc. 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 ( $\frac{3}{8}\%$ ) Open Space Tax and the one-eighth percent ( $\frac{1}{8}\%$ ) Historic Preservation Tax) that are actually collected by the City and attributable to new retail sales attributable solely to the project and occurring at the project location of 318 South McCaslin Boulevard and generated by a burrito restaurant for the first two years of its operation. The two-year rebate period shall commence upon and run continuously from the date of issuance of the certificate of occupancy for Ricco's Burritos, Inc.. Rebates shall not exceed \$7,500 or two years of operation, whichever comes first.

2. Payment of Rebates. The sales tax rebates shall be paid by the City in annual installments and shall be made on or before January 31st. No interest shall be paid on amounts subject to rebate.

3. Use of Funds. Funds rebated pursuant to this Agreement shall be used by Ricco's Burritos, Inc. solely for obligations and/or improvements

permitted under Louisville Municipal Code section 3.24.060 (as enacted by Ordinance No. 1507, Series 2007).

4. Entire Agreement. This instrument shall constitute the entire agreement between the City and Ricco's Burritos, Inc. 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:

Rick LaRouche  
Ricco's Burritos, Inc.  
7794 N. Washington Street  
Denver CO 80229  
303-289-8600  
[riccosburritos@yahoo.com](mailto:riccosburritos@yahoo.com)

5. Termination. This Agreement shall terminate and become void and of no force or effect upon the City if, by October 31, 2011, Ricco's Burritos, Inc. has not completed the project (as evidenced by successful final inspections for the shop); or should fail to comply with any City code.

6. Business Termination. In the event that, within five (5) years of the commencement of the rebate term, the shop ceases operations at 318 South McCaslin Boulevard, Louisville, Ricco's Burritos, Inc. 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 Ricco's Burritos, Inc., as well as reimburse the City for any funds provided to Ricco's Burritos, Inc. pursuant to this Agreement.

7. 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.

7. 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

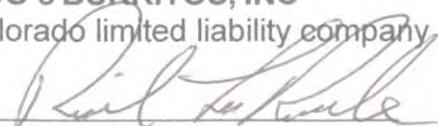
constitutional or statutory provision, and the City's obligations hereunder are expressly conditional upon annual appropriation by the City Council, in its sole discretion. Ricco's Burritos, Inc. understands and agrees that any decision of City Council to not appropriate funds for payment shall be without penalty or recourse to the City and, further, shall not affect, impair, or invalidate any of the remaining terms or provisions of this Agreement.

8. 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 a 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 may commence legal proceedings regarding the dispute. The venue for any lawsuit concerning this agreement shall be in the District Court for Boulder County, Colorado.

9. 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.

10. Assignment. This Agreement is personal to Ricco's Burritos, Inc. may not assign any of the obligations, benefits or provisions of the Agreement in whole or in any part without the expressed written authorization of the City Council of the City. Any purported assignment, transfer, pledge, or encumbrance made without such prior written authorization shall be void.

11. No Joint Venture. Nothing in this Agreement is intended or shall be construed to create a joint venture between the City and Ricco's Burritos, Inc. LLC and the City shall never be liable or responsible for any debt or obligation of Ricco's Burritos, Inc..

**RICCO'S BURRITOS, INC**  
A Colorado limited liability company  
By:   
Rick LaRouche

**CITY OF LOUISVILLE**  
  
\_\_\_\_\_  
Charles L. Sisk  
Mayor

ATTEST:



\_\_\_\_\_  
Secretary

*Nancy Varra*  
\_\_\_\_\_  
Nancy Varra  
City Clerk

**SUBJECT:** RESOLUTION NO. 6, SERIES 2013 – A RESOLUTION ACCEPTING THE DONATION OF AND QUIT CLAIM DEED FOR A REMNANT PARCEL LOCATED IN SECTION 8, TOWNSHIP 1 SOUTH, RANGE 69 WEST OF THE 6TH P.M. AND GENERALLY IDENTIFIED AS 0 HARPER STREET IN LOUISVILLE

**DATE:** FEBRUARY 5, 2012

**PRESENTED BY:** GAVIN MCMILLAN, AICP, PLANNING AND BUILDING SAFETY DEPARTMENT

**SUMMARY:**

The property addressed as 0 Harper Street is currently owned by the Mary Juanita Claman Revocable living trust. The executor of this trust, Mr. John Claman, recently approached Planning Department staff and volunteered to donate the property to the City of Louisville. In an e-mail to planning department staff Mr. Claman states that the property is *“basically unsellable except to an entity that might want to consolidate land in the revitalization district. Absent a potential buyer, I desire to donate the land to the city.”*

The subject property is 2,117 square feet according to the Boulder County Assessor, and is located in the Little Italy neighborhood at the northwest corner of Harper Street and Front Street.

0 Harper Street



**SUBJECT: RESOLUTION NO. 6, SERIES 2013**

**DATE: FEBRUARY 5, 2013**

**PAGE 2 OF 2**

If City Council elects to accept this donation, the property would be acquired as a general asset of the City that could potentially be utilized as part of the planned northerly extension of Front Street to South Boulder Road, as required in the Highway 42 Revitalization Plan and envisioned in the 42 Gateway Study and Corridor Plan.

**FISCAL IMPACT:**

The property is being donated to the City. Fiscal impacts associated with the acquisition of the property would be limited to 2012 property taxes owed of approximately \$200. Staff finds that the benefits of the acquisition outweigh the minimal fiscal impacts.

**RECOMMENDATION:**

Approve Resolution No. 6, Series 2013 accepting the donation of and quit claim deed for a remnant parcel located in Section 8, Township 1 South, Range 69 West of the 6<sup>th</sup> P.M. and generally identified as 0 Harper Street in Louisville.

**ATTACHMENTS:**

1. Resolution No. 6, Series 2013 and Quit Claim Deed

**RESOLUTION NO. 6  
SERIES 2013**

**A RESOLUTION ACCEPTING THE DONATION OF AND QUIT CLAIM DEED FOR A  
REMNANT PARCEL LOCATED IN SECTION 8, TOWNSHIP 1 SOUTH, RANGE 69  
WEST OF THE 6TH P.M. AND GENERALLY IDENTIFIED AS 0 HARPER STREET IN  
LOUISVILLE**

**WHEREAS**, certain real property, legally described on the Quit Claim Deed accompanying this Resolution and generally identified as 0 Harper Street, Louisville, Colorado, Assessor's Parcel Number 157508100010 (the "Property") is an approximately 2,117 square foot parcel of vacant land; and

**WHEREAS**, the current owner of the Property, the Mary Juanita Claman Revocable Living Trust, desires to donate the Property to the City of Louisville; and

**WHEREAS**, the owner has tendered a Quit Claim Deed to the City conveying the Property; and

**WHEREAS**, the City Council desires to accept such donation and conveyance of the Property;

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

**Section 1.** Ownership in fee simple of the Property is hereby approved and accepted by the City of Louisville.

**Section 2.** The City Council finds and determines that the Property is not being acquired for any park, open space or governmental purpose, but as a general asset of the City and for potential use as right-of-way, and that all or portions of the Property, and any interests, licenses, rights or privileges therein, may be sold, leased, conveyed or disposed of, in whole or part, as determined by subsequent action of City Council, without necessity of election, pursuant to the home rule charter of the City.

**Section 3.** The Quit Claim Deed from the Mary Juanita Claman Revocable Living Trust, Grantor, to the City of Louisville, Grantee, conveying the Property, a copy of which accompanies this Resolution, is hereby accepted by the City of Louisville, Colorado.

**Section 4.** The Mayor, City Manager and City Staff are authorized to execute all documents and to do all things necessary on behalf of the City to effect the City's ownership of the Property.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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Robert P. Muckle, Mayor

ATTEST:

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Nancy Varra, City Clerk



**SUBJECT: RESOLUTION NO. 7 SERIES 2013 – A RESOLUTION APPROVING AGREEMENTS BETWEEN THE CITY OF LOUISVILLE AND DUTKO WASHINGTON, LLC AND THE CITY OF LOUISVILLE AND BOYAGIAN CONSULTING, LLC TO FURNISH LOBBYIST SERVICES TO THE US 36 MAYORS AND COMMISSIONERS COALITION**

**DATE: FEBRUARY 5, 2013**

**PRESENTED BY: HEATHER BALSER, DEPUTY CITY MANAGER**

**SUMMARY:**

In February of 2012 the City Council approved a contract with Dutko Washington, LLC (DW) and Boyagian Consulting, LLC (BC) to perform lobbyist services for the US 36 Mayors and Commissioners Coalition (MCC) through February of 2013. Louisville manages the contract. The total sum amount for the annual contract in 2010, 2011 and 2012 was \$105,000 annually. Similar contracts for 2013 are attached with an amended Scope of Services in Appendix A for the 13/14 contract period. The 13/14 contract amount is again \$105,000 as approved by the MCC. The contract amount is split evenly between DW and BC.

The contract includes verbiage regarding cooperation between DW and BC in providing lobbyist services and provides a limit on expenses to \$4,000 in the DW contract and \$1,000 in the BC contract consistent with the \$5,000 limit in previous contracts. A current Scope of Services is attached in Appendix A to provide specific objectives for the upcoming contract cycle.

Boulder, Superior, Westminster, Louisville, the City and County of Broomfield and Boulder County have agreed once again to mutually participate in the funding of the lobbyist. The City's pro-rata share of the new contractual amount is \$ 11,680 for the year. The City of Louisville has budgeted \$14,500 in 2013 for lobbyist services which also includes funds for annual expenses (expenses are paid equally among the 6 localities at the end of each year). The City will be collecting from all participating parties and holding the funds in a liability account to pay the monthly bills as they are incurred. Full payment from all the participating jurisdictions will be provided by the end of the month. Again, the MCC has requested that Louisville administer the contract.

**FISCAL IMPACT:**

The cost of Louisville's contribution for the federal lobbying contract is \$11,680 in 2013 with 2013 expenses shared among the 6 municipalities, consistently in the \$1,000 to \$1,200 range. \$14,500 has been budgeted in 2013 for this purpose.

**SUBJECT: RESOLUTION NO. 7, SERIES 2013**

**DATE: FEBRUARY 5, 2013**

**PAGE 2 OF 2**

**RECOMMENDATION:**

Approve Resolution No. 7, Series 2013

**ATTACHMENT(S):**

1. Resolution No. 7, Series 2013
2. Dutko Washington, LLC Agreement
3. Boyagian Consulting, LLC Agreement

**RESOLUTION NO. 7  
SERIES 2013**

**A RESOLUTION APPROVING AGREEMENTS BETWEEN THE CITY OF LOUISVILLE AND DUTKO WASHINGTON, LLC AND THE CITY OF LOUISVILLE AND BOYAGIAN CONSULTING, LLC TO FURNISH LOBBYIST SERVICES TO THE US 36 MAYORS AND COMMISSIONERS COALITION**

**WHEREAS**, the US 36 Mayors and Commissioners Coalition, hereinafter referred to as the "US 36 MCC," wishes to better promote its position on US 36 transportation issues of concern at the regional, state and federal levels, be it legislative, regulatory, or other; and

**WHEREAS**, the City and the US 36 MCC desire that the City act on behalf of the US 36 MCC in engaging lobbyists to render professional lobbying services in connection with such US 36 transportation issues; and

**WHEREAS**, the cities of Boulder, Westminster, Superior, and Louisville, the City and County of Broomfield, and Boulder County have agreed to mutually participate in the funding of the lobbyists; and

**WHEREAS**, it has been proposed that for the period of February 15, 2013 to February 15, 2014, lobbyist services to the US 36 MCC be provided pursuant to two separate agreements between the City and Dutko Washington, LLC and the City and Boyagian Consulting, LLC, with Dutko Washington, LLC and Boyagian Consulting, LLC to cooperate to provide lobbyist services to the US 36 MCC; and

**WHEREAS**, agreements have been proposed between the City and Dutko Washington, LLC and the City and Boyagian Consulting, LLC for such purpose, and the City by this resolution desires to approve the agreements and authorize their execution;

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

1. The Proposed Agreement to Furnish Lobbyist Services to the US 36 Mayors and Commissioners Coalition between the City of Louisville and Dutko Washington, LLC, (Agreement"), for the provision of such services for a period between February 15, 2013 and February 15, 2014, is hereby approved in essentially the same form as the copy of such Agreement accompanying this Resolution.

2. The Proposed Agreement to Furnish Lobbyist Services to the US 36 Mayors and Commissioners Coalition between the City of Louisville and Boyagian Consulting, LLC, (Agreement"), for the provision of such services for a period between February 15, 2013 and February 15, 2014, is hereby approved in essentially the same form as the copy of such Agreement accompanying this Resolution.

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

**PASSED AND ADOPTED** this 5<sup>th</sup> day of February, 2013.

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Robert P. Muckle, Mayor

ATTEST:

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Nancy Varra, City Clerk

AGREEMENT  
TO FURNISH LOBBYIST SERVICES  
TO THE  
US 36 MAYORS AND COMMISSIONERS COALITION

THIS AGREEMENT, made and entered into effective as of the 15th day of February, 2013, between the CITY OF LOUISVILLE, hereinafter referred to as the "City," and DUTKO WASHINGTON, LLC, hereinafter referred to as the "Lobbyist," is as follows:

WHEREAS, the US 36 Mayors and Commissioners Coalition, hereinafter referred to as the "US 36 MCC," wishes to better promote its position on US 36 transportation issues of concern at the regional, state and federal levels, be it legislative, regulatory, or other; and

WHEREAS, the City of Louisville desires to act on behalf of the US 36 MCC in engaging the Lobbyist to render the professional lobbying services described in this Agreement and the Lobbyist is qualified and willing to perform such services; and

WHEREAS, the cities of Boulder, Westminster, Superior, and Louisville, the City and County of Broomfield, and Boulder County have agreed to mutually participate in the funding of the Lobbyist; and

WHEREAS, it has been proposed that the lobbyist services be provided pursuant to two separate agreements between the City and Dutko Washington, LLC and the City and another firm with the Lobbyist and the other firm to cooperate to provide lobbyist services to the US 36 MCC; and

WHEREAS, sufficient authority exists in charter and statute and sufficient funds have been budgeted for the purposes of this Agreement and are available and other necessary approvals have been obtained.

NOW, THEREFORE, in consideration of the mutual understandings and agreements set forth, the City and the Lobbyist agree as follows:

I. THE PROJECT

The Project consists of advocating the US 36 MCC's position on pertinent legislative, regulatory and other issues (regional, state, federal) and advising the US 36 MCC in the handling of miscellaneous legislative/intergovernmental issues that may arise on which the Lobbyist is utilized.

II. TERM

The Lobbyist's services are anticipated to be provided between February 15, 2013 and February 15, 2014. The City may extend the term of this Agreement beyond such one year, upon notice to the Lobbyist, as the City determines necessary for smooth progress of the Project and completion of Lobbyist's services. The Lobbyist shall provide services at such times as are necessary in order to promote such smooth progress of the Project.

III. LOBBYIST'S SERVICES

In connection with the Project, the Lobbyist shall undertake the duties and responsibilities and provide the services described in Appendix A, captioned "Scope of Work for February 2013 to February 2014 - US 36 Mayors and Commissioners Coalition Mayors," which is attached hereto and made a part hereof,

which are hereinafter referred to as the “Services”. The Lobbyist shall, in good faith, coordinate and cooperate with Boyagian Consulting, LLC in completing such services as described in Appendix A.

#### IV. ADDITIONAL SERVICES

When authorized in writing by the City, the Lobbyist agrees to furnish or obtain from others, additional professional services in connection with the Project due to changes in the scope of the Project or its design, subject to mutual written agreement as to additional compensation for additional services.

#### V. LOBBYIST’S FEE

As compensation for the Services described in this Agreement, the Lobbyist shall be paid a fee of \$52,500 to be paid in twelve equal monthly installments, with the first installment to be paid for the period of Services from February 15, 2013 to March, 2013. Such fee shall constitute full and complete payment for said Services and all expenditures which may be made and expenses which may be incurred, except as otherwise expressly provided in this Agreement. The Lobbyist shall present a monthly invoice, and the City shall pay monthly installments within thirty (30) days of receipt of invoice therefor unless the work or documentation therefor does not comply with this Agreement. Payments made more than thirty (30) days after the due date may be assessed an interest charge of one percent (1%) per month unless the delay in payment resulted from unsatisfactory work or documentation therefor.

#### VI. LOBBYIST’S EXPENSES

Lobbyist will be reimbursed actual costs for long distance phone calls and courier services (which costs shall be pro-rated if incurred in conjunction with other Lobbyist clients). Lobbyist shall be reimbursed for copies and faxes at rates approved by the City Manager. Additionally, it is understood that in the course of performing its Services under this Agreement the Lobbyist may incur certain extraordinary expenses that go beyond those normal expenses that are either reimbursed as set forth in this Section VI or within the Lobbyist’s fee in Section IV of this Agreement. These expenses include such things as travel. These expenses will be billed at costs and on a pro-rated basis if incurred in conjunction with other Lobbyist clients and only when prior approval is granted by the City. These expenses shall not exceed \$4,000 during the term of this Agreement. The City shall not be obligated to pay any expenses exceeding \$4,000, unless the Lobbyist receives pre-approval from the City to exceed \$4,000. The parties agree that no commissions, fees, expenses or other amounts paid to the Lobbyist in connection with this Agreement shall be paid from any Federal or State appropriated funds.

#### VII. LOBBYIST’S DUTIES

##### A. Abilities, Qualifications, Experience, and Best Efforts.

Notwithstanding anything to the contrary contained in this Agreement, the City and the Lobbyist agree and acknowledge that the City enters into this Agreement relying on the special and unique abilities to accomplish the Project of the persons named in page 2 of Appendix A, attached hereto and made a part hereof. The Lobbyist accepts the relationship of trust and confidence established between it and the City by this Agreement. The Lobbyist agrees that if any person named in page 2 of Appendix A must be replaced, the replacement shall possess at least equivalent qualifications and experience and shall be subject to reasonable approval by the City. The Lobbyist covenants with the City to use its best efforts. The Lobbyist shall further the interests of the City and the US 36 MMC according to the City’s direction, requirements and procedures, according to the highest professional standards, and in compliance with all applicable national, federal, state and municipal laws, regulations, codes, ordinances, orders and with

those of any other body having jurisdiction, including but not limited to federal laws and Colorado statutes and constitutional provisions regulating the conduct of lobbyists.

B. No Conflicts.

The Lobbyist represents, covenants, and agrees to and with the City that any persons employed by Lobbyist or working under its direction and control for this Agreement have and will undertake no obligations, commitments, or impediments of any kind that will limit or prevent them from the timely completion of the Project, loyally and strictly according to the best interests of the City and the US 36 MCC. In case of any conflict between interests of the City and any other entity, the Consultant shall fully and immediately disclose the nature and extent of such conflict to the City and shall take no action contrary to the City's interests.

C. Accuracy of Work.

The Lobbyist represents, covenants, and agrees that its work will be accurate and free from any material errors or omissions. The Lobbyist additionally represents, covenants, and agrees that the planning for the Project will conform to all foreseeable uses thereof. City approval shall not diminish or release the Lobbyist's duties since the City is ultimately relying upon the Lobbyist's skill and knowledge; however, the foregoing shall not limit the City's authority to terminate this Agreement as provided herein.

D. Duty to Warn.

The Lobbyist agrees to call to the City's attention anything of any nature in any drawings, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the Lobbyist (by the City or any other party) that is unsuitable, improper, or inaccurate in any way. Nothing shall detract from this obligation unless the Lobbyist advises the City in writing that such data is unsuitable, improper, or inaccurate and the City nevertheless confirms in writing that it wishes the Lobbyist to proceed according to the data as originally given.

E. Attendance at Meetings.

The Lobbyist shall attend such meetings on the Project as the City may require for performance of the Services. The City will give reasonable notice of any such required meeting, so that the Lobbyists may schedule and attend.

F. Reports.

The Lobbyist shall submit a written bi-monthly report to the City and the US 36 MCC detailing work on the Project and Services performed since the last report. The report shall include, but not be limited to, detail of specific Services performed, the status of work on the Project, review of Project efforts and other information pertinent to the Project and Services. The Lobbyist will submit all reports required of it by Federal and State law as a result of its performance of this Agreement. The City will cooperate and use its best efforts to obtain timely signatures on any such reports for which a client signature is required by Federal or State law.

G. Efficiency.

The Lobbyist represents, covenants, and agrees to furnish efficient business administration and superintendence and perform the Services required by this Agreement in the best, most expeditious and most economical manner consistent with the interests of the City.

H. Books and Records.

The Lobbyist shall keep its books and records for the Project and reimbursable expenses according to recognized accounting principles and practices, consistently applied. The Lobbyist shall make such books and records available for the City's inspection and copying at all reasonable times. The Lobbyists shall retain such books and records for at least three years after completion of the Project.

I. Payment of Bills.

The Lobbyists shall be solely responsible for and shall promptly pay all bills for labor and material performed and furnished by others in performance of the Project.

VIII. TERMINATION

A. This Agreement may be terminated by either party upon thirty (30) days prior written notice to the other party in the event of a substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party.

B. This Agreement may be terminated by the City for its convenience upon thirty (30) days prior written notice to the Lobbyist.

C. In the event of termination as provided in this Article, the City shall pay the Lobbyist in full for Services performed to the date of termination. Such payment shall be limited to monthly installments due to the date of termination, with the final month prorated. Any Services performed during the notice period require the advance written approval of the City. Said compensation shall be paid upon the Lobbyist's delivering or otherwise making available to the City, and no additional expense other than copying costs, all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Lobbyist in performing the Services included in this Agreement, whether completed or in progress.

IX. INSURANCE

The nature of the relationship of Lobbyist to the City is that of an independent contractor, and as such, the Lobbyist is required as a condition of this to maintain all applicable insurances as required by law, including Workmen's Compensation Insurance and automobile liability insurance for all owned or hired autos used in performing the Services. The Lobbyist shall provide certificates of insurance to the City indicating compliance with this paragraph.

X. EQUAL EMPLOYMENT OPPORTUNITY

In connection with its performance of this Agreement, the Lobbyist shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, or any other status protected by applicable federal, state or local law. Such actions shall include, but not be limited to the following: employment; upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

## XI. PROHIBITED INTEREST

A. The Lobbyist agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its Services hereunder. The Lobbyist further agrees that in the performance of the Agreement, no person having any such interests shall be employed or engaged.

B. No official or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

## XII. GENERAL PROVISIONS

A. Independent Contractor. In the performance of the Services, the Lobbyist shall act as an independent contractor and not as agent of the City except to the extent the Lobbyist is specifically authorized to act as agent of the City. Lobbyist and any persons employed by Lobbyist for the performance of work hereunder shall be independent contractors and not agents of the City. Any provisions in this Agreement that may appear to give the City the right to direct Lobbyist as to details of doing work or to exercise a measure of control over the work mean that Lobbyist shall follow the direction of the City as to end results of the work only. **As an independent contractor, Lobbyist and its employees are not entitled to workers' compensation benefits except as may be provided by the Lobbyist and are not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by the Lobbyist or some other entity. The Lobbyist is obligated to pay all federal and state income tax on any moneys earned or paid pursuant to this Agreement.**

B. Books and Records. The Lobbyist's books and records with respect to the Services and reimbursable costs shall be kept in accordance with recognized accounting principles and practices, consistently applied, and will be made available for the City's inspection and copying at all reasonable times at the places where the same may be kept. The Lobbyist shall not be required to retain such books and records for more than three (3) years after completion of the Services.

C. Responsibility; Liability – Indemnification. The Lobbyist shall indemnify and hold harmless the City and its officers, agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Services, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Project itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission or other fault of the Lobbyist, any subcontractor of the Lobbyist, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph C.

In any and all claims against the City or any of its officers, agents or employees by any employee of the Lobbyist, any subcontractor of the Lobbyist, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph C shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Lobbyist or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

In the event it becomes necessary for the City to bring an action to enforce any provision of this

Agreement or to recover any damages the City may incur as a result of the breach of this Agreement, including, but not limited to defective work, and the City prevails in such litigation, the Lobbyist shall pay the City its reasonable attorney fees as determined by the Court.

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F. Applicable Laws. This Agreement, and all questions concerning the execution, validity or invalidity, capacity of the parties, and the performance of this Agreement, shall be interpreted in all respects in accordance with the Charter and Code of the City of Louisville and the laws of the State of Colorado. The parties agree that venue for any litigation involving this Agreement shall be in the Boulder County District Court.

G. Entire Agreement. This Agreement shall constitute the entire agreement between the parties hereto and shall supersede all prior contracts, proposals, representations, negotiations and letters of intent, whether written or oral, pertaining to the Services for the Project.

H. Waiver. The failure of either Party to enforce at any time or for any period of time any provision hereof shall not be construed to be a waiver of such provision of the right thereafter to enforce each and every provision. No waiver by either Party to this Agreement, either express or implied, of any breach of any term, condition or obligation of this Agreement shall be construed as a waiver of any subsequent breach of that term, condition or obligation or of any other term, condition or obligation of this Agreement.

I. Employing Illegal Aliens. Appendix B, 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 Lobbyist's Pre-Contract Certification which Lobbyist has executed and delivered to the City prior to Consultant's execution of this Agreement.

INSURANCE CERTIFICATES REQUIRED BY THIS AGREEMENT SHALL BE SENT TO THE CITY MANAGER'S OFFICE, ATTENTION: HEATHER BALSER

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers effective as of the date first appearing above.

DUTKO WASHINGTON, LLC  
By: Dutko Grayling, its member

CITY OF LOUISVILLE

By \_\_\_\_\_  
John Frost  
Chief Financial Officer

By \_\_\_\_\_  
Robert P. Muckle  
Mayor

Date: \_\_\_\_\_, 2013

Date: \_\_\_\_\_, 2013

Address for notices under this Agreement:

Dutko Grayling  
Attn: John Frost  
100 M Street, Suite 500  
Washington, DC 20003

Address for notices under this Agreement:

City of Louisville  
Attn: Deputy City Manager  
749 Main Street  
Louisville, CO 80027

ATTEST:

\_\_\_\_\_  
City Clerk

## Appendix A

### **Dutko Grayling/Boyagian Consulting Scope of Work for February 2013 to February 2014 – US 36 Mayors and Commissioners Coalition**

The Dutko Grayling (DG)/Boyagian Consulting (BC) scope of services for the US 36 Mayors and Commissioners Coalition (MCC) for 2013/14 includes the following objectives and tasks to maintain US 36 as a federal funding priority project for the Reauthorization of the Highway Bill, Appropriations and Federal Grant opportunities through the US Department of Transportation.

#### Primary Objectives

- 1) Continue to support MCC in securing federal funding through Congress and the US Department of Transportation. TIFIA, TIGER Grant, Small Starts; Bus and Bus related facilities; Transportation and Community System Preservation; Surface Transportation Improvements; others that may present opportunities for multi-modal improvements along the US 36 Corridor as identified by the MCC
- 2) Continue to position US36 for funding in the reauthorization of MAP-21. If opportunities are presented to secure Congressionally directed funding for multi-modal improvements along the US36 Corridor coordinate with CO Congressional delegation. Requests would need to be resubmitted.
- 3) Support policy changes in reauthorization to the Transportation Infrastructure Finance and Innovative Act (TIFIA) program that provide additional opportunities to secure innovative financing under the program.
- 4) Maintain and develop relationships with CO Congressional offices and other Members, such as Chairman Shuster and Chairman Boxer.
- 5) Continue to track “Small Starts” process and other grant funding and connect the MCC with opportunities to promote and secure dollars for BRT and managed lane components of the US 36 project.
- 6) Inform and update Colorado Congressional delegation on current status of Northwest Commuter Rail and FasTracks. Commence preliminary discussions to start laying groundwork for future efforts with Burlington Northern Santa Fe, the Regional Transportation District and other stakeholders regarding longer-term opportunities and approaches for completing Northwest Commuter Rail.
- 7) Explore political opportunities.
- 8) Monitor and track any bills that could lead to financing or funding for the US36 Corridor.

#### 2013/14 Specific Action Steps and Deliverables

1. Position US 36 as a high priority with the Colorado delegation, key leaders, and key staff.
  - DG/BC will use its relationship on Capitol Hill to promote US36 and remind key congressional and federal agency players of the needs along the corridor and progress of the corridor.
  - Update and provide information to the Congressional delegation on the status of the US36 corridor project – environmental, state and local funding commitments, progress under TIFIA, other information the MCC wishes to pass on.

**Deliverable:** Identify and provide messages that will resonate in D.C. Inform coalition of contacts, conversations and feedback from Congress and USDOT. Draft letters and communications for MCC review and deliver final products to delegation.

**Deliverable:** DG/BC to continue to communicate by email and phone on a real-time basis to let the MCC know of current events and continue to participate actively in monthly MCC meetings by teleconference.

**Deliverable:** Track grant opportunities.

2. Schedule and coordinate the fly-in to Washington –February 2013 MCC Trip and facilitate additional opportunities for coalition members traveling to DC throughout the year to meet with key leaders and attend meetings.

- Schedule Congressional meetings with Representative Polis, Perlmutter, Coffman, DeGette, Tipton, Gardner, Lamborn and Senators Udall and Bennet.
- Schedule meetings with Washington staff of delegation.
- Schedule meetings with relevant authorizers and appropriations staffers and Members and others who will have a role in funding US36.
- Request a meeting with FHWA and FTA executive staff.
- Request a meeting with USDOT TIFIA office.
- Facilitate meetings throughout 2013 for MCC members traveling to DC for other purposes.

**Deliverable:** A full schedule of confirmed meetings and follow up after February trip.

3. Colorado Meetings

- DG/BC will determine which Colorado delegation members prefer to meet in Colorado while at home.
- Seek opportunities to bring Congressional staff to the corridor.

4. Role of DG/BC Staff

Bill Simmons will be the lead strategist and point of contact for the MCC regarding all federal appropriations related requests. Bill will work closely with Levon Boyagian regarding the day-to-day federal strategy for the MCC.

Levon Boyagian will be very involved with the long-term and day-to-day Congressional and federal strategies for the MCC. Levon will also be the TIFIA Program lead and point of contact for the MCC.

Senior members and staff on the respective authorizing and appropriations committees are critical to the MCC's long term success. Bill and Levon will reach-out to their respective contacts and networks on Capitol Hill beyond the Colorado delegation.

## Appendix B

### City of Louisville Public Services Contract Addendum Prohibition Against Employing Illegal Aliens

**Prohibition Against Employing Illegal Aliens.** Dutko Washington, LLC (hereafter “Consultant”) shall not knowingly employ or contract with an illegal alien to perform work under this contract. Consultant shall not enter into a contract with a subcontractor that fails to certify to the Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.

Consultant 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. Consultant 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 Consultant obtains actual knowledge that a subcontractor performing work under this contract for services knowingly employs or contracts with an illegal alien, Consultant shall:

- a. Notify the subcontractor and the City within three days that the Consultant 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 Consultant 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.

Consultant 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. Section 8-17.5-102(5).

If Consultant violates a provision of this Contract required pursuant to C.R.S. Section 8-17.5-102, the City may terminate the contract for breach of contract. If the contract is so terminated, the Consultant 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:  
Dutko Grayling

By: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Date

AGREEMENT  
TO FURNISH LOBBYIST SERVICES  
TO THE  
US 36 MAYORS AND COMMISSIONERS COALITION

THIS AGREEMENT, made and entered into effective as of the 15th day of February, 2013, between the CITY OF LOUISVILLE, hereinafter referred to as the "City," and Boyagian Consulting, LLC, hereinafter referred to as the "Lobbyist," is as follows:

WHEREAS, the US 36 Mayors and Commissioners Coalition, hereinafter referred to as the "US 36 MCC," wishes to better promote its position on US 36 transportation issues of concern at the regional, state and federal levels, be it legislative, regulatory, or other; and

WHEREAS, the City of Louisville desires to act on behalf of the US 36 MCC in engaging the Lobbyist to render the professional lobbying services described in this Agreement and the Lobbyist is qualified and willing to perform such services; and

WHEREAS, the cities of Boulder, Westminster, Superior, and Louisville, the City and County of Broomfield, and Boulder County have agreed to mutually participate in the funding of the Lobbyist; and;

WHEREAS, it has been proposed that the lobbyist services desired by the US 36 MCC be provided pursuant to two separate agreements between the City and Boyagian Consulting, LLC, and the City and another firm with the Lobbyist and the other firm to cooperate to provide lobbyist services to the US 36 MCC; and

WHEREAS, sufficient authority exists in charter and statute and sufficient funds have been budgeted for the purposes of this Agreement and are available and other necessary approvals have been obtained.

NOW, THEREFORE, in consideration of the mutual understandings and agreements set forth, the City and the Lobbyist agree as follows:

I. THE PROJECT

The Project consists of advocating the US 36 MCC's position on pertinent legislative, regulatory and other issues (regional, state, federal) and advising the US 36 MCC in the handling of miscellaneous legislative/intergovernmental issues that may arise on which the Lobbyist is utilized.

II. TERM

The Lobbyist's services are anticipated to be provided between February 15, 2013 and February 15, 2014. The City may extend the term of this Agreement beyond such one year, upon notice to the Lobbyist, as the City determines necessary for smooth progress of the Project and completion of Lobbyist's services. The Lobbyist shall provide services at such times as are necessary in order to promote such smooth progress of the Project.

III. LOBBYIST'S SERVICES

In connection with the Project, the Lobbyist shall undertake the duties and responsibilities and provide the services described in Appendix A, captioned "Scope of Work for February 2013 to February 2014 - US

36 Mayors and Commissioners Coalition," which is attached hereto and made a part hereof, which are hereinafter referred to as the "Services". The Lobbyist shall, in good faith, coordinate and cooperate with Dutko Washington, LLC to complete such services as described in Appendix A.

#### IV. ADDITIONAL SERVICES

When authorized in writing by the City, the Lobbyist agrees to furnish or obtain from others, additional professional services in connection with the Project due to changes in the scope of the Project or its design, subject to mutual written agreement as to additional compensation for additional services.

#### V. LOBBYIST'S FEE

As compensation for the Services described in this Agreement, the Lobbyist shall be paid a fee of \$52,500 to be paid in twelve equal monthly installments, with the first installment to be paid for the period of Services from February 15, 2013 to March 15, 2013. Such fee shall constitute full and complete payment for said Services and all expenditures which may be made and expenses which may be incurred, except as otherwise expressly provided in this Agreement. The Lobbyist shall present a monthly invoice, and the City shall pay monthly installments within thirty (30) days of receipt of invoice therefor unless the work or documentation therefor does not comply with this Agreement. Payments made more than thirty (30) days after the due date may be assessed an interest charge of one percent (1%) per month unless the delay in payment resulted from unsatisfactory work or documentation therefor.

#### VI. LOBBYIST'S EXPENSES

Lobbyist will be reimbursed actual costs for long distance phone calls and courier services (which costs shall be pro-rated if incurred in conjunction with other Lobbyist clients). Lobbyist shall be reimbursed for copies and faxes at rates approved by the City Manager. Additionally, it is understood that in the course of performing its Services under this Agreement the Lobbyist may incur certain extraordinary expenses that go beyond those normal expenses that are either reimbursed as set forth in this Section VI or within the Lobbyist's fee in Section IV of this Agreement. These expenses include such things as travel. These expenses will be billed at costs and on a pro-rated basis if incurred in conjunction with other Lobbyist clients and only when prior approval is granted by the City. These expenses shall not exceed \$1,000 during the term of this Agreement. The City shall not be obligated to pay any expenses exceeding \$1,000, unless the Lobbyist receives pre-approval from the City to exceed \$1,000. The parties agree that no commissions, fees, expenses or other amounts paid to the Lobbyist in connection with this Agreement shall be paid from any Federal or State appropriated funds.

#### VII. LOBBYIST'S DUTIES

##### A. Abilities, Qualifications, Experience, and Best Efforts.

Notwithstanding anything to the contrary contained in this Agreement, the City and the Lobbyist agree and acknowledge that the City enters into this Agreement relying on the special and unique abilities to accomplish the Project of the persons named in page 2 of Appendix A, attached hereto and made a part hereof. The Lobbyist accepts the relationship of trust and confidence established between it and the City by this Agreement. The Lobbyist agrees that if any person named in page 2 of Appendix A must be replaced, the replacement shall possess at least equivalent qualifications and experience and shall be subject to reasonable approval by the City. The Lobbyist covenants with the City to use its best efforts. The Lobbyist shall further the interests of the City and the US 36 MMC according to the City's direction, requirements and procedures, according to the highest professional standards, and in compliance with all

applicable national, federal, state and municipal laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction, including but not limited to federal laws and Colorado statutes and constitutional provisions regulating the conduct of lobbyists.

B. No Conflicts.

The Lobbyist represents, covenants, and agrees to and with the City that any persons employed by Lobbyist or working under its direction and control for this Agreement have and will undertake no obligations, commitments, or impediments of any kind that will limit or prevent them from the timely completion of the Project, loyally and strictly according to the best interests of the City and the US 36 MCC. In case of any conflict between interests of the City and any other entity, the Consultant shall fully and immediately disclose the nature and extent of such conflict to the City and shall take no action contrary to the City's interests.

C. Accuracy of Work.

The Lobbyist represents, covenants, and agrees that its work will be accurate and free from any material errors or omissions. The Lobbyist additionally represents, covenants, and agrees that the planning for the Project will conform to all foreseeable uses thereof. City approval shall not diminish or release the Lobbyist's duties since the City is ultimately relying upon the Lobbyist's skill and knowledge; however, the foregoing shall not limit the City's authority to terminate this Agreement as provided herein.

D. Duty to Warn.

The Lobbyist agrees to call to the City's attention anything of any nature in any drawings, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the Lobbyist (by the City or any other party) that is unsuitable, improper, or inaccurate in any way. Nothing shall detract from this obligation unless the Lobbyist advises the City in writing that such data is unsuitable, improper, or inaccurate and the City nevertheless confirms in writing that it wishes the Lobbyist to proceed according to the data as originally given.

E. Attendance at Meetings.

The Lobbyist shall attend such meetings on the Project as the City may require for performance of the Services. The City will give reasonable notice of any such required meeting, so that the Lobbyists may schedule and attend.

F. Reports.

The Lobbyist shall submit a written bi-monthly report to the City and the US 36 MCC detailing work on the Project and Services performed since the last report. The report shall include, but not be limited to, detail of specific Services performed, the status of work on the Project, review of Project efforts and other information pertinent to the Project and Services. The Lobbyist will submit all reports required of it by Federal and State law as a result of its performance of this Agreement. The City will cooperate and use its best efforts to obtain timely signatures on any such reports for which a client signature is required by Federal or State law.

G. Efficiency.

The Lobbyist represents, covenants, and agrees to furnish efficient business administration and superintendence and perform the Services required by this Agreement in the best, most expeditious and most economical manner consistent with the interests of the City.

#### H. Books and Records.

The Lobbyist shall keep its books and records for the Project and reimbursable expenses according to recognized accounting principles and practices, consistently applied. The Lobbyist shall make such books and records available for the City's inspection and copying at all reasonable times. The Lobbyists shall retain such books and records for at least three years after completion of the Project.

#### I. Payment of Bills.

The Lobbyists shall be solely responsible for and shall promptly pay all bills for labor and material performed and furnished by others in performance of the Project.

### VIII. TERMINATION

A. This Agreement may be terminated by either party upon thirty (30) days prior written notice to the other party in the event of a substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party.

B. This Agreement may be terminated by the City for its convenience upon thirty (30) days prior written notice to the Lobbyist.

C. In the event of termination as provided in this Article, the City shall pay the Lobbyist in full for Services performed to the date of termination. Such payment shall be limited to monthly installments due to the date of termination, with the final month prorated. Any Services performed during the notice period require the advance written approval of the City. Said compensation shall be paid upon the Lobbyist's delivering or otherwise making available to the City, and no additional expense other than copying costs, all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Lobbyist in performing the Services included in this Agreement, whether completed or in progress.

### IX. INSURANCE

The nature of the relationship of Lobbyist to the City is that of an independent contractor, and as such, the Lobbyist is required as a condition of this to maintain all applicable insurances as required by law, including Workmen's Compensation Insurance and automobile liability insurance for all owned or hired autos used in performing the Services. The Lobbyist shall provide certificates of insurance to the City indicating compliance with this paragraph.

### X. EQUAL EMPLOYMENT OPPORTUNITY

In connection with its performance of this Agreement, the Lobbyist shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, or any other status protected by applicable federal, state or local law. Such actions shall include, but not be limited to the following: employment; upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers effective as of the date first appearing above.

Boyagian Consulting, LLC

CITY OF LOUISVILLE

By \_\_\_\_\_  
Levon Boyagian

By \_\_\_\_\_  
Robert P. Muckle  
Mayor

Date: \_\_\_\_\_, 2013

Date: \_\_\_\_\_, 2013

Address for notices under this Agreement:  
Boyagian Consulting, LLC  
Attn: Levon Boyagian  
3711 N. Pershing Drive  
Arlington, VA 22203

Address for notices under this Agreement:  
City of Louisville  
Attn: Deputy City Manager  
749 Main Street  
Louisville, CO 80027

ATTEST:

\_\_\_\_\_  
City Clerk

## Appendix A

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- 5) Continue to track “Small Starts” process and other grant funding and connect the MCC with opportunities to promote and secure dollars for BRT and managed lane components of the US 36 project.
- 6) Inform and update Colorado Congressional delegation on current status of Northwest Commuter Rail and FasTracks. Commence preliminary discussions to start laying groundwork for future efforts with Burlington Northern Santa Fe, the Regional Transportation District and other stakeholders regarding longer-term opportunities and approaches for completing Northwest Commuter Rail.
- 7) Explore political opportunities.
- 8) Monitor and track any bills that could lead to financing or funding for the US36 Corridor.

#### 2013/14 Specific Action Steps and Deliverables

1. Position US 36 as a high priority with the Colorado delegation, key leaders, and key staff.
  - DG/BC will use its relationship on Capitol Hill to promote US36 and remind key congressional and federal agency players of the needs along the corridor and progress of the corridor.
  - Update and provide information to the Congressional delegation on the status of the US36 corridor project – environmental, state and local funding commitments, progress under TIFIA, other information the MCC wishes to pass on.

**Deliverable:** Identify and provide messages that will resonate in D.C. Inform coalition of contacts, conversations and feedback from Congress and USDOT. Draft letters and communications for MCC review and deliver final products to delegation.

**Deliverable:** DG/BC to continue to communicate by email and phone on a real-time basis to let the MCC know of current events and continue to participate actively in monthly MCC meetings by teleconference.

**Deliverable:** Track grant opportunities.

2. Schedule and coordinate the fly-in to Washington –February 2013 MCC Trip and facilitate additional opportunities for coalition members traveling to DC throughout the year to meet with key leaders and attend meetings.

- Schedule Congressional meetings with Representative Polis, Perlmutter, Coffman, DeGette, Tipton, Gardner, Lamborn and Senators Udall and Bennet.
- Schedule meetings with Washington staff of delegation.
- Schedule meetings with relevant authorizers and appropriations staffers and Members and others who will have a role in funding US36.
- Request a meeting with FHWA and FTA executive staff.
- Request a meeting with USDOT TIFIA office.
- Facilitate meetings throughout 2013 for MCC members traveling to DC for other purposes.

**Deliverable:** A full schedule of confirmed meetings and follow up after February trip.

3. Colorado Meetings

- DG/BC will determine which Colorado delegation members prefer to meet in Colorado while at home.
- Seek opportunities to bring Congressional staff to the corridor.

4. Role of DG/BC Staff

Bill Simmons will be the lead strategist and point of contact for the MCC regarding all federal appropriations related requests. Bill will work closely with Levon Boyagian regarding the day-to-day federal strategy for the MCC.

Levon Boyagian will be very involved with the long-term and day-to-day Congressional and federal strategies for the MCC. Levon will also be the TIFIA Program lead and point of contact for the MCC.

Senior members and staff on the respective authorizing and appropriations committees are critical to the MCC's long term success. Bill and Levon will reach-out to their respective contacts and networks on Capitol Hill beyond the Colorado delegation.

## **Appendix B**

### **City of Louisville Public Services Contract Addendum Prohibition Against Employing Illegal Aliens**

**Prohibition Against Employing Illegal Aliens.** Boyagian Consulting, LLC (hereafter “Consultant”) shall not knowingly employ or contract with an illegal alien to perform work under this contract. Consultant shall not enter into a contract with a subcontractor that fails to certify to the Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.

Consultant 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. Consultant 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 Consultant obtains actual knowledge that a subcontractor performing work under this contract for services knowingly employs or contracts with an illegal alien, Consultant shall:

- a. Notify the subcontractor and the City within three days that the Consultant 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 Consultant 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.

Consultant 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. Section 8-17.5-102(5).

If Consultant violates a provision of this Contract required pursuant to C.R.S. Section 8-17.5-102, the City may terminate the contract for breach of contract. If the contract is so terminated, the Consultant 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: BI-MONTHLY ECONOMIC DEVELOPMENT UPDATE**

**DATE: FEBRUARY 5, 2013**

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

**Below are short updates on some key projects for the months of December and January.**

Historic Grain Elevator – RFP responses were due on January 23, 2013. The City received two proposals; one from Hartronft Associates in Louisville, and one from Olde Town Group, LLC in Arvada. I will be asking a review team of the following people to evaluate the proposals:

Heather Balsler, Deputy City Manager  
Troy Russ, Planning Director  
Scott Robinson, Planning  
Aaron DeJong, Economic Development  
Mike Koertje, Historic Preservation Commission (HPC)  
Carlos Hernandez, Louisville Revitalization Commission (LRC)

This team will help me form a recommendation, which will go first to the HPC and then to the City Council for discussion and action. The anticipated timeline for evaluating and presenting recommendations to the HPC and City Council is:

- 1) January 31 – February 28, 2013 – Review proposals and conduct interviews if needed
- 2) March 11, 2013 – Present recommendation to HPC
- 3) March 19, 2013 – Present recommendation to City Council
- 4) March – April 2013 – Develop agreement with selected applicant

Highway 42 Revitalization – The LRC has received and reviewed an application for assistance from DELO, LLC for assistance in providing infrastructure improvements to remove barriers to development in the core area of the Highway 42 Revitalization Area. The LRC provided direction to staff to prepare a term sheet outlining the main points of the LRC borrowing funds for infrastructure improvements and repaying those funds through future tax increment revenues from property adjacent to the new infrastructure. This term sheet will go to both the LRC and City Council for review and approval in accordance with the Intergovernmental Agreement between the City and the LRC.

**SUBJECT: ECONOMIC DEVELOPMENT UPDATE**

**DATE: FEBRUARY 5, 2013**

**PAGE 2 OF 2**

Phillips 66 Property – Last year Phillips 66 made the decision to sell the Louisville property along US 36. The company is still deciding its real estate representation. Staff is encouraging Phillips 66 and its broker to coordinate with the City to ensure any potential buyer understands the development constraints on the site. Staff will continue to monitor the activity of this property.

**FISCAL IMPACT:**

N/A

**RECOMMENDATION:**

N/A

**ATTACHMENTS:**

None

**SUBJECT: DISCUSSION/DIRECTION/ACTION – MAIN STREET PATIO  
DESIGN CONTRACT**

**DATE: FEBRUARY 5, 2013**

**PRESENTED BY: DIANA TRETTIN, CIP MANAGER  
KURT KOWAR, DIRECTOR PUBLIC WORKS DEPARTMENT**

**SUMMARY:**

In December 2012, City staff presented the Main Street Patio design alternatives to the City Council. Council approved the concept of fabricating and installing seasonal patios on Main Street and requested staff to come back to Council with a finalized design, and a contract for fabrication of the patios in February 2013.

A thriving “Main Street” is viewed by many planners, including Louisville’s, as a vital component of a thriving and vibrant community. Louisville’s Main Street in recent years has become a model other communities are attempting to replicate. A key element of downtown Louisville’s success appears to be the seasonal patios. Representatives from Denver, Boulder, Castle Rock, and Ashland, Oregon have all visited or made inquiries into Louisville’s patio program hoping to learn from its success. The City of Aspen is also installing seasonal patios in their downtown area, indicating this is more than just a passing trend.

The Main Street Patio project started in 2009, as a Downtown Business Association (DBA) effort to enhance the livability and viability of Historic Downtown Louisville. At that time the DBA requested the City allow restaurants located on Main Street between Spruce Street and Walnut Street the opportunity to install patios in the parking spaces in front of the buildings on a seasonal basis. The intent was to transform the street into a more enticing venue during the summer months. In 2009 two restaurants applied for, and were granted, revocable license agreements to occupy a portion of the Main Street right-of-way and sidewalk for temporary patio improvements for food and beverage service. The license made the Licensee solely responsible for the construction, installation, operation, maintenance, repair and removal of the improvements. The DBA took the lead and constructed, installed, maintained, repaired, removed and stored all of the patios from 2009 through 2012.

The original Main Street Patio was designed as a 6 foot wide by 8 foot long structure constructed of wood and Trex (a manufactured wood alternative) material. While this design served its purpose, both business owners and the DBA agreed that a new design should be at least 1-2 feet wider to allow more room for tables and chairs, and be modular to increase the efficiency of set up and breakdown.

**SUBJECT: MAIN STREET PATIO DESIGN CONTRACT**

**DATE: DECEMBER 4, 2012**

**PAGE 2 OF 3**

The original wood/trex structures had a life expectancy of approximately 2-3 years per patio due to both weather effects and the difficulty of set up and breakdown of the components. The new patios have been designed for a much longer life expectancy of up to 15 years (or more), using Ipe ("Epay") wood floor and steel railings. The new design is modular to ease of setup and breakdown of the components, which also increases the life expectancy. The new design is modular and includes an 8 foot wide by 12 foot long structure that can be set up and broken down with ease.

Because the City Council previously approved funding to design and construct the patios, because there is sales tax revenue attributable to the seasonal patios, and because the seasonal patios appear to have enhanced Louisville's ability to attract people as a regional destination, staff views this project as a worthwhile economic development investment.

Staff negotiated a not to exceed fee of \$205,000 with ECI Site Construction Management, Inc. (ECI) to provide the design, engineering and fabrication services for the Main Street Patios. For this amount ECI will obtain bids from at least three (3) steel fabricators to produce up to fifteen (15) 12'x8' patios. Based on feedback from residents and business owners, the patios will be an additional 2 feet wide from curb to street to allow for better movement and seating. The new patios are 4 feet longer and 2 feet wider than the original patios, therefore fewer will need to be fabricated to serve the same area.

Based on the positive response to the prototype and the Council's direction at the December 4, 2012 City Council meeting, City has moved forward and, using the funding approved in the 2012 and 2013 budgets, finalized the design and contract to fabricate the modular patios for a NTE cost of \$205,000. Final design details include improvement of aesthetics for the railing designs, color selection, planting boxes, and connections for water and power.

Based on City Council direction, staff prepared this fabrication contract for Council consideration. If the fabrication contract is approved at this meeting, staff anticipates completing this work in May 2013, prior to the summer patio season. Assuming the City funds and fabricates the patios, the City would also anticipate overseeing the setup/takedown, maintenance, and winter storage of the modular patios. These details will be further refined based on determining an adequate storage location for the patios, currently expected to be at the new City Services Facility which is currently under design.

**FISCAL IMPACT:**

The 2012 budget included \$20,000 in the Capital Projects Fund for the patio design work, of which \$15,000 has been spent leaving \$5,000 to rollover into the 2013 budget. The 2013 budget includes \$200,000 in the Capital Projects Fund for construction of the patios in 2013 plus the \$5,000 rolled over from 2012. Staff estimates that the costs

**SUBJECT: MAIN STREET PATIO DESIGN CONTRACT**

**DATE: DECEMBER 4, 2012**

**PAGE 3 OF 3**

associated with setup, takedown and winter storage would be about \$3,000 annually; this cost was not anticipated and is not specifically identified in the budget, but can most likely be absorbed as part of the Public Works staff overall responsibilities. The DBA is still discussing whether or not they will do flowers for the patios this year. The City has told the DBA our staff cannot take on the watering of the flowers. Actual costs for providing water and electricity service are unknown at this time and would be in addition the capital and annual setup, takedown and storage costs. Based on 2012 tax receipts to date, and assuming current trends continue, staff estimates the patios generate at least \$20,000 in sales tax revenue annually.

**RECOMMENDATION:**

Approve the Professional Services Agreement with ECI Site Construction for an amount not to exceed \$205,000 for the fabrication of the Main Street Patios.

**ATTACHMENTS:**

1. Contract
2. Scope of Work
3. Meeting Notes
4. Presentation

**AN AGREEMENT BY AND BETWEEN THE CITY OF LOUISVILLE  
AND ECI SITE CONSTRUCTION MANAGEMENT, INC  
FOR CONSULTING SERVICES**

**1.0 PARTIES**

The parties to this Agreement are the **City of Louisville**, a Colorado home rule municipal corporation, hereinafter referred to as the “City”, and ECI Site Construction Management, Inc., a corporation, hereinafter referred to as the “Consultant”.

**2.0 RECITALS AND PURPOSE**

2.1 The City desires to engage the Consultant for the purpose of providing design and fabrication services as further set forth in the Consultant’s Scope of Services (which services are hereinafter referred to as the “Services”).

2.2 The Consultant represents that it has the special expertise, qualifications and background necessary to complete the Services.

**3.0 SCOPE OF SERVICES**

The Consultant agrees to provide the City with the specific Services and to perform the specific tasks, duties and responsibilities set forth in Scope of Services attached hereto as Exhibit “B” and incorporated herein by reference.

**4.0 COMPENSATION**

4.1 The City shall pay the Consultant for services under this agreement a total not to exceed (\$205,000) the amounts set forth in Exhibit “C” attached hereto and incorporated herein by this reference. The City shall pay mileage and other reimbursable expenses (such as meals, parking, travel expenses, necessary memberships, etc.) which are deemed necessary for performance of the services and which are pre-approved by the City Manager. The foregoing amounts of compensation shall be inclusive of all costs of whatsoever nature associated with the Consultant’s efforts, including but not limited to salaries, benefits, overhead, administration, profits, expenses, and outside consultant fees. The Scope of Services and payment therefor shall only be changed by a properly authorized amendment to this Agreement. No City employee has the authority to bind the City with regard to any payment for any services which exceeds the amount payable under the terms of this Agreement.

4.2 The Consultant shall submit monthly an invoice to the City for Services rendered and a detailed expense report for pre-approved, reimbursable expenses incurred during the previous month. The invoice shall document the Services provided during the preceding month, identifying by work category and subcategory the work and tasks performed and such other information as may be required by the City. The Consultant shall provide such additional backup documentation as may be required by the City. The City shall

pay the invoice within thirty (30) days of receipt unless the Services or the documentation therefor are unsatisfactory. Payments made after thirty (30) days may be assessed an interest charge of one percent (1%) per month unless the delay in payment resulted from unsatisfactory work or documentation therefor.

## **5.0 PROJECT REPRESENTATION**

- 5.1 The City designates Diana Trettin as the responsible City staff to provide direction to the Consultant during the conduct of the Services. The Consultant shall comply with the directions given by Diana Trettin and such person's designees.
- 5.2 The Consultant designates Ted Johnson as its project manager and as the principal in charge who shall be providing the Services under this Agreement. [The Services shall not be provided by persons other than Ted Johnson.] [Should any of the representatives be replaced, particularly Ted Johnson, and such replacement require the City or the Consultant to undertake additional reevaluations, coordination, orientations, etc., the Consultant shall be fully responsible for all such additional costs and services.]

## **6.0 TERM**

The term of this Agreement shall be February 6, 2013 to December 31, 2013, unless sooner terminated pursuant to Section 13, below. The Consultant's services under this Agreement shall commence upon execution of this Agreement by the City and shall progress so that the Services are completed in a timely fashion consistent with the City's requirements.

## **7.0 INSURANCE**

- 7.1 The Consultant agrees to procure and maintain, at its own cost, the policies of insurance set forth in Subsections 7.1.1 through 7.1.4. The Consultant shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types. The coverages required below shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained from the date of commencement of services hereunder. The required coverages are:
- 7.1.1 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.
- 7.1.2 General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate. The policy shall include the City of Louisville, its officers and its employees, as additional insureds, with primary coverage as respects the City of Louisville, its officers and its employees, and shall contain a severability of interests provision.

- 7.1.3 Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000) per person in any one occurrence and SIX HUNDRED THOUSAND DOLLARS (\$600,000) for two or more persons in any one occurrence, and auto property damage insurance of at least FIFTY THOUSAND DOLLARS (\$50,000) per occurrence, with respect to each of Consultant's owned, hired or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision. If the Consultant has no owned automobiles, the requirements of this paragraph shall be met by each employee of the Consultant providing services to the City of Louisville under this contract.
- 7.1.4 Professional Liability coverage with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate.
- 7.2 The Consultant's general liability insurance, automobile liability and physical damage insurance, and professional 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 Consultant. Such policies shall contain a severability of interests provision. The Consultant shall be solely responsible for any deductible losses under each of the policies required above.
- 7.3 Certificates of insurance shall be provided by the Consultant 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.
- 7.4 Failure on the part of the Consultant to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the City may immediately terminate the contract, or at its discretion may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Consultant to the City upon demand, or the City may offset the cost of the premiums against any monies due to Consultant from the City.
- 7.5 The parties understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101 et seq., 10 C.R.S.,

as from time to time amended, or otherwise available to the City, its officers, or its employees.

## **8.0 INDEMNIFICATION**

To the fullest extent permitted by law, the Consultant agrees to indemnify and hold harmless the City, and its elected and appointed officers and its employees, from and against all liability, claims, and demands, on account of any injury, loss, or damage, which arise out of or are connected with the services hereunder, if such injury, loss, or damage is caused by the negligent act, omission, or other fault of the Consultant or any subcontractor of the Consultant, or any officer, employee, or agent of the Consultant or any subcontractor, or any other person for whom Consultant is responsible. The Consultant shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims, and demands. The Consultant shall further bear all other costs and expenses incurred by the City or Consultant and related to any such liability, claims and demands, including but not limited to court costs, expert witness fees and attorneys' fees if the court determines that these incurred costs and expenses are related to such negligent acts, errors, and omissions or other fault of the Consultant. The City shall be entitled to its costs and attorneys' fees incurred in any action to enforce the provisions of this Section 8.0. The Consultant's indemnification obligation shall not be construed to extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the City.

## **9.0 QUALITY OF WORK**

Consultant'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.

## **10.0 INDEPENDENT CONTRACTOR**

Consultant and any persons employed by Consultant for the performance of work hereunder shall be independent contractors and not agents of the City. Any provisions in this Agreement that may appear to give the City the right to direct Consultant as to details of doing work or to exercise a measure of control over the work mean that Consultant shall follow the direction of the City as to end results of the work only. **As an independent contractor, Consultant is not entitled to workers' compensation benefits except as may be provided by the independent contractor nor to unemployment insurance benefits unless unemployment compensation coverage is provided by the independent contractor or some other entity. The Consultant is obligated to pay all federal and state income tax on any moneys earned or paid pursuant to this contract.**

## **11.0 ASSIGNMENT**

Consultant 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.

## **12.0 DEFAULT**

Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default.

### **13.0 TERMINATION**

13.1 This Agreement may be terminated by either party for material breach or default of this Agreement by the other party not caused by any action or omission of the other party by giving the other party written notice at least thirty (30) days in advance of the termination date. Termination pursuant to this subsection shall not prevent either party from exercising any other legal remedies which may be available to it.

13.2 In addition to the foregoing, this Agreement may be terminated by the City for its convenience and without cause of any nature by giving written notice at least fifteen (15) days in advance of the termination date. In the event of such termination, the Consultant will be paid for the reasonable value of the services rendered to the date of termination, not to exceed a pro-rated daily rate, for the services rendered to the date of termination, and upon such payment, all obligations of the City to the Consultant under this Agreement will cease. Termination pursuant to this Subsection shall not prevent either party from exercising any other legal remedies which may be available to it.

### **14.0 INSPECTION AND AUDIT**

The City and its duly authorized representatives shall have access to any books, documents, papers, and records of the Consultant that are related to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

### **15.0 DOCUMENTS**

All computer input and output, analyses, plans, documents photographic images, tests, maps, surveys, electronic files and written material of any kind generated in the performance of this Agreement or developed for the City in performance of the Services are and shall remain the sole and exclusive property of the City. All such materials shall be promptly provided to the City upon request therefor and at the time of termination of this Agreement, without further charge or expense to the City. Consultant shall not provide copies of any such material to any other party without the prior written consent of the City.

### **16.0 ENFORCEMENT**

16.1 In the event that suit is brought upon this Agreement to enforce its terms, the prevailing party shall be entitled to its reasonable attorneys' fees and related court costs.

16.2 Colorado law shall apply to the construction and enforcement of this Agreement. The parties agree to the jurisdiction and venue of the courts of Boulder County in connection with any dispute arising out of or in any matter connected with this Agreement.

**17.0 COMPLIANCE WITH LAWS; WORK BY ILLEGAL ALIENS PROHIBITED**

- 17.1 Consultant shall be solely responsible for compliance with all applicable federal, state, and local laws, including the ordinances, resolutions, rules, and regulations of the City; for payment of all applicable taxes; and obtaining and keeping in force all applicable permits and approvals.
- 17.2 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.

**18.0 INTEGRATION AND AMENDMENT**

This Agreement represents the entire Agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties.

**19.0 NOTICES**

All notices required or permitted under this Agreement shall be in writing and shall be given by hand delivery, by United States first class mail, postage prepaid, registered or certified, return receipt requested, by national overnight carrier, or by facsimile transmission, addressed to the party for whom it is intended at the following address:

If to the City:

City of Louisville  
Attn: City Manager  
749 Main Street  
Louisville, Colorado 80027  
Telephone: (303) 335-4533  
Fax: (303) 335-4550

If to the Consultant:

ECI Site Construction Management, Inc.  
Ted Johnson

---

(970) 669-6291

Any such notice or other communication shall be effective when received as indicated on the delivery receipt, if by hand delivery or overnight carrier; on the United States mail return receipt,

if by United States mail; or on facsimile transmission receipt. Either party may by similar notice given, change the address to which future notices or other communications shall be sent.

**20.0 EQUAL OPPORTUNITY EMPLOYER**

20.1 Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability or national origin. Consultant will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, age, sex, disability, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of the Equal Opportunity Laws.

20.2 Consultant shall be in compliance with the applicable provisions of the American with Disabilities Act of 1990 as enacted and from time to time amended and any other applicable federal, state, or local laws and regulations. A signed, written certificate stating compliance with the Americans with Disabilities Act may be requested at any time during the life of this Agreement or any renewal thereof.

In witness whereof, the parties have executed this Agreement to be effective as of the day and year of signed by the City.

CITY OF LOUISVILLE,  
a Colorado Municipal Corporation

By: \_\_\_\_\_  
Robert P. Muckle, Mayor

Attest: \_\_\_\_\_  
Nancy Varra, City Clerk

CONSULTANT:  
ECI Site Construction Management, Inc.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

## **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

**Exhibit B – Scope of Services**

**[Insert Scope of Service(s)]**

## Exhibit A – Scope of Services & Cost

[See Following Page(s)]

### **Phase 1: Initial Project Planning, Fact-Finding and Fabrication of Patio Prototype**

1. **Conduct initial project planning.** ECI Site Construction Management Inc. (ECI) conducted initial project planning meetings with the appropriate members of City Staff including the CIP Manager, City Engineer and the Public Works Director. The purpose of these meetings were to review our proposed Project Work Plan and Schedule, clarify goals and objectives, identify known project constraints, and refine dates and/or tasks as appropriate. As part of these meetings, we discussed our approach for managing communications between ECI, the landscape architect and the City, as well as our approach to scope, risk, and resource management.

During initial project planning, the ECI project team worked with the City's Project Team to determine the timing of the delivery of the Main Street Patio prototype as well as the actual patios.

2. **Request and review available documentation.** Prior to conducting the work, ECI examined the existing Main Street patios to gain an understanding of the size, construction and limitations of the current patios and other relevant information including reviewing various patios at other locations.
3. **Prototype Fabrication** ECI fabricated a mockup steel patio for installation in front of City Hall to solicit ideas surrounding functionality and aesthetics. The mockup was publicly displayed for several weeks allowing for public comment. The comments received from Council, the DBA and the public were reviewed and incorporated into the design of the new seasonal patios.

❖ *Deliverable: D1. Project Work Plan and Schedule*

### **Phase 2: Final Design of Main Street Patios**

**Present Final design to the City.** ECI presented six (6) railing design options to City staff and representatives of the DBA. This presentation allowed contributing members of the City's staff and the DBA to see how the ideas and comments from the public were incorporated into the final design, while providing an opportunity to communicate additional thoughts and suggestions.

❖ *Deliverable: D2. Presentation of final design*

### **Phase 3: Fabrication of Main Street Patios**

**Fabricate and deliver Patios to City.** ECI will fabricate required patios for Main Street per the approved design and deliver them to the City in May 2013. Steel frame patios will be 12'x8' in size consisting of IPE wood flooring, steel architectural railings with IPE wood handrails and steel posts with IPE wood caps. Planters will be designed to hang off the railings at 18" height and 18" width to hold the terracotta pots and flowers provided by the DBA.

❖ *Deliverable: D3. Delivery of patios*

**Ongoing Project Management:**

As part of our overall project management for this engagement, ECI will provide the City with monthly status reports that indicate the progress of the project in relation to the project plan and schedule of tasks and deliverables.

<b>Phase/Deliverable</b>	<b>Cost*</b>
<b>Phase 1: Initial Project Planning and Fact-Finding Patio prototype</b> <i>D1. Project Work Plan and Schedule</i> <i>(Includes Initial Fact-Finding Efforts design and Patio Prototype)</i>	
<b>Phase 1 Total:</b>	<b>\$NA</b>
<b>Phase 2 Total:</b>	<b>\$5,000</b>
<b>Phase 3: Fabrication of Main Street Patios</b>	
<b>Phase 3 Total:</b>	<b>NTE \$200,000</b>
<b>Ongoing Project Management:</b> <i>Monthly Status Reports (4)</i>	
<b>Project Management Total:</b>	<b>\$NA</b>
<b>Project Total:</b>	<b>\$205,000</b>

## Memorandum

**Date:** January 2  
**To:** Diana Trettin, CIP Manager; Kurt Kowar, Public Works Director;  
Troy Russ, Director of Planning and Building Safety;  
Joliette Woodson, Civil Engineer III  
**CC:**  
**From:** Sean McCartney, Principal Planner  
**Subject:** January 24, 2013 DBA meeting – Main Street Patios

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Last week staff distributed the attached conceptual design packet to the DBA in anticipation of a meeting on Thursday, January 24, 2013, which was a special meeting. After distribution we received some early comments from members who would not be able to attend. Their comments were as follows:

- The decks need to be 9' deep, not 8'. We discussed this at the Council meeting, and thought everyone agreed, but it is not drafted that way
- No way will there be room for planters inside the patios, especially if they are only 8' deep, plus having the planters outside softens their appearance—an effect that is lost or reduced by placing planters inside the decks
- I see no water or electrical hookups or plans for those—again, we thought this was promised by Council.
- The proposed design with the Louisville logo just doesn't fit.
- They like the top elevation shown on the conceptual design sheet.

At the Thursday morning meeting 3 members of the DBA were in attendance: Chris Pritchard, Judy Goodson and Jim Tienken. They reiterated the above concerns but quickly understood the patios were never going to be 9 foot deep. Staff explained the existing decks are 6 feet deep and the new decks are going to be 8 feet deep which gives 2 additional feet. They were happy to hear that and apologized for the misinterpretation. The remainder of their comments were as follows:

- They still like the simplicity of the elevation shown at the top of the sheet:



- They want IPE handrails and metal end posts.
- They want hanging platforms designed to allow for the placement of their existing terracotta planters off the sides of the patio railings. I will do a sketch of what they were thinking of for the City Council packet. They want the platform to be open to the air to allow for airflow which allows the flowers to grow better. The flower platforms will be designed to hang 18" from the rail and 18" out from the deck – this will give 18" of buffer between the planter and the travel lane.
- There was lengthy discussion about water and electrical hookups. Staff informed them we are working on the design of these elements but they might not make it in this year's design. Even though some were concerned, others understood it is important to make sure the design is good before we rush something out for this year. It was discussed the final design should have the water and electrical tucked under the rails so as not to be seen. They also indicated that there are existing water spigots located on each side of the street in front of both the Empire and Waterloo. This may be a way to tap into water for future incorporation into the patios.
- They were primarily interested in making sure the patio designs made it out for a mid-May unveiling, Memorial Day is the latest they want the patios completed.

The last thing they mentioned was to work with a local metallurgist known as Atomic Forge out of Erie. They said they may be able to cut the City a deal on any metal work – architectural railing and planters. We will forward this information to ECI.

City Council

## **Discussion/Direction/Action – Main Street Patio Design Contract**

Prepared by:

Diana Trettin, CIP Manager

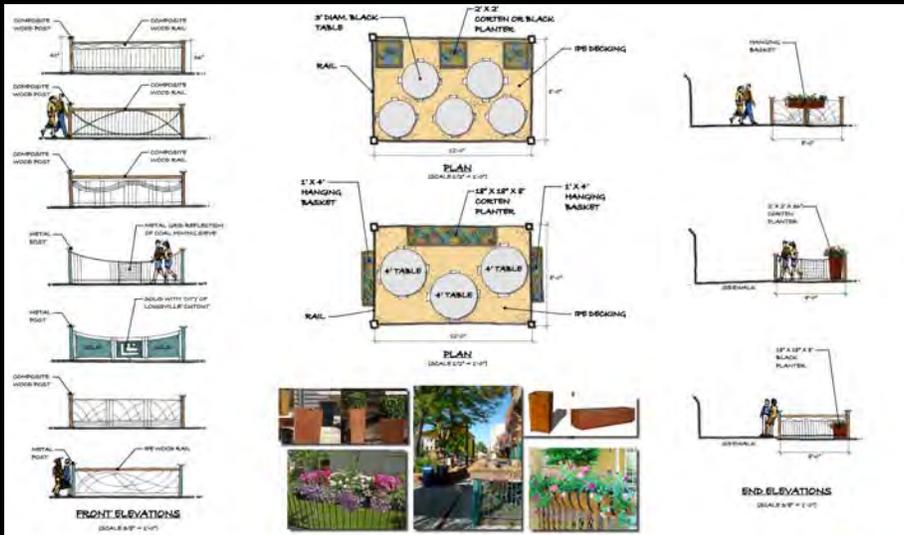
Kurt Kower, Director of Public Works Department

February 5, 2013

### **Main Street Patios**

- Following the December 4, 2012 meeting with City Council, staff hired ECI Site Construction Management, Inc. and Design Concepts to create design alternatives for the hand-railings, architectural railings, and planters for the Main Street Patios.
- The patios are designed to be 8' deep by 12' wide, which is 1 ½ times the size of the 6' deep by 8' wide existing patios.
- The patios are now large enough to preclude chairs slipping off the ends and to include planters on the inside if so desired.

Main Street Patios



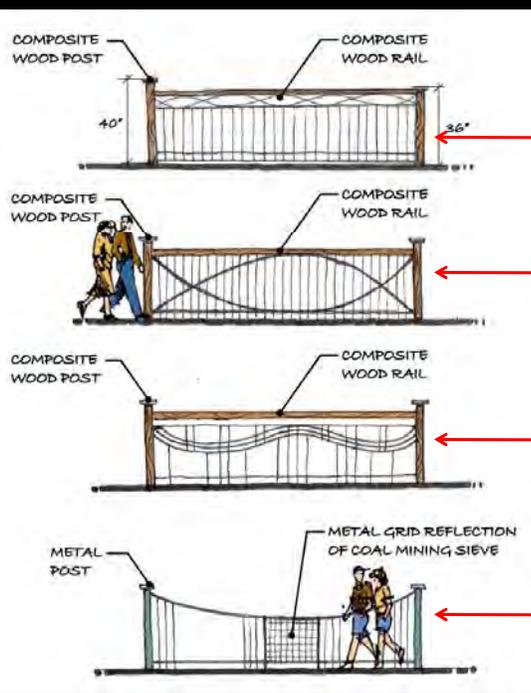
City of Louisville Parklets

Conceptual Design \* January 18, 2013

Louisville, Colorado



Main Street Patios



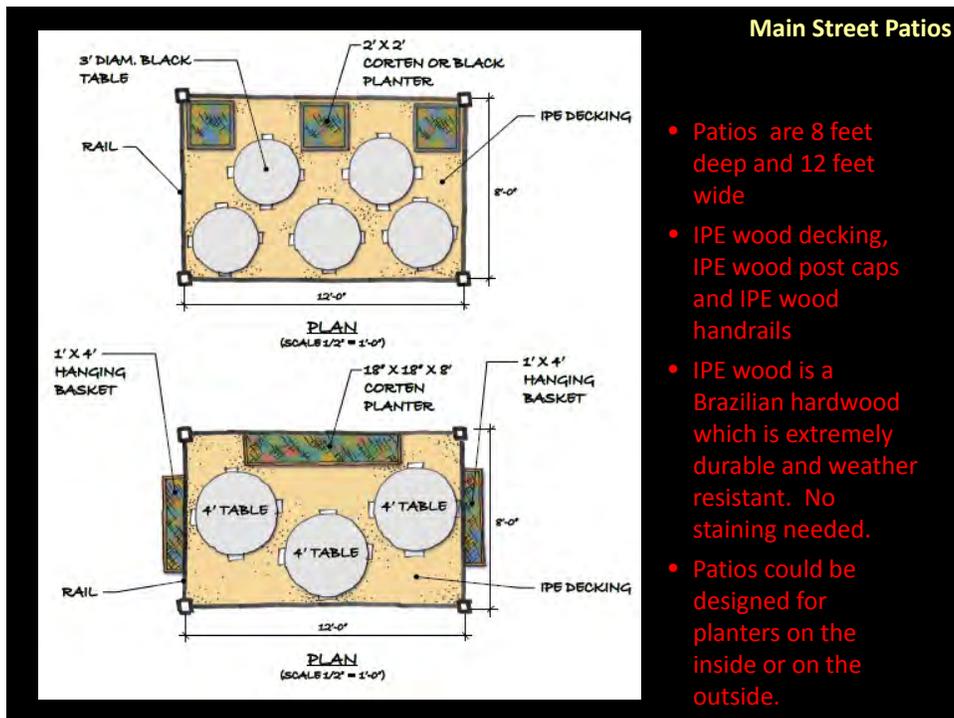
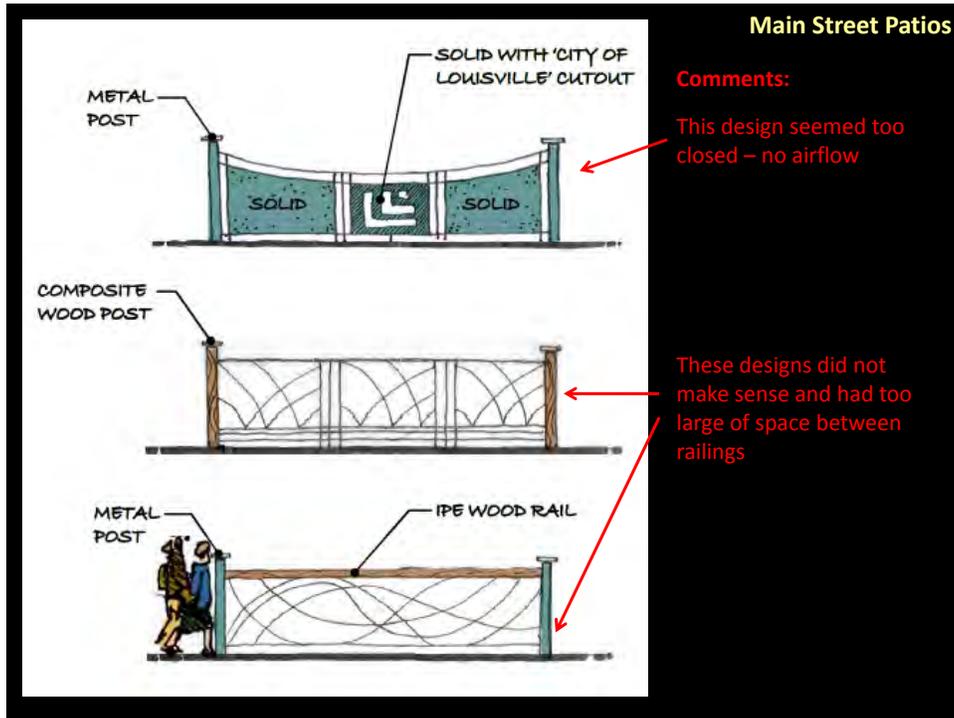
Comments:

This design seemed most functional

This design seemed religious in connotation

This design did not make sense and had too large of space between railings

The handrail in this design would not be functional



## Main Street Patios

- Ground mounted planters were believed to be stifling because no airflow was permitted to the bottom of the plants and ground mounting absorbs heat.

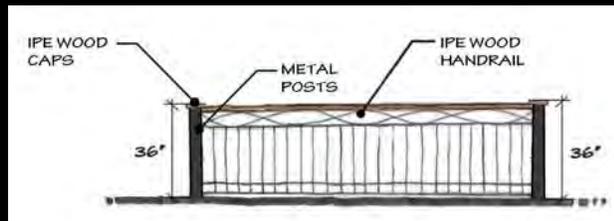
Various planter designs

- Hanging plants are believed to be the best for airflow and to soften the overall patio design.

- Most reviewers liked the more natural planter because of the organic look. However they did not believe this would be a sturdy design.



## Main Street Patios



Staff met with DBA on January 24:

- They like the simplicity of the above elevation
- They want IPE wood post caps and handrails
- They want hanging planters to allow better airflow – they will use their existing terracotta planters
- They want water and electrical hookups. Staff informed them this might be a 2014 addition.
- They want to be sure the patios are ready for a May unveiling

**Main Street Patios**

Prefab Architectural Railing examples



Tuscumbia Iron Works  
Designers & fabricators of  
architectural metal products  
605 Highway 72 West  
Tuscumbia Alabama

**Main Street Patios**

Conclusion/Recommendation:

- Staff will work with Design Concepts and ECI Site Construction Management, Inc. on completing the construction drawings for the patios.
- Staff is requesting approval of the Professional Services Agreement (PSA) with ECI Site Construction Management, Inc.

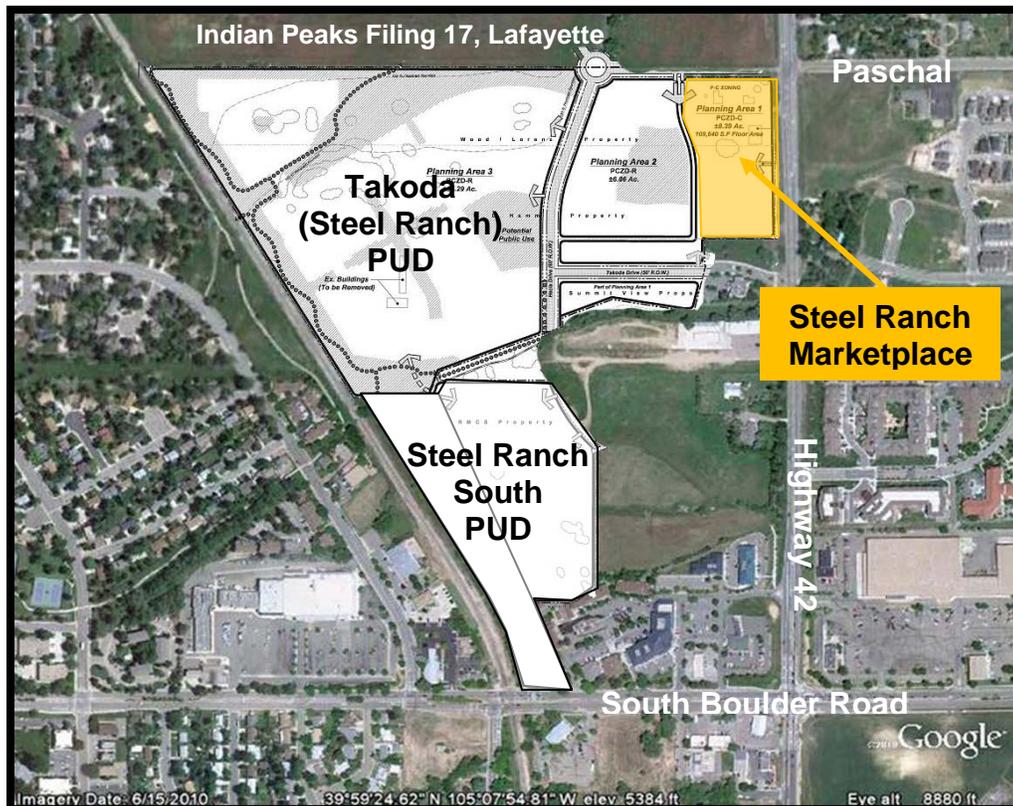
**SUBJECT:** RESOLUTION NO.8, SERIES 2012 – A RESOLUTION APPROVING AN AMENDMENT TO A FINAL SUBDIVISION PLAT AND FINAL PLANNED UNIT DEVELOPMENT TO ALLOW FOR STEEL RANCH MARKETPLACE – A COMMERCIAL / RETAIL DEVELOPMENT

**DATE:** FEBRUARY 5, 2013

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

**SUMMARY:**

The applicant/owner, RMCS, LLC submitted a Final Plat and Planned Unit Development (PUD) plan to allow the subdivision of a single 4.95 acre parcel into three (3) separate developable lots and outline the first of a three phase retail/commercial development know as the *Steel Ranch Market Place*.



The original Takoda Village General Development Plan (GDP) was approved on June 3, 2008 by Ordinance No. 1536, Series 2008. The Final Takoda Subdivision Plat and Final PUD were approved by Resolution No. 24, Series 2008. The subject property is located in the northeast corner of the subdivision.

The property is zoned Planned Community Zone District – Commercial/Residential (PCZD-C/R). According to Section 17.72.090 of the Louisville Municipal Code (LMC), the PCZD-C component of this development is *“intended to promote the development of well-planned shopping centers and facilities that provide a variety of shopping, professional business, cultural, and entertainment facilities designed to create an attractive and pleasant shopping atmosphere.”*

Indian Peaks Filing 17

To the north of Takoda/Steel Ranch is the Indian Peaks Filing 17, a residential / commercial project in the City of Lafayette. After a few years of dormancy, the development in the Indian Peaks subdivision has resumed. The following provides the details within the Indian Peaks Subdivision:

- Total # of residential units to be built: 302
- Total # of residential homes currently built or permitted: 45 homes
- Total acreage of Commercial area: 21.35 acres – the total square footage of the commercial area is unknown at this time.



Traffic Signal at Paschal and Highway 42

The Paschal and Highway 42 intersection provides access to three new residential subdivisions: Steel Ranch, North End and Indian Peaks Filing 17. The primary access drive for Indian Peaks Filing 17 extends north to south, from Baseline to Paschal. A

traffic signal is budgeted for the Hwy 42/Paschal intersection in Louisville’s 2013 Capital Improvement Budget (CIP). The Colorado Department of Transportation (CDOT) has conceptually approved the signal. However, the signal will not be permitted by CDOT until it is warranted. According to CDOT, the intersection is approximately 1,000 vehicles trips short of a signal being warranted.

The City of Louisville will continue to monitor the intersection’s traffic with CDOT to ensure the installation of the traffic signal will begin as soon as CDOT allows. Staff requires the applicant to provide the City of Louisville with an updated traffic count for CDOT to review.

*Gateway Sign*

The intersection of Highway 42 and Paschal Drive is the northern gateway to the City of Louisville. Tract R is dedicated to the City of Louisville and is located in the northeast corner of the subject property. Tract R was dedicated when the Takoda Subdivision was approved in 2008. A City of Louisville gateway sign is currently located in Tract R of Takoda Subdivision.

**PROPOSAL:**

The applicant proposes to develop the vacant property with commercial/retail space in a phased development. To accomplish this development, the applicant is requesting an amendment to the existing final Plat and final PUD.

**Final Subdivision Plat Amendment**

Lot Layout

The proposed lot layout amends the existing single ownership parcel to a three (3) lot multiple ownership subdivision. The proposed lot breakdown is as follows:

	<b>Area</b>	<b>Ownership</b>	<b>Use</b>
Lot 1	13,581 SF	Creative Enterprises, LLC.	Commercial/Retail
Lot 2	20,536 SF	Takoda Properties, Inc.	Commercial/Retail
Lot 3	149,205 SF	Takoda Properties, Inc.	Commercial/Retail
Tract A	32,360 SF	Takoda Properties, Inc.	Private and emergency access, drainage, and outdoor uses

Tract A is dedicated primarily for public access (circulation, and utilities). This area will be maintained by the ownership group. The developer will also dedicate a utility easement to the City of Louisville. The easement runs throughout Lot 1 and ties into the existing sewer easement located at the southwest corner of the lot.

Public Land Dedication

There is no need for Public Land Dedication because the public land was dedicated through the original Takoda Subdivision Plat.

Highway 42

The original Takoda Subdivision established Outlot 6 as right-of-way dedication for Highway 42. The developer is responsible for the development of all improvements on the west side of the curb which includes landscaping and pedestrian sidewalks.

**Final PUD Development Plan Amendment**

Land Use

As previously noted, the parcel is zoned PCZD-C/R. The commercial component of this property allows for the development of retail and commercial uses in 5 proposed buildings on three (3) separate lots. The total area of the development is 4.95 acres.

This project will be built in three (3) Phases:

**Phase I (Lot 1), Art Center** – The first phase includes the development of a 14,096 SF building (200 seat capacity) which will house an arts center providing various classes and performances. The building will be located on the west side of the development, close to Steel Ranch Park, and will include an outdoor pedestrian plaza equipped with tables, a playground, public art area and flexibility to allow for outdoor performances. The plaza will be bordered by landscape planter beds.

The applicant proposes 59 parking spaces and Lot 1 plus additional temporary overflow parking on a portion of the undeveloped Lot 3. Section 17.20 of the Louisville Municipal Code (LMC) requires 1 parking space for every 3 seats of an assembly area. The art center, which is considered an assembly area, will provide 200 seats. Therefore this use requires 67 parking spaces. The applicant states the staff area and classes require only 35 parking spaces, and that only during performances will the entire 67 spaces be needed. The applicant proposes the overflow parking to the east of the parcel on Lot 3 be counted to satisfy the requirement for 8 additional spaces. Staff believes this approach is acceptable provided the temporary parking lot and all access points are constructed of asphalt and graded to drain to the regional drainage system.

**Phase II and Phase III (Lots 2 and 3)** have not been delineated with this submittal. Future development of these lots will require a PUD amendment. Staff requires Lots 2 and 3 be seeded with native seeding in the interim. The seeding area shall be irrigated and kept weed free for the first two years.

Bulk and Dimension Standards

The commercial development must retain the following bulk and dimension standards as approved in the GDP:

	Planning Area #1
Minimum Lot Area	5,000 SF
Minimum Lot Width	N/A
Maximum Lot Coverage	0.30 FAR
Minimum Front Yard Setback	N/A
Minimum Side Yard Setback	N/A
Minimum Rear Yard Setback	N/A
Setback from Highway 42 R.O.W.	Parking: 20' Building: 10'
Setback from Collector Street R.O.W.	Parking: 10' Building: 15'
Setback from Local Street R.O.W.	Parking: 5' Building: 10'
Setback from Parks and Open Space	Parking: 0' Building: 0'
Minimum Building Separation	10'
Maximum Height	40' (principal uses)

Height

This development is located within Planning Area #1 on the GDP. The approved height in the GDP for Planning Area #1 is 40'. The building proposed for Lot 1 is shown at 32' in height.

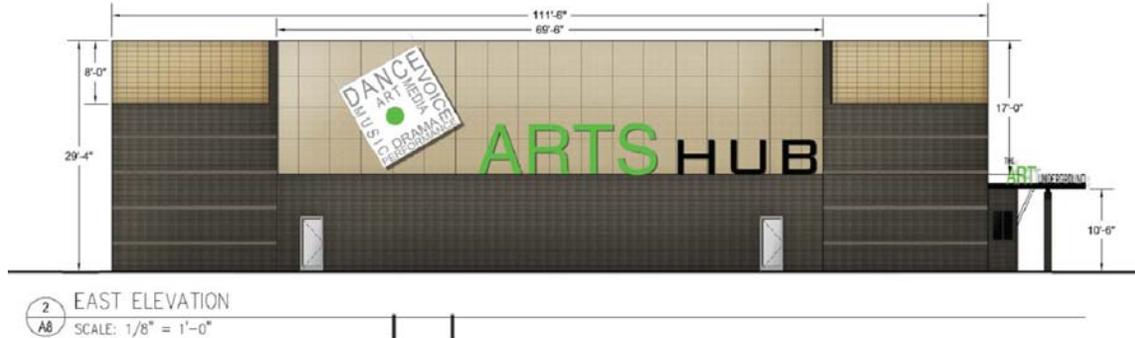
Architecture

The proposed structure on Lot 1 (Building One) is designed to look like an arts center. Most art centers are boxed buildings designed to take advantage of high ceilings and straight walls, which allow the most efficient interior spaces. To break up the “boxed” design, the architect proposes articulations on the north and west facades, which face Kaylix Avenue and Paschal Drive. The design lends a great deal of shadowing to break up the façade with step backs, awnings, varied materials and roof articulations.



The east façade, which faces Highway 42, provides a large, flat wall. The architect proposes different materials and colors to give visual interest to this wall. The applicant would like to take advantage of this wall space by proposing two (2) large wall signs. The first wall sign measures 12'4” X 12'4” (151 SF) and the second wall sign measures

47'3" X 6'7" (317 SF). The total sign area proposed for the east wall is 468 SF. The signs cover approximately 13.6% of the wall surface (the wall surface is 3,441 SF).



The requested signs will be painted on the surface of the building and will have downcast, gooseneck lighting. It should be noted that a sign painted on the building does not qualify as a mural. A mural is a work of art which in no way identifies a product, brand or use.

The sign standards established in the Commercial Development Design Standards and Guidelines (CDDSG) permit wall sign area at “1 square feet of sign area per linear foot of building frontage of the individual business. No individual sign shall exceed 200 square feet”, only one sign is allowed per building tenant, and characters may not exceed 2-feet in height. The applicant is requesting 6’7” lettering on the sign. The length of the building is approximately 111’. Based on the CDDSG sign area standard, the maximum wall sign permitted for this building is 111 square feet. The applicant understands the requested signs require a waiver from the City sign standard.

Staff recommends the combined area of the signs be reduced to a total of 200 SF or approximately 6% of the total facade. This solution is still in excess of the CDDSG. However, the solution reflects the total area of the proposed façade, which is more than a typical one story 200-foot long commercial building. As such, staff recommends a waiver to the CDDSG sign requirements and allowing a 200 SF sign despite the building only having 111 linear feet of frontage.

Section 17.28.110 of the LMC permits waivers to established design standards and guidelines as part of the PUD process. Waivers or modifications to established design standards and guidelines can be approved if the spirit and intent of the development plan criteria are met and either:

1. The city council finds that the development plan contains areas allocated for usable open space in common park area in excess of public use dedication requirements; or,

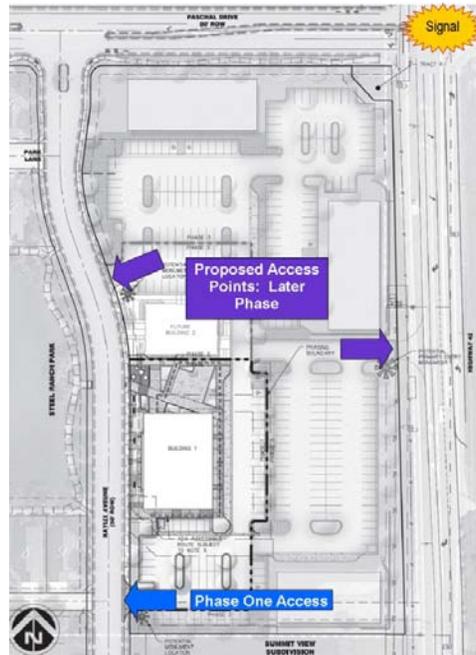
2. That the modification or waiver is warranted by the design and amenities incorporated in the development plan, and the needs of residents for usable or functional open space and buffer areas can be met.

Staff believes the public plaza at the entrance of the building, and its design creating a gathering space along with a strong linkage to the adjacent Takoda Park justifies this waiver to the sign code.

However, staff does not support allowing a sign area up to 468 SF for *any* building in the City. A painted wall sign would not enhance the architectural design of the building, nor would it provide architectural interest to the side of the building or offer relief to the structure. Furthermore, the proposed wall sign would be much larger than any other sign in the City. Additionally, the proposed sign would not be a mural because it conveys an activity specific to the use within the structure. Finally, staff believes using poor architectural detailing along a façade and large setback from the street as justification for a wall sign could create a precedent for a variance hearing with the Board of Adjustment and undermine the City's sign code. Consequently, staff recommends the City Council not consider these factors sufficient to grant a variance for a painted wall sign of the proposed size and scale. Instead, if Council desires to grant a variance, the variance should be limited to a sign of up to 200 SF, and the justification for a variance should be based on the total area of the proposed façade and the desirable public plaza and the positive connection with the adjacent Takoda Park.

#### Access

The property is adjacent to Highway 42 (east), Paschal Drive (north), and Kaylix Avenue (west), all public rights-of-way. The development is proposed with three (3) access points: two (2) along Kaylix Avenue, and one (1) on Highway 42. The applicant plans to construct the development in phases, with the first phase providing one access point along Kaylix Avenue.



Kaylix Avenue connects to Paschal Drive (north) and Summit Drive (south). Both Paschal Drive and Summit View Drive have direct access onto Highway 42.

Urban Form

The north and west facing façade designs provide visual interest for the adjacent housing development. By opening the building to a pedestrian plaza as well as the adjacent Steel Ranch Park, the building creates a civic use through architecture and good urban design.



**PLANNING COMMISSION:**

Planning Commission held a duly noticed public hearing on December 13, 2012. The Planning Commission supported the project. However, The Planning Commission spent time deliberating the east facing wall sign. Some commission members believed the sign, as proposed, was appropriately sized, because it added an artistic element and architectural interest to the building. Other commission members believed the proposed sign was too large, was potential precedence setting, and agreed with staff's analysis and recommendation for size (not to exceed 200 SF). The ultimate decision was to forward a recommendation for a painted wall sign, with downcast lighting, not to exceed 200 SF.

After a discussion with staff and the applicant, Planning Commission voted 3 to 1 to recommend the City Council approve the request with modified conditions:

1. The applicant shall provide the City of Louisville with an updated traffic count to be used by CDOT for additional review to warrant the traffic signal at Highway 42 and Paschal Drive.
2. The temporary parking lot and all access points shall be constructed of asphalt and graded to drain to the regional drainage system.
- ~~3. The undeveloped Lots 2 and 3 shall be seeded with native seeding and shall be irrigated until the seeding is well established and kept weed free for the two years.~~
4. The proposed wall signs on the eastern façade of the building shall not exceed combined area of 200-square feet.
5. The proposed wall signs on the eastern façade of the building shall be specific to the art center use, may not be transferred to another use and shall be externally lit by down casting lighting.

**FISCAL IMPACT:**

The arts center is an allowed land use in the Takoda GDP. The inclusion of a formal art center in the City of Louisville will have a positive impact on the City in that it will create an "anchor" destination within the Steel Ranch Market Place, making the retail center more attractive to future investments.

The infrastructure and other impacts have already been accounted for during the original approval of the Takoda Subdivision in 2008. This project will have a positive impact on the City's culture by providing new space for music, dance and performance art in an area designed for this use.

**RECOMMENDATION:**

Staff recommends approving the proposed amendment to the final Plat and final PUD for the development called Steel Ranch Marketplace. The proposal is consistent with the Comprehensive Plan and will allow for the development of commercial/retail/office space, which is a product type discussed in the 2009 Comprehensive Plan and consistent with the parcel's General Development Plan.

Staff recommends the following conditions of approval:

1. The applicant shall provide the City of Louisville with an updated traffic count to be used by CDOT for additional review to warrant the traffic signal at Highway 42 and Paschal Drive.
2. The temporary access points for overflow parking shall be constructed of asphalt and graded to drain to the regional drainage system.
3. The proposed wall signs on the eastern façade of the Building shall not exceed a combined area of 200-square feet.
4. The proposed wall signs on the eastern façade of the Building shall be specific to the art center use, may not be transferred to another use and shall be externally lit by down casting lighting.

**ATTACHMENTS:**

1. Resolution No. 8, Series 2012
2. Application documents
3. [Link to Final Plat](#) (1 MB)
4. [Link to Final PUD](#) (14 MB)
5. Color Renderings
6. Presentation

**RESOLUTION NO. 8  
SERIES 2013**

**A RESOLUTION APPROVING AN AMENDMENT TO A FINAL SUBDIVISION PLAT  
AND FINAL PLANNED UNIT DEVELOPMENT TO ALLOW FOR STEEL RANCH  
MARKETPLACE – A COMMERCIAL/RETAIL DEVELOPMENT**

**WHEREAS**, there has been submitted to the Louisville City Council an application for approval of an amendment to a final subdivision plat and final planned unit development to allow for Steel Ranch Marketplace – a commercial/retail development; and,

**WHEREAS**, all materials related to the final subdivision plat and final planned unit development (PUD) plan have been reviewed by City Staff and the Planning Commission and found, subject to conditions, to be in compliance with the Louisville zoning ordinances, subdivision regulations, related policies and previous approvals; and

**WHEREAS**, after duly noticed public hearing where evidence and testimony was entered into the record, including without limitation the findings in the Louisville Planning Commission Staff Reports dated December 13, 2012, the City of Louisville Planning Commission approved a resolution to forward a recommendation of approval, with conditions to the City Council; and,

**WHEREAS**, City Council has reviewed the application, the Staff Report January 8, 2013, along with the recommendation of the Planning Commission and finds that said final subdivision plat and final planned unit development (PUD) plan should be approved, subject to the following conditions:

1. *The applicant shall provide the City of Louisville with an updated traffic count to be used by CDOT for additional review to warrant the traffic signal at Highway 42 and Paschal Drive.*
2. *The temporary access points for overflow parking shall be constructed of asphalt and graded to drain to the regional drainage system.*
3. *The proposed wall signs on the eastern façade of the Building shall not exceed a combined area of 200-square feet.*
4. *The proposed wall signs on the eastern façade of the Building shall be specific to the art center use, may not be transferred to another use and shall be externally lit by down casting lighting.*

**NOW THEREFORE, BE IT RESOLVED** that the City Council of the City of Louisville, Colorado, based on the evidence and testimony presented at the hearings, does hereby approve the final subdivision plat and final planned unit development (PUD) plan for the Steel Ranch Marketplace development in northern Louisville, subject to the conditions set forth above.

**PASSED AND ADOPTED** this 5<sup>th</sup> day of February, 2013.

BY:

\_\_\_\_\_  
Robert P. Muckle, Mayor  
City of Louisville, Colorado

ATTEST:

\_\_\_\_\_  
Nancy Varra, City Clerk  
City of Louisville, Colorado

**LAND USE APPLICATION**

**CASE NO.** 19-027-F-11

<p><b>APPLICANT INFORMATION</b></p> <p>Firm: <u>TAKODA PROPERTIES, INC</u></p> <p>Contact: <u>JUSTIN MCCLURE</u></p> <p>Address: <u>950 SPRUCE ST. #2A</u> <u>LOUISVILLE, Co 80027</u></p> <p>Mailing Address: <u>950 SPRUCE ST. #2A</u> <u>LOUISVILLE, Co 80027</u></p> <p>Telephone: <u>720.524.3620</u></p> <p>Fax: _____</p> <p>Email: <u>JUSTIN@rncsland.com</u></p>
<p><b>OWNER INFORMATION</b></p> <p>Firm: <u>TAKODA PROPERTIES, INC</u></p> <p>Contact: <u>JUSTIN MCCLURE</u></p> <p>Address: <u>950 SPRUCE ST. #2A</u> <u>LOUISVILLE, Co 80027</u></p> <p>Mailing Address: _____</p> <p>Telephone: <u>720.524.3620</u></p> <p>Fax: _____</p> <p>Email: <u>JUSTIN@rncsland.com</u></p>
<p><b>REPRESENTATIVE INFORMATION</b></p> <p>Firm: <u>TAKODA PROPERTIES, INC</u></p> <p>Contact: <u>JUSTIN MCCLURE</u></p> <p>Address: <u>950 SPRUCE ST. #2A</u> <u>LOUISVILLE, Co 80027</u></p> <p>Mailing Address: <u>950 SPRUCE ST. #2A</u> <u>LOUISVILLE, Co 80027</u></p> <p>Telephone: <u>720.524.3620</u></p> <p>Fax: _____</p> <p>Email: <u>JUSTIN@rncsland.com</u></p>
<p><b>PROPERTY INFORMATION</b></p> <p>Common Address: <u>2397 Highway 42</u></p> <p>Legal Description: Lot <u>1</u> Blk <u>9</u></p> <p>Subdivision: <u>TAKODA SUBDIVISION</u></p> <p>Area: _____ Sq Ft</p>

<p><b>TYPE (S) OF APPLICATION</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Annexation</li> <li><input type="checkbox"/> Zoning</li> <li><input type="checkbox"/> Preliminary Subdivision Plat</li> <li><input checked="" type="checkbox"/> Final Subdivision Plat</li> <li><input type="checkbox"/> Minor Subdivision Plat</li> <li><input type="checkbox"/> Preliminary Planned Unit Development (PUD)</li> <li><input checked="" type="checkbox"/> Final PUD</li> <li><input type="checkbox"/> Amended PUD</li> <li><input type="checkbox"/> Administrative PUD Amendment</li> <li><input type="checkbox"/> Special Review Use (SRU)</li> <li><input type="checkbox"/> SRU Amendment</li> <li><input type="checkbox"/> SRU Administrative Review</li> <li><input type="checkbox"/> Temporary Use Permit: _____</li> <li><input type="checkbox"/> CMRS Facility: _____</li> <li><input type="checkbox"/> Other: (easement / right-of-way; floodplain; variance; vested right; 1041 permit; oil / gas production permit)</li> </ul>
<p><b>PROJECT INFORMATION</b></p> <p>Summary: <u>REPLAT OF LOT 1</u> <u>BLOCK 9, TAKODA SUBDIVISION</u> <u>WITH FINAL PUD FOR</u> <u>DEVELOPMENT OF ART CENTER</u> <u>AND COMMERCIAL RETAIL</u> <u>BUILDING.</u></p> <p>Current zoning: <u>PC2D-C</u> Proposed zoning: <u>PC3D-C</u></p>
<p><b>SIGNATURES &amp; DATE</b></p> <p>Applicant: _____</p> <p>Print: <u>JUSTIN MCCLURE</u></p> <p>Owner: _____</p> <p>Print: <u>JUSTIN MCCLURE</u></p> <p>Representative: _____</p> <p>Print: <u>JUSTIN MCCLURE</u></p>
<p><b>CITY STAFF USE ONLY</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Fee paid: _____</li> <li><input type="checkbox"/> Check number: _____</li> <li><input type="checkbox"/> Date Received: _____</li> </ul>

Takoda Properties Inc.  
950 Spruce Street Suite 2A  
Downtown Louisville, CO 80027

Troy Russ, Planning Director  
Sean McCartney, Senior Planner  
City of Louisville Planning Department  
749 Main Street  
Louisville Colorado

**Re: Final PUD Submittal for the 1<sup>st</sup> Phase of Development at the Steel Ranch Marketplace in Northeast Louisville**

Dear Sean,

Takoda Properties Inc. is glad to present to the City of Louisville the first phase of commercial development at Steel Ranch in the Takoda Subdivision – the Steel Ranch Marketplace. For background, the Steel Ranch development includes a 5-acre retail commercial parcel adjacent to State Highway 42, which currently has Preliminary approval, and this request is for a final PUD approval of Phase 1, which will be the first building within the 5-acre parcel.

Due to weak demand for commercial space along this part of the Highway 42 corridor, as well as the continued lack of bank financing for new commercial developments, we will be putting forward a relatively conservative phasing plan to allow the efficient use of capital and ensure the financial viability of the project.

The first phase accommodates an approximately 9,000 square foot building which will house an arts center that caters to various classes and performances with an emphasis on diverse age groups and demographics. The second phase of development is proposed to include an approximately 10,000 square foot building that will be designed to establish adjacent commercial opportunities for the existing residents of Northeast Louisville and the patrons of the Arts Center. Finally, the third phase is anticipated to incorporate a mix of commercial uses that will be finalized based on future market conditions.

The first phase and the associated vertical construction will be centered on a plaza / courtyard area that will activate the space and create a reason for consistent use. The plaza will place emphasis on various performances while showcasing public art and creating recreational opportunities at Steel Ranch Park. Takoda Properties Inc. feels that creative, high quality uses both in terms of hardscapes and architecture, will attract high quality commercial tenants and make Steel Ranch Marketplace one of the more unique commercial spaces in Louisville.

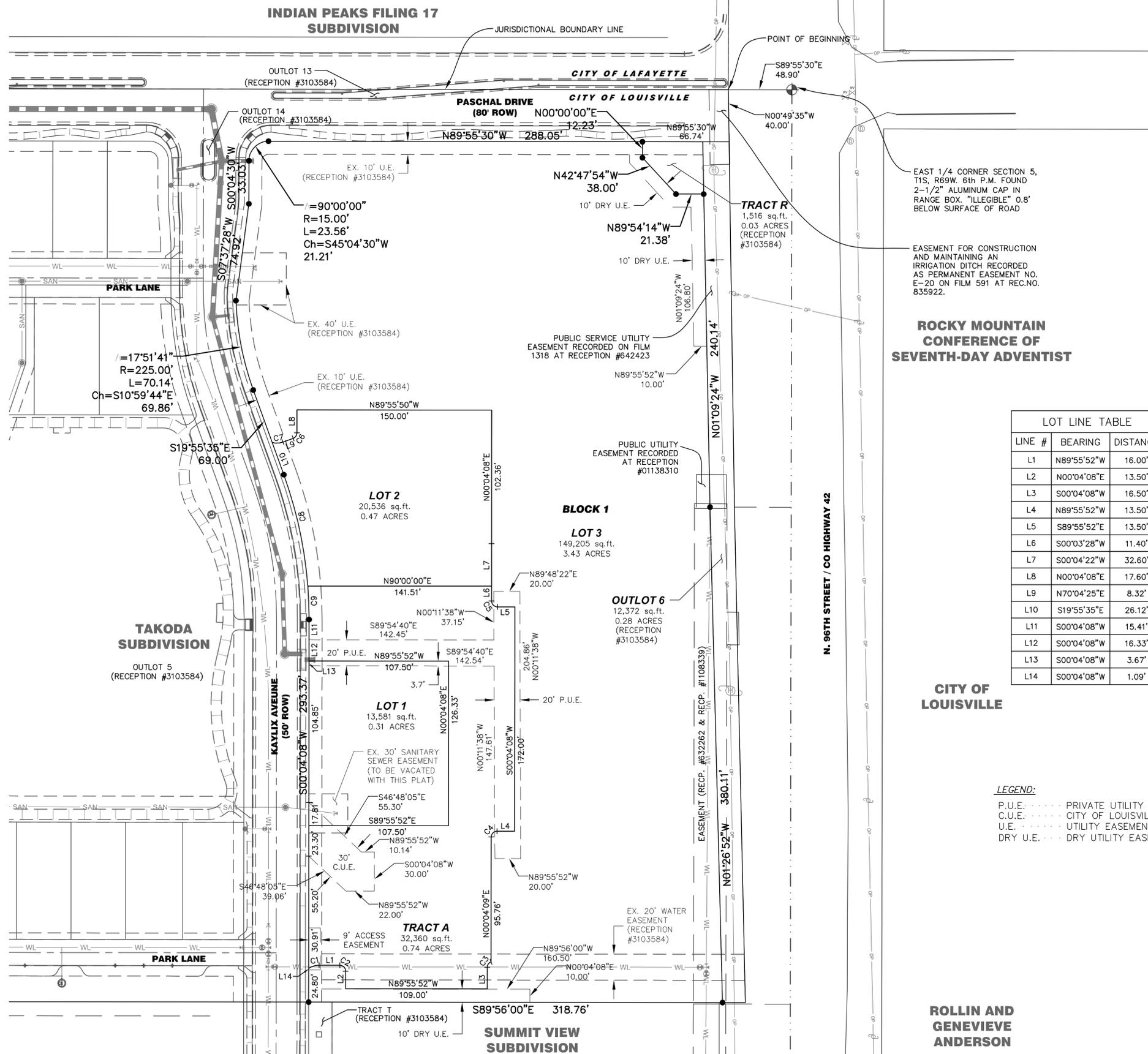
Takoda Properties Inc.

David Waldner



# STEEL RANCH MARKETPLACE

A REPLAT OF LOT 1, BLOCK 9 TAKODA SUBDIVISION AND PART OF SECTION 5, TOWNSHIP 1 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, BOULDER COUNTY, CITY OF LOUISVILLE, COLORADO



**ROCKY MOUNTAIN CONFERENCE OF SEVENTH-DAY ADVENTIST**

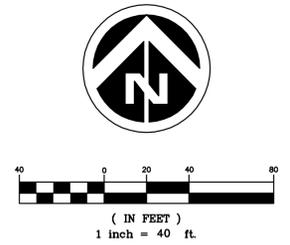
LOT LINE TABLE

LINE #	BEARING	DISTANCE
L1	N89°55'52"W	16.00'
L2	N00°04'08"E	13.50'
L3	S00°04'08"W	16.50'
L4	N89°55'52"W	13.50'
L5	S89°55'52"E	13.50'
L6	S00°03'28"W	11.40'
L7	S00°04'22"W	32.60'
L8	N00°04'08"E	17.60'
L9	N70°04'25"E	8.32'
L10	S19°55'35"E	26.12'
L11	S00°04'08"W	15.41'
L12	S00°04'08"W	16.33'
L13	S00°04'08"W	3.67'
L14	S00°04'08"W	1.09'

LOT CURVE TABLE

CURVE #	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	8.47'	14.50'	33°28'37"	S73°19'20"W	8.35'
C2	7.07'	4.50'	90°00'00"	N44°55'52"W	6.36'
C3	5.54'	4.50'	70°31'36"	N35°19'56"E	5.20'
C4	7.07'	4.50'	90°00'00"	S45°04'08"W	6.36'
C5	7.07'	4.50'	89°58'40"	S44°55'52"E	6.36'
C6	5.50'	4.50'	70°00'16"	N35°04'17"E	5.16'
C7	8.37'	14.50'	33°03'24"	N87°01'42"E	8.25'
C8	87.73'	325.00'	15°27'59"	S12°11'36"E	87.46'
C9	25.69'	325.00'	4°31'44"	S02°11'44"E	25.68'

**LEGEND:**  
 P.U.E. .... PRIVATE UTILITY EASEMENT  
 C.U.E. .... CITY OF LOUISVILLE EXCLUSIVE UTILITY EASEMENT  
 U.E. .... UTILITY EASEMENT  
 DRY U.E. .... DRY UTILITY EASEMENT

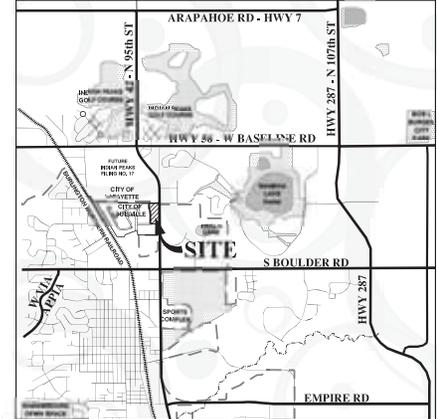


**RMCS SURVEYING, LLC**  
 950 SPRUCE STREET, SUITE 2A  
 LOUISVILLE, COLORADO 80027  
 (303) 448-1870

# STEEL RANCH MARKETPLACE

## FINAL DEVELOPMENT PLAN/ PLANNED UNIT DEVELOPMENT A PART OF SECTION 5, TOWNSHIP 1 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, BOULDER COUNTY, CITY OF LOUISVILLE, COLORADO

STEEL RANCH MARKETPLACE RENDERING



VICINITY MAP  
SCALE: 1" = 2000'

**CITY COUNCIL SIGNATURE BLOCK**

APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 201\_\_\_\_ BY THE CITY COUNCIL OF THE CITY OF LOUISVILLE, COLORADO.  
MAYOR \_\_\_\_\_ CITY CLERK \_\_\_\_\_

**PLANNING COMMISSION CERTIFICATION**

RECOMMENDED APPROVAL THIS \_\_\_\_ DAY OF \_\_\_\_\_, 201\_\_\_\_ BY THE PLANNING COMMISSION OF THE CITY OF LOUISVILLE, COLORADO, RESOLUTION NO. \_\_\_\_\_, SERIES \_\_\_\_\_

CHAIRMAN \_\_\_\_\_

**CLERK & 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 \_\_\_\_\_ OF 201\_\_\_\_ AND IS RECORDED IN PLAN FILE \_\_\_\_\_, SERIES \_\_\_\_\_, PAID \_\_\_\_\_, FILM NO. \_\_\_\_\_, RECEPTION \_\_\_\_\_

RECORDER \_\_\_\_\_ DEPUTY \_\_\_\_\_

**OWNERSHIP SIGNATURE BLOCK**

BY SIGNING THIS FDP/PUD, THE OWNER ACKNOWLEDGES AND ACCEPTS ALL THE REQUIREMENTS AND INTENT SET FORTH BY THIS FDP/PUD. WITNESS OUR HANDS AND SEALS THIS \_\_\_\_ DAY OF \_\_\_\_\_, 201\_\_\_\_

OWNER - TAKODA PROPERTIES, INC., A COLORADO S CORPORATION, (NOTARY SEAL)

NOTARY \_\_\_\_\_

OWNER \_\_\_\_\_ (NOTARY SEAL)

NOTARY \_\_\_\_\_

**LEGAL DESCRIPTION:**

STEEL RANCH MARKETPLACE:  
A REPLAT OF BLOCK 9, LOT 1 OF TAKODA SUBDIVISION WITH A RECEPTION NUMBER OF 3103584 AND BEING PART OF SOUTHEAST 1/4 OF SECTION 5, TOWNSHIP 1 SOUTH, RANGE 69 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO

AREA = 4.96 ACRES

STEEL RANCH MARKETPLACE - PHASE 1:

LOT 1, BLOCK 1 OF THE STEEL RANCH MARKETPLACE SUBDIVISION AND BEING A PART OF THE SOUTHEAST 1/4 OF SECTION 5, TOWNSHIP 1 SOUTH, RANGE 69 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO.

AREA=1.01 ACRES

**NOTES**

1. SURVEY BY RMCS SURVEYING, DATED JUNE 22, 2012.
2. PROPOSED VEHICULAR CONNECTIONS SHOWN AS ARROWS MAY BE REFINED, WITH FUTURE CONSTRUCTION PLAN SUBMITTALS.
3. TIMING AND PHASING OF DEVELOPMENT SHALL BE DEPENDENT UPON MARKET CONDITIONS.

Sheet Index	
Sheet Number	Sheet Title
1	COVER SHEET
2	MASTER PLAN AND GENERAL NOTES
3	PHASE 1 - PLAN, NOTES AND STANDARDS
4	SITE SKETCHES
5	PHOTOMETRIC PLAN
6	PHOTOMETRIC DETAILS
7	BUILDING 1 - ELEVATION
8	LANDSCAPE PLANS
9	EMERGENCY VEHICLE ACCESS PLAN
10	HORIZONTAL PUBLIC IMPROVEMENTS PLAN
11	HORIZONTAL CONTROL PLAN
12	OVERALL UTILITY PLAN
13	GRADING PLAN
14	SITE DETAILS

**TAKODA PA1 DESCRIPTION**

GROSS PROPERTY AREA: ± 4.95 AC.  
PCZD-C: ± 4.95AC.  
ACCESS: HIGHWAY 42 (VIA RIGHT IN/RIGHT OUT ACCESS), KATLYX AVENUE (VIA TAKODA, AKA STEEL RANCH)

**MARKETPLACE PHASE 1 DESCRIPTION**

GROSS PROPERTY AREA: ± 1.05 AC.  
PROPOSED ZONING: PLANNED COMMUNITY ZONED DISTRICT (CITY OF LOUISVILLE) PCZD-C: 1.05 ± AC.  
ACCESS: KATLYX AVENUE (VIA TAKODA, AKA STEEL RANCH)

**OWNERSHIP AND USE SUMMARY**

LOT/TRACT	UNENCUMBERED AREA	ENCUMBERED AREA	TOTAL AREA	OWNERSHIP	PRIMARY USES	MAINTENANCE
TRACT A	0.50	0.24	0.74	Takoda Properties, Inc.	Private Pedestrian Plaza, Outdoor Uses, Public and Private Utility Easements & Public Access	Steel Ranch Marketplace H.O.A.
LOT 1	0.27	0.04	0.31	Creative Enterprises, LLC	Commercial Use	Creative Enterprises, LLC
LOT 2	0.44	0.03	0.47	Takoda Properties, Inc.	Commercial Use	Takoda Properties, Inc.
LOT 3	2.92	0.51	3.43	Takoda Properties, Inc.	Commercial Use	Takoda Properties, Inc.
<b>TOTALS</b>	<b>4.13 AC</b>	<b>0.82 AC</b>	<b>4.95 AC</b>			

NOTE: EXISTING ENCUMBRANCES AND USES ARE NOTED ON THE DRAWINGS AND ARE NOT SUPERSEDED BY THE OWNERSHIP/USE TABLE.

ERIC BARTCZAK ARCHITECTS  
635 Lafayette St Denver, CO 80202  
Contact: Eric Bartczak, AIA  
PH (303) 733 7892

ENGINEERING CONSULTANTS  
Contact: Jason D. Margraf, PE  
6605 S. Park St., Suite 211 - Centennial, CO 80111  
800 366-5621 - FAX: (303) 366-5620  
Email: jdmargraf@engineering.com

Takoda Properties LLC  
920 SFRUCE ST • STE 2A  
LOUISVILLE • CO • 80027



PCS GROUP INC. www.pcsgrupeco.com  
P3 - Independence - 8199  
1001 14th Street - Denver CO 80202  
1 303 531 4905 Contact: Paul Shoukas

CRANE ARCHITECTURE  
3080 Larimer St. Denver, Colorado 80205  
Contact: Dan Craine 720.457.2022

No	Date	Description
1	8-9-2012	Initial Submittal
2	10-26-2012	Second Submittal
3	12-3-2012	Third Submittal

**FINAL DEVELOPMENT PLAN/  
PLANNED UNIT DEVELOPMENT**

Sheet 1 of 14

**COVER SHEET**

**STEEL RANCH  
MARKETPLACE**

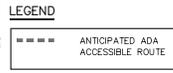
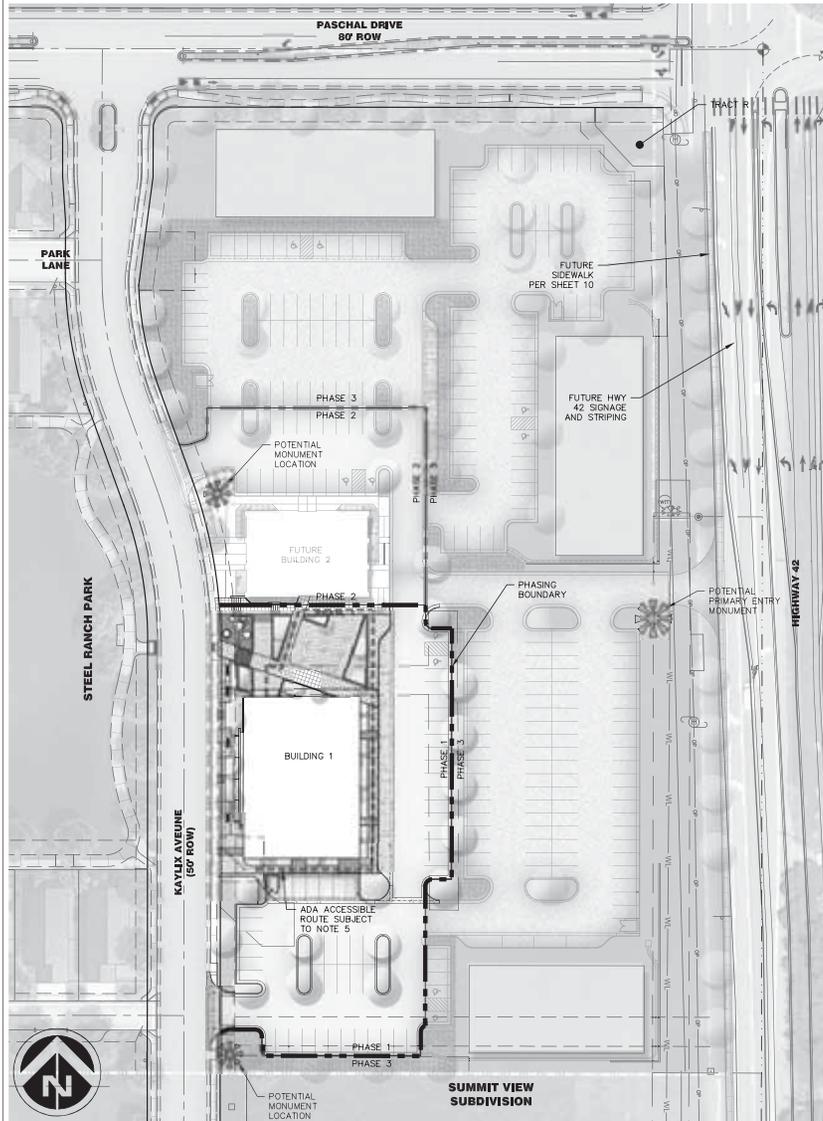
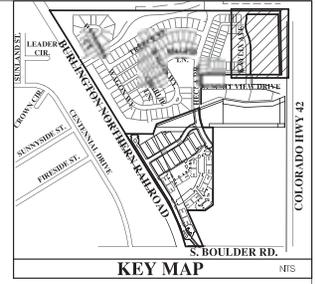
Designed By: SDC      Drawn By: CDS  
Checked By: JDM      Project #: 03000701

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# STEEL RANCH MARKETPLACE

## FINAL DEVELOPMENT PLAN/ PLANNED UNIT DEVELOPMENT

### A PART OF SECTION 5, TOWNSHIP 1 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, BOULDER COUNTY, CITY OF LOUISVILLE, COLORADO



**PA1 DEVELOPMENT SUMMARY**

Total Gross Property Area:	4.95 AC
Gross Developable Area:	4.95 AC

PLANNING AREA	USE	GROSS AREA	ALLOWABLE <sup>1</sup>	F.A.R.
PLANNING AREA 1	PCZD-C	±4.95 AC (100.0%)	±71,743 s.f.	0.30

1. PER THE APPROVED TAKODA FDP/PUD

**BULK & DIMENSION STANDARDS PER APPROVED GDP 1ST AMENDMENT TO TAKODA PER ORDINANCE 1601 SERIES 2011:**

	PLANNING AREA 1	PLANNING AREA 2	PLANNING AREA 3	PLANNING AREA 4
MIN. LOT AREA	3,000 S.F.	3,000 S.F.	BLOCKS 1, 2, 3, 5 & BLOCK 4 LOTS 16-21, BLOCK 5 LOTS 16-25	3,000 S.F.
MIN. LOT WIDTH	N/A	30'	30'	30'
MAX. LOT COVERAGE	30% FAR	60%	60%	60%
<b>BUILDING SETBACKS</b>				
MIN. FRONT YARD SETBACK (PRINCIPAL USES)	N/A	10' (R.O.W.), 0' (PARKING)	20' (WALK TO GAR.), 10' (OTHER)	10' (R.O.W.), 0' (PARKING)
MIN. SIDE YARD SETBACK (PRINCIPAL USES)	N/A	0' (INT. LOT ALLEY/PARK), 10' (R.O.W.)	0' (INT. LOT), 10' (R.O.W.)	0' (INT. LOT ALLEY/PARK), 10' (R.O.W.)
MIN. SIDE YARD SETBACK (ACCESSORY USES)	N/A	0' (INT. LOT ALLEY/PARK), 10' (R.O.W.)	0' (INT. LOT ALLEY/PARK), 10' (R.O.W.)	0' (INT. LOT ALLEY/PARK), 10' (R.O.W.)
MIN. REAR YARD SETBACK (PRINCIPAL USES)	N/A	0' (ALLEY)	10'	0' (ALLEY)
MIN. REAR YARD SETBACK (ACCESSORY USES)	N/A	0' (ALLEY)	0' (ALLEY)	0' (ALLEY)
SETBACK FROM HWY. 42 R.O.W. BUILDING	PARKING: 20' BUILDING: 10'	N/A	N/A	N/A
SETBACK FROM COLLECTOR STREET R.O.W.	PARKING: 10' BUILDING: 10'	N/A	N/A	N/A
SETBACK FROM LOCAL STREET R.O.W.	PARKING: 0' BUILDING: 10'	N/A	N/A	N/A
SETBACK FROM PARKS & OPEN SPACE BUILDING	0'	N/A	N/A	N/A
MINIMUM BLDG. SEPARATION	10'	10'	10'	10'
<b>MAX. BLDG. HEIGHT</b>				
PRINCIPAL USES	40'	40'	30'	30'
ACCESSORY USES	N/A	20'	20'	N/A

<sup>1</sup> IF FEE SIMPLE LOTS ARE CREATED WITHIN BUILDINGS, THERE IS NO SETBACK REQUIREMENT BETWEEN INTERNAL UNITS, UP TO 30% OF REAR ELEVATION MAY ENDOURGE IF INTO REAR SETBACK; DECKS MAY ENDOURGE 10' INTO REAR SETBACK. ACCESSORY STRUCTURES AVAILABLE FOR SP-0 ALLOWED TYPES ONLY. STRUCTURES SHALL NOT INCLUDE KITCHEN USE AREAS. COMMERCIAL DESIGN STANDARDS WILL BE SUBMITTED IN CONJUNCTION WITH THE SUBMITTAL OF THE FINAL DEVELOPMENT PLAN. ALL PLANNING AREA BULK AND DIMENSION STANDARDS ARE APPLICABLE TO PHA.

- GENERAL NOTES AND STANDARDS – ALL PHASES**
- ALL PUBLIC USE DEDICATIONS HAVE PREVIOUSLY BEEN MET FOR PA1.
  - THE CONSTRUCTION OF THE HIGHWAY 42 IMPROVEMENTS WILL BE INITIATED WITHIN 12 MONTHS OF THE ISSUANCE OF A BUILDING PERMIT WITHIN PHASE 2 AS AGREED UPON IN THE DEVELOPMENT AGREEMENT.
  - ENTRY MONUMENTS ARE CONCEPTUAL IN NATURE AT THE LOCATIONS SHOWN ON THIS PLAN. FINAL LOCATION SHALL BE DETERMINED DURING CONSTRUCTION DOCUMENTATION PROCESS.
  - NO HISTORIC STRUCTURES EXIST ON THE PROPERTY. ALL EXISTING STRUCTURES AND SURFACE ENCUMBRANCES HAVE BEEN REMOVED WITH THE TAKODA, AKA STEEL RANCH DEVELOPMENT.
  - ALL WALKS, TO THE EXTENT PRACTICAL, SHALL MEET ADA STANDARDS FOR RUNNING SLOPE AND CROSS SLOPE.
  - IN ADDITION TO ALL USES ALLOWED BY THE PCZD-C DESIGNATION, THE FOLLOWING USES SHALL BE EXPRESSLY ALLOWED WITHIN PA1: OUTDOOR PATIOS AND ASSOCIATED IMPROVEMENTS, SHADE STRUCTURES, OUTDOOR PLAY AREAS, TRASH ENCLOSURES AND OUTDOOR SEATING AND GATHERING AREAS AND ASSOCIATED IMPROVEMENTS.
  - AMENITY/RECREATION STRUCTURES ARE ACCESSORY STRUCTURES, AND ARE NOT INCLUDED IN F.A.R. CALCULATIONS. SUCH STRUCTURES ARE SUBJECT TO BULK AND DIMENSION STANDARDS SPECIFIED FOR ACCESSORY STRUCTURES AS DESCRIBED HEREIN. IN ADDITION TO OTHER DIMENSIONAL STANDARDS WITHIN THIS FINAL DEVELOPMENT PLAN.
  - OUTDOOR WAITING AND PLAY AREAS ARE NOT SUBJECT TO THE BULK AND DIMENSION STANDARD'S SETBACK REQUIREMENTS.
  - THE BULK AND DIMENSION STANDARDS FOR ALL PLANNING AREAS BELOW ARE VALUES PER GDP APPROVALS. SITE SPECIFIC BULK AND DIMENSION STANDARDS ON THE PHASE 1-PLAN, NOTES AND STANDARDS SHEET SHALL GOVERN DEVELOPMENT OF THAT AREA.
  - ALL REQUIRED PUBLIC IMPROVEMENTS TO ALLOW FOR PHASED DEVELOPMENT SHALL BE CONSISTENT WITH SHEETS 3 AND 10.

**NOTE:** THIS OVERALL DEVELOPMENT PLAN INCLUDES FUTURE PHASE(S) SCHEMATIC LAYOUTS TO DEMONSTRATE POTENTIAL ACCESS AND POTENTIAL LAYOUTS. THE FINAL DEVELOPMENT LAYOUTS FOR FUTURE PHASES SHALL BE REVIEWED IN SUBSEQUENT FINAL DEVELOPMENT PLAN(S).



**MASTER PLAN**  
SCALE: 1" = 40'

**ERIC BARTCZAK ARCHITECTS**  
325 Lafayette St Denver, CO 80202  
Contact: Eric Bartczak, AIA  
PH (303) 733 7892

**B ENGINEERING CONSULTANTS**  
Contact: Jason D. Margraf, PE  
6605 S. Park St., Suite D - Greenwood, CO 80111  
303 366-5621 - FAX: (303) 366-5620  
Email: jdmargraf@BEngineering.com

**Takoda Properties LLC**  
920 SFRUCE ST • STE 2A  
LOUISVILLE • CO • 80027



**PCS GROUP INC.** www.pcsgrupeco.com  
P3 • Independence • 80131 • 8-199  
1001 14th Street • Denver CO 80202  
303 531 4905 Contact: Paul Shokalski

**CRANE ARCHITECTURE**  
3080 Larimer St. Denver, Colorado 80205  
Contact: Dan Crane 720.457.2012

No	Date	Description
1	8-9-2012	Initial Submittal
2	10-26-2012	Second Submittal
3	12-3-2012	Third Submittal

Designed By: SDC      Drawn By: CDS  
Checked By: JDM      Project #: 03000701

**FINAL DEVELOPMENT PLAN/  
PLANNED UNIT DEVELOPMENT**

Sheet 2 of 14

**MASTER PLAN AND GENERAL NOTES**

# STEEL RANCH MARKETPLACE

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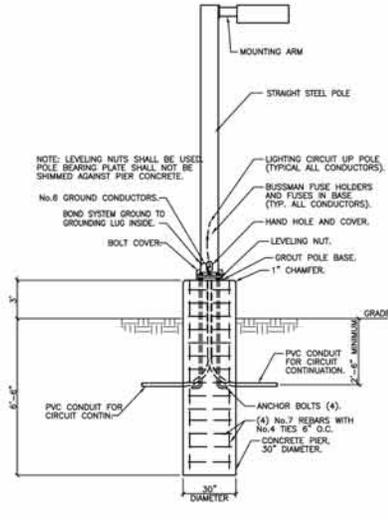




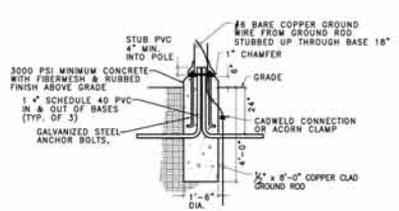
# STEEL RANCH MARKETPLACE

## FINAL DEVELOPMENT PLAN/ PLANNED UNIT DEVELOPMENT

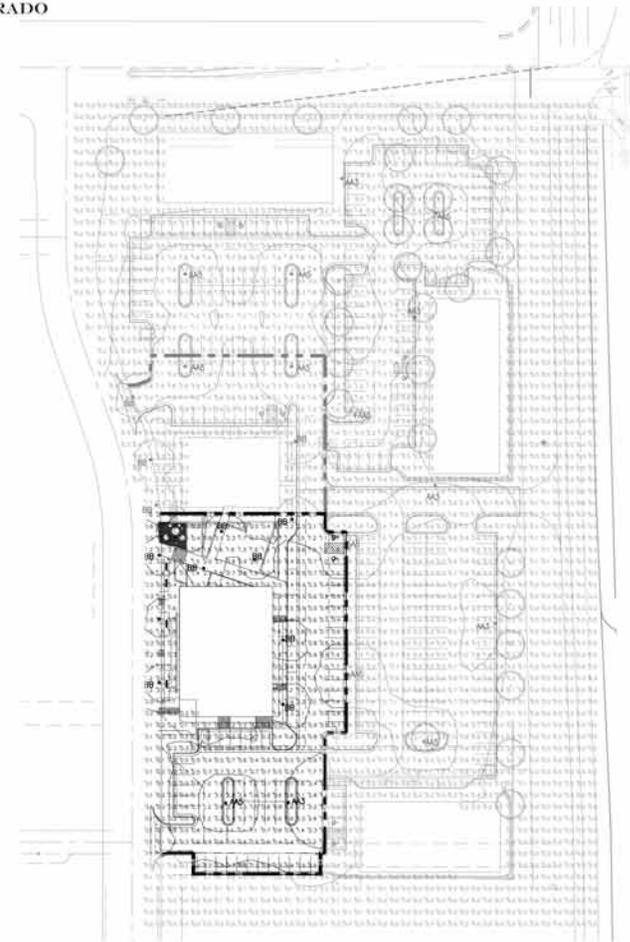
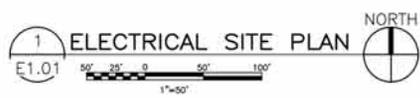
A REPLAT OF LOT 1, BLOCK 9 TAKODA SUBDIVISION AND PART OF SECTION 5 TOWNSHIP 1 SOUTH, RANGE 69 WEST OF THE 6TH PM  
PRINCIPAL MERIDIAN, BOULDER COUNTY, CITY OF LOUISVILLE, COLORADO



2 TALL POLE DETAIL  
E1.01 N.T.S.



3 SHORT POLE DETAIL  
E1.01 N.T.S.



**GIVEN**  
& ASSOCIATES INC.  
735 S. Xenon Ct. #201  
Lakewood, Colorado 80228  
PH: 303.716.1270  
Fax: 303.716.1272  
www.givendamassociates.com  
Project # 12093

ERIC BARTCZAK  
ARCHITECTS  
433 Lafayette St Denver, CO 80218  
Contact: Eric Bartczak, AIA  
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**ENGINEERING CONSULTANTS**  
Contact: Jason D. Margraf, PE  
4809 S. Fava St, Suite B - Commercial, CO 80111  
(303) 368-5627 - FAX: (303) 368-5623  
Email: jdmargraf@engr.com

**Takoda Properties LLC**  
950 17th Ave Ste 2A  
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**pcr group inc.** www.pcrgruop.com  
18 Independence blvd # 180  
1001 14th street - denver co 80202  
1 303.531.4905 Contact: Paul Shoukas

**CRANE ARCHITECTURE**  
3080 Larimer St Denver, Colorado 80205  
Contact: Dan Crane 720-457-2092

No	Date	Description
1	8-9-2012	Initial Submittal
2	10-28-2012	Second Submittal
3	12-3-2012	Third Submittal

Designed By: \_\_\_\_\_ Drawn By: \_\_\_\_\_  
Checked By: \_\_\_\_\_ Project #: \_\_\_\_\_

FINAL DEVELOPMENT PLAN/  
PLANNED UNIT DEVELOPMENT

Sheet 5 of 14

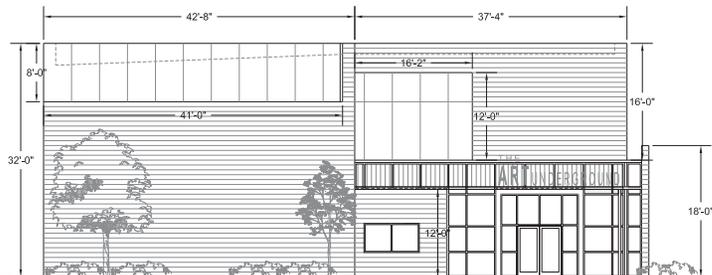
PHOTOMETRIC PLAN

# STEEL RANCH MARKETPLACE

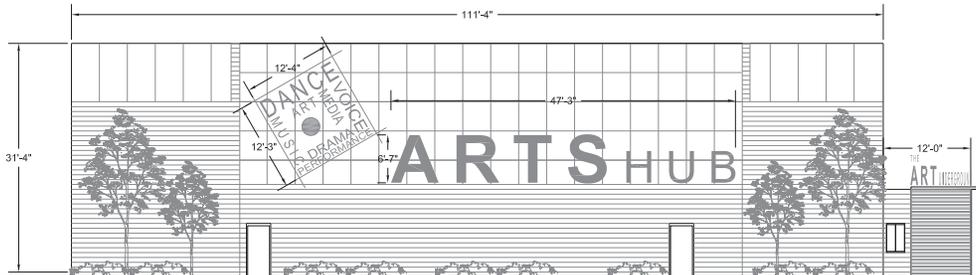


# STEEL RANCH MARKETPLACE

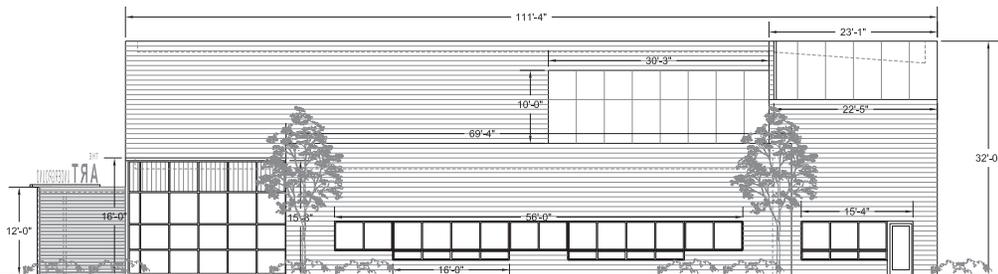
FINAL DEVELOPMENT PLAN/ PLANNED UNIT DEVELOPMENT  
A PART OF SECTION 5, TOWNSHIP 1 SOUTH, RANGE 69 WEST OF THE 6TH  
PRINCIPAL MERIDIAN, BOULDER COUNTY, CITY OF LOUISVILLE, COLORADO



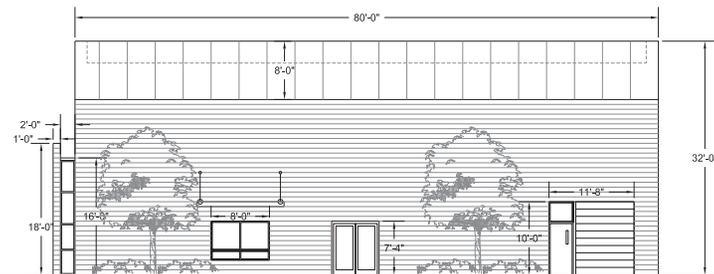
1 NORTH ELEVATION  
A8 SCALE: 1/8" = 1'-0"



2 EAST ELEVATION  
A8 SCALE: 1/8" = 1'-0"



3 WEST ELEVATION  
A8 SCALE: 1/8" = 1'-0"



4 SOUTH ELEVATION  
A8 SCALE: 1/8" = 1'-0"

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ARCHITECTS  
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**Takoda Properties LLC**  
150 S. PEACOCK ST. STE 2A  
LOUISVILLE CO 80027



PCF GROUP INC. www.pcfgroup.com  
#3 - Independence Plaza - 8-189  
1001 16th Street - Denver CO 80202  
1 303 531 4905 Contact: Paul Shoukas

CRAINE ARCHITECTURE

3080 Larimer St. Denver, Colorado 80205  
Contact: Dan Craine 720-457-2012

No	Date	Description
1	8-9-2012	Initial Submittal
2	10-26-2012	Second Submittal
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FINAL DEVELOPMENT PLAN/  
PLANNED UNIT DEVELOPMENT

Sheet 7 of 14

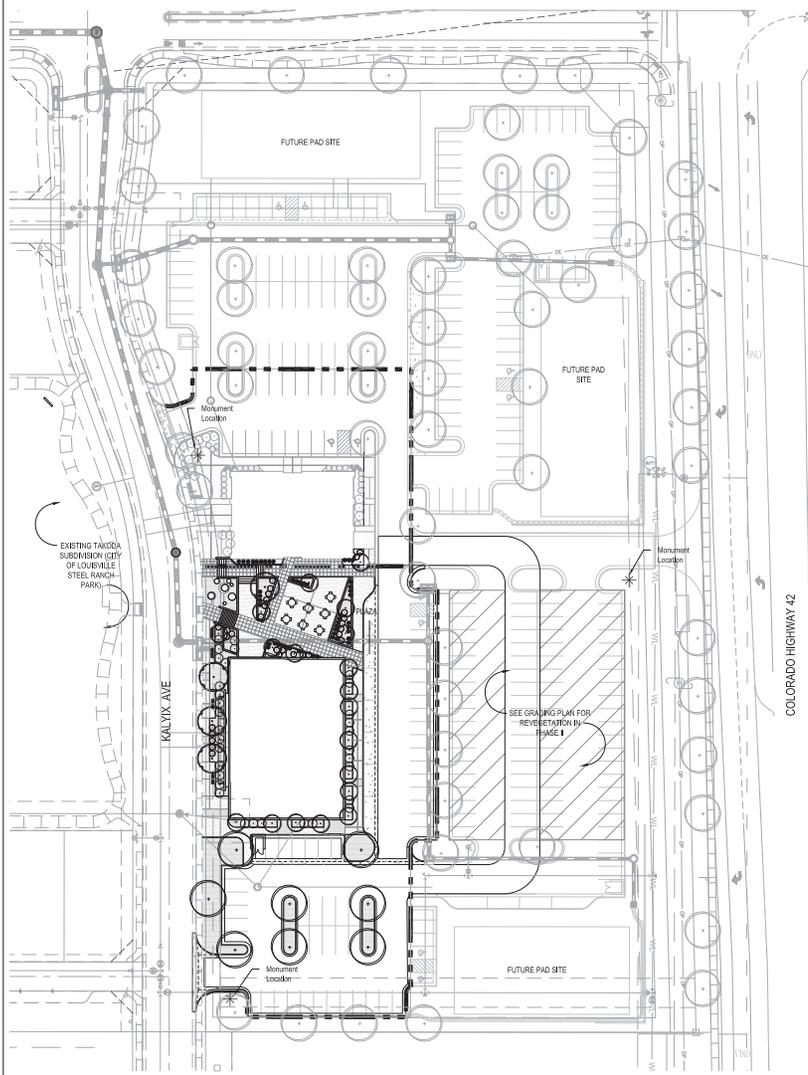
Building 1 - Elevation

**STEEL RANCH  
MARKETPLACE**

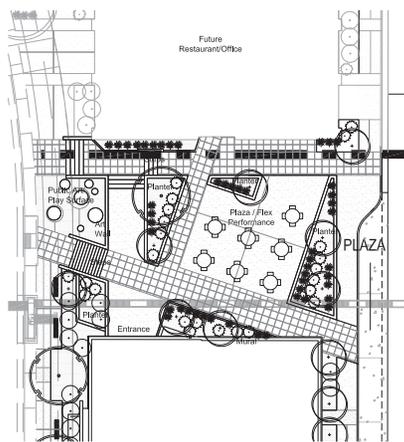
Designed By: EB Drawn By: LG  
Checked By: EB Project #: 03000701

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1 MASTER LANDSCAPE PLAN  
SCALE: 1" = 40'-0"



2 PLAZA - LANDSCAPE PLAN - BLOW UP  
SCALE: 1" = 20'-0"

LANDSCAPE LEGEND	
	DECIDUOUS UPRIGHT OR CANOPY TREE
	ORNAMENTAL TREE
	EVERGREEN TREE
	FUTURE PHASE LANDSCAPE
	SHRUBS / ORNAMENTAL GRASS
	MANICURED LANDSCAPE
	ENHANCED CONCRETE
	ENHANCED CONCRETE

## SUGGESTED PLANT PALETTE

Deciduous Trees	Evergreen Trees
Amelanchier canadensis	Thuja occidentalis
Aspen (Populus tremula)	Thuja sutchuanensis
Basswood (Fraxinus americana)	Thuja occidentalis 'Smaragd' (Smaragd Green)
Bittersweet (Euonymus alatus)	Thuja occidentalis 'Green Gem'
Black Gum (Nyctaginia glauca)	Thuja occidentalis 'Green Globe'
Black Locust (Robinia pseudoacacia)	Thuja occidentalis 'Green Pyramid'
Black Walnut (Juglans nigra)	Thuja occidentalis 'Green Sentinel'
Boxelder (Acer negundo)	Thuja occidentalis 'Green Spire'
Bur Oak (Quercus macrocarpa)	Thuja occidentalis 'Green Tower'
Chickadee (Prunella virginiana)	Thuja occidentalis 'Green Tower II'
Chinese Elm (Ulmus parvifolius)	Thuja occidentalis 'Green Tower III'
Cornus (Cornus sp.)	Thuja occidentalis 'Green Tower IV'
Cornus (Cornus sp.)	Thuja occidentalis 'Green Tower V'
Cornus (Cornus sp.)	Thuja occidentalis 'Green Tower VI'
Cornus (Cornus sp.)	Thuja occidentalis 'Green Tower VII'
Cornus (Cornus sp.)	Thuja occidentalis 'Green Tower VIII'
Cornus (Cornus sp.)	Thuja occidentalis 'Green Tower IX'
Cornus (Cornus sp.)	Thuja occidentalis 'Green Tower X'
Cornus (Cornus sp.)	Thuja occidentalis 'Green Tower XI'
Cornus (Cornus sp.)	Thuja occidentalis 'Green Tower XII'
Cornus (Cornus sp.)	Thuja occidentalis 'Green Tower XIII'
Cornus (Cornus sp.)	Thuja occidentalis 'Green Tower XIV'
Cornus (Cornus sp.)	Thuja occidentalis 'Green Tower XV'
Cornus (Cornus sp.)	Thuja occidentalis 'Green Tower XVI'
Cornus (Cornus sp.)	Thuja occidentalis 'Green Tower XVII'
Cornus (Cornus sp.)	Thuja occidentalis 'Green Tower XVIII'
Cornus (Cornus sp.)	Thuja occidentalis 'Green Tower XIX'
Cornus (Cornus sp.)	Thuja occidentalis 'Green Tower XX'
Cornus (Cornus sp.)	Thuja occidentalis 'Green Tower XXI'
Cornus (Cornus sp.)	Thuja occidentalis 'Green Tower XXII'
Cornus (Cornus sp.)	Thuja occidentalis 'Green Tower XXIII'
Cornus (Cornus sp.)	Thuja occidentalis 'Green Tower XXIV'
Cornus (Cornus sp.)	Thuja occidentalis 'Green Tower XXV'
Cornus (Cornus sp.)	Thuja occidentalis 'Green Tower XXVI'
Cornus (Cornus sp.)	Thuja occidentalis 'Green Tower XXVII'
Cornus (Cornus sp.)	Thuja occidentalis 'Green Tower XXVIII'
Cornus (Cornus sp.)	Thuja occidentalis 'Green Tower XXIX'
Cornus (Cornus sp.)	Thuja occidentalis 'Green Tower XXX'

## GENERAL NOTES:

- FINAL CONSTRUCTION DOCUMENTS SHALL CONFORM TO THE REQUIREMENTS OUTLINED WITHIN THIS PUD SUBMITTAL.
- LANDSCAPE PLANS ARE SCHEMATIC IN NATURE AND SUBJECT TO MODIFICATION TO MEET THE CITY'S REQUIREMENTS, THE DEVELOPER'S PROGRAM, OR OTHER NECESSARY REQUIREMENTS.
- LOCATION OF LANDSCAPE PLANTINGS MAY BE ALTERED TO PROVIDE ADEQUATE CLEARANCE FROM THE FINAL LOCATION OF UNDERGROUND UTILITIES. THE BASE DECIDUOUS TREES SHALL BE PLANTED NO CLOSER THAN 5' FROM WET UTILITIES. THE BASE OF EVERGREEN TREES SHALL BE PLANTED NO CLOSER THAN 10' FROM ALL WET UTILITIES UNLESS OTHERWISE DIRECTED BY THE CITY.
- GRASS AREAS DESIGNATED AS IRRIGATED TURF SHALL BE SEEDED OR SODDED WITH A DROUGHT TOLERANT GRASS MIXTURE.
- DECIDUOUS TREES WILL BE 2 1/2" CALIPER MINIMUM. EVERGREEN TREES WITH BE 6-8" HT. MINIMUM.
- SHRUBS (DECIDUOUS AND EVERGREEN) WILL BE 5 GALLON MINIMUM.
- MECHANICAL DEVICES SHALL BE SCREENED WITH LANDSCAPE MATERIAL.
- SITE MONUMENTATION THROUGHOUT THE DEVELOPMENT WILL BE IN CONCERT WITH PHASE III IMPROVEMENTS.

## LANDSCAPE REQUIREMENTS

- THE LANDSCAPE STANDARDS OUTLINED BELOW SUPERCEDE ANY LANDSCAPE REQUIREMENTS FROM PREVIOUS PUD SUBMITTALS AND ARE SPECIFIC TO STEEL RANCH MARKETPLACE.
- EACH PAD SITE SHOULD AVERAGE 10% LANDSCAPE AREA AND 10% FOR THE OVERALL PARCEL OF GROUND.
- LANDSCAPED AREAS, INCLUDING AREAS WITHIN PRIVATE STREETS, SHALL BE PRIVATELY MAINTAINED BY THE OWNERS ASSOCIATION.
- WHEEL STOPS OR BUMPER CURBS WILL BE PROVIDED AS REQUIRED TO PROTECT SIDEWALKS, STRUCTURES AND PLANTERS FROM EXCESSIVE VEHICULAR DAMAGE.
- INTERNAL LANDSCAPING - A MINIMUM OF FIVE PERCENT (5%) OF THE REQUIRED LANDSCAPE AREA SHOULD BE ALLOCATED TOWARDS BUILDING (OR FOUNDATION) LANDSCAPING. THIS SHOULD BE DRIP IRRIGATED AND XERIC IN NATURE. BUILDING LANDSCAPING PRIORITIES ARE THOSE THAT FACE THE PUBLIC RIGHT-OF-WAY.
- LOCAL STREETS - ONE TREE PER 40 LINEAR FEET ADJACENT TO OFF STREET PARKING AREAS (WITH THE EXCEPTION OF EASEMENTS OR OTHER OBSTRUCTIONS).
- COMMON AREAS - ONE TREE AND THREE SHRUBS PER 2,000 SQUARE FEET OF SOFTSCAPE OR A COMBINATION THEREOF AS AGREED UPON WITH THE PLANNING DEPARTMENT
- ALL LANDSCAPE IMPROVEMENTS SHALL BE DESIGNED AND INSTALLED WITH THE INTENT TO PRESERVE THE COMMERCIAL VEUE CORRIDOR WHILE MAINTAINING AN AESTHETIC QUALITY TO THE SITE.

NOTE: THIS OVERALL DEVELOPMENT PLAN INCLUDES FUTURE PHASE(S) SCHEMATIC LAYOUTS TO DEMONSTRATE POTENTIAL ACCESS AND POTENTIAL LAYOUTS. THE FINAL DEVELOPMENT LAYOUTS FOR FUTURE PHASES SHALL BE REVIEWED IN SUBSEQUENT FINAL DEVELOPMENT PLAN(S)

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1001 18th street - denver co 80202  
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3080 Larimer St. Denver, Colorado 80205  
Contact: Dan Craine 770-457-2012

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FINAL DEVELOPMENT PLAN/  
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Sheet 8 of 14

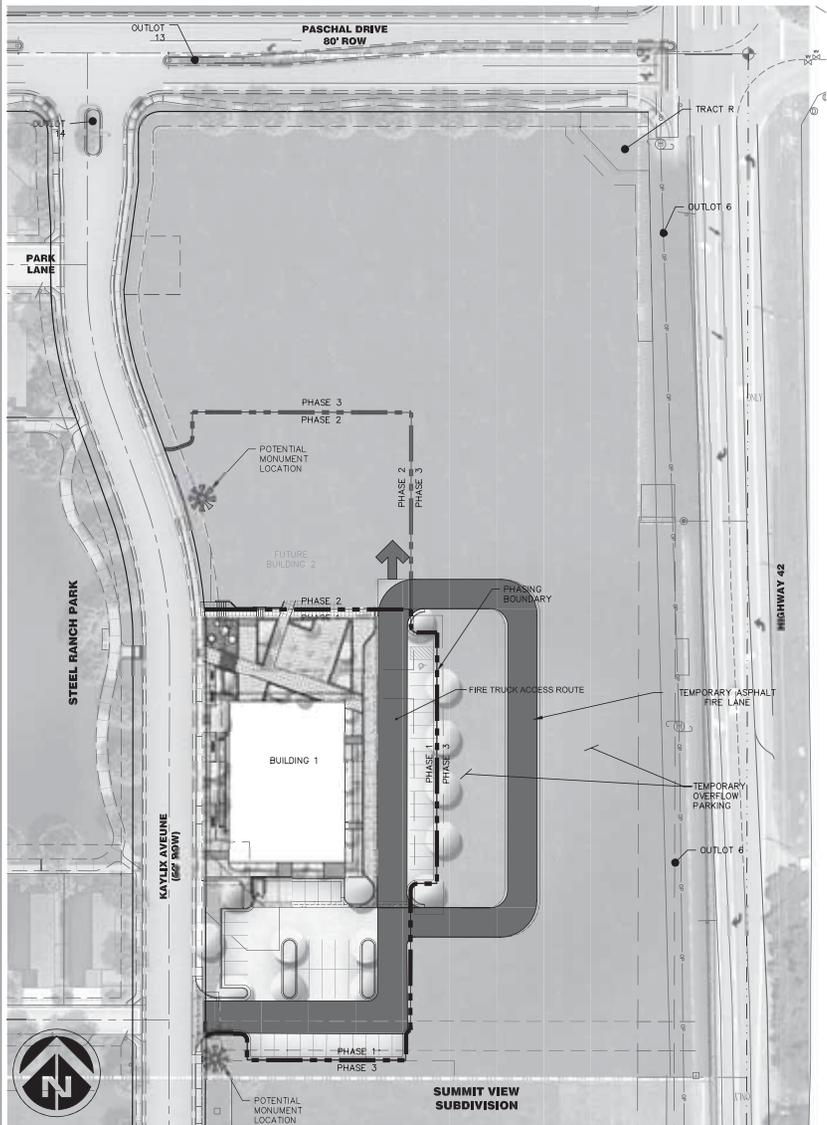
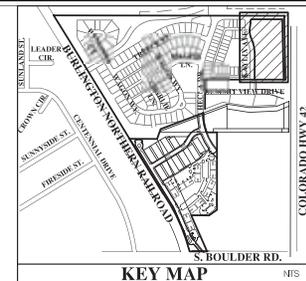
Landscape Plans

STEEL RANCH  
MARKETPLACE

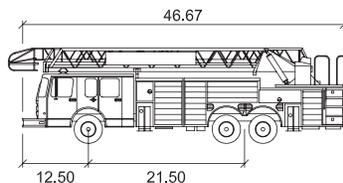
Designed By: PMS  
Checked By: PMS  
Drawn By: STA  
Project #: 03000701

# STEEL RANCH MARKETPLACE

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 A PART OF SECTION 5, TOWNSHIP 1 SOUTH, RANGE 69 WEST OF THE 6TH  
 PRINCIPAL MERIDIAN, BOULDER COUNTY, CITY OF LOUISVILLE, COLORADO



EMERGENCY VEHICLE ACCESS PLAN  
 SCALE: 1" = 40'



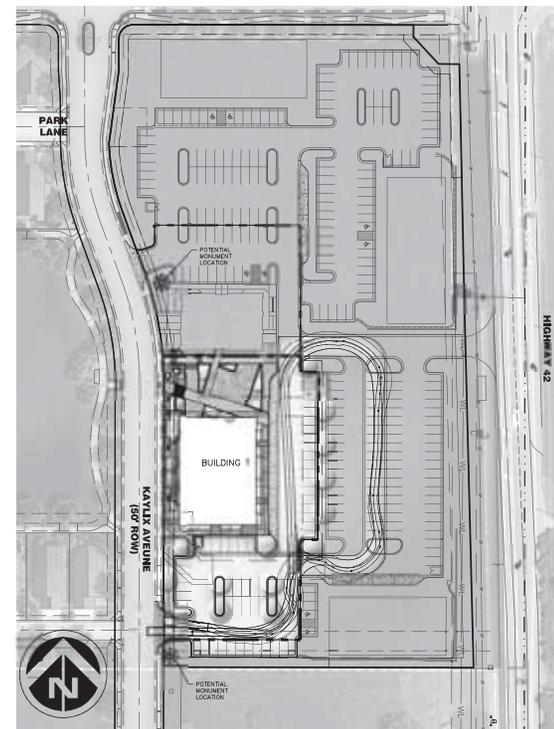
**LOUISVILLE TRUCK 17**

	feet
Width	: 8.00
Track	: 8.00
Lock to Lock Time	: 5.00
Steering Angle	: 45.00

- Legend**
- 20' Width Emergency Vehicle Access Route
  - Fire Hydrant
  - Existing Fire Hydrant
  - Anticipated, Future Access Point

**NOTES:**

1. THE CITY OF LOUISVILLE TRUCK WAS EVALUATED UTILIZING THE PROGRAM AUTOTURN FOR ALL ROADS DEPICTED IN GRAY. THOSE AREAS ACCOMMODATE THIS VEHICLE.
2. FIRE HYDRANTS DEPICTED ARE TO PROVIDE THE REQUIRED COVERAGE TO SERVICE PROPOSED PHASE OF PAT. ADDITIONAL FIRE HYDRANTS MAY BE REQUIRED FOR THE FUTURE, PHASED DEVELOPMENT AND WILL BE DETERMINED WITH SUBSEQUENT FINAL DEVELOPMENT PLAN SUBMITTALS.



TURNING MOVEMENTS  
 SCALE: 1" = 60'

NOTE: THIS OVERALL DEVELOPMENT PLAN INCLUDES FUTURE PHASE(S) SCHEMATIC LAYOUTS TO DEMONSTRATE POTENTIAL ACCESS AND POTENTIAL LAYOUTS. THE FINAL DEVELOPMENT LAYOUTS FOR FUTURE PHASES SHALL BE REVIEWED IN SUBSEQUENT FINAL DEVELOPMENT PLAN(S).

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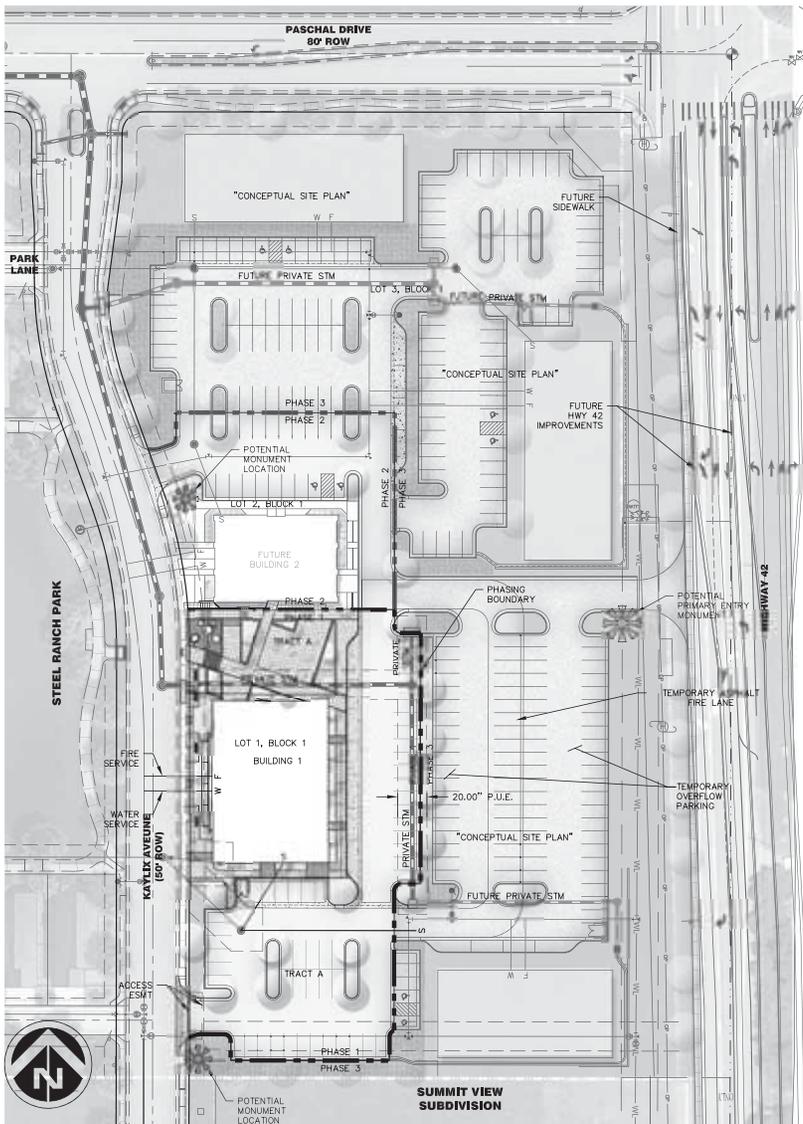
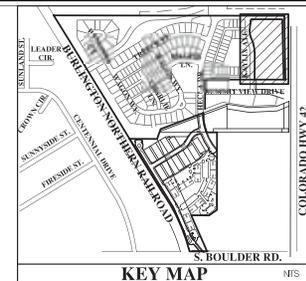
**EMERGENCY VEHICLE ACCESS PLAN**

**STEEL RANCH MARKETPLACE**

Designed By: SDC Drawn By: CDS  
 Checked By: JDM Project #: 03000701

# STEEL RANCH MARKETPLACE

## FINAL DEVELOPMENT PLAN/ PLANNED UNIT DEVELOPMENT A PART OF SECTION 5, TOWNSHIP 1 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, BOULDER COUNTY, CITY OF LOUISVILLE, COLORADO



### GENERAL HORIZONTAL PUBLIC IMPROVEMENT NOTES

PUBLIC HORIZONTAL IMPROVEMENTS FOR THE PROPERTY WILL BE CONSTRUCTED TO SERVICE THE PHASES OF THE PROJECT. THIS PHASING PLAN IS NOT MEANT TO DICTATE THE PHASING ASSOCIATED WITH THIS PROJECT BEYOND WHAT IS STATED IN THESE NOTES. THE PUBLIC HORIZONTAL IMPROVEMENTS INCLUDE THE FOLLOWING:

- 1) PASCHAL DRIVE ALONG THE NORTHERN BOUNDARY IS EXISTING AND ALL REQUIRED IMPROVEMENTS ON THIS ROAD WERE PREVIOUSLY MET WITH THE STEEL RANCH (TAKODA) DEVELOPMENT.
- 2) KAYLIX AVENUE ALONG THE WESTERN BOUNDARY IS EXISTING AND ALL REQUIRED IMPROVEMENTS ON THIS ROAD WERE PREVIOUSLY MET WITH THE STEEL RANCH (TAKODA) DEVELOPMENT.
- 3) COLORADO HIGHWAY 42 ALONG THE EASTERN BOUNDARY IS EXISTING AND WILL SERVICE THE DEVELOPMENT THROUGH A PROPOSED RIGHT IN/RIGHT OUT ACCESS POINT, AS NOTED IN THE PHASE 3 IMPROVEMENT NOTES.
- 4) THE SANITARY SEWER LOCATED WITHIN KAYLIX AVENUE IS EXISTING AND SHALL SERVICE THE PROJECT.
- 5) THE WATER LINE LOCATED WITHIN KAYLIX AVENUE AND ALONG THE SOUTHERN PROJECT BOUNDARY IS EXISTING. THE EXISTING WATERLINE MAY BE REIGNED WITH THE PHASED DEVELOPMENT, HOWEVER, PHASES MUST HAVE TWO POINTS OF CONNECTION AND MAY ROUTE THROUGH THE PROPERTY TO ALLOW FOR THE INDEPENDENT DEVELOPMENT OF PLANNING AREA 1 AND SUB-PHASING, THEREOF.
- 6) ONSITE STORM SEWER IS REQUIRED TO SERVICE THE INDEPENDENT PHASING AND DEVELOPMENT OF PA1. OFF-SITE, WATER QUALITY POND 1 AND REGIONAL DETENTION POND X ARE EXISTING AND WERE SIZED ANTICIPATING THE PROJECT DEVELOPMENT.
- 7) PHASING OF THE DEVELOPMENT MAY OCCUR IN ANY ORDER AND IS NOT LIMITED EXCEPT AS REQUIRED TO PROVIDE A LOOPED WATER SERVICE, SANITARY SERVICE, TWO POINTS OF EMERGENCY ACCESS AND THAT NO "DEAD END" LONGER THAN 500' WITHOUT A SECONDARY EMERGENCY ACCESS SHALL OCCUR.
- 8) NO OFF-SITE REGIONAL IMPROVEMENTS ARE ANTICIPATED TO BE REQUIRED WITH THIS DEVELOPMENT BEYOND THE PREVIOUSLY AGREED TO HIGHWAY 42 WEST SIDEWALK AND LANDSCAPING, AS CONCEPTUALLY DEPICTED WITHIN THIS PUD. PLEASE REFER TO THE DEVELOPMENT AGREEMENT FOR THE FULL REQUIREMENTS.
- 9) RETAINING WALLS MAY BE REQUIRED TO ACCOMMODATE SITE GRADING AND SHALL BE ALLOWED.

### HORIZONTAL IMPROVEMENT NOTES

#### PHASE 1

1. LOT 1 AND TRACT A CONSTITUTES THE FIRST PHASE OF THE PROJECT.
2. LOT 1 ACCESS SHALL BE VIA KAYLIX AVENUE.
3. THE EXISTING SANITARY SEWER STUB TO LOT 1 WILL BE REMOVED AND REALIGNED TO WORK WITH THE PROPOSED DEVELOPMENT IMPROVEMENTS.
4. WATER AND FIRE SERVICES WILL BE VIA THE EXISTING 8" MAIN IN KAYLIX AVENUE.
5. A TEMPORARY ASPHALT SURFACE FIRE LANE SHALL ALLOW FOR FIRE TRUCK MOVEMENTS AND FOR BUILDING 1 DROP TRAFFIC UNTIL THE DEVELOPMENT OF PHASE 2 IMPROVEMENTS AND ACCESS.
6. TEMPORARY OVERFLOW PARKING ON THE ADJACENT LOT 3 SHALL BE PERMITTED UNTIL THE DEVELOPMENT OF THE ADJACENT IMPROVEMENTS ON LOT 3.
7. THE TEMPORARY OVERFLOW PARKING AREA WILL BE GRADED AND SOOLED TO PROVIDE STABILIZATION.

### HORIZONTAL IMPROVEMENT NOTES

#### PHASE 2

1. LOT 2 CONSTITUTES THE SECOND PHASE OF THE PROJECT.
2. LOT 2 ACCESS SHALL BE VIA THE EXISTING KAYLIX AVENUE ACCESS WITH PHASE 1 AND A SECOND PROPOSED ACCESS TO KAYLIX AVENUE WITH LOT 2.
3. THE EXISTING SANITARY SEWER STUB NORTH OF LOT 2 OFF KAYLIX AVENUE SHALL BE EXTENDED TO SERVICE THE DEVELOPMENT.
4. WATER AND FIRE SERVICES WILL BE VIA THE EXISTING 8" MAIN IN KAYLIX AVENUE OR VIA EXTENDING THE MAIN ON SITE. SHOULD A MAIN EXTENSION BE UTILIZED, THE LOCATIONS OF SERVICES AND MAINS ARE SUBJECT TO CITY REVIEW AND APPROVAL.
5. THE CONSTRUCTION OF THE HIGHWAY 42 IMPROVEMENTS WILL BE INITIATED WITHIN 12 MONTHS OF THE ISSUANCE OF A BUILDING PERMIT WITHIN PHASE 2 AS AGREED UPON IN THE DEVELOPMENT AGREEMENT.

### HORIZONTAL IMPROVEMENT NOTES

#### PHASE 3

1. LOT 3 CONSTITUTES THE THIRD PHASE OF THE PROJECT. LOT 3 MAY BE SUB-PHASED BASED ON MARKET DEMAND.
2. DEVELOPMENT ACCESS SHALL BE VIA THE TWO EXISTING ACCESS POINTS OFF KAYLIX AVENUE DEVELOPED IN THE FIRST AND SECOND PHASES. A RIGHT IN, RIGHT OUT ACCESS ONTO HIGHWAY 42 IS PROPOSED IN THIS PHASE.
3. WATER AND SANITARY SEWER WILL BE EXTENDED TO PROVIDE SERVICE TO THIS PHASE.
4. ONE STREET LIGHT AT THE PROPOSED HIGHWAY 42 ACCESS WILL BE CONSTRUCTED AT THE TIME OF THE ACCESS.

NOTE: ON-SITE HORIZONTAL PUBLIC IMPROVEMENTS ARE CONCEPTUAL AND ARE SUBJECT TO CHANGE BASED ON THE FINAL, FUTURE PHASE SITE LAYOUT(S).

NOTE: THIS OVERALL DEVELOPMENT PLAN INCLUDES FUTURE PHASE(S) SCHEMATIC LAYOUTS TO DEMONSTRATE POTENTIAL ACCESS AND POTENTIAL LAYOUTS. THE FINAL DEVELOPMENT LAYOUTS FOR FUTURE PHASES SHALL BE REVIEWED IN SUBSEQUENT FINAL DEVELOPMENT PLAN(S).

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**FINAL DEVELOPMENT PLAN/  
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Sheet 10 of 14

**HORIZONTAL PUBLIC IMPROVEMENTS PLAN**

**STEEL RANCH  
MARKETPLACE**

Designed By: SDC Drawn By: CDS  
Checked By: JDM Project #: 03000701

HORIZONTAL PUBLIC IMPROVEMENTS PLAN

SCALE: 1" = 40'









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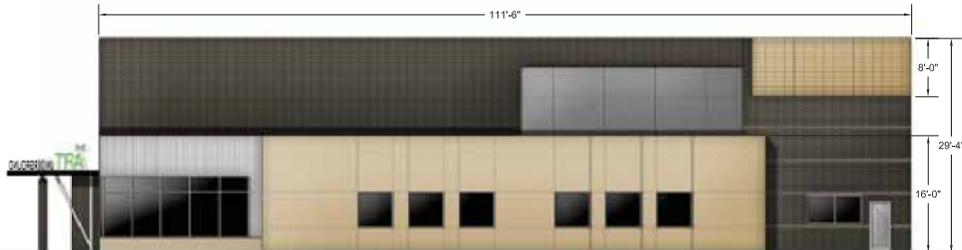
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Sheet of

**STEEL RANCH  
MARKETPLACE**

Designed By:

Drawn By:

Checked By:

Project #: 03000701

City Council – Public Hearing  
**Steel Ranch Marketplace**

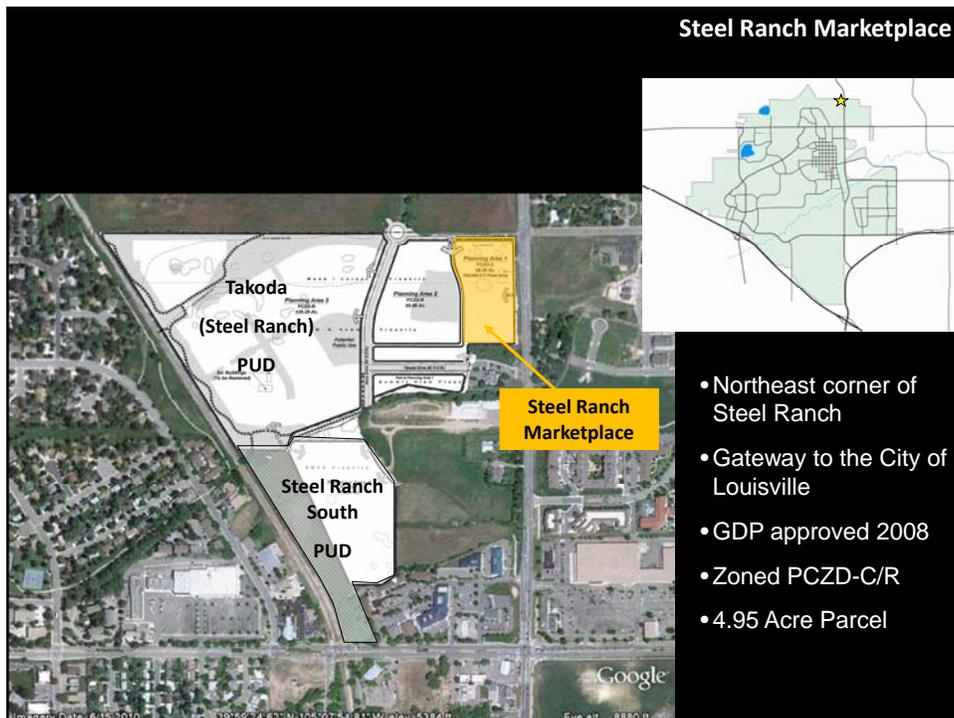
Resolution No. 8, Series 2013 –

APPROVAL TO AMEND A FINAL SUBDIVISION PLAT AND FINAL PLANNED UNIT DEVELOPMENT TO ALLOW FOR STEEL RANCH MARKETPLACE – A COMMERCIAL/RETAIL DEVELOPMENT

Prepared by:  
Dept. of Planning & Building Safety

**Public Notice Certification –**

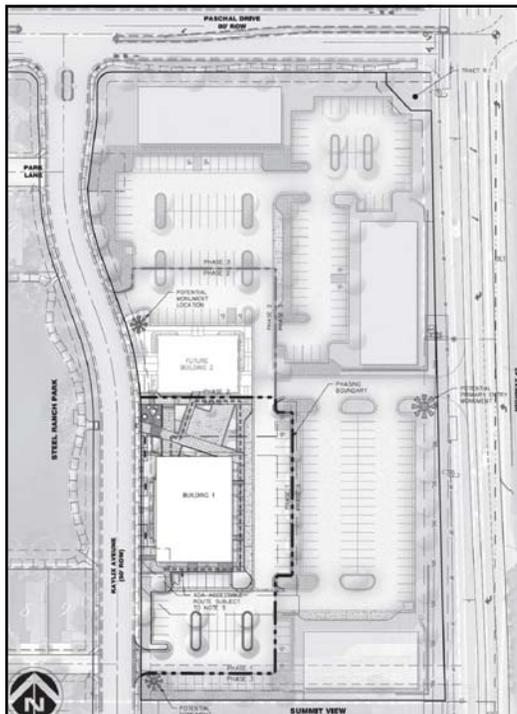
- Published in the Boulder Daily Camera – October 21, 2012
- Posted in City Hall, Public Library, Recreation Center, and the Courts and Police Building
- Mailed to surrounding property owners – October 19, 2012



### South Steel Marketplace

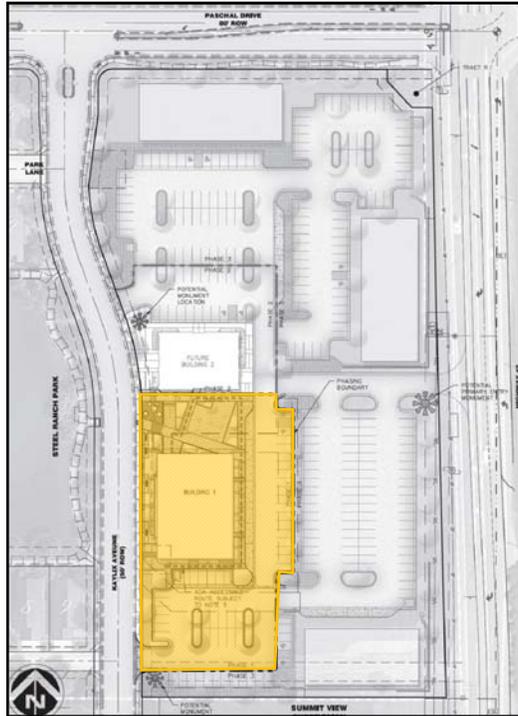


### South Steel Marketplace



Subdivided into 3 parcels:

- Lot 1 – 13,581 SF
- Lot 2 – 20,536 SF
- Lot 3 – 149,205 SF

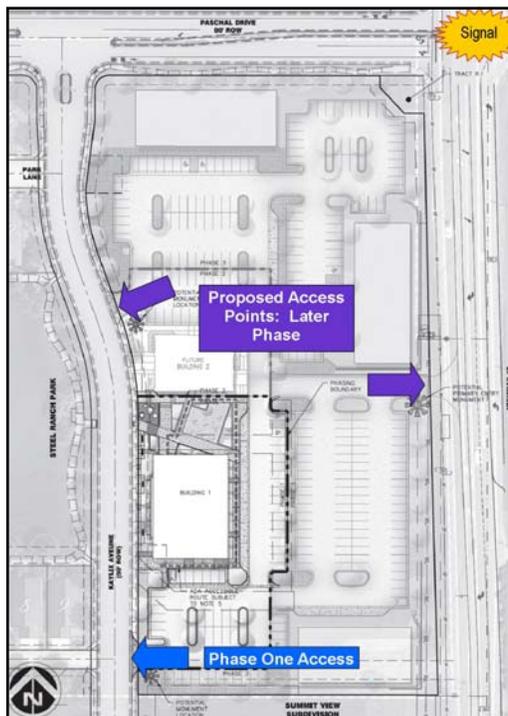


**South Steel Marketplace – Building 1**

3 Phases:

Phase I (Lot 1) – Art Center

- 14,096 SF building
- 200 seat capacity
- 67 spaces required / 59 spaces provided
- Applicant providing 8 additional spaces as overflow



**South Steel Marketplace - Access**

3 Access Points:

- 2 access on Kaylix Avenue
  - Only one access point being constructed in Phase 1
- 1 access on Highway 42
  - Later phase

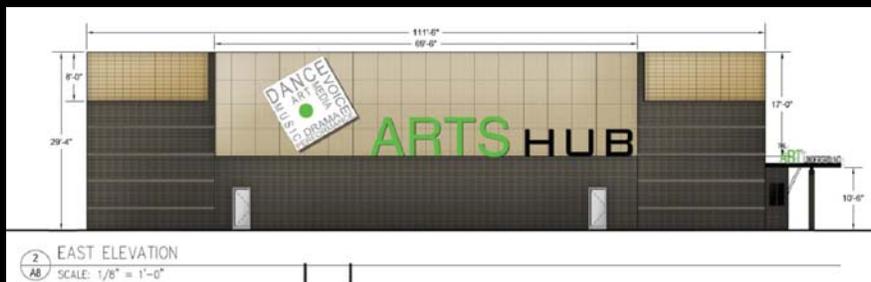
South Steel Marketplace - Elevations



Architecture:

- 40' height requirement; 32' height proposed
- Designed to function as an Art Center – high ceilings and flat walls.
- Articulated with:
  - colored stucco,
  - colored split face brick
  - step backs
  - awnings, and
  - roof articulation
- Public Plaza

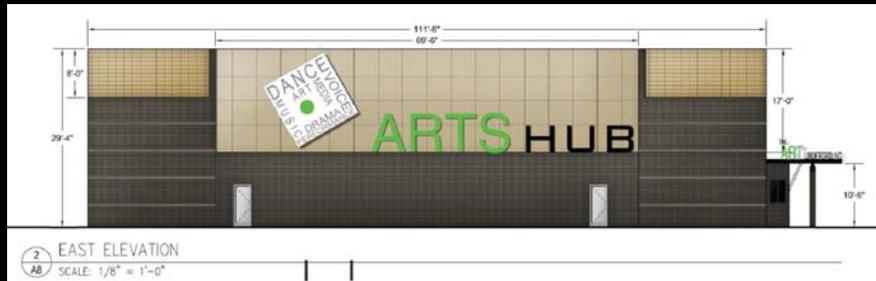
South Steel Marketplace - Elevations



Waiver request – Wall Sign Area:

- Commercial Design Development Standards and Guidelines (CDDSG) permits 1 SF of sign area for every 1 lineal foot of building frontage
  - Building #1 is 111' long = 111 SF of wall sign area permitted
  - No one sign can be larger than 200 SF
- The applicant is proposing two wall signs:
  - 12'4" X 12'4" (151 SF)
  - 6'7" X 47'3" (317 SF)
  - Total wall sign area = 468 SF
- Staff recommends allowing 200 SF of wall sign for this building

South Steel Marketplace - Elevations



Request – 468 SF



Staff Recommendation – 200 SF

South Steel Marketplace

Staff recommends the following four (4) conditions of approval:

1. The applicant shall provide the City of Louisville with an updated traffic count to be used by CDOT for additional review to warrant the traffic signal at Highway 42 and Paschal Drive.
2. The temporary access points for overflow parking shall be constructed of asphalt and graded to drain to the regional drainage system.
3. The proposed wall signs on the eastern façade of the Building shall not exceed combined area of 200-square feet.
4. The proposed wall signs on the eastern façade of the Building shall be specific to the art center use, may not be transferred to another use and shall be externally lit by down casting lighting.

**SUBJECT: DISCUSSION/DIRECTION/ACTION – CITY OF LOUISVILLE  
MEMBERSHIP IN THE COLORADO COMMUNICATIONS AND  
UTILITY ALLIANCE**

**DATE: FEBRUARY 5, 2013**

**PRESENTED BY: MEREDYTH MUTH, CITY MANAGER' S OFFICE**

**SUMMARY:**

In September, the City Council authorized staff to sign a conversion consent form for the Greater Metro Telecommunications Consortium (GMTC) to convert into the Colorado Communications and Utility Alliance (CCUA), a Colorado Non-Profit Corporation. Louisville was one of 33 members of the GMTC, all of which approved the conversion. At that time, the City Council directed staff to bring back the bylaws of the new CCUA for review and to determine if the City would like to remain a member under this new organization. A copy of the CCUA bylaws (approved January 17<sup>th</sup>) is attached.

The CCUA will continue the same focus on education and advocacy regarding telecommunications issues that the GMTC provided but will also expand its mission to include broadband issues, utility issues, rights-of-way management issues and related activities that impact local governments. Also, the CCUA will be a statewide organization rather than only represent the Denver metro area.

Membership in the CCUA (as it was with the GMTC) gives the City of Louisville three specific advantages.

1. It provides a forum with other cities and counties in which we exchange ideas and get information on issues.
2. It provides Louisville the chance to work as a part of a much larger group when dealing with the larger telecomm and utility companies. An example of this is the current discussions the CCUA is having with the Comcast, Century Link, and Baja Cable regarding customer service standards and current discussions with Century Link on a model franchise. The CCUA represents a large number of customers (or possible customers). Consequently, the CCUA has better negotiating leverage than Louisville would have individually to secure from those companies greater concessions and better agreements.
3. It provides Louisville with legal advice specific to the telecomm and utility industry. The CCUA attorney follows the ongoing telecomm and utility issues both here and nationwide, and keeps members up-to-date on what is going on and how issues might affect the City. City staff does not have the expertise or time to follow these issues to the detail that the CCUA does. This also includes

**SUBJECT: CCUA MEMBERSHIP**

**DATE: FEBRUARY 5, 2013**

**PAGE 2 OF 3**

the CCUA filing legal comments with such entities as the Federal Communication Commission and Congress on items that relate to local control and local land use.

As noted in the bylaws the mission of the CCUA is as follows:

- Establishing and administering systems for the sharing of information and resources pertaining to cable and telecommunications issues, broadband issues, utility issues, rights-of-way management issues and related activities that impact local government.
- Coordinating and cooperating in the administration, monitoring, enforcement, and renewal of cable, utility and similar franchises.
- Providing education and training for local government officials to enhance the capacity of local government to deal with cable, telecommunications, broadband, utilities and rights-of-way issues, and to simplify, improve, and increase the efficiency of the administration of cable and utility franchises and the use of cable, telecommunications, broadband and utility systems by local government.
- Providing technical and other informational assistance to the Members.
- Researching, representing, and advocating in appropriate forums, the Members' needs in the use, development, and regulation of cable, telecommunications, broadband and utility systems and rights-of-way management, in accordance with policies developed and approved by the Directors; and jointly and more efficiently monitoring cable, telecommunications, broadband and utility-related legislation, regulation and issues.
- Communicating and cooperating with other governmental, non-profit and industry organizations for the overall improvement of communications, broadband and utility services to the public.
- Cooperating in the operation of public, educational, and governmental channels and services, development of government programming, and coordinating and interconnecting regional cable systems.
- Providing other services as determined by its Directors.

The bylaws meet the requirements in the Colorado Revised Statutes for non-profit corporations. This includes Section 3.6 which requires 10 days minimum notice for meetings (stricter than the three days minimum for local government meetings).

**CITY COUNCIL COMMUNICATION**

**SUBJECT: CCUA MEMBERSHIP**

**DATE: FEBRUARY 5, 2013**

**PAGE 3 OF 3**

Additionally, in Sections 3.16 and 5.13, the bylaws state that meetings shall be open to the public as provided in the Colorado Open Meetings Law (C.R.S. §§ 24-6-401, *et seq.*). Regarding these sections, Louisville staff believes that the adopted phrasing should be clarified to avoid misinterpretations. Specifically, staff will ask the CCUA to amend those sections of its bylaws as follows.

Section 3.16 Open Meetings. Regular and special meetings of the Members shall be open to the public as ~~generally~~ provided in the Colorado Open Meetings Law, C.R.S. §§ 24-6-401, *et seq.*, or any successor statute thereto, unless two-thirds (2/3) of the quorum present at such meeting votes to ~~hold a closed meeting~~ convene an executive session for purposes authorized by such Law or any successor statute.

Section 5.13 Open Meetings. Regular and special meetings of the Board of Directors shall be open to the public as provided in the Colorado Open Meetings Law, C.R.S. §§ 24-6-401, *et seq.*, or any successor statute thereto, unless two-thirds (2/3) of the quorum present at such meeting votes to ~~hold a closed meeting~~ convene an executive session for purposes authorized by such Law or any successor statute.

These amendments will further clarify the CCUA's intent to adhere to the provisions of the Colorado Open Meetings Law.

**FISCAL IMPACT:**

Dues for 2013 are \$1,000 and are already in the 2013 budget.

**RECOMMENDATION:**

The CCUA offers all of the same benefits as did the GMTTC, plus the additional advantages outlined above, and staff believes continued membership in the CCUA brings value to the City. Accordingly, staff recommends the City Council approve 2013 membership in the CCUA. Staff believes CCUA membership is a great benefit. It is a low cost way for the City to access great technical assistance in telecommunications and utility issues (land use, regulation, and emerging technologies to name a few), gives the City strength in numbers when dealing with telecommunications and utility companies, and makes the City part of a group where we can exchange information and strategies to help move Louisville forward in these areas.

**ATTACHMENT:**

1. CCUA Bylaws

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of  
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**ARTICLE I  
Purposes and Powers**

Section 1.1 Purposes and Powers. The purposes and powers of the Corporation shall include:

1.1.1. Establishing and administering systems for the sharing of information and resources pertaining to cable and telecommunications issues, broadband issues, utility issues, rights-of-way management issues and related activities that impact local government.

1.1.2. Coordinating and cooperating in the administration, monitoring, enforcement, and renewal of cable, utility and similar franchises.

1.1.3. Providing education and training for local government officials to enhance the capacity of local government to deal with cable, telecommunications, broadband, utilities and rights-of-way issues, and to simplify, improve, and increase the efficiency of the administration of cable and utility franchises and the use of cable, telecommunications, broadband and utility systems by local government.

1.1.4. Providing technical and other informational assistance to the Members.

1.1.5. Researching, representing, and advocating in appropriate forums, the Members' needs in the use, development, and regulation of cable, telecommunications, broadband and utility systems and rights-of-way management, in accordance with policies developed and approved by the Directors; and jointly and more efficiently monitoring cable, telecommunications, broadband and utility-related legislation, regulation and issues.

1.1.6. Communicating and cooperating with other governmental, non-profit and industry organizations for the overall improvement of communications, broadband and utility services to the public.

1.1.7. Cooperating in the operation of public, educational, and governmental channels and services, development of government programming, and coordinating and interconnecting regional cable systems.

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1.1.8. Providing other services as determined by its Directors.

**ARTICLE II  
Definitions**

For purposes of these Bylaws the following words, terms and phrases shall have the following meanings.

“Director” shall mean the person appointed by a Member to be its representative in the Corporation.

“Alternate Director” shall mean a person selected by a Member to act on behalf of its appointed Director, as that person’s alternate, during any meeting from which he or she is absent. Another Director cannot be an Alternate Director.

“Member” shall mean a political subdivision of the State of Colorado which is, at the time in question, current with all costs of participation in the Corporation in general.

“Special Budget” shall mean a budget prepared under Article VIII of these Bylaws, and in general terms, the project for which such budget is prepared.

“Corporation” shall mean the Colorado Communications and Utility Alliance.

**ARTICLE III  
Members**

Section 3.1 Members. Membership in the Corporation shall consist of Voting Members. Voting Membership shall be open to political subdivisions in Colorado. Any entity consisting of more than one individual shall be considered one Member. Members shall be admitted to membership in the Corporation at such time as they complete the application in a format approved by the Directors, upon payment of dues and upon any other condition that the Directors may reasonably determine. No person or entity may be admitted as a Member without such person’s or entity’s consent.

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Section 3.2 New Members. Additional political subdivisions of the State of Colorado may become Members of the Corporation upon application to, and approval by, the Board of Directors. Approval by the Board of Directors of additional Members shall be conditioned upon, at a minimum, compliance by the new Member with such conditions as may be determined appropriate by the Board of Directors pursuant to the Board's authority as described in Section 3.1.

Section 3.3 Annual Meeting. The annual meeting of the Members shall be held at the last quarterly meeting of each year, initially in December, and in any event no later than December 31, at such time on such day as shall be established by the Board of Directors, for the purpose of having the Voting Members, who are in good standing, take any action that may be within the authority of the Members. For the purposes of these Bylaws, "good standing" shall mean that the Member is not in default on any contribution or payment to the Corporation. The annual meeting of the Members shall occur at the same time and at the same place as the annual meeting of the Directors. If the day fixed for the annual meeting shall be a legal holiday in the State of Colorado, such meeting shall be held on the next succeeding business day.

Section 3.4 Special Meetings. Special meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President or by the Board of Directors, and shall be called by the President at the request of one-tenth (1/10<sup>th</sup>) of the Voting Members in good standing.

Section 3.5 Place of Meeting. The Board of Directors may designate any place, unless otherwise prescribed by statute, as the place of meeting for any annual meeting or for any special meeting called by the Voting Members or Board of Directors. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal office of the Corporation in the State of Colorado.

Section 3.6 Notice of Meeting. Written notice stating the place, day and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than sixty (60) days before the date of the meeting, either personally or by first class or registered mail, by or at the direction of the President, or the persons calling the meeting, to each Member of record entitled to vote at such meeting. The aforementioned written notice may be delivered by electronic mail provided it is delivered not less than thirty (30) nor more than sixty (60) days before the date of the meeting. If mailed, such notice shall be deemed delivered when deposited in the United States Mail, addressed to the Member at

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their address as it appears in the record books of the Corporation, with postage thereon prepaid. If mailed electronically, such notice shall be deemed delivered when it is sent via electronic mail, addressed to the Member at their electronic mail address as it appears in the record books of the Corporation.

Section 3.7 Fixing of Record Date. For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or in order to make a determination of Members for any other proper purpose, the Board of Directors may fix in advance a date as the record date for any such determination of Members, such date in any case to be not more than seventy (70) days prior to the date on which the particular action requiring such determination is to be taken. If no record date is fixed for the determination of Members entitled to notice of or to vote at a meeting of Members, the business day preceding the date on which the notice of the meeting is mailed shall be the record date for such determination of Members.

Section 3.8 Voting Record. The officer or agent having charge of the record book of the Corporation shall make, at least ten (10) days before each meeting of Members, a complete record of the Voting Members in good standing, with the address of each Voting Member, which record shall be kept on file at the principal office of the Corporation and shall be subject to inspection by any Member during usual business hours. Such record shall also be produced or otherwise available at the time and place of the meeting and shall be subject to inspection by any Member during the whole of the meeting. The original record book, or the electronic version of same, shall be prima facie evidence as to who are the Members entitled to examine such record book or who are the Voting Members.

Section 3.9 Meeting of All Voting Members. If all of the Voting Members in good standing shall meet at any time and place and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting appropriate action may be taken.

Section 3.10 Quorum. Fifty percent (50%) plus one of the Voting Members in good standing shall constitute a quorum at any meeting of Members, except as otherwise provided by the Colorado Revised Nonprofit Corporation Act (C.R.S. §§7-121-101, *et seq.*), the Articles of Incorporation, or these Bylaws. In the absence of a quorum at any such meeting, upon the request of any Voting Member, a "weighted voting system" shall be utilized, in which each Voting Member represented at the meeting shall have one vote for each resident of that Member's jurisdiction. Under

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the weighted voting system fifty percent (50%) plus one of the total residents of all of the Voting Members' jurisdictions shall constitute a quorum, so long as there are at least forty percent (40%) of the Directors or Alternate Directors present either in person or electronically at the time the weighted vote is utilized. For purposes of determining the number of residents in a county, only those residents in unincorporated areas shall be counted. Unless otherwise prohibited by law, a simple majority of the votes cast in any weighted voting system vote shall decide any issue for which the weighted voting system is requested. The population of each Member's jurisdiction shall be determined in January of each year, based upon the most current available federal and/or state census counts, and such figures shall be used for determining a weighted vote for that year.

Section 3.11 Manner of Acting. If a quorum is present, the affirmative vote of the majority of the Voting Members in good standing represented at the meeting on the subject matter shall be the act of the Members, except in the case of a weighted vote described in Section 3.10, or unless the vote of a greater proportion or number is otherwise required by statute or by the Articles of Incorporation or these Bylaws. All meetings of the Members shall be conducted in accordance with the procedural rules set forth in the most recent edition of Robert's Rules of Order.

Section 3.12 Voting. Unless otherwise provided by these Bylaws or the Articles of Incorporation, each Voting Member in good standing shall be entitled to one vote upon each matter submitted to a vote at a meeting of the Members.

Section 3.13 Informal Action by the Members. Notwithstanding Section 3.16 below, any action required or permitted to be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Voting Members entitled to vote with respect to the subject matter thereof.

Section 3.14 Voting by Ballot. Voting on any question may be by voice vote unless the presiding officer shall order or a majority of the Voting Members in good standing shall demand that voting be by ballot.

Section 3.15 Voting by Proxy. A Voting Member in good standing may vote or otherwise act in person or by proxy. The proxy may be in any form authorized by the Corporation or by the Colorado Revised Nonprofit Corporation Act. The appointment of a proxy is revocable by the Voting Member, either by attending the meeting and voting in person or by signing and delivering to the Secretary of the Corporation or to another officer or agent authorized by the Corporation to

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tabulate proxy votes a writing revoking the proxy or a writing making a subsequent appointment of another proxy.

Section 3.16 Open Meetings. Regular and special meetings of the Members shall be open to the public as generally provided in the Colorado Open Meetings Law, C.R.S. §§ 24-6-401, *et seq.*, or any successor statute thereto, unless two-thirds (2/3) of the quorum present at such meeting votes to hold a closed meeting.

Section 3.17 Affiliates. The Board of Directors may allow affiliates to participate in the activities of the Corporation under terms and conditions to be determined in the sole discretion of the Board of Directors. Such affiliates may be any person or entity. The Board of Directors, at its discretion, may limit or restrict the kind and type of information of the Corporation that is shared with affiliates, and the level of participation that affiliates may have in the conduct of the Corporation's activities.

**ARTICLE IV**  
**Principal Office**

Section 4.1 Principal Office. The principal office of the Corporation in the State of Colorado shall be located at the business office of the President of the Corporation. The initial principal office of the Corporation shall be c/o Todd Barnes, City of Thornton, 9500 Civic Center Drive, Thornton, Colorado 80229. The Corporation may have such other offices as the Board of Directors may designate, or as the business of the Corporation may require from time to time.

Section 4.2 Registered Office. The registered office of the Corporation, required by the Colorado Revised Nonprofit Corporation Act to be maintained in the State of Colorado, may be, but need not be, identical to the principal office, and the address of the registered office may be changed from time to time by the Board of Directors.

**ARTICLE V**  
**Directors**

Section 5.1 Authority and Duties of the Board of Directors. Except as otherwise provided herein or by law, the business and affairs of the Corporation shall be managed and conducted by the Board of Directors. Each Member shall appoint one (1) Director and up to two (2) Alternate

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Directors for its benefit to serve until their respective earlier death, resignation, or removal. The selection and qualifications of each Director, as well as Alternate Directors, shall be within the discretion of each Member; however, notice of any changes or substitutions shall be sent within ten (10) days of the change to the Corporation at its principal office. The Corporation shall act through the Board of Directors, except as hereinafter provided with regard to Special Budgets, although the Board of Directors may vote to delegate specific authority to the officers of the Corporation, or to any executive committee or any other special committees that may be constituted. Directors shall sign on behalf of the Member appointing said Director, except as otherwise provided by law, and the signature of a Director shall constitute execution by the Member.

Section 5.2 Performance of Duties. A Director of the Corporation shall perform his or her duties as a Director, including his or her duties as a member of any committee upon which he or she may serve, in good faith, in a manner he or she reasonably believes to be in the best interests of the Corporation, and with such judgment as an ordinarily prudent person in a like position would use under similar circumstances. In performing his or her duties, a Director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by persons and groups listed in paragraphs (a), (b), and (c) of this Section 5.2; but he or she shall not be considered to be acting in good faith if he or she has knowledge concerning the matter in question that would cause such reliance to be unwarranted. A person who so performs his or her duties shall not have any liability by reason of being or having been a Director of the Corporation. Those persons and groups on whose information, opinions, reports, and statements a Director is entitled to rely upon are:

- (a) One or more officers or employees of the Corporation who the Director reasonably believes to be reliable and competent in the matters presented;
- (b) Counsel, public accountants, or other persons as to matters which the Director reasonably believes to be within such persons' professional or expert competence; and
- (c) A committee upon which he or she does not serve, duly designated in accordance with these Bylaws, as to matters within its designated authority, which committee the Director reasonably believes to merit confidence.

Section 5.3 Meetings. Regular meetings of the Board of Directors shall be held at least four (4) times a year. Special meetings of the Board of Directors may be called by the President, the

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Vice President, or at the written request of three (3) members of the Board of Directors. Business conducted at special meetings shall be limited to the business agenda set forth in the notice of the special meeting, unless all Directors are in attendance at the special meeting and consent to amendment of the agenda for the special meeting. Notice of regular and special meetings shall be sent to all Directors and Alternate Directors in writing no less than one (1) week prior to the meeting. Notice shall be sent to each Director and Alternate Director at the last address the Director and Alternate Director have furnished to the Corporation for this purpose. The annual meeting of the Board of Directors shall be held at the last quarterly meeting of each year, initially in December, and in any event no later than December 31, of each year, at a date, time, and place fixed by the Board of Directors.

Section 5.4 Quorum. Except as otherwise provided in these Bylaws, the presence of a majority of the total number of Directors appointed by Voting Members in good standing shall constitute a quorum for the transaction of business at all meetings of the Board of Directors. Unless otherwise required herein or by law, the act of a majority of the Directors, or their respective Alternate Director in their absence, of Voting Members in good standing present at any meeting at which a quorum is present shall be the act of the Board of Directors. For purposes of determining a quorum, an Alternate Director shall be considered to be a Director for the respective appointing Voting Member if such Director is not present. Notwithstanding the foregoing, in the absence of a quorum at any such meeting of Directors, upon the request of any Director, a “weighted voting system” shall be utilized (except with respect to the election of officers), in which each Director of a Voting Member represented at the meeting shall have one vote for each resident of their respective Voting Members’ jurisdiction. Under the weighted voting system fifty percent (50%) plus one of the total residents of all Voting Member jurisdictions shall constitute a quorum, so long as there are at least forty percent (40%) of the Directors or Alternate Directors present either in person or electronically at the time the weighted vote is utilized. For purposes of determining the number of residents in a county, only those residents in unincorporated areas shall be counted. Unless otherwise prohibited by law, a simple majority of the votes cast in any weighted voting system vote shall decide any issue for which the weighted voting system is requested. The population of each Director’s respective Voting Member jurisdiction shall be determined in January of each year, based upon the most current available federal and/or state census counts, and such figures shall be used for determining a weighted vote for that year.

Section 5.5 Voting. Except as otherwise set forth in these Bylaws and as described in the weighted voting system set forth in Section 5.4 above, each Director, or his/her respective Alternate

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Director in his/her absence, of the Voting Members in good standing shall have one vote. There shall be no voting by proxy by the Directors. Directors shall not be eligible to vote on behalf of a Voting Member during the time that the respective Voting Member is in default on any contribution or payment to the Corporation.

Section 5.6 Action by Directors Without a Meeting. Notwithstanding Section 5.13 below, any action required to be taken or which may be taken at a meeting of the Board of Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by a majority of the Directors appointed by Voting Members in good standing. Such consent may be executed in counterparts and shall be effective as of the date of the last signature thereon, unless the consent specifies a different effective date.

Section 5.7 Participation by Electronic Means. Any members of the Board of Directors or any committee may participate in a meeting of the Board of Directors or committee by means of telephone conference or similar communications equipment by which all persons participating in the meeting can hear each other at the same time. Such participation shall constitute presence in person at the meeting.

Section 5.8 Resignation. Any Director or Alternate Director of the Corporation may resign at any time by giving written notice to their appointing Member, who shall in turn, so notify the Corporation. The resignation of any such Director or Alternate Director shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5.9 Removal. Any Director or Alternate Director of the Corporation may be removed at any time, with or without cause, by their respective appointing Member.

Section 5.10 Vacancies. Any vacancy occurring as the result of the death, resignation, or removal of a Director or Alternate Director shall be filled by the respective Member which initially appointed the deceased, resigned, or removed Director or Alternate Director.

Section 5.11 Compensation. Directors and Alternate Directors shall receive no compensation from the Corporation for their services. Directors and Alternate Directors may be reimbursed for direct expenses incurred in the completion of their duties as specified by the Board of

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Directors, and may be compensated by their appointing Members as each Member chooses.

Section 5.12 Presumption of Assent. A Director or Alternate Director of the Corporation who is present at a meeting of the Board of Directors at which action taken on any corporate matter is taken shall be presumed to have assented to the action taken unless his or her dissent shall be entered in the minutes of the meeting or unless he or she shall file his or her written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director or Alternate Director who voted in favor of such action.

Section 5.13 Open Meetings. Regular and special meetings of the Board of Directors shall be open to the public as provided in the Colorado Open Meetings Law, C.R.S. §§ 24-6-401, *et seq.*, or any successor statute thereto, unless two-thirds (2/3) of the quorum present at such meeting votes to a hold a closed meeting.

Section 5.14 Employees. The Board of Directors at its discretion may employ one or more persons to carry on the business of the Corporation. Funding for the position(s) shall not exceed the assets of the Corporation without the consent of each Member contributing to such funding.

**ARTICLE VI**  
**Officers**

Section 6.1 Number and Election. Officers may serve in the same office for up to two (2) consecutive two (2) year terms. The Officers of the Corporation shall be the President, Vice President, Secretary, and Treasurer, and, at the option of the Board of Directors, Assistant Secretary and Assistant Treasurer, each of whom shall be elected by the Board of Directors without resort to weighted voting as set forth in Section 5.4 above, at the Board of Directors annual meeting in even years. Additionally, the most recent former President, who remains a Director, shall serve as an Officer for a two (2) year term or until the current President resigns, is not elected again, or their term expires. If the immediate past-President is unable to assume this position, then the most recent former President, who remains a Director, shall fill the Past-President Officer position. Only Directors may be elected as Officers. The Board of Directors may at its discretion, create additional officer positions, whose titles and obligations shall be specified in amendments to these Bylaws.

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Section 6.2 President. The President shall, subject to the direction and supervision of the Board of Directors, be the principal operating officer of the Corporation, and shall preside at all meetings of the Board of Directors. The President shall have general active management of the Corporation and shall see that all actions of the Board of Directors are carried into effect. The President shall represent, or appoint a person to represent, the Corporation at any meeting at which such representation is requested. The President shall appoint Directors and Alternate Directors with their consent to Committees. The President shall have such additional authority, powers, and duties as are appropriate and customary for the office of President and as the Board of Directors may prescribe from time to time. The President may sign and execute, with the Secretary or Treasurer, in the name of the Corporation, deeds, contracts or other instruments authorized by the Board of Directors, except in cases where the signing and execution thereof has been expressly delegated by the Board of Directors or these Bylaws to some other officer or agent of the Corporation. The President shall be an ex-officio member of all Committees but shall not be a participant in any Special Budget unless acting as a representative of a participating Member, or unless requested by a majority of those Directors participating in the Special Budget. Following the expiration of his or her term, and provided he or she remains a Director of the Corporation, the President shall serve as a member of the Executive Committee, as Past-President, for the following two (2) year term and until a subsequent President takes office.

Section 6.3 Vice President. The Vice President shall have such authority, powers and duties as are prescribed by the Board of Directors or President. The Vice President shall preside at any meeting at which the President is absent or incapacitated. Upon the death, absence, or disability of the President, the Vice President shall have the authority, powers, and duties of the President until the Board of Directors has the opportunity to elect a new President.

Section 6.4 Secretary. The Secretary shall give, or cause to be given, notice of meetings of the Board of Directors pursuant to Section 5.2 above, keep the minutes of such meetings, keep the Corporation's seal, handle correspondence, maintain all Corporation records and files and prepare and file any reports required by governmental agencies, impress or affix the Corporation's seal to any instrument requiring it (and, when so impressed or affixed, it may be attested to by the Secretary's signature), and have such other authority, powers, and duties as are appropriate and customary for the office of Secretary or as the Board of Directors or the President in the scope of the President's duties may prescribe from time to time. The Secretary shall be the custodian of these Bylaws and shall keep and take to each meeting a current copy of the Bylaws. The Secretary shall keep at the principal office or at such other location as the Directors may approve, the official record book containing the

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names and addresses of all Directors, Alternate Directors, and Members of the Corporation. In the event of a vacancy in both the office of the President and Vice President, or during their absence or inability to act, for some reason, the powers and duties of the office of the President shall be exercised by the Secretary. The Secretary shall be responsible for publishing an annual report no later than March 31, of each year. The Annual Report shall include at least a financial statement, a list of current Members, current Directors and Alternate Directors, a list of current Committees, and a list of projects over the past year.

Section 6.5    Treasurer. The Treasurer shall control the funds and all stocks, bonds, and other securities owned by the Corporation and shall be responsible for the preparation and filing of any filings required by law or regulation of any governmental agency. The Treasurer shall receive all moneys paid to the Corporation and, subject to any limits imposed by the Board of Directors or the President, shall have authority to give receipts and vouchers, to sign and endorse checks and warrants in the Corporation's name and on the Corporation's behalf, and give full discharge for the same. The Board of Directors may, at its discretion, authorize additional Officers or employees to discharge funds and may limit that authority as it sees fit. The Treasurer shall also have charge of disbursement of the funds of the Corporation, shall keep full and accurate records of the receipts and disbursements, and shall deposit all moneys and other valuable effects in the name of and to the credit of the Corporation in such depositories as shall be designated by the Board of Directors. The Treasurer shall provide a report on the financial condition of the Corporation whenever requested by the President. The Treasurer shall have such additional authority, powers, and duties as are appropriate and customary for the office of the Treasurer and as the Board of Directors or the President, within the scope of the President's duties, may from time to time prescribe. The Treasurer shall cause an audit to be performed at the direction of the Board of Directors.

Section 6.6    Assistant Secretary, Assistant Treasurer. An Assistant Treasurer and an Assistant Secretary may be elected by the Directors to assist the Treasurer and the Secretary, respectively, in their duties, and to act for them when they are unavailable.

Section 6.7    Removal, Resignation and Vacancies. Any Officer elected, or appointed by the Board of Directors may be removed at any time by the Board of Directors by a two-thirds (2/3's) vote. Any person appointed by the President to any position may be removed at any time by the Board of Directors or the President. Any Officer may resign at any time by giving written notice of the Officer's resignation to the President or to the Secretary, and acceptance of such resignation shall not be necessary to make it effective unless the notice so provides. Any vacancy occurring in any

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office, the election or appointment to which is made by the Board of Directors, shall be filled by the Board of Directors for the unexpired portion of the term. Any vacancy occurring in any other office of the Corporation may be filled by the Board of Directors or the President for the unexpired portion of the term.

Section 6.8 Bonds. If the Board of Directors by resolution shall so require, any Officer or agent of the Corporation shall give bond to the Corporation in such amount and with such surety as the Board of Directors may deem sufficient, conditioned upon the faithful performance of his/her respective duties and offices.

Section 6.9 Compensation. The Officers shall receive no compensation from the Corporation for their services. However, the Officers may be reimbursed for direct expenses incurred in the completion of their duties.

Section 6.10 Loans. No loans shall be made by the Corporation to any Officer, Director, or Alternate Director.

**ARTICLE VII**  
**Committees**

Section 7.1 Authorization of Committees. The President, from time to time, may designate and appoint Directors and Alternate Directors, with their consent, to one or more Committees. All Corporation Committees shall be given an explicit charge and shall serve at the pleasure of the Board of Directors, except for Committees appointed under Article VIII, which Committees shall be appointed and serve at the pleasure of the Members participating in the Special Budget. Committee membership shall be distributed as evenly as possible among the Members of the Corporation. Although only Directors from Voting Members may vote in Corporation or Special Budget matters, staff of Members may serve on Committees as full participants therein.

Section 7.2 Board Committees. In addition to the Executive Committee, consisting of the Officers of the Corporation and the Past-President, which shall handle budget and finance matters, the President may appoint such other committees as he or she may deem appropriate from time to time.

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**ARTICLE VIII**  
**Special Budgets**

Section 8.1 Special Budgets. Upon direction by the Board of Directors, the Treasurer shall prepare a Special Budget for particular projects that involve more than ongoing research, information sharing, communication, and PEG interconnection functions of the Corporation, for such matters that may include, without limitation, franchise renewals, participation in regulatory proceedings and development of model documents that may benefit a particular subset of the Corporation's membership. Those Voting Members in good standing desiring to participate in such special projects shall authorize their Directors to vote to approve or reject such Special Budget, except that the quorum requirements for the purpose of approving a Special Budget shall only apply to the total number of Voting Members in good standing who have indicated their intent to participate in said specially-budgeted project, rather than the entire membership of the Corporation.

Section 8.2 Contracts. Where less than all the Voting Members of the Corporation are participating in a particular project under the Special Budget provisions of this Article VIII, the Directors representing the Voting Members who have contributed to the Special Budget shall have sole authority to sign and execute agreements or documents on behalf of the Special Budget group or for expenditure of any portion of the Special Budget. Said Directors shall have authority to bind the Corporation contractually, but in stated amounts only up to the amount of the Special Budget, for the purposes for which the Special Budget was prepared.

Section 8.3 Organization. Directors representing Voting Members participating in a Special Budget may organize the group participating in such Special Budget as they deem fit for the purpose of administering and managing the Special Budget and carrying out the objectives for which such Special Budget is prepared; provided that no Special Budget group shall exercise power with regard to the Corporation in general, except with regard to the expenditure of the Special Budget or with regard to the project or objectives for which the Special Budget is prepared and approved. Meetings of Special Budget participants may be limited to Special Budget participants and may be called by Special Budget participants independently from the rest of the Corporation.

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**ARTICLE IX**  
**Finances**

Section 9.1 Operating Budget. Drawing upon such assistance from the Members as shall reasonably be required based upon such direction as the Board of Directors provides, the Treasurer, as a member of the Executive Committee, shall prepare and submit to the Board of Directors, prior to September 1 of the year preceding the budgeted year, an operating budget (“Operating Budget”) for the Corporation for the Board of Directors review, discussion, modification and approval. The Operating Budget shall set forth anticipated expenses, financing sources, and proposed service levels necessary to carry out the purposes of the Corporation. Once approved, the Operating Budget shall take effect the following fiscal year, beginning on January 1. Directors shall vote to approve any Operating Budget according to the voting procedures set forth in Sections 5.4 and 5.5 above, but each Member shall have the right to refuse to pay that Member’s proportionate share and withdraw from the Corporation by giving notice of withdrawal as provided in Article X below.

Section 9.2 Annual Dues. Regardless of which voting procedure is used, Member dues both with regard to the Operating Budget, and any Special Budgets, shall be apportioned and required in direct proportion to each Member’s proportionate share of the population within the jurisdiction of all Members of the Corporation, as maintained by the Corporation as set forth in these Bylaws. Additional assessments may be made, in the discretion of the Directors, to facilitate the Corporation’s involvement in any state or national associations, the participation in which will further the collective interests of the Members of the Corporation. By September 1<sup>st</sup> of each year, Members will be advised of their dues obligations for the upcoming fiscal year. With the approval of the Board of Directors, Members may be credited for the monetary value of any personnel time, equipment, or facilities used by the Corporation, or for such other non-cash contributions that benefit the Corporation as a whole. Failure by any Member to pay its dues to the Corporation by January 31 of the applicable fiscal year shall be considered a default, and such Member shall be considered no longer in good standing for all purposes under these Bylaws until paid in full. Failure by any Member to timely pay its proportionate share of any duly approved Special Budget shall result in the termination of the Member’s right to participate in, or authorize its Director to vote on any issues pertaining to, the projects or matters for which that Special Budget was prepared.

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**ARTICLE X  
Withdrawal**

Any Member may withdraw from the Corporation by filing written notice of its intention to do so with the principal office of the Corporation. Termination will take effect for the purposes of contributions on January 1 of any year, provided there is at least three (3) weeks advance notice. The withdrawal of any Member from the Corporation shall in no way affect the rights and obligations of the remaining Members, except as agreed upon between the remaining Members. Members withdrawing from the Corporation are not entitled to the return of any funds contributed to the Corporation for the Operating Budget, or to the return of any materials or supplies contributed to the Corporation. Members shall be entitled to the return of a pro rata share of the unexpended and uncommitted portions of any Special Budgets within three (3) weeks after the effective date of their withdrawal.

**ARTICLE XI  
Contracts, Loans, Checks, and Deposits**

Section 11.1 Contracts. The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 11.2 Loans. No loans shall be contracted on behalf of the Corporation and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

Section 11.3 Checks, Drafts, etc. All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer, officers, agent, or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 11.4 Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may select.

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Section 11.5 Gifts. The Board of Directors may accept on behalf of the Corporation any contributions, gift, bequest, or devise for the general purposes of or for any special purposes of the Corporation.

**ARTICLE XII**  
**Books and Records**

The Corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of the Board of Directors and Committees having any of the authority of the Board of Directors. The Board of Directors shall adopt records retention policies consistent with applicable law.

**ARTICLE XIII**  
**Conflict of Interest Policy**

A conflict of interest exists whenever a Director, Alternate Director, or Member is associated in any manner with an entity which either directly or indirectly has entered into an agreement with the Corporation, or whenever such entity may be a possible recipient of Corporation favors or expenditures for services or materials. No Director or Alternate Director may vote on a matter in which that Director's or Alternate Director's involvement, or the involvement of the Director's or Alternate Director's appointing Member, may constitute a conflict of interest as described above or under any applicable Colorado statute.

**ARTICLE XIV**  
**Fiscal Year**

The fiscal year of the Corporation shall begin on the first day of January and end on the last day of the next December.

**ARTICLE XV**  
**Indemnification and Insurance**

Section 15.1 Indemnification. The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, or investigatory, by reason of the fact that said person is or was

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an Officer, Director, Alternate Director, or in any similar managerial, advisory, or fiduciary position of the Corporation, or as an employee or agent of, a corporation, partnership, joint venture, trust, or other organization or entity operating under the direction of the Corporation, or of the Corporation itself, against all liability, expense (including attorney's fees), and reasonable costs incurred by said person in connection with any such action, suit or proceeding, except in relation to matters in which said person is adjudged in such proceeding or determined by the Board of Directors (if there is no judicial determination on that subject), to have committed wanton or willful acts or omissions.

Section 15.2 Insurance. The Corporation may purchase and maintain insurance on behalf of any and all of its present or former Officers, Directors, Alternate Directors, agents, or employees against liability or settlement based on asserted liability, incurred by them by reason of being or having been an Officer, Director, Alternate Director, agent, or employee of the Corporation, whether or not the Corporation would have the power to indemnify them against such liability or settlement under the provisions of this Article XV.

Section 15.3 Cost. The Corporation may also in its discretion make payments of the costs and expenses of the type subject to possible indemnification to persons who may be eligible for indemnification pursuant to this Article XV, under suitable contractual arrangements, pending the final determination of their eligibility for indemnification.

Section 15.3 Governmental Immunity. The Directors, Alternate Directors and Officers of the Corporation are representatives of the Member governmental entities at which they are employed or otherwise serve, and their activities on behalf of the Corporation are intended and understood to be part of their responsibilities on behalf of the Member governments. Nothing contained herein is intended to waive, limit or otherwise avoid the coverages and protections afforded to the Corporation's Directors, Alternate Directors and Officers under the Colorado Governmental Immunity Act, as amended.

**ARTICLE XVI**  
**Seal**

The Board of Directors may adopt a seal which may be circular in form and bear the name of the Corporation, which, when adopted, shall constitute the organizational seal of the Corporation. The seal may be used by causing it or a facsimile thereof to be impressed, affixed, manually reproduced or rubber stamped upon any document with indelible ink.

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**ARTICLE XVII**  
**Waiver of Notice**

Whenever any notice is required to be given under the provisions of these Bylaws or under the provisions of the Articles of Incorporation or under the provisions of the Colorado Revised Nonprofit Corporation Act, or otherwise, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the event or other circumstance requiring such notice, shall be deemed equivalent to the giving of such notice.

**ARTICLE XVIII**  
**Amendments**

The Board of Directors shall have the power to amend and repeal any of these Bylaws at any duly convened meeting of the Board of Directors at which a quorum is present after full discussion of such amendment; provided, however, the Board of Directors are precluded from amending these Bylaws to the extent such amendment would result in a change of the rights, privileges, preferences, restrictions, or conditions of the Members as to voting, dissolution, redemption, or transfer. Provided further, however, that notice of the meeting shall have been given, with such notice having set forth the proposed amendment or repeal thereof verbatim.

**ARTICLE XIX**  
**Limitations of Purposes and Powers**

The purposes and powers of the Corporation are subject to the following limitations:

(a) That no part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its Officers, Members, Directors, Alternate Directors, and employees or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make reimbursement for direct expenses incurred on behalf of the Corporation; and

(b) The Corporation shall not, directly or indirectly, participate or intervene in any campaign on behalf of any candidate for public office.

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**ARTICLE XX**  
**Dissolution**

In the event of the dissolution of the Corporation, the Board of Directors shall, after paying or making provision for the payment of all the liabilities of the Corporation, dispose of the general assets of the Corporation to the Members according to their proportionate contribution to the yearly Operating Budget of the Corporation; and, with regard to assets resulting from Special Budgets, according to the participating Members' proportionate contribution to the Special Budget.

ADOPTED \_\_\_\_\_

AMENDED \_\_\_\_\_

**SUBJECT:                   ORDINANCE NO. 1626, SERIES 2013 – AN ORDINANCE  
EXTENDING THE TERMS OF A NONEXCLUSIVE FRANCHISE  
GRANTED BY THE CITY OF LOUISVILLE, COLORADO 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  
– 1ST READING – SET PUBLIC HEARING 02/19/2013**

**DATE:                       FEBRUARY 5, 2013**

**PRESENTED BY:   MEREDYTH MUTH & HEATHER BALSER,  
CITY MANAGER’S OFFICE**

**SUMMARY:**

The City and Comcast Cable are currently working under a seven-year Franchise Agreement signed in 2006 and set to expire on April 11, 2013. Staff has been waiting for Denver and Aurora to complete their new franchises prior to beginning negotiations with Comcast for our new agreement. Denver and Aurora are the two largest franchisees in the State. The franchises they negotiate will lay the ground work on which we can base our new agreement. Basically, whatever Denver and Aurora are able to get in their Franchise will then be on the table for discussion for our franchise. While we may not want all of the items that the larger cities get, we will have a much better chance of getting what we want if Comcast has already agreed to those provisions with Denver and Aurora.

Both Denver and Aurora’s franchises were set to expire at the end of 2012. Currently Denver has extended theirs to the end of June 2013 and Aurora to the end of December 2013. Denver and Aurora specifically timed their franchises to expire concurrently so that they could negotiate together and have the best position representing a very large number of Comcast subscribers. Many other metro area municipalities are in the same position as Louisville by specifically timing franchises to expire after Denver’s so we could use their new franchise as a model. This is similar to our Xcel franchise which is based on Denver’s and in which we received very favorable conditions only because Denver had already negotiated them.

Staff is aware of some of the items that are sticking points in the current negotiations with Denver and Aurora but cannot discuss them as they are part of negotiating strategies for the two cities. That said, staff does know that there are issues under discussion about which we agree with Denver and Aurora and hope they reach a conclusion soon.

**SUBJECT: ORDINANCE NO.1626, SERIES 2013**

**DATE: FEBRUARY 5, 2013**

**PAGE 2 OF 3**

Louisville could do our own franchise and not wait for the larger cities to come to an agreement with Comcast. However, as noted above we likely would not get as good a deal as Denver and Aurora, we would have to start from scratch with Comcast and would likely pay significantly more in legal fees to do so, and we do not want to undermine the negotiations of Denver and Aurora.

It should be noted that the Greater Metro Telecommunications Communications Consortium (GMTC), now the Colorado Communications and Utilities Alliance (CCUA), has tried to negotiate a model franchise for the metro area with Comcast. Comcast was unwilling to participate in the creation of that model franchise. In contrast to what has transpired with Comcast, the CCUA has completed a model franchise with Century Link, which has started to build cable systems in the Denver area.

Attached for first reading is an ordinance that, if approved, extends the existing franchise to April 11, 2014. The extension would be in effect before the April 11 expiration date.

Once we have a franchise template we will begin our negotiations with Comcast. The intent of the franchise as whole is to “meet the cable related needs of the community now and in the future.” To that end, and to help inform our negotiations, we plan public outreach to hear from residents regarding any concerns they have about Comcast cable service and what issues or services they may be looking for in the future. For the last franchise the City completed a full needs assessment including a mail survey to residents, a web-based survey, nine focus group meetings, a broader public meeting, and general comments from the public. Staff is still determining the exact public outreach that will be used this year.

When staff is ready to begin negotiations with Comcast we will ask the Council to appoint one member to work with staff in the negotiations.

One item to keep in mind is that Federal law allows municipalities very limited control and regulation through the franchise process. We cannot regulate prices, tiers, what channels are carried, or access to high definition channels, and we have limited control over customer service. Additionally, it is important to remember that this franchise relates to cable service only and does not pertain to the phone and broadband products that Comcast provides and frequently bundles with their cable service.

**FISCAL IMPACT:**

To extend the franchise one year will not cost the City anything. Extending the existing franchise keeps all of the current provisions in place including payments of the franchise fees and Public, Educational, and Governmental Channel (PEG) fees. For 2012, the City received approximately \$228,000 in franchise fees and approximately \$26,000 in PEG fees.

**SUBJECT: ORDINANCE NO.1626, SERIES 2013**

**DATE: FEBRUARY 5, 2013**

**PAGE 3 OF 3**

Once we start franchise negotiations, the City has budgeted \$25,000 for the services of legal counsel to help represent us in the negotiations.

**RECOMMENDATION:**

Approve Ordinance No. 1626, Series 2013 on first reading, set the public hearing for February 19, 2013.

**ATTACHMENTS:**

1. Ordinance No. 1626, Series 2013
2. [Link to Current Franchise \(3 MB\)](#)

**ORDINANCE NO. 1626  
SERIES 2013**

**AN ORDINANCE EXTENDING THE TERMS OF A NONEXCLUSIVE FRANCHISE GRANTED BY THE CITY OF LOUISVILLE, COLORADO, 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 franchise (“Franchise”) with the City of Louisville (“City”), granted by Ordinance No. 1488, Series 2006; and,

**WHEREAS**, Comcast’s Franchise with the City is scheduled to expire by its own terms on April 11, 2013, and an extension thereof has been requested; and,

**WHEREAS**, Comcast has preserved its right of renewal by timely filing a request with the City to activate the formal process for renewing the Franchise pursuant to the provisions of the Cable Communications Policy Act of 1984 (“Cable Act”); and

**WHEREAS**, Comcast and the City intend to enter into negotiations concerning renewal of the existing Franchise; and,

**WHEREAS**, Comcast and the City anticipate that additional time will be needed to complete negotiations and for the City to consider a proposed franchise renewal, which the parties believe will take no more than twelve (12) months; and,

**WHEREAS**, the City Council finds it is in the best interests of the citizens of the City to extend the term of the Franchise prior to its expiration to allow sufficient time for negotiations regarding a proposed franchise renewal and consideration thereof by the City; and,

**WHEREAS**, Comcast has agreed to the extension of the Franchise as set forth herein;

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

**Section 1.** The term of the Franchise between Comcast and the City is hereby extended from its expiration date of April 11, 2013, for a period of twelve (12) months, to expire on April 11, 2014. The Franchise shall remain in effect, pursuant to the terms and conditions contained therein, until April 11, 2014, or until a new agreement is entered into between the parties, or until the Franchise is terminated pursuant to its terms, whichever shall first occur.

**Section 2.** Neither party waives any right which it enjoys under law as a result of agreeing to this Franchise extension, and Comcast shall not be required to file any additional request or document in order to preserve its right of renewal under Section 626 of the Cable Act.

**Section 3.** Nothing herein shall be construed to prohibit amendment of the Franchise at any time during its extended term in the manner provided by law, or to prohibit any other arrangements that may be agreed upon or enacted during the extended term of the Franchise to address matters related to the Franchise.

**Section 4.** 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 5.** 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 6.** The repeal or modification of any provision of the Municipal Code of the City of Louisville or of any ordinance 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 \_\_\_\_\_, 2013.

\_\_\_\_\_  
Robert P. Muckle, Mayor

ATTEST:

\_\_\_\_\_  
Nancy Varra, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Light, Kelly & Dawes, P.C.  
City Attorney

**PASSED AND ADOPTED ON SECOND AND FINAL READING** this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Robert P. Muckle, Mayor

ATTEST:

\_\_\_\_\_  
Nancy Varra, City Clerk

520CA  
PROPERTY OF  
CENTRAL RECORDS  
PLEASE RETURN FILE TO  
CENTRAL RECORDS

ORIGINAL

**FRANCHISE AGREEMENT**  
**BETWEEN**  
**THE CITY OF LOUISVILLE, COLORADO**  
**&**  
**COMCAST OF COLORADO I, LLC**

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THIS FRANCHISE is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2006, by and between Comcast of Colorado I, LLC (hereinafter referred to, together with any lawful successor, transferee, or assignee, as the "Grantee") and the City of Louisville, Colorado (the "City").

## **SECTION 1. DEFINITIONS**

For the purposes of this Franchise and all Exhibits attached hereto the following terms, phrases, words and their derivations shall have the meanings 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" includes Educational Access, Governmental Access and Public Access, collectively, and means the availability for noncommercial use by various governmental and educational agencies, institutions, organizations, groups and individuals in the community, including the City and its designees, of particular channels on the Cable System to receive and distribute video programming, as permitted under applicable law, including, but not limited to:

(A) "Educational Access" means Access where Schools are the primary users having editorial control over programming and services.

(B) "Governmental Access" means Access where governmental institutions or their designees are the primary users having editorial control over programming and services; and

(C) "Public Access" means Access where the public is the primary user.

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

1.3 "Access Capital Contribution" means the capital contribution paid to the City by the Grantee in accordance with Section 9.

1.4 "Activation" or "Activated" means the status of any capacity on or part of the Cable System wherein the use of that capacity or part thereof may be made available without further installation of system equipment other than Subscriber premise equipment, whether hardware or software.

1.5 "Affiliated Entity" or "Affiliate" when used in connection with the Grantee means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with the Grantee.

1.6 "Bad Debt" means amounts lawfully owed by a Subscriber and accrued as revenues on the books of the Grantee but not collected after reasonable efforts by the Grantee.

1.7 "Basic Cable Service" means the lowest service Tier that includes the retransmission of local television broadcast signals and Access Channels.

1.8 "Cable Act" means the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, and any amendments thereto.

1.9 "Cable Operator" means any Person or group of Persons, including the Grantee, who provides Cable Service over the Cable System and directly or through one or more Affiliates owns a significant interest in such Cable System or who otherwise controls or are responsible for, through any arrangement, any of the management and/or operation of the Cable System.

1.10 "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.

1.11 "Cable System" means the Grantee's 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 shall not include (A) A facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) A facility that serves subscribers without using any public Right-of-Way; (C) A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934 (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; or (D) An open video system that complies with Section 653 of the Cable Act.

When used herein, the term "Cable System" shall mean Grantee's Cable System in the Franchise Area.

1.12 "Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering Video Programming Service or combination of Video Programming Services, whether by analog or digital signal, on a twenty-four (24) hour per day basis or a portion thereof.

1.13 "City" means the City of Louisville, Colorado, a Colorado home rule municipal corporation.

1.14 "Designated Access Provider" means the entity or entities designated by the City to manage or co-manage any Access Channels and facilities. The City may be a Designated Access Provider.

1.15 "Franchise" means this non-exclusive right and authority to construct, maintain, and operate a Cable System through use of the public Rights of Way in the Franchise Area, and is a binding contractual agreement executed by the City and the Grantee.

1.16 "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.

1.17 "Franchise Fee" means consideration paid by the Grantee pursuant to Section 3.1. The term Franchise Fee does not include:

(A) Any tax, fee or assessment of general applicability;

(B) Capital costs which are required by the Franchise to be incurred by the Grantee for Public, Educational or Governmental Access facilities and equipment, including the support required in Section 9;

(C) Requirements or charges incidental to the awarding or enforcing of the Franchise, including but not limited to, payments for bonds, letters of credit, insurance, indemnification, penalties or liquidated damages; or

(D) Any fee imposed under Title 17, United States Code.

1.18 "Grantee" means Comcast of Colorado I, LLC.

1.19 "Greater Metro Telecommunications Consortium" or "GMTC" means a Colorado agency, formed by intergovernmental agreement between franchising authorities in the greater Denver metropolitan area to communicate with regard to franchising matters collectively and cooperatively. The official list of Members of the GMTC is contained in Exhibit A, which Exhibit the City may update from time to time at its sole discretion as additional franchising authorities join, or separate from, the GMTC.

1.20 "Gross Revenues" means all revenues derived directly or indirectly by the Grantee or an Affiliated Entity from the operation of the Cable System used to provide Cable Services within the Franchise Area. By way of example, and not by limitation, to the extent derived from the operation of the Cable System to provide Cable Service in the Franchise Area, Gross Revenues include monthly fees collected from Subscribers for any basic, optional, premium, per-channel, per-program service, or Video Programming Service, installation, disconnection, reconnection, and change-in-service fees; revenues from rentals or sales of converters or other equipment; fees from third party unaffiliated programmers for leased access programming; advertising revenues after deducting agency commissions; late fees and administrative fees; revenues from the sale or carriage of other Cable Services; and revenues from home shopping channels. Gross Revenues shall include revenue received by the Grantee or any entity other than the Grantee where necessary to prevent evasion or avoidance of the obligation under this Franchise to pay the Franchise Fees. Gross Revenues shall not include (i) to the extent consistent with Generally Accepted Accounting Principles, Bad Debt, provided, however, that all or part of any such Bad

Debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; or (ii) any Access Capital Contributions as defined by this Franchise; or (iii) any taxes on equipment or services furnished by the Grantee which are imposed directly on any Subscriber by the State, City or other governmental unit and which are collected by the Grantee on behalf of said governmental unit. The Franchise Fee is not such a tax.

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

1.22 "Incremental Costs" means the direct and actual material and labor cost (including overhead) of constructing, relocating or placing additional ducts, conduit or related structures by the Grantee for the City excluding the costs of design, trenching, boring, pipe bedding, backfilling, compacting, restoring the surface, installation and other charges, costs or expenses that the Grantee would otherwise incur to construct, relocate or place ducts, conduit or related structures for the Grantee.

1.23 "Institutional Network" or "I-Net" means that part of the Cable System facilities or capacity designed for non-commercial voice, video and data communications to, from and among government agencies, schools and libraries within the Franchise Area.

1.24 "Interconnect" or "Interconnection" means the actual physical linking of the Cable System's Access Channels with the Access Channels of another geographically contiguous cable system, including technical, engineering, and physical components to accomplish, complete and adequately maintain such linking, in a manner that permits the transmission and receiving of Access programming between the Cable System and other cable systems.

1.25 "Leased Access Channel" means any Channel or portion of a Channel commercially available for programming in accordance with Section 612 of the Cable Act.

1.26 "Non-Commercial" means, in the context of Access Channels, that particular products and services are not promoted or sold in order to generate profit for the City or any Designated Access Provider. This term shall not be interpreted to prohibit an Access Channel operator or programmer from soliciting and receiving financial support to produce and transmit Video Programming on an Access Channel, or from promoting a contributors business or entity, so long as the revenue received does not exceed the costs of Access Channel operations. In the context of an Institutional Network, Non-Commercial shall mean private network communications from and among government agencies, schools, libraries and other public agencies and excludes any other actions, such as the leasing or reselling Institutional Network capacity to a third party for any purpose whatsoever.

1.27 "Normal Business Hours" means those hours during which most businesses in the community are open to serve customers, and in any event no less than forty (40) hours per week. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some hours on Saturday.

1.28 "Normal Operating Conditions" means those service conditions that are within the control of the Grantee. Those conditions that are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, labor stoppages or slowdowns, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions that are ordinarily within the control of the Grantee include, but are not limited to, maintenance or upgrade of the Cable System.

1.29 "Person" means any natural person, sole proprietorship, partnership, joint venture, association, or limited liability entity or corporation, or any other form of entity or organization.

1.30 "Residential Subscriber" means any Person who lawfully receives Cable Service provided by the Grantee by means of the Cable System, excluding Subscribers in multiple dwelling units that are billed on a bulk basis.

1.30 "Right-of-Way" means land acquired or dedicated to the public, and maintained under public authority or by others, including but not limited to public streets or roads, highways, avenues, lanes, alleys, bridges, sidewalks, easements and similar public property located within the Franchise Area. Right of Way does not include public parks and pedestrian trails.

1.31 "School" means any State accredited K-12 public or private educational institution in the City, and excluding home schools and residential facilities.

1.32 "Standard Installation" means a connection extending no more than 125 feet from the Subscriber's termination panel to the point on the Cable System from which Cable Service can be provided to the Subscriber.

1.32 "Street" means Right-of-Way.

1.33 "Subscriber" or "Customer" means any Person(s) who lawfully elects to receive Cable Services provided by the Grantee by means of the Cable System.

1.34 "Tier" means a category of Cable Services provided by the Grantee for which a separate rate is charged.

1.35 "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

## SECTION 2. GRANT OF FRANCHISE

### 2.1 Grant

(A) The City hereby grants to the Grantee a nonexclusive authorization to make reasonable and lawful use of the Rights-of-Way within the Franchise Area to construct, operate, maintain, reconstruct, repair and upgrade a Cable System for the purpose of providing Cable Services. Such grant is subject to the terms and conditions set forth in this Franchise. This Franchise shall constitute an obligation to fulfill the requirements of this Franchise. The City may not unilaterally alter the material provisions of this Franchise, except by exercise of the City's lawful police powers, acting through ordinance or resolution and with written notice to Grantee prior to taking such action.

(B) The Grantee is granted the right to operate its Cable System using the City's Rights-of-Way in compliance with all lawfully enacted applicable City codes, ordinances, standards, procedures and regulations.

(C) This Franchise shall not be interpreted to prevent the City from imposing other conditions, to the extent permitted by law, should the Grantee provide service(s) other than Cable Service.

(D) No rights shall pass to the 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 of general applicability 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 of general applicability required by the City for Right-of-Way users in connection with operations on or in Right-of-Way or public property, including, by way of example and not limitation, street cut permits; or

(3) Any permits or agreements of general applicability 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.

(E) Grantee understands that the Franchise granted herein is granted subject to prior franchise agreements and subject to all ownerships, easements and other interests of record applicable to the Right-of-Way. Grantee shall be solely responsible for coordinating its activities hereunder with the holders of such franchise agreements or of such ownerships, easements or other interests, subject to the City's control and direction of such coordination efforts. The City makes no representations or warranties with respect to its title to the Right-of-Way, and Grantee agrees the City shall have no liability whatsoever concerning such title.

(F) This Franchise is an express authorization to provide Cable Services. This Franchise does not prohibit or condition the lawful imposition of any conditions on the Grantee with respect to Grantee's delivery of non-cable services, telecommunications services or information services, whether similar, different or the same as the conditions specified herein. This Franchise does not relieve the Grantee of any obligation it may have to obtain from the City an authorization to provide non-cable services, telecommunications services or information services or relieve the Grantee of its obligation to comply with any such authorization(s) that may be lawfully required. However, this Franchise shall not be read as a concession by the Grantee that it needs authorization to provide non-cable services, telecommunications services or information services.

## **2.2 Duration**

The term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be seven (7) years from the effective date of this Franchise, unless terminated sooner as provided herein.

## **2.3 Effective Date**

(A) This Franchise and the rights, privileges and authority granted hereunder shall take effect and be in force from and after the effective date of this Franchise. The Effective Date of this Franchise shall be April 11, 2006.

(B) The grant of this Franchise shall have no effect on the Grantee's duty under the prior franchise, in effect prior to the effective date of this Franchise, to indemnify or insure the City against acts and omissions occurring during the period that the prior franchise was in effect, nor shall it have any affect upon liability to pay all Franchise Fees which were due and owed under a prior franchise. The parties agree that the prior franchise shall be deemed extended and continue in full force and effect until April 11, 2006.

## **2.4 Franchise Nonexclusive**

This Franchise shall be nonexclusive. The City may at any time grant authorization to use the Right-of-Way for any purpose not incompatible with the Grantee's authority under this Franchise and for such additional franchises for other cable systems as the City deems appropriate.

## **2.5 Grant of Other Franchises**

In the event the City enters into a cable franchise with any other Person or entity other than the Grantee to use the City's streets or Right-of-way for the purpose of constructing or operating a cable system to provide Cable Service to all or any part of the Franchise Area in which the Grantee is providing Cable Service under the terms and conditions of this Franchise then the parties agree that the terms and conditions of the cable franchise, taken as a whole, should be reasonably comparable to those contained herein for comparable situations, in order

that one Cable Company not be granted an unfair competitive advantage over another. However, nothing in this provision shall be construed in such a way as to limit the City's authority to enter into other cable franchises that the City, in its sole discretion, determines meet the cable related needs and interests of the community, considering both the added risk of entry into the market and the benefits of incumbency and the historic investment in the Cable System made by the incumbent. The parties recognize and acknowledge that other cable franchises granted by the City might contain terms and conditions that are different than the terms and conditions the Grantee has negotiated and accepted in this Franchise. This Section shall apply to Open Video Systems to the extent the City has regulatory authority over such systems.

## **2.6 Familiarity with Franchise**

The Grantee acknowledges and warrants by acceptance of the rights and privileges 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 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 to the best of its knowledge consistent with all local, State and federal laws and regulations currently in effect, including the Cable Act.

## **2.7 Effect of Acceptance**

By accepting the Franchise, the Grantee: acknowledges and accepts the City's legal right to issue and enforce the Franchise; accepts and agrees to comply with each and every provision of this Franchise subject to applicable law; agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law.

## **2.8 Police Powers**

Grantee's rights hereunder are subject to the police powers of City to adopt and enforce ordinances necessary to the safety, health and welfare of the public, and Grantee agrees to comply with all applicable laws, ordinances and regulations enacted pursuant to the police powers of City, or hereafter enacted in accordance therewith, by City or any other legally-constituted governmental unit having lawful jurisdiction over the subject matter hereof. Any conflict between the provisions of this Franchise and any other present or future lawful exercise of Grantor's police powers shall be resolved in favor of the latter. The Grantee reserves the right to challenge provisions of any ordinance, rule, regulation, resolution or other enactment of the City that conflicts with the rights granted by this Franchise, either now or in the future.

## **2.9 Franchise Area**

Grantee shall provide Cable Service within the Franchise Area, subject to the terms and conditions of this Franchise.

## **SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS**

### **3.1 Franchise Fee**

As compensation for the use of the City's Rights-of-Way, the Grantee shall pay as a Franchise Fee to the City, throughout the duration of this Franchise, an amount equal to five percent (5%) of Grantee's Gross Revenues. Accrual of such Franchise Fee shall commence as of the effective date of this Franchise. The Grantor recognizes that Grantee, at its sole discretion, may allocate revenue between Cable Services (which are subject to the Franchise Fee) and non-Cable Services (which are not subject to the Franchise Fee but may be subject to other fees and/or taxes) on bundled packages of services. No allocation shall violate this Franchise or have the effect of remitting an unfair or unlawfully disproportionate payment of Franchise Fees to Grantor.

In the event that the Grantor believes that Grantee's allocation methodology violates the preceding section, the Grantor and the Grantee shall meet upon advance notice from the Grantor to discuss and resolve the Grantor's concerns. If the Grantor and the Grantee cannot agree on the matter within a reasonable period of time, the Grantor and the Grantee shall submit the matter to a mutually agreeable third party for mediation. The cost of the mediation shall be shared equally between the Grantor and the Grantee. If the Grantor and the Grantee are unable to mutually agree on a mediator, then either the Grantor or the Grantee can bring the matter to a court of competent jurisdiction, or pursue any other remedies available to them in this Franchise or by law.

### **3.2 Payments**

The 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 forty-five (45) days after said dates. Late payments shall be subject to applicable interest and penalties.

### **3.3 Acceptance of Payment**

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 the Grantee.

### **3.4 Quarterly Franchise Fee Reports**

Each payment shall be accompanied by a written report to the City, verified by an authorized representative of the Grantee, containing an accurate statement in summarized form, of the Grantee's Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross Revenues of the Cable System. Upon written request of the City, Grantee shall provide the detailed backup information upon which the summary report was based.

### **3.5 Audits**

Upon thirty (30) days' prior written notice but not more than once per year, the City shall have the right to conduct an audit of the Grantee's records reasonably related to enforce compliance with this Franchise and to calculate any amounts determined to be payable under this Franchise. Provided the Grantee cooperates in making all relevant records available upon request, the City will in good faith attempt to complete each audit within six (6) months. The audit period shall not be any greater than the previous three (3) years. Any additional undisputed amounts due to the City as a result of the audit shall be paid within sixty (60) days following written notice to the Grantee by the City, which notice shall include a copy of the audit findings. If the audit shows that Franchise Fees have been a material underpayment by five percent (5%) or more in a calendar year, then the Grantee shall pay the cost of the audit up to a maximum of \$10,000.

### **3.6 Financial Records**

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

### **3.7 Interest on 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 Additional Commitments Not Franchise Fees**

No term or condition in this Franchise shall in any way modify or affect the 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 the Grantee's Gross Revenues in any twelve (12) month period, the Grantee agrees that the additional commitments including Access Capital Contribution, Access Channels and the I-Net are excluded from the definition of Franchise Fees herein and are not Franchise Fees. Such additional commitments will not be offset or credited against any Franchise Fee payments due to the City, nor do they represent an increase in Franchise Fees to be passed through to Subscribers pursuant to any federal law.

### **3.9 Payment on Termination**

If this Franchise terminates for any reason, the Grantee shall file with the City within one hundred twenty (120) 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. Within forty-five (45) days of the filing of the certified statement with the City, the Grantee shall pay any unpaid amounts as indicated. If the Grantee fails to satisfy its remaining financial obligations as required in this Franchise, the City may do so by utilizing the funds available in any security provided by the Grantee.

## **SECTION 4. ADMINISTRATION AND REGULATION**

### **4.1 General Provisions**

The City shall be vested with the power and right to administer and enforce the requirements of this Franchise and the regulations and requirements of applicable law, including the Cable Act, or to delegate that power and right of administration, or any part thereof, to the extent permitted under federal, State and local law, to any agent, including but not limited to, the Greater Metro Telecommunications Consortium, in the sole discretion of the City. Provided however, that any final decision regarding franchise violations, damages, or revocation shall be made by the City Council pursuant to Section 15.

### **4.2 Rates and Charges**

All Grantee rates and charges for Cable Services shall be subject to regulation by City to the full extent authorized by applicable federal, State and local laws.

### **4.3 No Rate Discrimination**

Grantee's rates and charges shall be non-discriminatory. Grantee shall apply its rates in accordance with governing 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. The Grantee shall permit Subscribers to make any in-residence connections the Subscriber chooses without additional charge and without penalizing the Subscriber therefore. If any in-home connection requires service from the 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 appropriate service charges by the Grantee. Nothing herein shall be construed to prohibit:

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

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

(C) The offering of bulk discounts for Multiple Dwelling Units.

#### **4.4 Filing of Rates and Charges**

(A) Throughout the term of this Franchise, the 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 the Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns. As used in this subsection, no rate or charge shall be considered temporary if Subscribers have the ability over a period greater than twelve (12) consecutive months (or such other period as may be approved by the City) to purchase Cable Services at such rate or charge.

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

#### **4.5 Late Fees**

If the Grantee assesses any kind of fee for late payment, such fee shall comply with applicable law.

#### **4.6 Performance Evaluation**

(A) Upon receipt of the City's written request, special evaluation sessions may be held at any time during the term of this Franchise, but not more than once per year.

(B) Grantee shall include a message on Subscriber bills, notifying Subscribers of the time and location of any evaluation session. Grantee's obligation to provide this notice is contingent upon Grantee's receipt of written notice of the evaluation session from the City, at least sixty (60) days prior to its scheduled date.

(C) Topics which may be discussed at any evaluation session may include, but are not limited to Cable Service rates, Franchise Fees, free or discounted Cable Services, application of new technologies, System performance, Cable Services provided, customer complaints, privacy, amendments to this Franchise, judicial and FCC rulings, line extension policies, and the City's or the Grantee's rules, provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise or any term or provision therein, or a commitment by Grantee to implement new services.

(D) During evaluations under this Section, the Grantee shall fully cooperate with the City and shall provide such information and documents as the City may reasonably require under Section 7 of the Franchise to perform the evaluation.

## SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

### 5.1 Indemnification

(A) General Indemnification. The Grantee shall indemnify, defend and hold the City, its officers, officials, boards, commissions, authorized agents and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorneys' fees and expenses, arising from any casualty or accident to Person or property, including, without limitation, copyright infringement, defamation, hazardous substances 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 the Grantee, its officers, its authorized agents, its employees, its contractors or subcontractors, or by reason of any neglect or omission of the Grantee, its officers, its authorized agents, its employees, its contractors or subcontractors. The Grantee shall reasonably consult and cooperate with the City while conducting its defense of the City.

(B) Indemnification for Relocation. The Grantee shall indemnify the City for any damages, claims, additional costs or expenses assessed against, or payable by, the City related to, arising solely out of, or resulting solely from the Grantee's failure to remove, adjust or relocate any of its facilities in the Streets in a timely manner in accordance with any relocation required by the City pursuant to applicable law.

(C) Additional Circumstances. The 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 attorneys' fees or expenses in any way arising out of any failure by the Grantee to secure consents from owners or authorized distributors or licensees/licensors of programs to be delivered by the Cable System.

(D) Procedures and Defense. If a claim or action arises, the City or any other indemnified party shall tender the defense of the claim or action to the Grantee, which defense shall be at the Grantee's expense. The City may participate in the defense of a claim and, in any event, the Grantee may not agree to any settlement of claims financially affecting the City without the City's written approval, which shall not be unreasonably withheld.

(E) Duty of Defense. The fact that the Grantee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to the Grantee's duty of defense and indemnification under this Section.

(F) Duty to Give Notice. The City shall give the Grantee timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by this Section. In the event any such claim arises, the City or any other indemnified party shall tender the defense thereof to the Grantee and the Grantee shall have the obligation and duty to defend any claims arising there under, and the City shall cooperate fully therein.

(G) Separate Representation. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by the Grantee to represent the City, the Grantee shall pay attorneys' fees and expenses incurred by the City in defending itself with regard to any action, suit or proceeding indemnified by the Grantee. The City's fees and expenses shall include all out-of-pocket expenses, such as attorney and/or 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 the Grantee.

## **5.2 Insurance Requirements**

(A) General Requirement. The Grantee must have adequate insurance during the entire term of this Franchise to protect the City against claims for injuries to Persons or damages to property which in any way relate to, arise from or are connected with this Franchise, or involve the Grantee, its agents, representatives, contractors, subcontractors and their employees.

(B) Initial Insurance Limits. The Grantee must maintain during the Franchise term and for a period of twelve (12) months after expiration, termination or non-renewal thereof, insurance in effect in accordance with the minimum insurance limits herein set forth by the City from time to time. The Grantee shall obtain policies or provide evidence of self insurance for the following insurance limits:

(1) Commercial General Liability: One million dollars (\$1,000,000) per occurrence. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury or death of a person, broad form property damage (including completed operations), explosion and collapse hazard, underground hazard, personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations;

(2) Automobile Liability: One million dollars (\$1,000,000) per person property damage, with respect to each owned, hired and/or non-owned vehicles assigned to or used in the exercise of privileges or obligations of this Franchise; and

(3) Employer's Liability: One million dollars (\$1,000,000) per occurrence.

(4) Workers Compensation Insurance in accordance with state law requirements.

(5) The amounts listed above are the minimum deemed necessary by the City to protect the City's interests in this matter. The City has made no recommendation to the Grantee as to the insurance necessary to protect the Grantee's interests and any decision by the Grantee to carry or not carry insurance amounts in excess of the above is solely that of the Grantee. The Grantee shall be responsible for judgments, settlements, damages, costs, attorneys' fees and expenses that exceed the limits of the Grantee's insurance coverage. The Grantee shall

not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Franchise by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

(C) Endorsements.

(1) All policies shall contain, or shall be endorsed so that:

(a) The City shall be designated as an additional insured, with the Workers Compensation insurance. The Workers Compensation and Employer's Liability insurance policies shall contain a waiver of subrogation as to the City.

(b) The Grantee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, boards, commissions, employees and duly authorized 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, provided the occurrence arises out of the Grantee's acts or negligence; and

(c) The 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.

(2) Each policy of insurance required herein shall not be cancelled or materially altered so as to be out of compliance with the requirements of this Section without thirty (30) days written notice first being given to the City. If the insurance is cancelled or materially altered so as to be out of compliance with the requirements of this Section within the term of this Franchise, the Grantee shall provide a replacement policy. The Grantee agrees to maintain continuous uninterrupted insurance coverage, in the amounts required, for the duration of this Franchise.

(D) Acceptability of Insurers. The insurance obtained by the Grantee shall be placed with insurers with a Best's rating of no less than "A-VI". The City shall have the right, in a reasonable exercise of its discretion, to deny any proposal to provide any required coverages through self-insurance or to revoke any approval previously granted for provision of self-insurance.

(E) Verification of Coverage. The Grantee shall furnish the City with certificates of insurance and endorsement reflecting additional insured status. The certificates for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates for each insurance policy shall be on standard forms or such forms as are consistent with standard industry practices, shall evidence that the required coverages, conditions, and minimum limits are in full force and effect, and shall be received by the City at the time of acceptance of this Franchise by the Grantee with existing insurance coverage to be maintained by the Grantee until that date. The Grantee hereby warrants that its insurance policies satisfy the requirements of this Franchise.

### **5.3 Performance Bond**

(A) The City reserves the right, consistent with applicable law, to require, and the Grantee shall provide, construction and/or Right-of-Way bonds.

(B) The bond shall be in a form reasonably acceptable to the City. The Grantee shall pay all premiums or costs associated with maintaining the bond, and shall keep the same in full force and effect at all times during the term of the proposed construction interval.

(C) The parties agree that the Grantee's maintenance of the bond shall not be construed to excuse unfaithful performance by the Grantee or limit the liability of the Grantee to the amount of the bond(s) or otherwise limit the City's recourse to any other remedy available at law or equity.

### **5.4 Letter of Credit**

(A) No later than the Effective Date of this Franchise, Grantee shall establish and provide to the City, on behalf of the City and the other members of the GMTCC collectively, as security for the faithful performance by Grantee of all of the provisions of this Franchise, including the City's Customer Service Standards, a letter of credit in the amount of one hundred thousand dollars (\$100,000.00).

(B) The letter of credit shall be maintained at one hundred thousand dollars (\$100,000.00) throughout the term of this Franchise, provided that at intervals no more often than every three (3) years, City shall have the right to review whether this amount should be increased to reflect increases in the Denver – Boulder Consumer Price Index during the prior three (3) year period.

(C) 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 after completing all procedures required in Section 15;

(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. Withdrawal of any sums due from the letter of credit in an amount less than the full amount of recovery shall not result in a waiver of the City's right to recover any balance due from a subsequent letter of credit or in any other manner.

(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.

(F) If more than fifty percent (50%), based on the number of Subscribers, of the GMTC members listed on Exhibit A withdraw from the GMTC or are not eligible to draw on the letter of credit held in the name of all GMTC members, Grantee shall have the right to renegotiate the terms of the letter of credit or reduce it by an amount equal to the pro-rata number of Subscribers whose grantors have withdrawn from the GMTC or are not eligible to draw on the shared letter of credit, provided however that the amount of the letter of credit shall in no event be reduced below twenty five thousand dollars (\$25,000.00).

(G) If the City withdraws from the GMTC, Grantee shall obtain a letter or credit or other security consistent with that supplied to other GMTC members, solely on behalf of the City, in the amount of twenty five thousand dollars (\$25,000.00), within sixty (60) days of receiving written notice from the City. In this event, the City will also be removed from the GMTC letter of credit.

## **SECTION 6. CUSTOMER SERVICE**

### **6.1 Customer Service Standards**

The Grantee shall comply with Customer Service Standards, attached as Exhibit B of this Franchise, and as may be lawfully amended from time to time by the City Council acting by ordinance or resolution. It is acknowledged and agreed that the City may, from time to time, modify or add to the Customer Service Standards as permitted by applicable law and upon sixty (60) day written notice to Grantee. The Grantee reserves the right to challenge any Customer Service Standards that it believes are inconsistent with federal law or the contractual rights granted in this Franchise.

### **6.2 Subscriber Privacy**

The Grantee shall comply with privacy rights of Subscribers in accordance with applicable federal, State and local laws.

### **6.3 Customer Service Agreement and Manual**

(A) The Grantee shall provide to Subscribers an accurate, comprehensive service agreement and customer installation packet for use in establishing Subscriber service. This material shall, at a minimum, contain the following:

- (1) The Grantee's procedure for investigation and resolution of Subscriber service complaints.
- (2) Services to be provided and rates for such services.
- (3) Billing procedures.
- (4) Service termination procedure.
- (5) A description of the manner that will be used to provide notice of changes in rates, service or service terms and conditions.
- (6) A complete statement of the Subscriber's right to privacy.
- (7) Equipment policy.
- (8) The name, address and phone number of the customer care department that is responsible for handling cable questions and complaints for the Grantee. This information shall be prominently displayed in the installation packet.

(B) A copy of the installation packet shall be provided to each Subscriber at the time of initial installation and any reconnection or Cable Service upgrade requiring a home visit by the Grantee (excluding reconnections to the same Subscriber within twelve (12) months), and at any time the packet is requested by the Subscriber.

## **SECTION 7. REPORTS AND RECORDS**

### **7.1 Open Records**

The City shall have access to, and the right to inspect, any books and records of the Grantee and/or its Affiliates, if necessary, which are reasonably related to the enforcement of the terms of this Franchise. The Grantee shall not deny the City access to any of the Grantee's records on the basis that the Grantee's records are under the control of any parent corporation, Affiliated Entity or a third party. The City may, in writing, request copies of any such records or books, and the Grantee shall provide such copies within thirty (30) days of the receipt of such request. One copy of all reports and records required under this or any other section shall be furnished to the City at the sole expense of the Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then the Grantee may request, in writing within ten (10) days of receipt of such request, that the City inspect them at

the Grantee's local offices. If any books or records of the 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 for the enforcement of this Franchise, then all reasonable travel expenses incurred in making such examination shall be paid by the Grantee.

## **7.2 Confidentiality**

The City agrees to keep confidential any proprietary or confidential information obtained from Grantee's books or records to the extent permitted by law. The Grantee shall be responsible for clearly and conspicuously identifying the work confidential or proprietary, and within thirty (30) days of a written request from the City, shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under state or federal law. If the City receives a demand from any Person(s) for disclosure of any information designated by the Grantee as confidential or proprietary, the City shall, so far as consistent with applicable law, advise the Grantee and provide the Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. If Grantee believes that the disclosure of such documents by the City would interfere with Grantee's rights under federal or state law, Grantee may institute an action in the Boulder County District Court to prevent the disclosure by the City of such documents. Grantee shall join the Person requesting the documents to such an action. Grantee shall defend, indemnify and hold the City harmless from any claim or judgment as well as any costs and attorneys fees incurred in participating in such proceeding.

## **7.3 Copies of Federal and State Reports**

Upon written request, the Grantee shall submit to the City copies of any pleadings, applications, notifications, communications and documents of any kind, submitted by the Grantee or its Affiliates to any federal, State or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of the Grantee's Cable System within the Franchise Area. The Grantee shall submit such documents to the City no later than sixty (60) days after receipt of the City's request. The 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.

## **7.4 Complaint File and Other Reports**

The Grantee shall keep an accurate compilation of any and all Subscriber complaints regarding the Cable System in the Franchise Area and the provision of Cable Services, and the Grantee's actions in response to those complaints, in a manner consistent with the privacy rights of Subscribers. The Grantee shall provide an executive summary report to the City on an annual basis (unless requested in writing semi-annually by the City, such request to apply to that six month period only) within one-hundred twenty (120) days of the end of each year (or six month period as the case may be) which shall include the following information:

- (A) A summary of customer complaints referred by the City to Grantee;
- (B) A summary of service calls, identifying the number and nature of the requests and their disposition;
- (C) A log of all service interruptions;
- (D) Any significant construction activities occurring in the Franchise Area;
- (E) Average response time for service calls;
- (F) Phone activity report;
- (G) Video programming changes (additions/deletions);

(H) Within sixty (60) days of a request, such other information as reasonably requested by the City; provided however, that if Grantee believes that the City has no authority to require such additional information, it shall provide its written explanation within the sixty (60) day period. Any dispute over such information shall be addressed pursuant to Section 15. Within thirty (30) days of a written request by the City, Grantee shall either provide all backup documentation and records relating to the executive summary, or shall schedule a meeting with the City to discuss the City's concerns and the basis for its request. Within thirty (30) days after such meeting all documents or other backup material relating to the City's concerns shall be provided by the Grantee. Notwithstanding the requirement to provide back up documentation, Grantee is not required to develop new reporting forms to comply. Grantee shall only be required to provide whatever backup documentation it maintains in the ordinary course of its business, that relates to the summary previously provided.

If the City determines it no longer requires the reports described in this Section, the City shall provide written notice of its decision to Grantee.

## **7.5 False Statements**

Any intentionally false or misleading statements or representations, or intentional material omission in any report required by this Franchise shall be a material breach of this Franchise and may subject the Grantee to all remedies, legal or equitable, which are available to the City under this Franchise or otherwise.

## **SECTION 8. PROGRAMMING**

### **8.1 Obscenity**

The Grantee shall not transmit, or permit to be transmitted, over any Channel subject to its editorial control any programming that is obscene under applicable federal, State or local law.

The City acknowledges that Grantee does not have editorial control over the content aired on Access Channels.

## **8.2 Parental Control Device**

Upon request by any Subscriber, the 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.

## **8.3 Complimentary Cable Service**

Upon request of the City, the Grantee shall provide without charge, a Standard Installation and one outlet of Expanded Basic Service to each fire station, police station, School, public library, and other municipal buildings provided that the buildings are either owned and occupied or leased and occupied by the City, and provided further that the buildings are either already served or are within 125 feet of its Cable System. The Grantee shall not be required to provide an outlet to such buildings where a non-Standard Installation is required, unless the City or building owner/occupant agrees to pay the Incremental Cost of any necessary Cable System extension and/or non-Standard Installation. If additional outlets of Cable Service are provided to such buildings beyond those required herein, the building owner/occupant shall pay the usual installation and service fees associated therewith.

The City shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. Such obligation to provide complimentary 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., public viewing areas at golf courses and recreation center workout facilities).

## **8.4 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 programming;
- (D) General entertainment programming;
- (E) Children's programming;
- (F) Arts, culture and performing arts;

- (G) Foreign language programming;
- (H) Science/documentary programming;
- (I) National news, weather and information;
- (J) Access programming, to the extent required by this Franchise, and programmed by the City or its Designated Access Providers.

## **SECTION 9. PUBLIC, EDUCATIONAL AND GOVERNMENTAL AND I-NET**

### **9.1 Access Channels**

In order to meet the need for Access Channels and programming, the Grantee shall make available to the City the following Access Channels throughout the Franchise Area:

(A) Two (2) Access Channels, each of which shall be made available as part of the Basic Cable Service Tier, as follows:

- 1) One Government Access Channel,
- 2) One Public Access Channel.

(B) The parties acknowledge that the Boulder Valley School District (“BVSD”) currently programs education access programming in the City and other Boulder County communities on a separate Educational Access Channel provided by Grantee to BVSD. In addition to the two Access Channels described in subsection (A) above, Grantee shall continue to provide this Educational Access Channel to BVSD, and such programming shall remain as part of the Basic Cable Service Tier in the City, for so long as BVSD, in its sole discretion, continues to program the channel. If BVSD decides to stop programming the Educational Access Channel, it will revert to Grantee to use as Grantee determines, subject to this subsection (B). If BVSD has returned the Educational Access Channel described herein, and if subsequently there is a demonstrated community need and Subscriber demand for an Educational Access Channel as reasonably determined by the City, then one (1) additional Access Channel shall be made available to the City within one-hundred fifty (150) days of receipt by the Grantee of a written request from the City which demonstrates community need for an Educational Access Channel. If, in response to the City’s request, Grantee provides the Educational Access Channel pursuant to this Section, the City acknowledges that other Video Programming services may be removed from the Basic Service Tier to make this additional Access Channel available.

(C) At such time when any individual Access Channel is occupied by non-character-generated programming eighty (80%) percent of the time during “regular viewing hours” for any twelve (12) consecutive week period, the City may request the use of one (1) additional Access Channel, by giving the Grantee one hundred fifty (150) days written notice. For purposes of this subsection, “regular viewing hours” shall be the hours between 3 p.m. and 11 p.m., Monday

through Friday, and between noon and midnight on weekends. At no time shall the number of Access Channels exceed four (4) total. In order to qualify for an additional Access Channel, at least sixty percent (60%) of the programming on the existing Access Channel must be locally produced. For purposes of this subsection, "locally produced" means produced within the State of Colorado.

(1) A program may be repeated up to three (3) times after its first run during regular viewing hours. A program shall also include bulletin board material if the material consists of multiple and different text (or video and text).

(2) If, after provision of additional Access Channel pursuant to the aforementioned criteria, the demand for such programming is reduced to the point where over a twelve (12) week period all such programming can be scheduled on the initial Access Channel during regular viewing hours, the additional Channel shall be returned to Grantee upon one hundred fifty (150) days notice of its intent to reclaim the channel.

(3) The fact that a Channel may be reclaimed as a result of decreased demand as provided herein, does not preclude the additional Channel from being made available subsequently should demand increase in accordance with this subsection (C).

(D) Grantee Use of Fallow Time. Because blank or under utilized Access Channels are not in the public interest, in the event the City or Designated Access Provider elects not to fully program its Channel(s), Grantee may program unused time on those channels subject to reclamation by the City upon no less than one hundred fifty (150) days notice.

(E) The City shall indemnify Grantee for any liability, loss, or damage it may suffer due to violation of the intellectual property rights or copyright infringement of third parties on the Government Access Channel. The City shall require that its Designated Access providers indemnify Grantee for any liability, loss, or damage it may suffer due to violation of the intellectual property rights or copyright infringement of third parties on any Access Channel on which that Designated Access Provider is involved in programming or operations.

(F) If Grantee makes changes to its Cable System that necessitate modifications to Access signal transmission facilities and equipment (including but not limited to the upstream paths), Grantee shall provide reasonable advance notice of such changes to the City and its Designated Access Provider(s) and shall provide, at Grantee's expense, any additional or modified facilities or equipment necessary to implement such modifications within a reasonable period of time prior to the date that the system changes are to be made, so that Access signal transmission facilities and equipment may be used and operated as intended and without interruption, including, among other things, so that transmissions of live and taped communications can be cablecast efficiently to Subscribers. By way of example, and not limitation, should the Grantee cease delivery of all signals in an analog format to Subscribers, it will provide the signal transmission and/or conversion equipment necessary so that Access signals can be transmitted in a digital format.

(G) All assigned Access Channels can be used to transmit programming in any format which is technically compatible with the Cable System, including, by way of example and not limitation, video, audio only, secondary audio and/or text (character generated) messages. Such uses must be in furtherance of Access purposes. Any Access Channels provided via digital or compressed video technology shall have at least the same transmission quality as is used to carry any of the commercial Channels that deliver programming on the Cable System and shall be full motion video. The provision of Access Channels via digital or compressed video technology will not reduce or increase the total Access Channel requirement herein.

## **9.2 Management and Control of Access Channels**

The City may authorize Designated Access Providers to control, operate, and manage the use of any and all Access Channels made available by Grantee under this Franchise. The City or its designee may formulate rules for the operation of the Access Channels, consistent with this Franchise. Nothing herein shall prohibit the City from authorizing itself to be a Designated Access Provider.

## **9.3 Access Channel Identification/Location/Relocation/Bill Insertions**

(A) The Grantee will use reasonable efforts to minimize the movement of Access Channel assignments. The Grantee shall provide to the City a minimum of ninety (90) days notice prior to any relocation of any Access Channels, unless the change is required by federal law, in which case the Grantee shall give the City the maximum notice possible. Grantee shall reimburse the City for any costs incurred for any promoting, marketing, advertising and notice of the Channel change up to five thousand dollars (\$5,000), so long as the relocation was a requirement of Grantee.

(B) The Grantee, upon sixty (60) days written request, shall provide the City the opportunity to include two (2) Access Channel bill insertions and up to two (2) Access Channel bill messages per year. Bill messages are subject to printing space limitations. The City or its Designated Access Provider shall be responsible for the costs of printing its bill insertion, the cost of inserting the information into the Grantee's bills and for any incremental postage costs. Bill insertions must conform to the Grantee's reasonable mailing requirements. The Grantee shall be provided an opportunity to review and in its reasonable discretion, approve all Access bill insertions and messages.

## **9.4 Access Interconnections**

Grantee acknowledges that is the City's goal to further the community's needs and interests by providing for the Interconnection of Access Channels between the City and surrounding communities. Grantee shall include the City in any existing Access Channel Interconnection, which facilitates the sharing of Access programming between and among participating GMTC members. In addition, the City shall have the right to use any Access Channel for Access programming provided to it through an Interconnect.

## **9.5 Return Lines**

(A) The Grantee shall continue to provide and maintain a return line from City Hall to the Cable System Headend for so long as such return line is necessary. It is the Grantee's responsibility to ensure that the signal carried on the existing return line from the existing point of demarcation back to the Cable System Headend meets FCC technical standards. Similarly, it is the City's responsibility to ensure the technical quality of the signal from the City's origination equipment to the designated demarcation point meets FCC technical standards.

(B) The Grantee shall maintain return lines from the Cable System Headend to the City Police Department at 992 West Via Appia and to the City's Recreation Center at 900 West Via Appia. Grantee shall additionally construct and maintain return lines from the Cable System Headend to the City's new library building at 951 Spruce Street.

(C) If the City requests a return line to a facility operated by a Designated Access Provider of Public Access programming, Grantee shall construct such return line at its expense, if the location is within one hundred twenty-five (125) feet from its distribution cable, or otherwise, for such costs to the Designated Access Provider as calculated pursuant to Section 13.1 (B). The City may request additional return line(s) to City facilities or to accommodate the needs of any Designated Access Provider(s). Any such requests must be in writing. The City shall be responsible for paying any and all costs associated with engineering and construction of any additional or new return lines requested by the City. The City and Grantee will mutually agree upon the time frame to provide additional return lines requested by the City.

(D) All return lines from the Cable System Headend to the City buildings or to accommodate Designated Access Provider(s) described in this Franchise are for Video Programming services only and will be terminated at a designated internal location within the City buildings at a standard termination panel provided by Grantee. The City will provide wall mount backboard and a power source for the termination panel. The termination panel will be the fiber demarcation point.

(E) The Grantee shall provide the necessary transmitter(s) and receiver(s), capable of accepting, transmitting and receiving the video/audio signal(s) from the locations where Grantee has installed a return line for Access broadcasting and where such Access programming originates ("Access origination locations") without degradation, limitation or loss of signal. For purposes of signal quality, the identified point of demarcation will be the input connector on the transmitter(s) provided by the Grantee at the Access origination locations. Once the transmitter(s) provided by the Grantee receives the signal(s) from the Access origination locations, to transmit them to the Cable System Headend the Grantee shall be responsible for the signal quality on the return line to the Cable System Headend and on the Cable System.

## **9.6 Technical Quality**

The Grantee shall maintain Access Channels at the same level of technical quality and reliability required by this Franchise and all other applicable laws, rules and regulations for other

Channels. The Grantee shall provide routine maintenance and shall repair and replace, if necessary, Grantee's transmission equipment, including transmitters and receivers, associated cable and equipment, required to carry a quality signal to and from the City's facilities (and Designated Access Providers' facilities) and the Grantee's facilities for the Access channels provided under this Franchise. The City, at its expense, shall be responsible for maintenance, repair and replacement of the City's equipment.

### **9.7 Institutional Network (I-Net)**

Grantee will work cooperatively with the City to create proposals as desired for network services that allow for private, non-commercial two-way communications between City buildings located in the Franchise area. Nothing contained herein should be construed as a requirement for the Grantee to provide these network services without fair reimbursement from the City. Grantee and the City shall enter into a separate contract to address terms, conditions and compensation for an I-Net if the City requests construction of an I-Net. The City may not use any Access Capital Contributions or Replacement Capital Contributions remitted by Grantee to pay for construction of an I-Net that is not constructed by Grantee. The City may use such Contributions for I-Net costs if construction is provided by Grantee.

### **9.8 Support for Access Capital / I-Net Capital Costs**

(A) Within ninety (90) days of the Effective Date of this Franchise, Grantee shall provide a one time grant of eighty thousand (\$80,000.00) dollars (the "Access Capital Contribution") which the City shall use to outfit City Council chambers and other facilities and to purchase field equipment to produce Access programming. Grantee shall be entitled to fully recover this contribution from Residential Subscribers pursuant to federal law.

(B) Grantee shall notify the City, in writing, when the Access Capital Contribution has been fully recovered. After the Access Capital Contribution is fully recovered by Grantee, or forty-two (42) months whichever occurs first, upon sixty (60) days written notice from the City, Grantee shall provide to the City an amount, not to exceed fifty cents (\$.50) per Residential Subscriber per month. Grantee shall not be responsible for collecting or paying the Replacement Capital Contribution with respect to gratis or complimentary accounts. The Grantee may recover this amount to the extent and in a manner provided for in federal regulations. Such payments are to be made quarterly on the same schedule as Franchise Fees. With each quarterly payment, Grantee will prepare and submit a report, in a form acceptable to the City that shows how such payments were calculated.

(C) Upon written request from Grantee, the City shall provide Grantee with public documents it maintains in the regular course of the City's business, consistent with the Colorado Open Records Act, which documents the use of the Access Capital Contribution(s) and/or Replacement Capital Contribution.

(D) The City agrees that operations of Access Channels require funding. If a reasonable amount of operating support for all Access Channels is no longer available, then the

City shall so notify Grantee and Grantee's obligations to provide a Replacement Capital Contribution shall be eliminated, for such period of time that a reasonable amount of operating support is not provided for the operation of at least one (1) Access Channel.

## **SECTION 10. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION**

### **10.1 Construction**

(A) Subject to applicable federal, state and local laws, regulations and ordinances and the provisions of this Franchise, the Grantee may perform all maintenance, construction, repair, upgrade and reconstruction necessary for the operation of its Cable System. All construction and maintenance of any and all of the Grantee's facilities within Right-of-Way shall, regardless of who performs the construction, be and remain the Grantee's responsibility. The Grantee, or Grantee's authorized contractors shall apply for, and obtain, all permits necessary for construction of any facilities and for excavating and laying any facilities underground within the Right-of-Way. The Grantee shall pay all applicable fees upon issuance of the requisite construction permits by the City to the Grantee.

(B) The Grantee may make excavations in Right-of-Way for any facility needed for the maintenance or extension of the Grantee's Cable System, subject to local ordinances. Prior to doing such work, the Grantee shall apply for, and obtain, appropriate permits from the City, and give appropriate notices to the City. As a condition of any permits so issued, City officials may impose such conditions and regulations as are lawful for the purpose of protecting any structures in such Right-of-Way, proper restoration of such Right-of-Way and structures, protection of the public and the continuity of pedestrian or vehicular traffic. When obtaining a permit, Grantee shall inquire about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or 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 Rights-of-Way cuts within the Franchise Area.

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

### **10.2 Location of Facilities**

(A) Upon the City's request, in connection with the design of any City project, the Grantee will verify the location of its underground Cable System within the Franchise Area by marking on the surface the location of its underground facilities in accordance with applicable laws. However, when necessary for the actual construction of any City project, the City may request that the Grantee identify the exact location of its underground System by excavating (e.g., pot holing) at no expense to the City.

(B) Upon the City's written request, the Grantee will provide, at no expense to the City, copies of drawings, route maps or plans showing the horizontal and vertical location of Grantee's System within the Franchise Area. Grantee shall provide the requested documentation within thirty (30) days, or other period of time as may be agreed upon by both parties.

### **10.3 Restoration of Right-of-Way and Other Public Property**

If the Grantee excavates, disturbs or damages any Right-of-Way or other public property, then the Grantee shall be responsible for restoration in accordance with applicable regulations to a condition as good or better than its prior condition in the City's sole determination. The City may, after providing written notice to the Grantee and an opportunity to cure a failure in restoration, or without notice where the excavation, disturbance or damage may create a risk to public health, safety or welfare, repair, refill or repave any excavation, disturbance or damage. The cost thereof, including the costs of inspection and supervision, shall be paid by the Grantee within forty-five (45) days of an itemized billing invoice. All excavations made by the Grantee in Right-of-Way shall be properly safeguarded for the prevention of accidents.

### **10.4 Maintenance and Workmanship**

(A) The 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 Right-of-Way, by or under the City's authority.

(B) The Grantee shall provide and use any equipment and appliances necessary to control and carry the Grantee's signals so as to prevent injury to the City's property or property belonging to any Person. The Grantee, at its own expense, shall repair, renew, change and improve its facilities to keep them in good repair and safe and presentable condition, in accordance with all applicable codes.

(C) 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 9-1.5-101, *et seq.*, as such may be amended from time to time, and will further comply with and adhere to local procedures, customs and practices relating to the one call locator service program.

(D) The Grantee shall give reasonable notice to private property owners of construction work in adjacent Right-of-Way.

### **10.5 Acquisition of Facilities**

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

facilities shall immediately be subject to the terms of this Franchise.

## **10.6 Relocation of Facilities**

(A) Movement of the System For and By the City. Nothing in this Franchise shall prevent the City from constructing any public work or capital improvement. The Grantee shall assume the costs (in accordance with applicable law) associated with any requirement of the City to relocate its Cable System facilities located in the Right-of-Way. Following sixty (60) days written notice by the City, the Grantee shall remove, replace, relocate, modify or disconnect any of its Facilities within any Right-of-Way, or on any other property of the City. 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. The Grantee shall remit payment to the City within forty-five (45) days of receipt of an itemized list of those costs.

In the case of fire, disaster or other emergency, the City may remove or disconnect the Grantee's facilities and equipment located in the Right-of-Way or on any other property of the City. The City shall provide reasonable notice to the Grantee prior to taking such action and shall provide the Grantee with the opportunity to perform such action unless, in the City's reasonable discretion, the eminent threat to public health safety or welfare make such notice impractical.

(B) Movement for Other Permittees. At the written request of any Person holding a valid City permit and upon reasonable advance notice, the Grantee shall remove, replace, relocate, modify or disconnect any of its facilities or temporarily raise, lower or remove its facilities as necessary to accommodate the work under the permit. Unless the project is identified by the City as a part of a City capital improvement project, the cost must be paid by the permit holder, and the Grantee may require the estimated payment in advance.

(C) The City shall not be required to obtain easements for the Grantee.

## **10.7 Right-of-Way Vacation**

If any Right-of-Way or portion thereof used by the Grantee is vacated by the City during the term of this Franchise, the City shall provide Grantee written notice of such intent to vacate the Right-of-Way or portion thereof. Unless the City specifically reserves to the Grantee the right to continue the use of vacated Right-of-Way, the Grantee shall, without delay or expense to the City, remove its facilities from such Right-of-Way, and restore, repair or reconstruct the Right-of-Way where such removal has occurred. In the event of failure, neglect or refusal of the Grantee, after sixty (60) days' notice by the City, to restore, repair or reconstruct such Right-of-Way, the City may do such work or cause it to be done, and the reasonable cost thereof, as found and declared by the City, shall be paid by the Grantee within forty-five (45) days of receipt of an invoice and documentation.

## **10.8 Removal of Discontinued Facilities**

Whenever the Grantee intends to discontinue using any Cable System facilities within the Right-of-Way, the Grantee shall submit to the City a complete description of the facilities and the date on which the Grantee intends to discontinue using the facilities. The Grantee may remove the facilities or request that the City allow them to remain in place. Notwithstanding the Grantee's request that any such facilities remain in place, the City may require the Grantee to remove the facilities from the Rights of Way or modify the facilities to protect the public health, welfare, safety and convenience. If the City requests modifications of the facilities under this Section to allow for City use of such Facilities, and such modifications are not, in Grantee's opinion, economically feasible, then Grantee and City shall meet to discuss a more economical solution. The City may require the Grantee to perform a combination of modification and removal of the facilities. The Grantee shall complete such removal or modification in accordance with a reasonable schedule set by the City. Until such time as the Grantee removes or modifies the facilities, or until the rights to and responsibility for the facilities are accepted by another Person having authority to construct and maintain such facilities, the Grantee shall be responsible for all necessary repairs and relocations of the facilities, as well as maintenance of the Right-of-Way, in the same manner and degree as if the facilities were in active use, and the Grantee shall retain all liability for such facilities. If Grantee abandons its facilities, the City may choose to use such facilities for any purpose.

## **10.9 Hazardous Substances**

(A) The Grantee shall comply with all applicable State and federal laws, statutes, regulations and orders concerning hazardous substances within the Right-of-Way.

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

## **10.10 Undergrounding of Cable**

(A) When required by applicable ordinances, resolutions, regulations or rules of the City or applicable State or federal law, Grantee's Cable System shall be placed underground at no expense to the City unless otherwise required by applicable law, including, C.R.S. 29-8-101. Placing facilities underground does not preclude the use of ground-mounted appurtenances.

(B) In areas of the Franchise Area where electrical or telephone utility wiring is aerial and Grantee's existing Cable System facilities are aerial, the Grantee may continue to operate and maintain the existing Cable System aerially, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

(C) In those areas of the Franchise Area where electrical or telephone utility wiring is aerial and the Grantee's construction or installation of any Cable System coaxial wires or fiber sheaths results in a change in use or an intensification of an existing use, the Grantee may request consent from the City for aerial construction. Consent by the City will be granted on a case-by-case basis and will not be unreasonably withheld.

(D) When electric and telephone utility wiring and the aerial lines of telecommunications providers in an area of the Franchise Area are subsequently relocated to underground the Grantee shall concurrently relocate its aerial Cable System facilities to underground, at no cost or expense to the City.

(E) The Grantee shall utilize existing poles wherever possible. 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.

(F) Related Cable System facilities (such as pedestals, equipment cabinets, etc.) must be placed in accordance with applicable City code requirements and underground utility policies.

(G) The City shall provide reasonable advance notice of available opportunities for access to open trenches. To the extent technically and economically feasible, the Grantee shall participate with other providers in joint trench projects to relocate its overhead facilities underground provided that Grantee's share of the cost of participation in a joint trench project does not exceed Grantee's cost of relocation to a single occupancy trench.

#### **10.11 Avoid Interference**

The Grantee shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of said public or private property by any Person. In the event of interference, the City may require the removal or relocation of the Grantee's lines, cables and other appurtenances from the property in question.

#### **10.12 Tree Trimming**

Upon obtaining a permit from the City, which shall not be unreasonably withheld delayed or conditioned, the Grantee may trim or prune trees in the Right-of-Way that interfere with the Cable System. Any such trimming or pruning will be performed using standard practices and in accordance with City ordinances, standards, rules and regulations.

#### **10.13 Standards**

(A) All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. The Grantee must comply with all federal, State and local 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, the Grantee must comply with the National Electric Code.

National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

(B) The Grantee shall ensure that all cable drops are properly bonded and grounded at the home, consistent with applicable code requirements. All non-conforming or non-performing cable drops shall be replaced by the Grantee as necessary.

(C) All installations of equipment shall be permanent in nature, durable and installed in accordance with good engineering practices and of sufficient height to comply with all federal, State and local regulations, ordinances and laws so as not to interfere in any manner with the right of the public or individual property owner, 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.

(D) In the maintenance and operation of its Cable System in the Right-of-Way and other public places, and in the course of any new construction or addition to its facilities, the Grantee shall proceed so as to cause the least possible inconvenience to the general public; any opening or obstruction in the Right-of-Way or other public places made by the Grantee in the course of its operations shall be guarded and protected at all times by the placement of adequate barriers, fences or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly marked.

#### **10.14 Corrections and Discontinuance of Unsafe, Nonconforming, or Unauthorized Conditions**

Whenever the City determines that the Grantee has taken any action or caused any condition within the Franchise Area in violation of the Louisville City Code or other applicable City ordinances, standards, procedures and/or regulations that results in or produces any unsafe, nonconforming, or unauthorized condition the City may order the correction or discontinuance of such condition or any activity causing such condition, or take any other remedial action, pursuant to applicable provisions of the Louisville City Code or other applicable City ordinances, standards, procedures and/or regulations, as from time to time amended.

#### **10.15 Work of Contractors and Subcontractors**

The Grantee's contractors and subcontractors shall be licensed and bonded in accordance with local ordinances, regulations and requirements. Work by contractors and subcontractors shall be subject to the same restrictions, limitations and conditions as if the work were performed by the Grantee. The Grantee shall be responsible for all work performed by its contractors and subcontractors and others authorized by Grantee to perform work on its behalf, and shall ensure that all such work is performed in compliance with this Franchise and other applicable law. 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 laws governing the work performed by them.

## **SECTION 11. SYSTEM DESIGN AND CAPABILITY**

Prior to the effective date of this Franchise, the Grantee undertook a voluntary upgrade of its Cable System to a hybrid fiber coaxial (HFC) fiber-to-the-node system architecture, with fiber-optic cable deployed from the Headend to the nodes and tying into a coaxial system already serving Subscribers. The Cable System delivers two-way cable communications as well as high quality signals that meet FCC technical quality standards regardless of a particular manner in which signal is transmitted. The Cable System utilizes an infrastructure that will permit additional improvements necessary for high quality and reliable service throughout the Franchise term. The Grantee agrees to maintain the Cable System in a manner consistent with these specifications throughout the term of this Franchise.

## **SECTION 12. TECHNICAL STANDARDS**

### **12.1 Technical Performance**

The technical performance of the Cable System shall meet or exceed all applicable technical standards authorized or required by law, including, without limitation, FCC 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. The Cable System shall additionally meet the Standards of Good Engineering Practices adopted by the National Cable Telecommunications Association, and any similar standards that may be adopted by NCTA during the term of this Franchise.

### **12.2 Cable System Performance Testing**

(A) The Grantee shall, at its expense, perform all tests on its Cable System required by the FCC and shall maintain written records of its test results. Copies of such test results will be provided to the City upon written request.

(B) All required technical performance or other Cable System tests shall be at the expense of the Grantee and may be witnessed by representatives of the City. Upon written request, the Grantee will notify the City before any required technical proof-of-performance or other testing occurs. If the City notifies Grantee that it wishes to have a representative present during the next test(s), Grantee shall reasonably cooperate in scheduling its testing so that the representative can be present so long as Grantee is still able to meet FCC regulations for testing dates. Notwithstanding the above, representatives of the City may witness all technical performance tests.

(C) The Grantee shall promptly take such measures as are reasonably necessary and shall diligently continue the same until completion in order to correct any performance deficiencies fully and to prevent their recurrence, in accordance with FCC regulations. The Grantee's failure to correct deficiencies to bring the system in compliance with FCC regulations shall be a violation of this Franchise. Sites shall be re-tested within five (5) days following correction until correction has been confirmed and the test results confirm that the Cable System

is in compliance with FCC regulations.

### **12.3 Additional Tests**

(A) Upon thirty (30) days prior written notice, the City may require the Grantee to conduct proof of performance tests. The City may only trigger this testing requirement once during the thirty-six (36) month franchise renewal window.

(B) Notwithstanding Subsection (A) above, where there exists a pattern of poor technical performance or signal quality on the Cable System generated from multiple Subscribers from a similar area within the Franchise Area, the City may upon thirty (30) days prior written notice, require the Grantee to conduct an additional performance test within the City. The 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:

- (1) The nature of the complaint or problem that precipitated the special tests;
- (2) The Cable System component tested;
- (3) The equipment used and procedures employed in testing;
- (4) The method, if any, in which such complaint or problem was resolved; and
- (5) Any other information pertinent to said tests and analysis that may be required.

## **SECTION 13. SERVICE AVAILABILITY**

### **13.1 Service Availability**

(A) In general, except as otherwise provided herein, the Grantee shall provide a Standard Installation of Cable Service within seven (7) days of a request by any Person within its Franchise Area. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by the Grantee, receipt of a written request by the Grantee or receipt by the Grantee of a verified verbal request. The Grantee shall provide such service:

- (1) With no line extension charge except as specifically authorized herein.
- (2) At a non-discriminatory installation charge for a Standard Installation, with additional charges for non-Standard Installations computed according to a non-discriminatory methodology for such installations.

(B) No customer shall be refused service arbitrarily. However, for unusual circumstances, such as the existence of more than one hundred twenty-five (125) feet of aerial distance from distribution cable to connection of service to Subscribers, or a density of less than thirty-five (35) residences per 5280 feet of trunk or distribution cable, service may be made available on a pro rata cost basis of construction including cost of material, labor and easements. For the purpose of determining the amount of cost of construction to be borne by the Grantee and Subscribers 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 5280 feet of its trunk or distribution cable and whose denominator equals thirty-five (35). Subscribers 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 pro rata cost of construction borne by such potential Subscribers be paid in advance.

### **13.2 Universal Service**

(A) Grantee shall not arbitrarily refuse to provide Cable Service to any Person within its Franchise Area. Subject to subsection 13.1, all Dwelling Units, Multiple Dwelling Units and commercial establishments in the Franchise Area shall have the same availability of Cable Services from Grantee's Cable System under non-discriminatory rates and reasonable terms and conditions. The City acknowledges that the Grantee cannot control the dissemination of particular Cable Services beyond the point of demarcation at a Multiple Dwelling Unit. Notwithstanding the foregoing, Grantee may introduce new or expanded Cable Services on a geographically phased basis, where such services require an upgrade of the Cable System. Grantee may also charge for line extensions and non-standard installations pursuant to subsection 13.1.

(B) If there is new construction within the City, and the Grantee is not permitted by the contractor or developer to install its Facilities while trenches are open, Grantee shall inform the City of the problem as soon as reasonably possible, and the City shall attempt to resolve the issue with all interested parties.

### **13.3 Annexations**

(A) In the event that the City annexes territory that is contiguous to the current Franchise Area and not being provided Cable Service by the Grantee or an Affiliate of Grantee, Grantee agrees that it will extend its Cable System into the newly annexed territory under the terms of subsection 13.1; provided however, that Grantee shall not be penalized for failure to timely extend its Cable System to newly developed areas if the developer or other responsible party does not notify Grantee of the time frame for installing utilities in accordance with the City's applicable ordinances, regulations and/or subdivision agreements.

(B) In the event the City annexes territory that is currently being provided Cable Service by Grantee or an Affiliate of Grantee, but not the same Cable Service as provided within the current Franchise Area, Grantee shall estimate the cost to make such adjustments to the Cable System as is

necessary to provide the same Cable Service to the annexed area. If requested by the Grantee, Grantee and the City shall discuss the cost of such adjustment and potential impact on Subscriber rates within one hundred twenty (120) days of Grantee's receipt of notification of the annexation. Unless waived by the City, Grantee shall make the required adjustments to the Cable System and billing system to provide the same Cable Service to the annexed area within two (2) years of receipt of the annexation notification.

(C) In the event that the City annexes territory that is not contiguous to the current Franchise Area, Grantee shall have no obligation to extend to such area; provided, however that if Grantee and/or an Affiliate has permission from the appropriate government authority to use the intervening Right-of-Way for this purpose, either by franchise or separate agreement, Grantee shall extend or adjust the Cable System in accordance with subsection (A) or (B) above.

(D) If Grantee finds it convenient for any of the annexed territory to be served by an Affiliate versus the Grantee, it is understood by the parties that the rights, benefits and obligations of this Franchise shall apply to such Affiliate for the annexed area, without the need for transfer approval of the City.

## **SECTION 14. STANDBY POWER AND EMERGENCY ALERT SYSTEM**

### **14.1 Standby Power**

The Grantee shall provide standby power generating capacity at the Cable System Headend capable of providing at least twelve (12) hours of emergency operation. Grantee shall maintain standby power system supplies, rated for at least two (2) hours duration, throughout the trunk and distribution networks, and rated for at least four (4) hours duration at all nodes and at all hubs.

### **14.2 Emergency Alert Capability**

(A) Grantee shall install for use by the City and Emergency Alert System ("EAS"). The EAS shall at all times be operated in compliance with FCC requirements, and in all respects consistent with applicable federal and state law. Subject to the foregoing, the EAS shall be remotely activated by telephone and shall allow a representative of the City to override the audio and video on all channels on the Grantee's Cable System that may lawfully be overridden (subject to any contractual or other rights of local broadcasters) without assistance of the Grantee, for emergency broadcasts from a location designated by the City in the event of a local emergency or for reasonable tests.

(B) The City shall only permit its appropriately trained and authorized persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's Cable System that in any manner results in an inappropriate use thereof. To the extent allowed by law, the City shall hold the Grantee, its employees and officers harmless from any claims arising out of the emergency use of the EAS facilities by the City.

(C) The City will provide reasonable notice to Grantee prior to any test use of the EAS. Grantee shall cooperate with the City in any such test to the maximum extent feasible.

(D) The Grantee shall ensure that the EAS system is functioning properly at all times. It will test the EAS system periodically, in accordance with FCC regulations.

## **SECTION 15. FRANCHISE VIOLATIONS**

### **15.1 Informal Dispute Resolution**

Prior to proceeding with the formal Procedure for Remediating of Franchise Violations process as set forth below, the City agrees to provide Grantee informal written (which can be by electronic mail) notice of any alleged material violation of this Franchise and allow Grantee a reasonable opportunity to cure the violation. If the alleged violation is investigated by Grantee and determined to be valid, Grantee agrees to exert good faith efforts to immediately resolve the matter. However, if the alleged violation is determined by Grantee to be invalid, or outside of Grantee's legal responsibilities, the Grantee promptly shall so advise the City in writing. Grantee agrees to exert good faith efforts to expedite its investigation, determination and communications to the City so that the informal resolution process proceeds on an expedited basis. If the informal resolution process is not completed within thirty (30) days of the City's first informal notice to Grantee, the City may commence any other dispute resolution process set forth in this Franchise or permitted by law.

### **15.2 Procedure for Remediating Material Franchise Violations**

(A) If the City believes that the Grantee has failed to perform any material obligation under this Franchise, the City shall notify the Grantee in writing, stating with reasonable specificity the nature of the alleged default. The 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 hearing in accordance with subsection (B), below; or

(2) Cure the default; or

(3) Notify the City that the 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, the Grantee shall promptly take all reasonable steps to cure the default and notify the City in writing and in detail as to the steps that will be taken and the projected completion date. In such case, the City may set a hearing in accordance with subsection (B) below.

(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 hearing in accordance with subsection (A)(1), or the City orders a hearing in accordance with

subsection (A)(3), the City shall set a public hearing to investigate said issues or the existence of the alleged default. The City shall notify Grantee of the hearing in writing and such hearing shall take place no less than thirty (30) days after Grantee's receipt of notice of the hearing. At the hearing, Grantee shall be provided an opportunity to be heard, to present and question witnesses, and to present evidence in its defense. At any such hearing, the City shall permit Grantee's opportunity to make a record which may be reviewed should any final decision of the City be appealed to a court of competent jurisdiction. The determination as to whether a default or a material breach of this Franchise has occurred shall be within the City's discretion, but any such determination shall be subject to appeal upon the administrative record to a court of competent jurisdiction.

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

- (1) Assess and collect monetary damages in accordance with this Franchise;
- (2) Commence procedures to revoke this Franchise; or,
- (3) Pursue any other legal or equitable remedy available under this Franchise or applicable law.

### **15.3 Assessment of Monetary Damages**

(A) Upon completion of the procedures set forth above and after all appeals have been exhausted, and from the date of said violation pursuant to the procedures specified in this Franchise, the City may assess against and collect from Grantee monetary damages in amounts as set forth below:

- (1) For failure to comply with general rights of way and construction standards: \$500 per day;
- (2) For failure to comply with requirements of Section 9 for PEG obligations: \$250 per day;
- (3) For failure to restore damaged property: \$250 per day;
- (4) For failure to render payment for reimbursement of any franchise-required expenses, or failure to pay capital grants or expenditures, or liquidated damages: \$250 for each day each such payment is delayed;
- (5) For failure to file, obtain or maintain the required performance bond or other security instruments in a timely fashion: \$250 per day;

(6) For violation of technical standards established by the FCC or other lawful authority: \$150 per day for each day;

(7) For failure to pay franchise fees when due, or any other violation of a monetary obligation to the City, not otherwise itemized in this section 15.3(A): \$150 per day;

(8) For failure to provide complete and accurate information, reports, or filings lawfully required under this Agreement or applicable law: \$100 per day;

(9) For any other violations of this Agreement not itemized herein: \$75 per day.

In no event shall monetary damages be assessed for a period exceeding one hundred eighty (180) days.

(B) Any assessment hereunder shall not constitute a waiver by the City of any other right or remedy it may have under this Franchise or applicable law, including its right to recover from Grantee any additional rights or claims the City might have to damages, losses, costs and expenses.

(C) The City and the Grantee recognize the delays, expense and unique difficulties involved in proving in a legal proceeding the actual loss suffered by the City as a result of the Grantee's breach of this Franchise. Accordingly, after an evidentiary finding of a breach, instead of requiring such proof of a specific amount of damages, the City and the Grantee agree that the Grantee shall pay to the City the sums set forth above for each day that the Grantee shall be in breach of the specific provisions of this Franchise. Such amounts are agreed by both parties to be a reasonable estimate of the actual damages the City would suffer in the event of the Grantee's breach of such provisions of this Franchise, and are not intended as a penalty.

(D) The Grantee's maintenance of the Security required herein or by applicable code shall not be construed to excuse unfaithful performance by the Grantee of this Franchise; to limit the liability of the Grantee to the amount of the Security; or to otherwise limit the City's recourse to any other remedy available at law or equity.

#### **15.4 Revocation**

(A) In addition to all other rights and powers retained by the City, the City reserves the right to revoke and terminate this Franchise and all rights and privileges of the Grantee in the event of a substantial violation or breach of its terms and conditions, pursuant to subsection 15.5 and applicable law. A substantial violation or breach by the Grantee shall include, but shall not be limited to, any of the following acts or omissions:

(1) An uncured substantial violation of any material provision of this Franchise, or any material rule, order or regulation of the City made pursuant to its power to protect the public health, safety and welfare;

(2) An intentional evasion or knowing attempt to evade any material provision of this Franchise or the practice of any fraud or deceit upon the Cable System Subscribers or upon the City;

(3) Failure to provide the services as specified in this Franchise, or a reasonable substitute therefor;

(4) Any use or occupation of the Right of Way that presents a risk to public health or safety or the construction, installation, operation or maintenance of the Cable System in an unsafe or dangerous manner, and such use or occupation remains after demand for correction;

(5) Willful misrepresentation of material fact in the application for, or during negotiations relating to, this Franchise;

(6) A continuous and willful pattern of inadequate service or failure to respond to subscriber complaints that the City has found to be legitimate;

(B) None of the foregoing shall constitute a substantial violation or breach if the Grantee is without fault or if the violation or breach occurs as a result of circumstances beyond the Grantee's reasonable control. The Grantee shall bear the burden of proof in establishing the existence of such circumstances. However, the Grantee's substantial violation or breach shall not be excused by economic hardship nor by nonfeasance or malfeasance of its directors, officers, employees, agents or, contractors.

## **15.5 Revocation Procedures and Process**

(A) This Franchise may be terminated in accordance with the following procedures:

(1) The City Manager, or other person designated by the City Manager, shall notify the Grantee in writing of the exact nature of the alleged substantial violation or breach constituting a ground for termination. Said notice shall provide that the Grantee shall have sixty (60) days from the date of receipt of the notice to correct and cure such alleged substantial violation or breach or to present facts and argument in refutation of the alleged substantial violation or breach.

(2) If the Grantee corrects any alleged substantial violation or breach within the sixty (60) day cure period, then in no event shall the violation be weighed against such Grantee in any subsequent review of Franchise performance.

(3) If the Grantee does not correct and cure the alleged substantial violation or breach within the sixty (60) day cure period then the City Council shall, within sixty (60) days of the last day of the sixty (60) cure period, conduct a public hearing to determine if the revocation and termination of the Franchise is warranted.

(4) At least twenty (20) days prior to the public hearing, the City shall issue a public hearing notice that shall provide the time, date and location of the hearing; provide that the City shall hear any persons interested therein; and provide that the Grantee shall be afforded fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence, to be represented by counsel and to call and question witnesses.

(5) The City Council shall hear testimony, take evidence, hear oral argument and receive written briefs, if submitted in the discretion of the parties. The City Council shall keep a complete record of the public hearing including all exhibits introduced at the hearing and an electronic sound recording.

(6) Within thirty (30) days after the close of the record the City Council shall take final action which shall include a written decision containing findings of facts and the conclusions derived from those facts.

(B) If the action by the City Council will result in the revocation and termination of the Franchise, it shall adopt an ordinance which shall declare that the Franchise shall be revoked and terminated; any security fund or bonds are forfeited; and shall include findings of fact and conclusions derived from those facts which support the decision of the Council. The ordinance may by reference adopt some or all of the findings and conclusions of the City Council.

(C) The decision of the City Council shall be the final decision of the City and subject to applicable law, may be appealed by Grantee to a court of competent jurisdiction pursuant to Section 19.5.

## **15.6 Removal**

(A) In the event of the termination, expiration, revocation or non-renewal of this Franchise, and after all appeals from any judicial determination are exhausted and final, the City may order the removal of the Cable System facilities from the Franchise Area at the Grantee's sole expense, within a reasonable period of time as determined by the City. In removing its plant, structures and equipment, the Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Right-of-Way, public places and private property in as good a condition as that prevailing prior to the Grantee's removal of its equipment.

(B) If the Grantee fails to complete any required removal to the satisfaction of the City, the City may cause the work to be done, and the Grantee shall reimburse the City for the reasonable costs incurred within thirty (30) days after receipt of an itemized list of the City's expenses and costs, or the City may recover its expenses and costs from the security, or pursue any other judicial remedies for the collection thereof. Any expenses incurred in the collection by the City of such obligation shall be included in the monies due the City from the Grantee, including reasonable attorneys' fees, court expenses and expenses for work conducted by the City's staff or agents.

## **SECTION 16. ABANDONMENT**

If the Grantee abandons its Cable System during the Franchise term, the provisions of this Franchise and the City Code shall apply and the City, at its option, may operate the Cable System, cause the Cable System to be removed pursuant to Section 15.6, or designate another entity to operate the Cable System temporarily until the Grantee restores service, or until the Franchise is revoked and a new Grantee is selected by the City. If the City designates another entity to operate the Cable System, the Grantee shall reimburse the City for all reasonable costs, expenses and damages incurred, including reasonable attorneys' fees, court expenses and attributed expenses for work conducted by the City's staff or authorized agents.

## **SECTION 17. FRANCHISE TRANSFER**

### **17.1 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 not be unreasonably withheld, delayed or conditioned.

(B) The Grantee shall promptly notify the City of any actual or proposed sale, change in, transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stock ownership 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. Such consent shall not be deemed to waive any rights of the City to subsequently enforce noncompliance issues relating to this Franchise. Consent shall not be required for any transfer to an Affiliate of Grantee.

(C) The parties to the sale, transfer or change in control of the Cable System or the Grantee shall make a written request to the City for its approval of a sale or transfer or change in control and furnish all information required by law, and in accordance with this Franchise.

(D) In seeking the City's consent to any change in ownership or control, the proposed transferee or new controlling Person or entity shall indicate whether, as applicable, 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 it 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 the provision of Cable Services;

(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 or new controlling entity, along with any other data that the City may reasonably require related to the proposed transferee's financial status in accordance with applicable law; 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 proposed transferee or new controlling Person or entity shall additionally provide complete information, in a format acceptable to the City, regarding any potential impact of the transaction on Subscriber rates and service, as well as any other documentation reasonably related to the proposed transaction which, in the reasonable discretion of the City are necessary to understand the proposed transaction.

(F) The City shall act on the request within one hundred twenty (120) days of the request, provided it has received a complete application with all information required by FCC Form 394 and this Franchise. Subject to the foregoing, if the City fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

(G) Within thirty (30) days of any transfer, sale or change in control, 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 change in control, certified and sworn to as correct by Grantee and the transferee or new controlling Person or entity. In case of a sale or transfer of ownership 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 this Franchise, subject to applicable law, and will file a written acceptance as required.

(H) In reviewing a request for sale or transfer, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the City in so inquiring. The City may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be consistent with applicable federal law and reasonably related to the qualifications of the prospective controlling party or transferee to comply with this Franchise, and to the resolution of any outstanding and unresolved issues of noncompliance with this Franchise by Grantee.

(I) Notwithstanding anything to the contrary in this subsection, the prior approval of the City shall not be required for any sale, assignment or transfer of the Franchise or Cable

System to an Affiliate; 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.

(J) Approval of any transaction described in this Section 17 does not constitute a waiver or release of the rights of either the Grantee or the City under this Franchise or any applicable law, unless specifically identified in the resolution or ordinance approving the transaction.

## **SECTION 18. NOTICES**

Throughout the term of this 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 to such respective address, and such notices shall be effective upon the date of mailing. At the effective date of this Franchise:

The Grantee's address shall be:

Comcast  
8000 East Iliff Avenue  
Denver, CO 80231  
Attention: Government Affairs

With a copy to:

Comcast  
1617 S. Acoma Street  
Denver, CO 80223  
Attention: General Manager

The City's address shall be:

City of Louisville  
749 Main Street  
Louisville, CO 80027  
Attention: City Manager

With a copy to:

City of Louisville  
749 Main Street  
Louisville, CO 80027

Attention: City Attorney

## **SECTION 19. MISCELLANEOUS PROVISIONS**

### **19.1 Cumulative Rights**

Subject to applicable law, all rights and remedies given to the City by this Franchise or retained by the City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to the City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

### **19.2 Costs to be Borne by the Grantee**

The Grantee shall pay for all costs of publication of this Franchise and the ordinance necessary to its adoption.

### **19.3 Binding Effect**

This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.

### **19.4 Authority to Amend**

This Franchise may be amended at any time by written agreement between the parties.

### **19.5 Venue**

The venue for any dispute related to this Franchise shall be in the United States District Court for the District of Colorado or in the Boulder County District Court in Boulder, Colorado.

### **19.6 Governing Law**

This Franchise shall be governed in all respects by federal law, the laws of the State of Colorado and local laws.

### **19.7 Condemnation**

This Franchise shall not limit any authority of the City in accordance with applicable law to condemn, in whole or in part, the Franchise and/or any other property of Grantee, provided that the Grantee shall receive whatever condemnation award the Grantee would normally be entitled to recover as a matter of applicable law.

## **19.8 Captions**

The captions and headings of this Franchise are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of any provisions of this Franchise.

## **19.9 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 that would indicate any such relationship with the other.

## **19.10 Waiver**

The failure of either party at any time to require performance by the other of any provision hereof shall in no way affect the right of the other party hereafter to enforce the same. Nor shall the waiver by either party 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.

## **19.11 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.

## **19.12 Force Majeure**

The Grantee shall not be held in default under, or in noncompliance with, the provisions of this Franchise, nor suffer any enforcement or imposition of damages relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control, including war or riots, civil disturbances, floods or other natural catastrophes, labor stoppages, slow downs, power outages exceeding back-up power supplies or work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System is attached. If Grantee believes that its compliance with any term of this Franchise will be prevented or delayed by non-Normal Operating Conditions, to the extent Grantee has knowledge of such conditions in advance, Grantee shall, prior to the deadline for compliance, 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.



## EXHIBIT A

### (GMTC MEMBER LISTING)

Adams County	Federal Heights
Arapahoe County	City of Glendale
City of Arvada	Greenwood Village
City of Aurora	Jefferson County
City of Brighton	City of Lafayette
City/County of Broomfield	City of Lakewood
City of Castle Rock	City of Littleton
City of Centennial	Town of Lochbuie
Cherry Hills Village	City of Lone Tree
Columbine Valley	City of Louisville
Commerce City	City of Northglenn
City and County of Denver	Town of Parker
Douglas County	City of Sheridan
City of Edgewater	City of Thornton
City of Englewood	City of Westminster
Town of Erie	City of Wheat Ridge

**EXHIBIT B**  
**CUSTOMER SERVICE STANDARDS**

**(Section references are to codification in chapter 5.22 of municipal code)**

- 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. [omitted]**

**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, 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 the Customer Service Standards (the "Standards") set forth in this chapter, 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.

*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.

*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. For purposes of this definition, "video programming" is programming provided by, or generally considered comparable to programming provided by a television broadcast station; and "other programming service" is information that a cable operator makes available to all subscribers generally.

*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.

*City* shall mean the City of Louisville, Colorado.

*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* means a complaint that is referred to a Cable Operator by the Franchising Authority.

*Franchising Authority* shall mean the City and/or the Greater Metro Telecommunications Consortium.

*Greater Metro Telecommunications Consortium or GMTC* shall mean a Colorado agency formed by intergovernmental agreement between its Members, local governmental subdivisions of the State of Colorado. The GMTC may be delegated the authority to enforce cable television franchises and cable system operations for its Member communities, and may administer any or all functions under these Standards.

*Information Service* shall mean the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

*Necessary* shall mean required or indispensable.

*Non-cable-related purpose* means 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 shall be considered Non-cable-related purposes.

*Normal business hours* shall mean those hours during which 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/or some weekend hours.

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

*Personally Identifiable Information* means specific information about a Customer, including, but not be limited to, a Customer's (a) login information, (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, (h) web browsing activities, or (i) any other personal or private information. "Personally Identifiable Information" shall not mean 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.

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. Within sixty (60) days of the effective date of these Standards, a Cable Operator shall provide, customer service centers/business offices ("service centers") such that no customer shall be located further than ten (10) miles away from a service center. Except as otherwise approved by the Franchising Authority, all service centers shall be open during Normal Business Hours, and 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 requests. The Franchising Authority may approve alternatives for service centers offering lesser services or fewer hours at any site to which the public has general access. A Cable Operator shall post a sign at each service

center, advising customers of its hours of operation and of the addresses and telephone numbers at which to contact the Franchising Authority and the Cable Operator if the service center is not open at the times posted. A Cable Operator shall provide free exchanges of faulty equipment at the customer's address if the converter 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 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. A Cable Operator shall retain sufficient customer service representatives and telephone line capacity to ensure that telephone calls to service/repair and billing 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. These standards shall be met no less than ninety (90) percent of the time measured monthly.

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 monthly.

### **C. Responsiveness**

#### **1. Guaranteed Seven-Day Residential Installation**

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

b. All underground cable drops to the home shall be buried at a depth of no less than twelve inches (12"), or such other depth as may be required by the Franchise Agreement, 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.

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.

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 customer will be contacted promptly. The appointment will be scheduled, as necessary at a time that is convenient to the customer.

d. A Cable Operator shall be deemed to have responded to a request for service under the provisions of this Section when a technician arrives within the agreed upon time, and, if the customer is absent when the technician arrives, the technician leaves written notification of arrival and return time, and a copy of that notification is kept by the Cable Operator. In such circumstances, the Cable Operator shall contact the customer within forty-eight (48) hours.

### 3. Residential Service Interruptions

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

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

#### c. Records of Complaints.

i. A Cable Operator shall keep an accurate and comprehensive file of any and all 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 open to the Franchising Authority during normal business hours, and shall be retained by the Cable Operator for a period of at least three (3) years.

ii. A Cable Operator shall provide the Franchising Authority an executive summary monthly, 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. 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 month and submitted to the Franchising Authority by the tenth (10th) day of the succeeding month. Complaints shall be broken out by the nature of the complaint and the type of Cable service subject to the complaint. A log of all service interruptions shall be maintained and provided to the Franchising Authority quarterly.

d. 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 service interrupted. Such records shall be submitted to the Franchising Authority with the records identified in Subsection 5.22.050.C.3.c.ii, and shall be retained by the Cable Operator for a period of three (3) years.

e. 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. 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 repair the problem no later than the day following the customer call. If an appointment is necessary, the customer may choose a block of time described in Subsection 5.22.050.C.2.a. At the customer's request, the Cable Operator shall repair the problem at a later time convenient to the customer.

#### 5. Problem Resolution

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

#### 6. Billing, Credits, and Refunds

a. 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.

b. 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.

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

## 7. Treatment of Property

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

a. A Cable Operator shall keep tree trimming to a minimum; trees and shrubs or other landscaping that are damaged by a Cable Operator, any employee or agent of a Cable Operator during installation or construction shall be restored to their prior condition or replaced. Trees and shrubs shall not be removed without the prior permission of the owner or legal tenant of the property on which they are located. This provision shall be in addition to, and shall not supersede, any requirement in any franchise agreement.

b. A Cable Operator shall, at its own cost and expense, and in a manner approved by the property owner and the Franchising Authority, restore any property to as good condition as before the work causing such disturbance was initiated. A Cable Operator shall repair, replace or compensate a property owner for any damage resulting from the Cable Operator's installation, construction, service or repair activities.

c. Except in the case of an emergency involving public safety or service interruption to a large number of subscribers, 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. 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.

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. If damage is caused by any Cable Operator activity, the Cable Operator shall reimburse the property owner one hundred (100) percent of the cost of the damage or replace the damaged property. For the installation of pedestals or other major construction or installation projects, property owners shall also be notified by mail at least one week in advance.

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 TDD service 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. Customer Information**

1. Upon installation, and at any time the customer may request, a Cable Operator shall provide the following information, in clear, concise written form (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, the FCC, and the Franchising Authority to whom the complaints should be addressed;

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;

i. 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 GMTC and the Franchising Authority, which shall include at a minimum, the URL address of a website containing these Standard in their entirety; provided however, that if the GMTC 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.

2. Copies of all notices provided to the customer shall be filed (by fax or email acceptable) concurrently with the Franchising Authority and the GMTC.

3. A Cable Operator shall provide customers with written notification of any change in rates, programming, or channel positions, at least thirty (30) days before the effective date of change.

4. 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.

5. 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, record, 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.

b. A Cable Operator shall take such actions as are necessary 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.b. shall not be interpreted to prohibit an Affiliate from obtaining access to Personally Identifiable Information to the extent otherwise permitted by this Subsection -.050.F.

c. A Cable Operator shall take such actions as are reasonably necessary to prevent a person or entity (other than Affiliates) 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, except as follows:

a. A Cable Operator may disclose for a Non-cable-related purpose the name and address of a Customer subscribing to any general programming tiers of service and other categories of Cable and Other Service provided by the Cable Operator if the Cable Operator has provided the Customer the opportunity to prohibit or limit such disclosure in accordance with this Subsection 5.22.050.F and Section 631 of the Federal Communications Act, 47 U.S.C. Section 551, and such disclosure does not directly or indirectly disclose:

- i. A Customer's extent of viewing of a Cable Service provided by the Cable Operator;
- ii. The extent of any other use by a Customer of a Cable Service provided by the Cable Operator, including, but not limited to a disclosure of the particular viewing selections by a

person subscribing to a Cable Service; or

iii. The nature of any transactions made by a Customer over the Cable System of the Cable Operator.

iv. The nature of programming 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).

A minimum of thirty (30) days prior to making any disclosure of Personally Identifiable Information of any Customer as provided in this Subsection 5.22.050.F.3.a, the Cable Operator shall notify in writing the Franchising Authority the fact that Personally Identifiable Information will be disclosed and each Customer (that the Cable Operator intends to disclose information about) of the specific information that will be disclosed, to whom it will be disclosed, and notice of the Customer's right to prohibit the disclosure of such information for Non-cable related purposes. The notice to Customers may be included with or made a part of the Customer's monthly bill for Cable Service or may be made by separate mailed notice. Each time that this notice is given to a Customer, the Cable Operator also shall provide the Customer with an opportunity to prohibit the disclosure of information in the future. Such opportunity shall be given in one of the following forms: a postage paid, self-addressed post card provided by the Cable Operator; a box that may be checked by the Customer on the Customer's monthly bill for Cable Services; a toll-free number that the Customer may call; or such other equivalent methods as may be approved by the Franchising Authority.

Additionally, within forty-five (45) days after each disclosure of Personally Identifiable Information of any Customer as provided in this Subsection 5.22.050.F.3.a, the Cable Operator shall notify in writing the Franchising Authority the fact that Personally Identifiable Information was disclosed and each Customer (that the Cable Operator has disclosed information about) of the specific information that has been disclosed, to whom it has been disclosed, and notice of the Customer's right to prohibit the disclosure of such information for non-cable related purposes. The notice to Customers may be included with or made a part of the Customer's monthly bill for Cable Service or may be made by separate mailed notice. Each time that this notice is given to a Customer, the Cable Operator also shall provide the Customer with an opportunity to prohibit the disclosure of information in the future. Such opportunity shall be given in one of the following forms: a postage paid, self-addressed post card provided by the Cable Operator; a box that may be checked by the Customer on the Customer's monthly bill for Cable Services; a toll-free number that the Customer may call; or such other equivalent methods as may be approved by the Franchising Authority.

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 federal law, a Cable Operator may disclose Personally Identifiable Information pursuant to a subpoena or court order 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 at the local offices of the Cable Operator or other convenient place within the City designated by the Cable Operator. Upon a reasonable showing by the Customer that the information is inaccurate, a Cable Operator shall correct such information.

5. Privacy Notice to Customers

a. A Cable Operator shall annually mail 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 and be printed in ten-point type or larger.

b. In the statement required by Subsection 5.22.050.F.5.a, a Cable Operator shall state substantially the following 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 a subpoena or court order authorizing such disclosure;, but only to the extent authorized by applicable federal law.

ii. Disclosure of the name and address of a Customer 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 sites 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)."

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.5.b for non-cable related purposes. This opportunity will be presented in the form of a toll-free telephone number and/or a postage paid, self-addressed post card, provided by the Cable Operator with the privacy notice or other manner acceptable to the Franchising Authority. 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 permanently, unless the Customer subsequently notifies the Cable Operator in writing that he or she wishes to permit the Cable Operator to disclose his/her name and address.

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 sufficient to demonstrate that the Personally Identifiable Information collected or disclosed was: (A) collected or disclosed only 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 only to the extent Necessary to detect unauthorized reception of cable communications; (C) disclosed pursuant to a subpoena or valid court order or to a governmental entity to the extent required by federal law; (D) names and addresses disclosed in compliance with Subsection 5.22.050.F.6.a of this Section; or (E) a disclosure of personally identifiable information of particular subscribers, but only to the extent affirmatively consented to by such subscribers in writing or electronically.

c. The names of all 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 if such disclosure would be inconsistent with applicable federal law;

d. The measures that have been taken, or could be 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.

8. Any aggrieved person may commence a civil action for damages for invasion of privacy against any Cable Operator.

9. Destruction of Personally Identifiable Information. A Cable Operator shall destroy, within ninety (90) days, any Personally Identifiable Information if the Personally Identifiable 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 Personally Identifiable Information under Subsection 5.22.050.F.3, pursuant to a court order, or pursuant to Section 631 of the Communications Act, 47 U.S.C. Section 551.

## **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. Satisfaction Guaranteed**

A Cable Operator shall guarantee customer satisfaction for every customer who requests new installation of Cable Service or adds any additional service to the customer's subscription. Any such customer who requests disconnection of such service within 30 days from its date of activation shall receive a credit to his/her account in the amount of one month's subscription charge for the service that has been disconnected.

### **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 or in writing to a Cable Operator that it has violated any provision of these Customer Service Standards, any terms or conditions of the customer's contract with the Cable Operator, or reasonable business practices.

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 and approved by the Franchising Authority prior to implementation.

#### **B. 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 effective date of these Standards or the effective date of any franchise granted by the Franchising Authority, whichever occurs first, a Cable Operator shall deposit with an escrow agent approved by the Franchising Authority one hundred thousand

dollars (\$100,000) 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. Such amount may, with the approval of the Franchising Authority, be posted jointly for more than one member of the GMTC, and may be administered, and drawn upon, jointly by the GMTC or drawn upon individually by each member.

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 one hundred thousand dollars (\$100,000), or such lesser amount accepted by the Franchising Authority, even if amounts are withdrawn pursuant to any provision of these Standards.

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.

### **C. 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.

8. If the Franchising Authority determines that the customer's complaint is valid and that the Cable Operator did not provide the complaining customer with the proper solution and/or credit, the Franchising Authority may reverse any decision of the Cable Operator in the matter and/or require the Cable Operator to grant a specific solution as determined by the Franchising Authority in its sole discretion, and/or any credit provided for in these Standards; or the Franchising Authority may provide the customer with the amount of the credit by means of a withdrawal from the Security Fund.

#### **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. Overall Quality of Service**

The Franchising Authority may evaluate the overall quality of customer service provided by a Cable Operator to customers:

a. In conjunction with any performance review provided for in the franchise agreement; and

b. At any other time, at its sole discretion, based on the number of customer complaints received by a Cable Operator and the Franchising Authority, and the Cable Operator's response to those complaints.

#### **F. Procedure for Remediating Violations**

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

2. Following the procedures set forth in any Franchise Agreement governing the manner to address alleged Franchise violations, if the Franchising Authority determines in its sole

discretion that the noncompliance has been substantiated, in addition to any remedies that may be provided in the Franchise Agreement, the Franchising Authority may:

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

b. Order 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. 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.