

# City Council

## Agenda

**Tuesday, January 2, 2024**  
**Council Chambers**  
**749 Main Street**  
**6:00 PM**

*Members of the public are welcome to attend and give comments remotely; however, the in-person meeting may continue even if technology issues prevent remote participation.*

- You can call in to **+1 719 359 4580 or 877 853 5247 (toll free)**  
Webinar ID **#876 9127 0986**.
- You can log in via your computer. Please visit the City's website [here](http://www.louisvilleco.gov/council) to link to the meeting: [www.louisvilleco.gov/council](http://www.louisvilleco.gov/council)

*The Council will accommodate public comments during the meeting. Anyone may also email comments to the Council prior to the meeting at [Council@LouisvilleCO.gov](mailto:Council@LouisvilleCO.gov).*

### **1. CALL TO ORDER & ROLL CALL**

### **2. APPROVAL OF AGENDA**

### **3. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA AND ITEMS ON THE CONSENT AGENDA**

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

### **4. 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 voice vote unless the Mayor or a City Council person specifically requests an 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 Amendment to Public Art Contract
- C.** Approval of Addendum #3 to Marshall Fire Site Supervision Contract with Otak, Inc.
- D.** Approval of City Council January Meeting Schedule

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#### **Citizen Information**

If you wish to speak at the City Council meeting in person, please fill out a sign-up card and present it to the City Clerk at the meeting; if you are attending remotely, please use the "raise hand" icon to show you wish to speak in public comments.

Persons planning to attend the meeting who need sign language interpretation, translation services, assisted listening systems, Braille, taped material, or special transportation, should contact the City Clerk's Office (303.335.4536 or 303.335.4574) or [ClerksOffice@LouisvilleCO.gov](mailto:ClerksOffice@LouisvilleCO.gov). A forty-eight-hour notice is requested.

Si requiere una copia en español de esta publicación o necesita un intérprete durante la reunión del Consejo, por favor llame a la Ciudad al 303.335.4536 o 303.335.4574 o email [ClerksOffice@LouisvilleCO.gov](mailto:ClerksOffice@LouisvilleCO.gov).

- E.** Approval of 2024 Contract Amendment for FEMA Project Consulting Services
- F.** Approval of Designation of Places for Posting Notices for Public Meetings
- G.** Approval of Resolution No. 1, Series 2024 – A Resolution Levying General Property Taxes for the Year 2023, to Help Defray the Costs of Government for the City of Louisville, Colorado for the 2024 Budget Year
- H.** Distribution of Open Government Pamphlet

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

**6. CITY MANAGER’S REPORT**

**7. REGULAR BUSINESS**

**A. SWEARING IN OF PRESIDING MUNICIPAL JUDGE AND CITY ATTORNEY**

**B. PROCLAMATION – DR. MARTIN LUTHER KING DAY – 2024**

- Action

**C. RESOLUTION NO. 2, SERIES 2024 – A RESOLUTION APPROVING A SECOND AMENDMENT TO THE SALES TAX REVENUE SHARING INTERGOVERNMENTAL AGREEMENT WITH THE TOWN OF SUPERIOR REGARDING A TEMPORARY WAIVER OF TAX REVENUES DUE TO THE CITY FOR PURPOSES OF PROVIDING A BUSINESS INCENTIVE**

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

**D. 2024-2029 SOLID WASTE COLLECTION REQUEST FOR PROPOSAL CRITERIA AND KEY CONTRACT POINTS**

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

**E. RESOLUTION NO. 3, SERIES 2024 – A RESOLUTION  
APPROVING A REVOCABLE LICENSE AGREEMENT FOR  
THE INSTALLATION OF FIBER OPTIC CABLES AND  
CONDUIT WITHIN CITY RIGHTS-OF-WAY IN CONNECTION  
WITH THE INTREPID FIBER NETWORK**

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

**8. CITY ATTORNEY'S REPORT**

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

**10. ADJOURN**

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|City of Louisville, CO  
| DETAIL INVOICE LIST

|P 1  
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CASH ACCOUNT: 001000 101001

WARRANT: 121423 12/14/2023

| VENDOR      | VENDOR NAME                    | PURPOSE                   | AMOUNT     |
|-------------|--------------------------------|---------------------------|------------|
| 14621       | CHAD ROOT                      | MILEAGE 10/18/23 - 11/28/ | 241.70     |
| 15382       | DELLACAVA/TEBO DEVELOPMENT CO. | DEC 2023 1805 HWY 42, SU  | 6,560.00   |
| 11298       | DELTA DENTAL OF COLORADO       | 007562-0001 JAN 2024 EMPL | 15,245.50  |
| 5255        | FAMILY SUPPORT REGISTRY        | Payroll Run 1 - warrant 1 | 173.53     |
| 6455        | KAISER PERMANENTE              | 05920-01-16 JAN 2024 EMPL | 186,671.68 |
| 14002       | KANSAS PAYMENT CENTER/ SN20DM0 | Payroll Run 1 - warrant 1 | 42.23      |
| 99999       | RAQUEL LJUNGBERG               | MILEAGE 10/3/23 - 11/17/2 | 85.15      |
| 99999       | AMELIA BRACKETT HOGSTAD        | REIMBURSEMENT HOTEL 9/27/ | 273.00     |
| 10951       | PINNACOL ASSURANCE             | POLICY #4206615           | 28,620.67  |
| 10884       | WORD OF MOUTH CATERING INC     | LUNCHES SERVED 12/7/23 -  | 3,123.75   |
| 3875        | XCEL ENERGY                    | ACCT #53-1879595-0        | 1,052.12   |
| 3875        | XCEL ENERGY                    | ACCT #53-1879593-8        | 140.33     |
| =====       |                                |                           |            |
| 12 INVOICES |                                | WARRANT TOTAL             | 242,229.66 |
| =====       |                                |                           |            |



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|P 1  
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CASH ACCOUNT: 001000 101001

WARRANT: 123123A 12/31/2023

| VENDOR | VENDOR NAME                    | PURPOSE                   | AMOUNT    |
|--------|--------------------------------|---------------------------|-----------|
| 9751   | ADAMS COUNTY                   | CUST #385137              | 300.00    |
| 4160   | ALARM DETECTION SYSTEMS, INC.  | ACCT #870159              | 11,178.59 |
| 14737  | ALEX THOELE                    | GUITAR CLASSES DECEMBER 2 | 420.00    |
| 9319   | AMERICAN DATA GROUP INC        | SUPPORT SERVICES 11/9/23  | 510.00    |
| 13818  | ARROWHEAD AWARDS INC           | NAMEPLATE & BADGE         | 32.50     |
| 500    | BAKER AND TAYLOR               | ACCT #415337 L121376 4 B0 | 80.54     |
| 500    | BAKER AND TAYLOR               | ACCT #415337 L121376 4 B0 | 25.00     |
| 500    | BAKER AND TAYLOR               | ACCT #415337 L121376 4 B0 | 69.44     |
| 500    | BAKER AND TAYLOR               | ACCT #415337 L121376 4 B0 | 26.10     |
| 500    | BAKER AND TAYLOR               | ACCT #415337 L121376 4 B0 | 23.30     |
| 14251  | BK TIRE INC                    | VEHICLE #3403 TIRES       | 533.84    |
| 14251  | BK TIRE INC                    | TIRE DISPOSAL             | 35.00     |
| 14140  | BLUE RIVER FORESTRY & TREE CAR | 12/12/23I COTTONWOOD PRUN | 1,400.00  |
| 14140  | BLUE RIVER FORESTRY & TREE CAR | Tree pruning at Cemetery  | 6,440.00  |
| 13344  | BROWNS HILL ENGINEERING & CONT | 23-117 SERVICE WORK       | 889.50    |
| 15547  | BSN SPORTS LLC                 | CUST #12149101            | 22.10     |
| 13964  | CHANDLER ASSET MANAGEMENT      | NOV 2023 INVESTMENT FEES  | 3,146.22  |
| 15336  | CHARLES ABBOTT ASSOCIATES, INC | NOV 2023 BLDG INSPECTIONS | 22,724.00 |
| 13260  | CLIFTON LARSON ALLEN LLP       | NOV 2023 ACCT #A509999    | 12,838.70 |
| 15152  | MIKE MAROONE FORD LONGMONT     | 2 NEW KEYS 2023 FORD MUST | 799.52    |
| 14909  | COLORADO CHRISTMAS LIGHTS      | 11/16/23 GARLAND AND BOWS | 541.89    |
| 15304  | CORONA ENVIRONMENTAL CONSULTIN | NOV 2023 MARSHALL FIRE RE | 1,627.50  |
| 15190  | DANIEL LASHER                  | 12/13/23 TRANSLATION FOR  | 706.81    |
| 15172  | DANIELS LONG CHEVROLET         | 2 - 2024 CHEVY SILVERADOS | 95,981.98 |
| 15149  | DENALI WATER SOLUTIONS LLC     | CUST #1120056             | 3,369.57  |
| 15149  | DENALI WATER SOLUTIONS LLC     | CUST #1120056             | 3,206.02  |
| 15149  | DENALI WATER SOLUTIONS LLC     | CUST #1120056             | 1,096.14  |
| 15149  | DENALI WATER SOLUTIONS LLC     | CUST #1120056             | 952.60    |
| 15149  | DENALI WATER SOLUTIONS LLC     | CUST #1120056             | 2,168.90  |
| 15149  | DENALI WATER SOLUTIONS LLC     | CUST #1120056             | 2,143.19  |
| 15149  | DENALI WATER SOLUTIONS LLC     | CUST #1120056             | 1,989.85  |

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CASH ACCOUNT: 001000 101001

WARRANT: 123123A 12/31/2023

| VENDOR | VENDOR NAME                    | PURPOSE                   | AMOUNT    |
|--------|--------------------------------|---------------------------|-----------|
| 15683  | DESIGN WORKSHOP, INC.          | NOV 2023 PROJ #007131.00  | 11,998.69 |
| 14920  | E-Z-GO DIVISION OF TEXTRON INC | CUST #700012259           | 39.96     |
| 14920  | E-Z-GO DIVISION OF TEXTRON INC | CUST #700012259           | 409.71    |
| 14691  | EEG ENTERPRISES INC            | DEC 2023 CLOSED CAPTIONIN | 299.00    |
| 12270  | FASTENAL COMPANY               | CUST #COBOU1062           | 18.38     |
| 14070  | FORENSIC TRUTH VERIFICATION GR | PRE-EMPLOYMENT POLYGRAPH  | 310.00    |
| 7113   | GALLS LLC                      | ACCT #1001752120 JAMES P  | 191.40    |
| 15381  | HICKS CONTRACTORS SERVICES LLC | RESET VALVE BOX AT SOUTH  | 2,300.00  |
| 15381  | HICKS CONTRACTORS SERVICES LLC | SOUTH PLANT HATCH LIDS    | 1,800.00  |
| 15209  | HOLLAR TREE CO LLC             | 12/13/23 Tree pruning on  | 5,975.00  |
| 15261  | WESTERN PAPER DISTRIBUTORS     | CUST ID #244097           | 118.13    |
| 2615   | INGRAM LIBRARY SERVICES INC    | ACCT #2050766             | 160.10    |
| 2615   | INGRAM LIBRARY SERVICES INC    | ACCT #2050766             | 519.10    |
| 2615   | INGRAM LIBRARY SERVICES INC    | ACCT #2050766             | 266.54    |
| 2615   | INGRAM LIBRARY SERVICES INC    | ACCT #2050766             | 430.45    |
| 2615   | INGRAM LIBRARY SERVICES INC    | ACCT #2050766             | 197.06    |
| 2615   | INGRAM LIBRARY SERVICES INC    | ACCT #2050766             | 383.03    |
| 2615   | INGRAM LIBRARY SERVICES INC    | ACCT #2050766             | 144.10    |
| 2615   | INGRAM LIBRARY SERVICES INC    | ACCT #2050766             | 420.56    |
| 2615   | INGRAM LIBRARY SERVICES INC    | ACCT #2050766             | 251.40    |
| 2615   | INGRAM LIBRARY SERVICES INC    | ACCT #2050766             | 586.78    |
| 2615   | INGRAM LIBRARY SERVICES INC    | ACCT #2050766             | 412.23    |
| 2615   | INGRAM LIBRARY SERVICES INC    | ACCT #2050766             | 18.80     |
| 2615   | INGRAM LIBRARY SERVICES INC    | ACCT #2050766             | 404.57    |
| 2615   | INGRAM LIBRARY SERVICES INC    | ACCT #2050766             | 241.41    |
| 2615   | INGRAM LIBRARY SERVICES INC    | ACCT #2050766             | 420.68    |
| 2615   | INGRAM LIBRARY SERVICES INC    | ACCT #2050766             | 224.24    |
| 2615   | INGRAM LIBRARY SERVICES INC    | ACCT #2050766             | 404.14    |
| 2615   | INGRAM LIBRARY SERVICES INC    | ACCT #2050766             | 459.99    |
| 2615   | INGRAM LIBRARY SERVICES INC    | ACCT #2050766             | 424.81    |
| 2615   | INGRAM LIBRARY SERVICES INC    | ACCT #2050766             | 392.16    |
| 2615   | INGRAM LIBRARY SERVICES INC    | ACCT #2050766             | 754.57    |
| 2615   | INGRAM LIBRARY SERVICES INC    | ACCT #2050766             | 217.63    |
| 2615   | INGRAM LIBRARY SERVICES INC    | ACCT #2050766             | 235.76    |
| 2615   | INGRAM LIBRARY SERVICES INC    | ACCT #2050766             | 353.01    |
| 2615   | INGRAM LIBRARY SERVICES INC    | ACCT #2050766             | 334.61    |
| 2615   | INGRAM LIBRARY SERVICES INC    | ACCT #2050766             | 358.82    |
| 2615   | INGRAM LIBRARY SERVICES INC    | ACCT #2050766             | 525.90    |
| 2615   | INGRAM LIBRARY SERVICES INC    | ACCT #2050766             | 254.01    |
| 2615   | INGRAM LIBRARY SERVICES INC    | ACCT #2050766             | 240.96    |

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CASH ACCOUNT: 001000 101001

WARRANT: 123123A 12/31/2023

| VENDOR | VENDOR NAME                    | PURPOSE                   | AMOUNT   |
|--------|--------------------------------|---------------------------|----------|
| 10552  | INTERNATIONAL MARTIAL ARTS ASS | JULY-DEC 2023 KARATE CLAS | 5,082.00 |
| 14239  | JC GOLF ACCESSORIES            | ACCT #COALCRK             | 278.14   |
| 14219  | KIMLEY-HORN AND ASSOCIATES INC | SERVICES THROUGH 10/31/23 | 3,995.00 |
| 8002   | KINSCO LLC                     | OLEG BERG                 | 322.45   |
| 8002   | KINSCO LLC                     | DARREN CRANK              | 304.96   |
| 15357  | LANGUAGE USA, INC.             | 11/30/23 TRANSLATION SERV | 1,870.00 |
| 14592  | LIVE OAK BANK                  | ACCT #3022382             | 5,084.54 |
| 3070   | LL JOHNSON DISTRIBUTING CO     | CUST #158907              | 716.42   |
| 6939   | MCCANDLESS TRUCK CENTER LLC    | CUST #100743              | 432.90   |
| 99999  | CASSIDY HOFFMANN               | REFUND BLDG PERMIT #RES-3 | 3,159.00 |
| 99999  | CORNERSTONE BUILDERS, LLC      | REFUND HYDRANT METER RENT | 2,450.00 |
| 13649  | OVERDRIVE INC                  | CUST ID #1100-0005        | 715.89   |
| 13649  | OVERDRIVE INC                  | CUST ID #1100-0005        | 424.37   |
| 13649  | OVERDRIVE INC                  | CUST ID #1100-0005        | 569.96   |
| 13649  | OVERDRIVE INC                  | CUST ID #1100-1006        | 133.45   |
| 13649  | OVERDRIVE INC                  | CUST ID #1100-1006        | 134.99   |
| 15748  | PRECISION DATA & FIBER         | INSTALL NEW CABLE FOR PHO | 352.00   |
| 15741  | RMMI DIGITAL DOCUMENT SOLUTION | New scanners for records  | 7,700.00 |
| 13695  | ROCKY MOUNTAIN PUMP & CONTROLS | ANNUAL PREV MAINT 11/15/2 | 325.00   |
| 13695  | ROCKY MOUNTAIN PUMP & CONTROLS | PREV MAINT 11/15/23 SPORT | 325.00   |
| 14696  | SALT LAKE WHOLESALE SPORTS     | S.O. #13853               | 1,989.00 |
| 14560  | SAMEDAY OFFICE SUPPLY          | ACCT #A12877              | 47.58    |
| 14560  | SAMEDAY OFFICE SUPPLY          | ACCT #A12877              | 22.90    |
| 14560  | SAMEDAY OFFICE SUPPLY          | ACCT #A12877              | 146.64   |
| 14612  | SOME LIKE IT GREEN             | DEC 2023 PLANT CARE       | 91.00    |
| 15237  | TAFT ENGINEERING INC           | HVAC REPAIR KITS          | 1,328.78 |
| 15237  | TAFT ENGINEERING INC           | ANNUAL MAINT KITS         | 830.18   |
| 14550  | TAYLOR MADE GOLF COMPANY INC   | ACCT #632413              | 244.44   |
| 15415  | TAYLOR NICHOLSON               | LEVITATE JUMP ROPE 8/21/2 | 1,890.00 |
| 11087  | UNITED SITE SERVICES OF COLORA | CUST ID #DEN-02653        | 360.00   |
| 11087  | UNITED SITE SERVICES OF COLORA | CUST ID #DEN-02653        | 360.00   |

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| P 4  
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CASH ACCOUNT: 001000 101001

WARRANT: 123123A 12/31/2023

| VENDOR        | VENDOR NAME                    | PURPOSE                   | AMOUNT     |
|---------------|--------------------------------|---------------------------|------------|
| 11087         | UNITED SITE SERVICES OF COLORA | CUST ID #DEN-02653        | 720.00     |
| 4900          | VRANESH AND RAISCH LLP         | NOV 2023 WINDY GAP        | 616.17     |
| 1191          | WEED WRANGLERS                 | 12/6/23 PREEMERGENT APPLI | 1,254.20   |
| 14373         | WEIFIELD GROUP CONTRACTING INC | DISCONNECT SO CORD FROM 6 | 392.50     |
| 13985         | WESTERN STATES FIRE PROTECTION | CUST #133633              | 1,778.00   |
| 7924          | WORLD BOOK INC                 | ACCT #L5687               | 1,139.05   |
| =====         |                                |                           |            |
| 108 INVOICES  |                                |                           |            |
| =====         |                                |                           |            |
| WARRANT TOTAL |                                |                           | 256,363.00 |
| =====         |                                |                           |            |

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|City of Louisville, CO  
| DETAIL INVOICE LIST

|P 1  
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CASH ACCOUNT: 001000 101001

WARRANT: 010224 01/02/2024

| VENDOR        | VENDOR NAME                    | PURPOSE                   | AMOUNT     |
|---------------|--------------------------------|---------------------------|------------|
| 4160          | ALARM DETECTION SYSTEMS, INC.  | ACCT #802604 JAN-MAR 202  | 373.38     |
| 9319          | AMERICAN DATA GROUP INC        | ADG 2024 MAINT AGREEMENT  | 10,734.00  |
| 14938         | INNOVISE BUSINESS CONSULTANTS  | POLICY #ZLP31N2264924PB   | 921,913.00 |
| 14938         | INNOVISE BUSINESS CONSULTANTS  | 24-25 INLAND MARINE SOLAR | 11,561.00  |
| 14938         | INNOVISE BUSINESS CONSULTANTS  | POLICY #105873549 23-26   | 4,612.00   |
| 14776         | PHILADELPHIA INSURANCE COMPANI | ACCT #79613375            | 837.00     |
| =====         |                                |                           |            |
| 6 INVOICES    |                                |                           |            |
| =====         |                                |                           |            |
| WARRANT TOTAL |                                |                           | 950,030.38 |
| =====         |                                |                           |            |

**SUBJECT: APPROVAL OF AMENDMENT TO PUBLIC ART CONTRACT**

**DATE: JANUARY 2, 2024**

**PRESENTED BY: SHARON NEMECHEK, DIRECTOR OF LIBRARY AND MUSEUM SERVICES**

**BACKGROUND:**

In the spring of 2023, after completing the full public art selection process and receiving Council approval, the City entered into an agreement with local artists Rita Vali and Arabella Tattershall to create a sculpture that would be placed in front of City Hall, celebrating and honoring the resilience of the City of Louisville and its residents. The cost of the sculpture is \$22,000, half of which has been paid to the artists. The other half will be paid upon full completion of the piece and its acceptance by City staff.

The contract between the City and the artists states that, “All supplies and materials to be integrated into the Work, including any footer, base, or concrete pad needed to support the Work shall be furnished by the Artist.” The artists, with public safety in mind, hired a structural engineer at a cost of \$1,600 to design a base that would hold the weight and stabilize the height of the sculpture. This base turned out to be much more involved and costly than originally anticipated. The structural engineer’s report is attached.

Estimates to build an adequate base have been received by the artists, with an average cost of \$3,700. To move the project forward and to alleviate an unanticipated financial burden on our local artists staff recommends that the City cover the cost of the base up to \$4,000. There are funds available to be carried forward in the City’s Arts Opportunity Programming (public art) budget.

This change requires an amendment to the original contract between the City and the artists.

**FISCAL IMPACT:**

Estimated cost not to exceed \$4,000.

**PROGRAM/SUB-PROGRAM IMPACT:**

This action moves a major public art project forward, demonstrates that the City of Louisville understands that there may be unanticipated costs of installing public art, and shows that the City of Louisville supports creatives in our community. This enhances the City’s reputation in the regional arts community.

**SUBJECT: AMENDMENT TO PUBLIC ART CONTRACT**

**DATE: JANUARY 2, 2024**

**PAGE 2 OF 2**

**RECOMMENDATION:**

Amend the contract between the City and artists Rita Vali and Arabella Tattershall to commit the City to covering the cost of the sculpture base for an amount not to exceed \$4,000.

**ATTACHMENT(S):**

1. First Amendment to Public Art Commission Agreement By and Between The City of Louisville and Arabella Tattershall & Rita Vali
2. Public Art Commission Agreement By and Between The City of Louisville and Arabella Tattershall & Rita Vali
3. yetiweurks Structural Drawings

**STRATEGIC PLAN IMPACT:**

|                          |                                                                                                                                       |                                     |                                                                                                                           |
|--------------------------|---------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> |  <b>Financial Stewardship &amp; Asset Management</b> | <input type="checkbox"/>            |  <b>Reliable Core Services</b>           |
| <input type="checkbox"/> |  <b>Vibrant Economic Climate</b>                     | <input checked="" type="checkbox"/> |  <b>Quality Programs &amp; Amenities</b> |
| <input type="checkbox"/> |  <b>Engaged Community</b>                          | <input type="checkbox"/>            |  <b>Healthy Workforce</b>              |
| <input type="checkbox"/> |  <b>Supportive Technology</b>                      | <input type="checkbox"/>            |  <b>Collaborative Regional Partner</b> |

## **FIRST AMENDMENT TO PUBLIC ART COMMISSION AGREEMENT**

This **FIRST AMENDMENT TO PUBLIC ART COMMISSION AGREEMENT** ("First Amendment") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ ("Effective Date"), by and between the **City of Louisville**, a Colorado home rule municipality ("City"), and the **Rita Vali** and **Arabella Tattershall**, individuals (collectively, the "Artist") (Artist and City are sometimes referred to collectively as the "Parties").

**WHEREAS**, the City and Artist are parties to that certain Public Art Commission Agreement, dated April 11, 2022 (the "Original Agreement"), for Artist's creation and installation of a sculpture and base as further described and depicted on the Scope of Services attached to the Original Agreement as Exhibit "A"; and

**WHEREAS**, under Section 4.1 of the Original Agreement and Exhibit "A", the Artist agreed to accept a total of \$22,000 as compensation for the sculpture, including the footer, base, or concrete pad needed to support the sculpture; and

**WHEREAS**, the Artist, with public safety in mind, hired a structural engineer at a cost of \$1,600 to design a base that would hold the weight and stabilize the height of the sculpture, which base turned out to be much more costly than originally anticipated; and

**WHEREAS**, the Artist has received quotes from contractors for the construction of an adequate base with an average cost of \$3,700; and

**WHEREAS**, in order to move the project forward and to alleviate an unanticipated financial burden on the Artist, the City desires cover the cost of the base up to \$4,000; and

**WHEREAS**, the Parties desire by this First Amendment to amend the Original Agreement to increase the Artist's compensation from a total not to exceed \$22,000 to a total not to exceed \$26,000.

**NOW THEREFORE**, in consideration of the foregoing and the mutual promises contained herein and in the Original Agreement, the Parties agree as follows:

**Section 1.** Exhibit A to the Original Agreement is hereby amended to replace the reference to "\$22,000" with "\$26,000", such that \$26,000 shall serve as the definition of "Maximum Contract Amount."

**Section 2.** Artist acknowledges and agrees that it has been paid \$11,000 of the Maximum Contract Amount as of the Effective Date of this Amendment. Section 4.1 of the Original Agreement is hereby amended to authorize the City's payment of the



remaining \$15,000 of the Maximum Contract Amount within seven (7) days of the City's final acceptance of the Work.

**Section 3.** The Original Agreement, as amended by this First Amendment, is hereby ratified and confirmed and shall remain in full force and effect and binding upon the City and Contractor in accordance with its terms. Any capitalized term not defined herein shall have the meaning assigned to it in the Original Agreement.

**IN WITNESS WHEREOF** the Parties have executed this First Amendment on the date first above written.

**CITY OF LOUISVILLE**

**ATTEST:**

By: \_\_\_\_\_  
Christopher M. Leh, Mayor

\_\_\_\_\_  
Meredyth Muth, City Clerk

**ARTIST**

**ARTIST**

\_\_\_\_\_  
Rita Vali

\_\_\_\_\_  
Arabella Tattershall

**PUBLIC ART COMMISSION AGREEMENT  
BY AND BETWEEN THE CITY OF LOUISVILLE  
AND ARABELLA TATTERSHALL & RITA VALI**

**1.0 PARTIES**

This PUBLIC ART COMMISSION AGREEMENT (this "Agreement") is made and entered into this 11th day of April, 2022 (the "Effective Date"), by and between the **City of Louisville**, a Colorado home rule municipal corporation, hereinafter referred to as the "City", and **Rita Vali and Arabella Tattershall**, hereinafter referred to as the "Artist".

**2.0 RECITALS AND PURPOSE**

- 2.1 The City desires to commission Artist for the purpose of creating, shipping, and installing the artwork described and depicted in the Scope of Work (hereinafter referred to as the "Work").
- 2.2 Artist represents that Artist has the special expertise, qualifications and background necessary to complete the Work.

**3.0 SCOPE OF SERVICES & PROJECT COMPLETION**

- 3.1 Artist agrees to provide the City with the Work and to perform the specific tasks, duties and responsibilities set forth in Scope of Work attached hereto as Exhibit "A" and incorporated herein by reference. Artist shall furnish all tools, labor, materials, and supplies in such quantities and of the proper quality as are necessary to professionally and timely perform the Work. All supplies and materials to be integrated into the Work, including any footer, base, or concrete pad needed to support the Work shall be furnished by the Artist. Artist acknowledges that this Agreement does not grant any exclusive privilege or right to supply Work to the City.
- 3.2 The Work shall be fully installed and completed by Artist by November 30, 2023, unless delays are caused by the City or by events beyond the control of both parties. Any extensions of time must be agreed to in writing by both parties. Artist must notify the City when the Work is fully installed and complete. No more than thirty (30) days after receiving such notice, the City will provide the Artist a written response, informing the Artist that either (i) the City agrees that the Work is fully installed and is complete consistent with the terms of this Agreement, and the City formally accepts the Work as completed; or (ii) the City does not consider the Work to be completed due to unresolved issues or defects that remain, and describing the outstanding issues or defects and the time frame in which the Artist must cure before the City will issue written final acceptance. The Project is not finally complete for purposes of this Agreement until the City has issued final acceptance and made the Final Payment (defined below).

**4.0 COMPENSATION AND PROGRESS REPORTS**

- 4.1 The City shall pay Artist for the Work a total not to exceed the amounts set forth in Exhibit "A" attached hereto and incorporated herein by this reference ("Maximum Contract Amount"); provided that, if the Artist's costs for crating and shipping exceed the estimated cost set forth in Exhibit "A," Artist shall be entitled to an equitable adjustment in the Maximum Contract Price with the approval of the appropriate City employee or officer in accordance with the

City's duly adopted purchasing policies; except that, no equitable adjustment shall be applied to cover the cost of the Artist's required insurance policies or any deductible losses incurred by the Artist under such policies. The City shall pay Artist fifty percent (50%) of the Maximum Contract Amount before Artist commences the Work ("Deposit"), and shall pay the remaining fifty percent (50%) within seven (7) days of the City's final acceptance of the Work ("Final Payment"). Artist shall provide the City with a completed form W-9 "Request for Taxpayer Identification Number" prior to the City's payment of the Deposit. The foregoing amounts of compensation shall be inclusive of all costs of whatsoever nature associated with the Artist's efforts, including but not limited to salaries, benefits, overhead, administration, profits, expenses, outside contractor fees, and supplies and materials to be integrated into the Work, including any footer, base, or concrete pad needed to support the Work. The Scope of Work 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 Work which exceeds the amount payable under the terms of this Agreement.

- 4.2 Artist shall submit bi-monthly reports to the City regarding progress made on the Work during the previous two (2) weeks. Artist shall provide such additional backup documentation, sketches, or photographs as may be required by the City.

## **5.0 PROJECT REPRESENTATION**

- 5.1 The City designates Erica Schmitt ("City's Project Manager"), as the responsible City staff to communicate with Artist during the conduct of the Work. Artist shall promptly respond to any communications from Erica Schmitt and such person's designees.
- 5.2 The Artist designates Rita Vali and Arabella Tattershall as its project managers and as the principals in charge who shall be providing the Services under this Agreement.

## **6.0 TERM**

- 6.1 The term of this Agreement shall be from the Effective Date to the date of Final Payment by the City, unless sooner terminated pursuant to Section 12, below. Artist's Work under this Agreement shall commence promptly following City's payment of the Deposit to Artist, and Artist shall proceed with diligence and promptness so that the Work is completed in a timely fashion consistent with the Scope of Work and Section 3.2.
- 6.2 Nothing in this Agreement is intended or shall be deemed or construed as creating any multiple-fiscal year direct or indirect debt or financial obligation on the part of the City within the meaning of Colorado Constitution Article X, Section 20 or any other constitutional or statutory provision. All financial obligations of the City under this Agreement are subject to annual budgeting and appropriation by the Louisville City Council, in its sole discretion. Notwithstanding anything in this Agreement to the contrary, in the event of non-appropriation, this Agreement shall terminate effective December 31 of the then-current fiscal year.

## **7.0 GENERAL INDEMNIFICATION; INSURANCE; GOVERNMENTAL IMMUNITY**

- 7.1 To the fullest extent permitted by law, Artist 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 Work hereunder, if such injury, loss, or damage is caused by the negligent act, omission, or other fault of Artist or any subcontractor of the Artist, or any officer, employee, volunteer, or agent of the Artist or of any subcontractor, or any other person for whom Artist is responsible. Artist shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims, and demands.

Artist shall further bear all other costs and expenses incurred by the City or Artist 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 Artist. The City shall be entitled to its costs and attorneys' fees incurred in any action to enforce the provisions of this Section.

The insurance coverage specified herein shall in no way lessen or limit the liability of the Artist under the terms of the Agreement. The Artist'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.

- 7.2 Prior to commencing delivery and installation Services pursuant to Section 15.0 hereof, the Artist agrees to procure and maintain, at its own cost, the policies of insurance set forth in Subsections 7.2.1 and 7.2.3. The Artist 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 under Section 15.0 until the conclusion of the Warranty Period set forth in Section 17.5; provided that, Artist may suspend the policies of insurance set forth in Subsections 7.2.1 and 7.2.2 following Final Payment until such time as the Artist is required to perform work under the Artist's warranty set forth in Section 17.0 hereof, or elects to perform maintenance work pursuant to Section 16.0 hereof, at each such time the Artist shall provide the City with an updated certificate(s) of insurance showing the required coverages, which shall be continuously maintained during the warranty or maintenance work. The required coverages are:

7.2.1 General Liability insurance with minimum combined single limits of \$1,000,000 each occurrence and \$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.

7.2.2 Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than \$400,000 per person in any one occurrence and \$1,000,000 for two or more persons in any one occurrence, and auto property damage insurance of at least \$50,000 per occurrence, with respect to each of Artist's owned, hired or non-owned vehicles assigned to or used in performance of the Services. If the Artist has no owned automobiles, the requirements of this paragraph shall be met by each officer or employee of the Artist providing services to the City of Louisville under this contract.

7.2.3 Fine Art insurance, or a similar policy of insurance, with minimum limits necessary to cover the cost of Artist's obligations to maintain, repair, or replace the Work, including the footer, base, or concrete pad to which the Work is attached.

7.3 The Artist's general liability insurance and automobile liability and physical damage 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 Artist. Such policies shall contain a severability of interests provision. The Artist shall be solely responsible for any deductible losses under each of the policies required above.

7.4 Certificates of insurance shall be provided by the Artist 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.

7.5 Failure on the part of the Artist 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 this Agreement, 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 Artist to the City upon demand, or the City may offset the cost of the premiums against any monies due to Artist from the City.

7.6 The parties understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101 et seq., C.R.S., as from time to time amended, or otherwise available to the City, its officers, or its employees.

## **8.0 QUALITY OF WORK**

Artist's Work shall be created and shipped in accordance with the highest workmanship and service standards in the field to the satisfaction of the City.

## **9.0 INDEPENDENT CONTRACTOR**

It is the expressed intent of the parties that Artist is an independent contractor and not the agent, employee or servant of the City, and that:

**9.1 ARTIST SHALL SATISFY ALL TAX AND OTHER GOVERNMENTALLY IMPOSE RESPONSIBILITIES INCLUDING, BUT NOT LIMITED TO, PAYMENT OF STATE, FEDERAL AND SOCIAL SECURITY TAXES, UNEMPLOYMENT TAXES, WORKERS' COMPENSATION AND SELF-EMPLOYMENT TAXES. NO STATE, FEDERAL OR LOCAL TAXES OF ANY KIND SHALL BE WITHHELD OR PAID BY THE CITY.**



**9.2 ARTIST IS NOT ENTITLED TO WORKERS' COMPENSATION BENEFITS EXCEPT AS MAY BE PROVIDED BY THE ARTIST NOR TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS UNEMPLOYMENT COMPENSATION COVERAGE IS PROVIDED BY THE ARTIST OR SOME ENTITY OTHER THAN THE CITY.**

**10.0 ASSIGNMENT**

Artist 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.

**11.0 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.

**12.0 TERMINATION**

This Agreement may be terminated by either party for material breach or default of this Agreement by the defaulting party, if such default is not caused by any action or omission of the terminating party, by giving the defaulting 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.

**13.0 INSPECTION AND AUDIT**

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

13.2 The City's representative shall have the right to inspect the Work from the Artist before Final Payment is rendered. The Artist or its contractor shall contact the Department of Building Safety to inquire about the required of obtaining a permit from Planning and Building Safety. If required, the permit will be provided to Artist at no cost to the Artist, and the Artist shall be responsible for calling for such inspections as required in the permit up to and including a final inspection.

**14.0 OWNERSHIP AND RIGHTS RELATED TO WORK**

14.1 Artist shall own the Work and bear the sole risk of loss, damage, or destruction, until (i) the Work has been delivered to and installed in the location designated in the Scope of Work, (ii) the Work has been finally accepted by the City, and (iii) Final Payment has been made to the Artist by the City. The City shall become the legal owner of the Work once the City finally accepts the Work and makes the Final Payment to Artist; provided that, Artist will maintain common-law copyright in the Work. If requested by the City, Artist shall execute a bill of sale to effect or memorialize the transfer of ownership of the Work to the City at no further cost to the City.

14.2 In view of the intention that the Work in its final dimensions shall be unique, Artist shall not make any additional exact duplicate reproduction of the final Work, nor shall Artist grant permission to others to do so except with the written permission of the City. Artist grants

to the City and its assigns an irrevocable license to make two-dimensional reproductions of the Work for non-commercial purposes, including, but not limited to, reproductions used in advertising, brochures, media publicity, and catalogues or other similar publications, provided that these rights are exercised in a professional manner and not to market goods or services. Artist, however, may use photographic reproductions of the Work in its portfolio, in critical and scholarly writings, or for non-commercial purposes, including reproductions used in advertising brochures, media publicity, and catalogues or other similar publications.

- 14.3 Any two-dimensional reproduction by the City shall contain a credit to Artist and display a copyright notice. Artist shall use its best efforts to give a credit reading substantially, "an original work owned and commissioned by the City of Louisville," in any public showing of the Work or reproductions thereof.
- 14.4 Artist shall place a copyright notice on the Work that informs the public that the Work is protected by copyright, identifies the copyright owner, and shows the year of first publication. If the copyright is registered with the U.S. Copyright Office, the Artist shall provide the City with the Copy of the application for registration, the registration number, and the effective date of the registration.
- 14.5 To the extent the uses, modification, destruction or removal of the Work under this Agreement affect any rights Artist may have under the provisions of federal or state law, including the 1990 Visual Artists' Rights Act under 17 U.S.C. §106A(a) and §113, the Artist hereby knowingly waives any rights provided by those laws.
- 14.6 Artist shall have the right of first refusal to any sale or donation of the Work during the ten (10) years following the Final Payment. Such right of first refusal shall be exercised by written notice to the City within thirty (30) days of written notification by the City. If the Artist elects to exercise its right of first refusal, it shall pay all costs associated with removal of the Work as set forth in Section 16.2, below. If the City decides to donate or sell the Work, the donee or buyer of the Work will take the Work subject to all of the Artist's rights as stated herein. The donee or buyer shall be given a copy of this executed Agreement at the time of the donation or sale. The City will endeavor to notify the Artist of such donation and sale and of the identity of the donee or buyer. In the event the Artist does not exercise the right of first refusal, the City may proceed to sell or donate the Work.

## **15.0 DELIVERY & INSTALLATION**

- 15.1 Artist shall securely crate and ship completed Work to the location designated in the Scope of Work. Artist shall communicate with the City via email or phone before scheduling delivery and installation. City will instruct the Artist as to when the City ready to receive the Work. The Artist is responsible for uncrating and installing the Work.

Artist shall obtain a permit from the City for the installation work. During the permitting process, Artist shall describe the installation of the Work, including the area needed for staging equipment, the equipment that will be brought onto the site, the proposed date of installation commencement, the period of time Artist will be on site to complete the installation, and whether and how pedestrian and/or vehicle traffic will need to be restricted.

Unless otherwise agreed upon by the City in writing, Artist shall provide, erect, and maintain barricades, fences, lights, and other traffic control devices, and shall furnish such personnel (as the City may require) to warn the public and guard the site and shall take such other precautionary measures as are reasonably necessary to protect persons, property, and the work done under this Agreement.

15.2 Prior to commencing the delivery and installation of the Work, Artist shall obtain and the insurance policies set forth in Section 7.0 hereof, which policies shall be maintained throughout the delivery and installation period.

15.3 During installation of the Work, Artist shall clean up the site at reasonable intervals and at other times when directed by the City. At all times while finish work is being accomplished, the site shall be kept clean, free of dust, construction debris and trash. Directly upon completion of the Work, Artist shall remove from the site all equipment and any waste materials not previously disposed of, leaving the site thoroughly clean and ready for the City's final inspection.

#### **16.0 MAINTENANCE, REPAIR, & RESTORATION**

16.1 The City recognizes that maintenance of the Work on a regular basis according to the maintenance instructions is essential to the integrity of the Work and that the City will be solely obliged to maintain the Work after the warranty period set forth in Section 17.5. The City shall nonetheless have the right to determine, in its sole discretion, if maintenance, repairs, and restorations to the Work will be made. To the extent practicable, and if the Artist has provided a current address pursuant to Section 21.0, during the ten years following the Final Payment, the Artist shall be given the opportunity to consult on repairs or restorations in addition to those described in the maintenance instructions. Artist shall obtain and maintain throughout the maintenance consultation period the insurance policies set forth in Subsections 7.2.1 and 7.2.2 hereof

16.2 Nothing in this Agreement shall preclude any right of the City in its sole discretion to (i) remove the Work from public display; (ii) move or relocate the Work to another location selected by the City for public display; or (iii) destroy the Work. If the City shall at any time decide to destroy the Work, the City shall notify the Artist and offer the Artist a reasonable opportunity to recover the Work at no cost to the Artist, except for an obligation of the Artist to indemnify and reimburse the City for the difference between the City's cost to recover the Work and the City's cost to destroy the Work, as reasonably determined by the City. Without limiting the generality of this section, the Artist agrees that his rights in connection with the destruction of the Work are as described in this Section; the Artist waives any greater or other rights which he might have in connection with the removal or destruction of the Work under 17 U.S.C. §106A(a) and §113.

#### **WARRANTIES**

17.1 Artist represents and warrants to the City that the Work is artistically unique, and agrees not to create or be involved in the creation of an identical artwork within 100 miles of Louisville, Colorado. Additionally, Artist represents and warrants that:

17.1.1 The Work is solely the result of the artistic effort of the Artist;



17.1.2 Except as otherwise disclosed in writing to the City prior to the time of execution hereof, the Work is unique and original and does not infringe upon any copyright and any other property or personal right;

17.1.3 That neither the Work delivered hereunder, nor a duplicate thereof, has been accepted for sale elsewhere; and

17.1.4 The Work is free and clear of any liens or claims or encumbrances from any source whatsoever.

17.2 The Artist shall defend and indemnify the City if a third party asserts a copyright infringement or claim involving the Work.

17.3 Artist warrants to City that all work performed will be performed in a workmanlike manner.

17.4. The Work, as fabricated and executed, will use materials that are of good quality, fit for the selected purpose, within manufacturer tolerances and warranties, and free from all faults and defects not inherent in the quality required.

17.5. Notwithstanding anything herein to the contrary, for a period of two (2) years from the date of the Final Payment, Artist agrees to replace or correct any material defects in the Work and that relate to a defect in the design, workmanship, or materials, without cost to the City. The City shall give notice to Artist of any observed material defect. If Artist fails to cure any such material defects, or to make arrangements to do so within a reasonable time satisfactory to the City, the City has the right to arrange for such replacements or corrections, and Artist must reimburse the City for the costs of any such replacements or corrections. If the City requests that Artist repair damage caused to the Work not related to the design, workmanship, or materials (e.g., by vandalism, collision, extreme environmental conditions, or other unforeseeable causes), the City will reimburse Artist for reasonable material and labor costs for such repairs, except to the extent such damage is due to a defect in design, workmanship or materials used in the Work.

17.6 Artist shall procure and maintain at the Artist's own expense and cost any kinds and amounts of insurance that in the Artist's judgment may be necessary for the Artist's proper protection in the prosecution of the warranties and guaranties hereunder. Prior to commencing any warranty work required under this Section, the Artist shall procure and maintain, at minimum, the insurance policies set forth in Subsections 7.2.1 and 7.2.2 hereof, which policies shall be maintained throughout the pendency of the warranty work.

## **18.0 ENFORCEMENT**

18.1 In the event that suit is brought upon this Agreement to enforce its terms, the parties shall each bear and be responsible for their own attorneys' fees and court costs.

18.2 This Agreement shall be deemed entered into in Boulder County, Colorado, and shall be governed by and interpreted under the laws of the State of Colorado. Any action arising out of, in connection with, or relating to this Agreement shall be filed in the courts of Boulder County or the federal district court for the District of Colorado, and in no other court. Colorado law shall apply to the construction and enforcement of this Agreement.

## **19.0 COMPLIANCE WITH LAWS**

Artist 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.

## **20.0 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.

## **21.0 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 email transmission, addressed to the party for whom it is intended at the following address:

If to the City:

City of Louisville  
Attn: Erica Schmitt  
749 Main Street  
Louisville, CO 80027  
e-mail: [eschmitt@louisvilleco.gov](mailto:eschmitt@louisvilleco.gov)

If to Artist:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
e-mail: \_\_\_\_\_

Except for notices by email transmission, any notice required or permitted under this Agreement 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. Notices by email transmission shall be effective on transmission, so long as no message of error or non-receipt is received by the party giving notice. Either party may by similar notice given, change the address to which future notices or other communications shall be sent.

## **22.0 EQUAL OPPORTUNITY EMPLOYER**

22.1 Artist will not discriminate against any employee or applicant for employment because of age 40 and over, race, sex, color, religion, national origin, disability, genetic information, sexual orientation, veteran status, or any other applicable status protected by state or local law. Artist will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to any status set forth in the preceding sentence. 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. Artist 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.

22.2 Artist shall be in compliance with the applicable provisions of the American with Disabilities Act 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.

### 23.0 NO THIRD PARTY BENEFICIARIES

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

### 24.0 SUBCONTRACTORS

Artist may utilize subcontractors identified in its qualifications submittal to assist with the Work. Artist shall submit any proposed subcontractor and the description of its services to the City for approval. The City will not work directly with subcontractors.

### 25.0 AUTHORITY TO BIND

Each of the persons signing below on behalf of any party hereby represents and warrants that such person is signing with full and complete authority to bind the party on whose behalf of whom such person is signing, to each and every term of this Agreement.

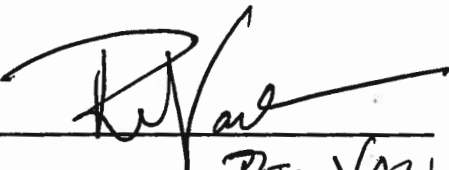
In witness whereof, the parties have executed this Agreement to be effective as of the day and year first above written.

CITY OF LOUISVILLE

By:  January 10, 2023

Name: Dennis Malone

Title: Mayor

ARTIST:   
Sign: \_\_\_\_\_  
Print: Rita Vali RITA VALI

ARTIST:   
Sign: \_\_\_\_\_  
Print: Arabella Tattershall Arabella Tattershall

## Exhibit A – Scope of Services

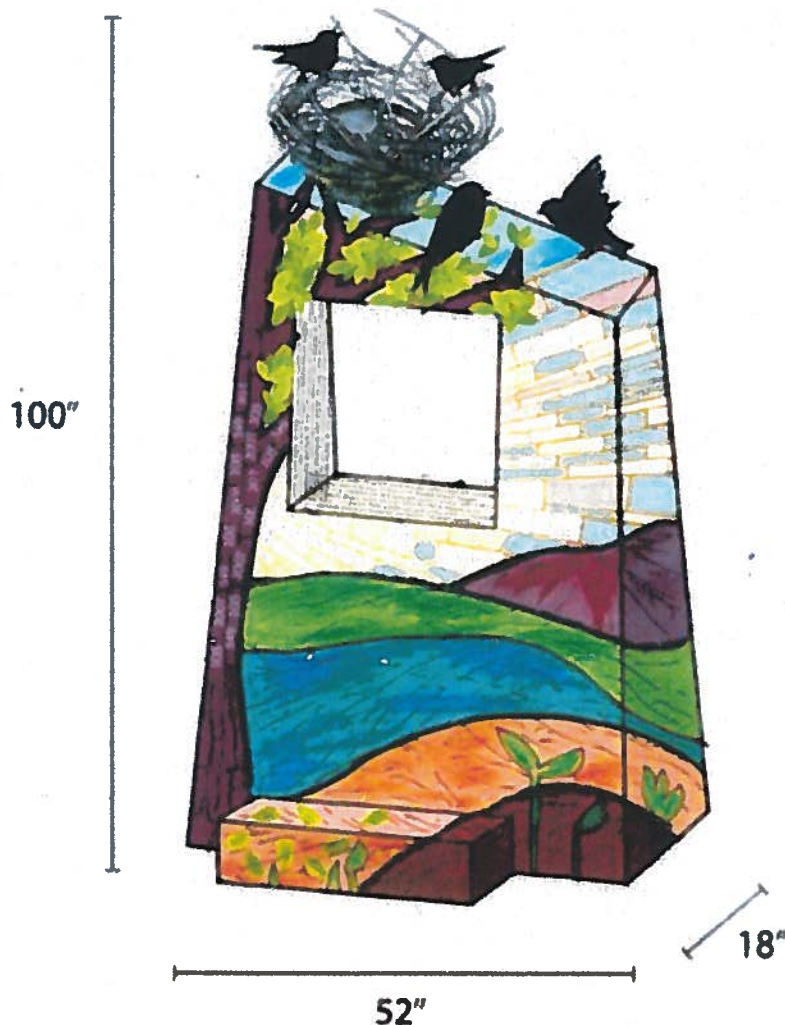
Artist will provide sculpture and base as described in their proposal submitted through "Call for Entry" for a total of \$22,000. Art includes but is not limited to:

Creation and installation of sculpture titled "Community Resilience", a sculpture of a "slice of a house" made of concrete covered in handmade ceramic tiles with a steel nest and birds supported on top of the sculpture. Sculpture will be approximately 10ft tall x 2ft deep x 4.5ft wide.

Concrete pad with an elevated footprint of dimensions 2ft deep x 4.5ft wide x 7" tall with attachment bolts that are appropriate to support the sculpture being attached via welding or bolts.

Artist will coordinate with the community to engage individuals who lost their home in the Marshall Fire to hand number and paint handmade ceramic tiles. The numbered tiles will be used to make up the trunk of a large mosaic tiled tree that visually supports a steel nest. The front step of the "slice of a house" will also be tiled.

Artist's depiction of the sculpture follows.





PROJECT DESCRIPTION

1. Rita Hall and Arabella Tattershall — Louisville City Hall Artwork is a freestanding exterior concrete masonry sculpture with ceramic tile mosaic and steel artwork elements on a concrete foundation to be installed at Louisville City Hall in Louisville, CO.

2. This section is for general orientation only. The Contractor is responsible for all scope items described in the drawings and specifications as well as for all material and labor that can reasonably be inferred from them.

GENERAL APPLICATION

1. All things which, in the opinion of the Contractor, appear to be deficiencies, omissions, contradictions or ambiguities in the drawings shall be brought to the attention of the Structural Engineer. Corrections or written interpretations shall be issued before affected work may proceed.

2. The Contractor shall inform the Structural Engineer, clearly and explicitly in writing, of any deviation or substitution from requirements of the contract documents. Contractor shall not be relieved of any requirement of the contract documents by virtue of the Structural Engineer's review of shop drawings, project data, etc., unless the Contractor has explicitly informed the Structural Engineer in writing of any deviations or substitutions at time of submission.

DESIGN CRITERIA

- Building Code: 2018 IRC, City of Louisville
- Gravity Loads: Sculpture Self-Weight
- Ground Snow Load: 30psf
- Foundation Design: Minimum Allowable Soil Bearing Pressure = 1500psf
- Wind Loading:
  - Ultimate Design Wind Speed = 145 MPH, Risk Category II
  - Wind Exposure B
  - Seismic Loading: N/A — Wind Controls
  - First Depth = 36in

CODES AND STANDARDS

- Building Code: 2018 IRC, City of Louisville
- Specification for Structural Steel Buildings\* ANSI / AISC 360-05 by American Institute of Steel Construction (AISC).
- ACI Code of Standard Practice\* by ACI.
- Specification for Structural Joints using ASTM A325 or A490 Bolts\* by ACI.
- Building Code Requirements for Reinforced Concrete\*, AC308, by the American Concrete Institute (ACI).
- Manual of Standard Practice\* by the Concrete Reinforcing Steel Institute (CRSI).

All references are latest edition unless noted otherwise.

CAST-IN-PLACE CONCRETE

- Minimum concrete compressive strength at 28 days and unit weight:

| ELEMENT  | STRENGTH, PSI | WEIGHT, PCF |
|----------|---------------|-------------|
| Footings | 4000          | 145         |
- Concrete shall not be placed until reinforcing and embedded items have been inspected by the owner's independent inspection agency and/or the special investigator.
- Reinforcing:
  - Bars: ASTM A615-grade 60, except grade 40 for bars noted as field bent.
  - Welded Wire Fabric: ASTM A185.
  - Clearance between reinforcing and concrete surfaces:
    - Unformed — 3"
    - Earth formed trenches may be used for footings.
    - Unless noted, provide continuous reinforcing around corners and through construction joints, and joints between all shoring members.
    - Provide standard hooks on bars terminating at a concrete face unless noted i.e.: edges of openings, slab edges, expansion joints, ends of beams, and ends of walls, etc.
  - Splice bars with contact laps unless noted otherwise.
    - Use class A splices.
    - For lightweight concrete, multiply lengths in tables by 1.3.
    - For epoxy-coated reinforcement, multiply lengths in tables by 1.5.

TENSION LAP SPICES (4000 PSI CONCRETE)

| BAR SIZE | LAP CLASS | TOP BARS | OTHER BARS |
|----------|-----------|----------|------------|
| #3       | A         | 19       | 15         |
|          |           | B        | 24         |
| #4       | A         | 25       | 19         |
|          |           | B        | 32         |
| #5       | A         | 31       | 24         |
|          |           | B        | 40         |
| #6       | A         | 37       | 29         |
|          |           | B        | 48         |
| #7       | A         | 54       | 42         |
|          |           | B        | 70         |
| #8       | A         | 62       | 48         |
|          |           | B        | 80         |
| #9       | A         | 70       | 54         |
|          |           | B        | 91         |
| #10      | A         | 79       | 61         |
|          |           | B        | 102        |
| #11      | A         | 87       | 67         |
|          |           | B        | 113        |

15. Concrete mix designs:

- Submit written reports of each proposed concrete mix not less than 15 days prior to the start of work.
- Mix designs, including water/cement ratios and slump, shall be prepared in accordance with ACI 301.
- Cement shall conform to ASTM C 150 Type I.
- Normal weight aggregate shall conform to ASTM C33.
- Light weight aggregate shall conform to ASTM C330.
- No admixtures containing calcium chloride shall be permitted in any concrete.
- Maximum aggregate size shall be: 1 1/2" for formed elements and 3/4" for slabs on grade.
- Water reducing admixture shall be used in all concrete.
- For entraining admixture in accordance with ACI 301 shall be used in all concrete exposed to freezing and thawing during other construction or service conditions.
- Concrete subjected to freezing/thawing shall have a maximum water/cement ratio of 0.50 and shall contain the amount of air entraining agent specified in ACI 301.
- In no case shall water/cement ratio exceed the following:

| f'c=4000 psi | 0.50 max. w/c ratio |
|--------------|---------------------|
|--------------|---------------------|

24.Curing:

a. Liquid type, membrane forming curing compound, conforming to ASTM C309, use Type I, Class A compounds.

a. Curing compounds should not be used on surfaces that are to receive additional concrete, paint, tile or other material requiring a positive bond unless the contractor has demonstrated that the membrane can be satisfactorily removed before subsequent application is made, or the membrane dissipates or can serve satisfactorily as the base for the later application.

c. Curing shall be maintained for a period of 7 days in which the mean ambient temperature is above 40 degrees Fahrenheit or until the concrete has attained 75% of the specified compressive strength.

25.4d Weather Placement: When depositing concrete in hot weather, follow recommendations of ACI 305. The temperature of concrete at time of placement shall not exceed 90 degrees Fahrenheit. Protect to prevent rapid drying. Start finishing and curing as soon as possible.

26.0d Weather Placement: When temperatures drop below 40 degrees at any time during concrete placement or curing, the provisions of ACI 308-9.2, which addresses the protection of concrete from freezing shall be followed. The following provisions are a guideline for cold-weather concreting procedures, however, they DO NOT replace nor supersede ACI-306.

27. Concrete mix and mixing procedures:

- Where use is desired, a non-corrosive, non-chloride accelerating admixture may be used in accordance with manufacturers printed instructions. Admixtures containing calcium chloride SHALL NOT BE USED UNDER ANY CIRCUMSTANCES.
- Any entraining admixture in accordance with ACI-301 shall be included in any concrete subject to freezing and thawing during other construction or service conditions.
- Water and aggregate shall be uniformly heated to achieve the following temperatures during mixing (Refer to ACI-306, Table 3.1): If air temperature is —, then concrete temperature as mixed is:—

| Air Temp                     | Concrete Temp                |
|------------------------------|------------------------------|
| Greater than 32° F; 60° F    | Greater than 32° F; 60° F    |
| Between 32° and 30° F; 60° F | Between 32° and 30° F; 60° F |
| Less than 32° F; 70° F       | Less than 32° F; 70° F       |

d. Concrete slump shall be maintained at 4 inches or less. (Ref. ACI-306)

28. Concrete Placing: (Ref. ACI-306)

- All snow, ice, and frost shall be removed so that it does not occupy space intended to be filled with concrete.
- Concrete shall not be placed on frozen subgrade.
- Concrete shall be placed at a temperature not less than 55° F.

29. Protection of concrete during curing: (Ref. ACI-306)

- Concrete shall be maintained at a temperature not less than 55° F during curing for the time duration specified below.
- Concrete that will be exposed to little or no freezing and thawing in service or during construction, such as in foundations and substructures, shall be maintained at the curing temperature for:
  - Two days if made with Type I or II cement.
  - One day if made with Type II cement, or accelerating admixture, or 100 lbs/yd<sup>3</sup> of additional cement.
- Concrete that will be exposed to weather in service or during construction:
  - Three days if made with Type I or II cement.
  - Two days if made with Type II cement, or accelerating admixture, or 100 lbs/yd<sup>3</sup> of additional cement.

30. Insulating materials for concrete protection are outlined in ACI-306.

31. Welding of reinforcing is prohibited.

MISCELLANEOUS NOTES

- The Contractor is solely responsible for all safety regulations, programs and precautions related to all work on this project.
- The Contractor is solely responsible for the protection of persons and property either on or adjacent to the project and shall protect it against injury, damages, or loss.
- Means and methods of construction and erection of structural materials are solely the Contractor's responsibility.
- The structure is designed to function as a unit upon completion of construction of the project and then, only to support the design loads indicated. The contractor is responsible for means, methods and sequence of construction and the adequacy of the structure to support loads occurring during construction of the project. Furnish all temporary bracing, shoring, and/or support as may be required.
- No structural modifications, alterations, or repairs shall be made without prior review by Structural Engineer.

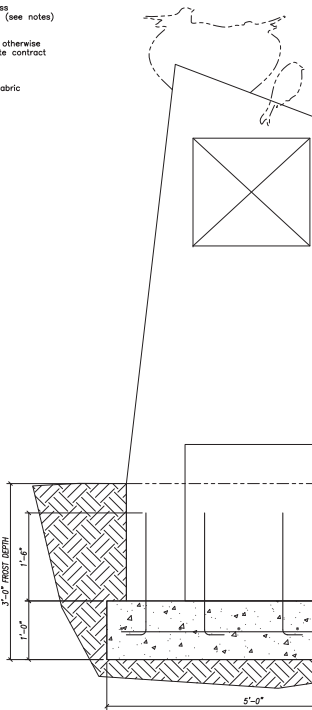
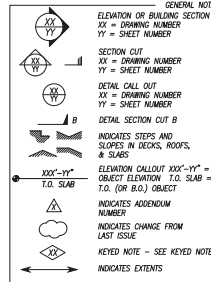
QUALITY CONTROL

- The Contractor is responsible for quality control, including workmanship and materials furnished by his subcontractors and suppliers.
- Inspection or testing by the Owner does not relieve the Contractor of his responsibility to perform the Work in accordance with the Contract Documents.
- Workmanship: The Contractor is responsible and shall bear the cost of correcting work which does not conform to the specified requirements.
- Correct deficient work by means acceptable to the Engineer. The cost of extra work incurred by the Engineer to approve corrective work shall be borne by the Contractor.

STRUCTURAL ABBREVIATIONS

| ABBREV. | DEFINITION            | ABBREV. | DEFINITION                  |
|---------|-----------------------|---------|-----------------------------|
| A.B.    | anchor bolts          | HORIZ   | horizontal                  |
| ADON'L  | additional            | I.F.    | inside face                 |
| A.F.T.  | alternating           | INT     | interior                    |
| ALT     | alternate             | JT      | joint                       |
| ARCH    | architectural         | L       | length                      |
| B.      | bottom                | L.L.    | long leg lateral            |
| B.B.    | bond beam             | L.V.    | long leg vertical           |
| B.L.    | back ledge            | LONG    | longitudinal                |
| BLDG    | building              | LVL     | laminated veneer lumber     |
| BM      | beam                  | MAS     | masonry                     |
| BRG     | bearing               | MAX     | maximum                     |
| BTWN    | between               | MECH    | mechanical                  |
| CL      | control/control joint | MIAM    | micromer                    |
| CLCLR   | clear                 | MFR     | manufacturer                |
| CMU     | conc. masonry unit    | MIN     | minimum                     |
| COL     | column                | N.L.C.  | not in contract             |
| CONC    | concrete              | NOM     | nominal                     |
| CONN    | connection            | NS      | near side                   |
| CONST   | construction          | O.F.    | outside face                |
| CONT    | continuous            | O.H.    | opposite hand               |
| CTRL    | control               | OPNG    | opening                     |
| DET.DTL | detail                | PC      | precast                     |
| DB      | deck bearing          | PL      | plate                       |
| DIM     | dimension             | REIN    | reinforcement               |
| DK      | deck                  | REQ'D   | required                    |
| DWGCS   | drawings              | RET     | retaining                   |
| DWL     | diagonal sheathing    | RWR     | rake wall rafter            |
| EA      | each                  | S.A.D.  | see arch. drawings          |
| EE      | extended end          | S.O.G.  | slope on grade              |
| EF      | each face             | SC      | slip critical               |
| EFF     | effective             | SCHED   | schedule                    |
| EXP     | expansion joint       | SL      | section                     |
| ELEV    | elevation             | SIP     | structural insulating panel |
| EOD     | edge of concrete      | SLAB    | slab                        |
| EOM     | edge of deck          | SPA     | spacing                     |
| EVS     | edge of slab          | SST     | Simpson Strong Tie          |
| EW      | each way              | STFR    | stiffener                   |
| EXIST   | existing              | STL     | steel                       |
| EXP     | expansion             | SUPP    | supplier                    |
| EXT     | exterior, extension   | SUPT    | support                     |
| FDTN    | foundation            | T/xx    | top of xxx                  |
| FL      | floor                 | THK     | thick, thickness            |
| FOS     | face of stud          | TJI     | Wood I beam (see notes)     |
| FP      | full penetration      | TRAN    | transverse                  |
| FS      | for side              | TYP     | typical                     |
| FTG     | footing               | UNO     | unless noted otherwise      |
| GA      | gauge                 | U.S.C.  | under separate contract     |
| GB      | grade beam            | VERT    | vertical                    |
| GEN     | general               | V.F.F.  | verify in field             |
| GLB     | glu-lam beam          | W       | wide, width                 |
| HAS     | headed anchor stud    | WWF     | welded wire fabric          |
| HK      | hook                  |         |                             |

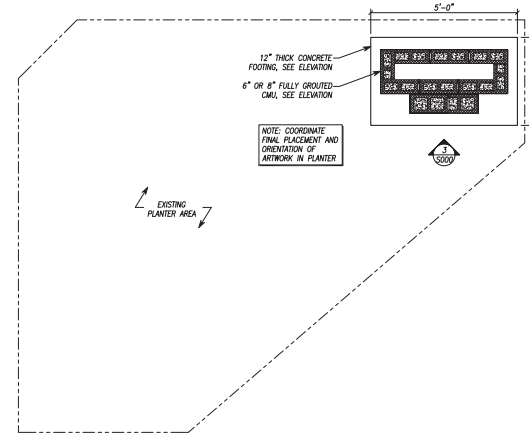
GENERAL LEGEND



ARTWORK ELEVATION

SCALE: 1"=1'-0"

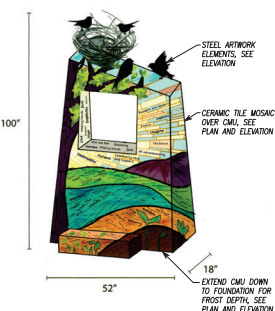
18310001



SITE AND FOUNDATION PLAN

SCALE: 1/2"=1'-0"

18310001



ARTIST RENDERING

SCALE: NTS

18310001

THESE DRAWINGS ARE TO BE USED IN CONJUNCTION WITH THE ARCHITECTURAL DRAWINGS ON THE PROJECT TO CLEARLY DEFINE ALL OF THE REQUIREMENTS FOR CONSTRUCTION. WHERE CONFLICTS OCCUR, CONTACT THE ARCHITECT FOR CLARIFICATION.

DESIGNER: THE STRUCTURAL ENGINEER'S SEAL ON THIS DRAWING INDICATES THAT THE INFORMATION SHOWN AND THE CALCULATIONS PERTAINING TO THIS INFORMATION HAVE BEEN PREPARED BY QUALIFIED PEOPLE UNDER THE SUPERVISION OF THE ENGINEER OF RECORD. THE SEAL LIVES FOR 10 YEARS. ANY REDESIGNING AND SIGN REDESIGNING IS SPECIFICALLY INDICATED. ON THESE PROJECTS, DRAWINGS THAT ARE ISSUED BUT NOT SEaled SHALL BE CONSIDERED TO BE PRELIMINARY IN NATURE AND ARE VOID FOR INFORMATION ONLY.



|                                                                                                                                                                              |                                                                                                                                                                                                       |             |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| <b>Wytewerks</b><br>ART + ENGINEERS<br>303.446.2653 / <a href="mailto:info@wytewerks.com">info@wytewerks.com</a><br><a href="http://www.wytewerks.com">www.wytewerks.com</a> | <b>GENERAL NOTES, ABBREVIATIONS, LEGENDS</b><br><b>ARTWORK REVISIONS, PLAN AND ELEVATION</b><br>Rita Hall and Arabella Tattershall<br>Louisville City Hall Artwork, Louisville, CO<br>NAG<br>AS NOTED | <b>S000</b> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|

**SUBJECT: APPROVAL OF ADDENDUM #3 TO MARSHALL FIRE SITE  
SUPERVISOR CONTRACT WITH OTAK, INC**

**DATE: JANUARY 2, 2024**

**PRESENTED BY: KURT KOWAR, DIRECTOR OF PUBLIC WORKS AND UTILITIES**

**SUMMARY:**

Staff recommends approval of Addendum #3 to the contract with the engineering on-call consultant, Otak, Inc., for Marshall Fire site supervisor services in the amount of \$44,317. This addendum will bring the total contracted amount to \$231,687 and extend services until the end of April 2024.

A summary of the contract and addendums are as follows:

|                                     | <b>Date Approved</b> | <b>Amount</b>       |
|-------------------------------------|----------------------|---------------------|
| Base Contract (Previously Approved) | March 2, 2022        | \$30,964.00         |
| Addendum #1 (Previously Approved)   | June 21, 2022        | \$41,626.00         |
| Addendum #2 (Previously Approved)   | April 4, 2023        | \$114,960.00        |
| Addendum #3 (This Communication)    | January 2, 2024      | \$44,137.00         |
| <b>Total</b>                        |                      | <b>\$231,687.00</b> |

This contract has provided additional resources for monitoring of contractor activities to ensure City rights of way and property are protected from the Marshall Fire demolition activities and reconstruction activities.

Currently there are over 80 private contractors and 2-5 Lumen (Century Link) contractors performing rebuilding efforts within the burn areas. Otak is providing several services that staff does not have the capacity to cover including:

- Work zone safety
- Safety fencing
- Erosion Control/Mud tracking
- Trespassing
- Right of way damages
- Parking
- Code violations
- Material Staging
- Dumpsters/Trucks
- Utility damages
- Port-o-lets
- Emergency Access

Specific Services include:

- Monitor all the burn areas at 7am daily to identify violations with the building permit provisions and City Code.
- Ensure erosion control measures are maintained and replaced.
- Ensure dumpsters are being maintained, roads are accessible, and that streets are cleaned.

Addendum #3 will provide funding for these activities until April 2024 based on an estimated rate of 20 hours per week. This is the average hours that Otak has been spending to perform the current activities under the existing contract.

The original contract was procured through the City's Engineering On-Call list. The on-call contractors were procured through a public competitive bid process in late 2021 through 2022. Staff received 3 similarly priced quotes from the on-call list and ultimately decided to utilize Otak due to the proximity of Otak to the burn areas (Louisville office).

**FISCAL IMPACT:**

The Marshall Fire expenses have not been budgeted and a budget amendment will be required. Staff has requested reimbursement by FEMA for this work, but approval of this reimbursement is still a large unknown. A budget amendment will be required for these additional 2024 expenses (\$44,137.00). All expenses for this activity are accounted to account 101110-532909 Marshall Fire – Services.

**PROGRAM/SUB-PROGRAM IMPACT:**

This effort supports recovery efforts for the Marshall Fire

**RECOMMENDATION:**

Staff recommends City Council authorize the City Manager to execute the proposed Addendum #3 with Otak, Inc. for extension of site supervisor services through April 2024 in an amount not to exceed \$44,137.00, making the total contract amount \$231,687.00.

**ATTACHMENT(S):**

1. Contract Addendum #3

**STRATEGIC PLAN IMPACT:**

|                                     |                                                                                                                                         |                                     |                                                                                                                             |
|-------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> |  <b>Financial Stewardship &amp; Asset Management</b> | <input checked="" type="checkbox"/> |  <b>Reliable Core Services</b>           |
| <input type="checkbox"/>            |  <b>Vibrant Economic Climate</b>                     | <input type="checkbox"/>            |  <b>Quality Programs &amp; Amenities</b> |
| <input type="checkbox"/>            |  <b>Engaged Community</b>                            | <input type="checkbox"/>            |  <b>Healthy Workforce</b>                |
| <input type="checkbox"/>            |  <b>Supportive Technology</b>                        | <input type="checkbox"/>            |  <b>Collaborative Regional Partner</b>   |



## EXHIBIT C

### Addendum No. 3 to Service Agreement

This Addendum to that certain Services Agreement dated March 2, 2022 is made effective as of January 2, 2024, by and between the undersigned parties. The Addendum immediately preceding this Addendum was dated April 4, 2023.

1. Services to be provided: Additional 3 months of site supervisor services for reconstruction of the Marshall Fire destroyed homes. Please see attached detailed request for additional fees.
2. Fees: \$44,137.00
3. Schedule: Thru April, 2024.

CITY OF LOUISVILLE  
749 Main Street  
Louisville, CO 80027

By: \_\_\_\_\_  
Jeff Durbin, City Manager

Attest: \_\_\_\_\_  
Meredyth Muth, City Clerk

Company: Otak, Inc.

Address: 371 Centennial Parkway, Suite 210  
Louisville, CO 80027

By: **Scott Dreher** Digitally signed by Scott Dreher  
DN: C=US, E=scott.dreher@otak.com,  
O=Otak, OU=Corporate, CN=Scott Dreher  
Date: 2023.12.08 18:06:29-08'00'  
Chief Operating Officer

Attest: Matthew Marshall  
Interim Colorado Regional Director and CMI  
Business Unit Lead



December 1, 2023

Mr. Cameron Fowlkes, PE, CFM  
City Engineer  
City of Louisville  
749 Main St.  
Louisville, CO 80027

**Re: Contract Amendment No. 3 – Marshall Fire Site Supervisor Services  
Otak Project No. 020108.A00**

Dear Mr. Fowlkes,

As requested, please find our contract amendment request to extend the Marshall Fire Site Supervisor work for an additional three months through approximately April 2024, at which time an evaluation of the City's needs moving forward will occur to determine future services required.

### Project Understanding

Otak has provided site supervisor services since April of 2022 during the City of Louisville's fire debris removal and cleanup efforts and during the rebuilding phase after the Marshall Fire. Otak's construction inspector has been monitoring contractor activities to ensure the City's right-of-way (ROW) is maintained and that open space is protected from impacts.

### Work Plan

The work plan will remain the same as presented in Contract Amendment No. 2., dated March 1, 2023.

### Fee

As detailed in the cost worksheet below, the total fee estimate for the extension of our Marshall Fire Site Supervisor services is \$44,137, which includes three (3) additional months or 13 weeks of site supervision at 20 hours per week and two (2) hours per week of project support and management, which, along with our remaining budget (as of the date of this contract modification), is anticipated to provide the City's desired level of service through April of 2024. Below is a detailed breakdown of the costs as currently anticipated.

| Task                                  | PIC      | Field Rep<br>> | Project<br>Coord. I | Total     |
|---------------------------------------|----------|----------------|---------------------|-----------|
| 2024 Billing Rate                     | \$ 242   | \$ 135         | \$ 125              |           |
| Site Supervision (3 Months, 13 Weeks) | 26       | 272            | 9                   |           |
| Site Supervision                      |          | 260            |                     | \$ 35,100 |
| Project Support & Management          | 20       |                | 7                   | \$ 5,715  |
| Closeout                              | 6        | 12             | 2                   | \$ 3,322  |
| Total                                 | \$ 6,292 | \$ 36,720      | \$ 1,125            | \$ 44,137 |

**Contract Summary/Breakdown**

|                   |           |
|-------------------|-----------|
| Original Contract | \$30,964  |
| Amendment #1      | \$41,626  |
| Amendment #2      | \$114,960 |
| Amendment #3      | \$44,137  |
| Total Contract    | \$231,687 |

Otak is pleased to continue to support the City with these critical recovery efforts. Thank you, and please do not hesitate to reach out with any questions.

Sincerely,

**Otak, Incorporated**



Matt Marshall  
Interim Colorado Regional Manager

**SUBJECT: APPROVAL OF CITY COUNCIL JANUARY MEETING SCHEDULE**

**DATE: JANUARY 2, 2024**

**PRESENTED BY: MEREDYTH MUTH, CITY CLERK**

**SUMMARY:**

Staff recommends the City Council approve changing the January 9 and January 23 study sessions to special meetings to allow Council to give staff direction regarding discussion items at those meetings if needed.

Staff also recommends calling two additional special meetings in January; one on January 22 for City Council's Biennial Ethics and Quasi-Judicial Training and one on January 30 for interviewing applicants for the vacant Ward I seat.

**FISCAL IMPACT:**

None

**RECOMMENDATION:**

Approve January meeting schedule

**ATTACHMENT(S):**

None

**SUBJECT: APPROVAL OF 2024 CONTRACT AMENDMENT FOR FEMA  
PROJECT CONSULTING SERVICES**

**DATE: JANURARY 2, 2024**

**PRESENTED BY: KIANA FREEMAN, RECOVERY & RESILIENCE MANAGER**

**SUMMARY:**

As a major part of the Marshall Fire recovery, the City of Louisville's internal teams have been working with Carlisle Thompson, LLC to continue closing out FEMA Public Assistance projects that were established in 2022. The original 2023 contract with Carlisle Thompson, LLC contained an end term of December 31, 2023.

FEMA requires timely and complete project information as work is completed to facilitate efficient and effective closeout of the grant awards. Before closeout can begin, staff must carefully analyze the insurance proceeds received by the City's insurance provider and the FEMA public assistance to determine which funding source pays for specific repairs. For instance, median restoration is ineligible for FEMA assistance but falls under the City's outdoor property coverage, which has a limit of \$250,000. Staff must go through each item to determine the best source to maximize recovery dollars.

With staff vacancies and the Recovery & Resilience Division being onboarded and brought up to speed about Marshall Fire Recovery, the City has not submitted for reimbursement. Therefore, Staff is recommending that the City extend the current contract term and increase the consulting services dollar allowance. This extension of services through 2024 would greatly benefit the new Division and continuing the expertise for reimbursement of projects already in progress.

The estimated cost for this additional work is \$5,000. While it is difficult to know the exact number of hours that the consultant will be needed, the contract lists an amount not to exceed an additional amount of \$5,000 with hourly rates for the consultant's staff.

This expense is an eligible cost under Category Z – Management Costs, and therefore can be reimbursed by FEMA. Management costs include any indirect costs, direct administrative costs and other administrative expenses related to FEMA Public Assistance.

**FISCAL IMPACT**

This amendment contract was not included in the 2024 budget and requires an amendment for the total cost of \$5,000 and the anticipated reimbursement from FEMA.

**RECOMMENDATION:**

Staff recommends approval of the 2024 Amendment Contract for FEMA Consulting Services.

**SUBJECT: CONTRACT FOR FEMA PROJECT CONSULTING SERVICES**

**DATE: JANUARY 2, 2024**

**PAGE 2 OF 2**

**ATTACHMENT(S):**

1. Amendment Contract for FEMA Project Consulting Services
2. Original Contract for FEMA Project Consulting Services

**STRATEGIC PLAN IMPACT:**

|                                     |                                                                                                                                       |                          |                                                                                                                           |
|-------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|--------------------------|---------------------------------------------------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> |  <b>Financial Stewardship &amp; Asset Management</b> | <input type="checkbox"/> |  <b>Reliable Core Services</b>           |
| <input type="checkbox"/>            |  <b>Vibrant Economic Climate</b>                     | <input type="checkbox"/> |  <b>Quality Programs &amp; Amenities</b> |
| <input type="checkbox"/>            |  <b>Engaged Community</b>                            | <input type="checkbox"/> |  <b>Healthy Workforce</b>                |
| <input type="checkbox"/>            |  <b>Supportive Technology</b>                        | <input type="checkbox"/> |  <b>Collaborative Regional Partner</b>   |



**AMENDMENT TO  
AGREEMENT BY AND BETWEEN THE CITY OF LOUISVILLE  
AND CARLISLE THOMPSON, LLC  
FOR CONSULTING SERVICES**

This AMENDMENT TO AGREEMENT FOR CONSULTING SERVICES (this "Amendment") is made and entered into this \_\_\_\_ day of \_\_\_\_, 20\_\_ (the "Effective Date"), by and between the City of Louisville, a Colorado home rule municipal corporation, hereinafter referred to as the "City", and Carlisle Thompson, LLC, a Florida Limited Liability Company, hereinafter referred to as the "Consultant".

**WHEREAS**, the City and Consultant are parties to that certain Agreement for Consulting Services, dated June 20, 2023 (the "Agreement") for insurance reconciliation and project closeout services in connection with the City's Marshall Fire (DR-4634) projects; and

**WHEREAS**, the City and Consultant desire to amend the Agreement to extend the term of the Agreement and increase the maximum contract amount.

**NOW THEREFORE**, in consideration of the foregoing and the mutual promises contained herein and in the Agreement, the Parties agree as follows:

**Section 1.** Section 4.1 is amended to replace the reference to \$20,000 with \$25,000.

**Section 2.** Section 6.1 of the Agreement is amended to read as follows:

6.1 The term of this Agreement shall be from the Effective Date to June 30, 2023, unless sooner terminated pursuant to Section 13, below. The Consultant's Services under this Agreement shall commence on the Effective Date and Consultant shall proceed with diligence and promptness so that the Services are completed in a timely fashion consistent with the City's requirements.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the Effective Date.

CITY OF LOUISVILLE,  
a Colorado Municipal Corporation

CONSULTANT  
Carlisle Thompson, LLC

By: \_\_\_\_\_  
Christopher M. Leh, Mayor

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

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

Attest: \_\_\_\_\_  
Meredyth Muth, City Clerk

**AN AGREEMENT BY AND BETWEEN THE CITY OF LOUISVILLE  
AND CARLISLE THOMPSON, LLC  
FOR CONSULTING SERVICES**

**1.0 PARTIES**

This AGREEMENT FOR CONSULTING SERVICES (this “Agreement”) is made and entered into this 20<sup>th</sup> day of June, 2023 (the “Effective Date”), by and between the **City of Louisville**, a Colorado home rule municipal corporation, hereinafter referred to as the “City”, and Carlisle Thompson, LLC, a Florida Limited Liability Company 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 grant consulting 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 “A” 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 \$20,000.00 as paid hourly as outlined in Exhibit A. The City shall not pay mileage and other reimbursable expenses (such as meals, parking, travel expenses, necessary memberships, etc.), unless such expenses are (1) clearly set forth in the Scope of Services, and (2) necessary for performance of the Services (“Pre-Approved Expenses”). 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 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 City Manager Jeff Durbin 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 Jeff Durbin and such person's designees.
- 5.2 The Consultant designates Jo Barrios as its project manager and as the principal in charge who shall be providing the Services under this Agreement. Should any of the representatives be replaced, particularly Jo Barrios, 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**

- 6.1 The term of this Agreement shall be from the Effective Date to December 31, 2023, unless sooner terminated pursuant to Section 13, below. The Consultant's Services under this Agreement shall commence on [(the Effective Date) or (on another date desired by the City, after the Effective Date)] and Consultant shall proceed with diligence and promptness so that the Services are completed in a timely fashion consistent with the City's requirements.
- 6.2 Nothing in this Agreement is intended or shall be deemed or construed as creating any multiple-fiscal year direct or indirect debt or financial obligation on the part of the City within the meaning of Colorado Constitution Article X, Section 20 or any other constitutional or statutory provision. All financial obligations of the City under this Agreement are subject to annual budgeting and appropriation by the Louisville City Council, in its sole discretion. Notwithstanding anything in this Agreement to the contrary, in the event of non-appropriation, this Agreement shall terminate effective December 31 of the then-current fiscal year.

## **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 FOUR HUNDRED THOUSAND DOLLARS (\$400,000) per person in any one occurrence and ONE MILLION DOLLARS (\$1,000,000) 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 Agreement.
- 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 this Agreement, 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 Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101 et seq., 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 and to the extent 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**

It is the expressed intent of the parties that the Consultant is an independent contractor and not the agent, employee or servant of the City, and that:

- 10.1. Consultant shall satisfy all tax and other governmentally imposed responsibilities including but not limited to, payment of state, federal, and social security taxes, unemployment taxes, worker's compensation and self-employment taxes. No state, federal

or local taxes of any kind shall be withheld or paid by the City.

- 10.2. **Consultant is not entitled to worker's compensation benefits except as may be provided by the Consultant nor to unemployment insurance benefits unless unemployment compensation coverage is provided by the Consultant or some entity other than the City.**
- 10.3. Neither party has the authority to act for the other party, or to bind the other party in any respect whatsoever, or to incur any debts or liabilities in the name of or on behalf of the other party.
- 10.4. Consultant has and retains control of and supervision over the performance of Consultant's obligations hereunder and control over any persons employed by Consultant for performing the Services hereunder.
- 10.5. The City will not provide training or instruction to Consultant or any of its employees regarding the performance of the Services hereunder.
- 10.6. Neither the Consultant nor any of its officers or employees will receive benefits of any type from the City.
- 10.7. Consultant represents that it is engaged in providing similar services to other clients and/or the general public and is not required to work exclusively for the City.
- 10.8. Consultant shall take all precautions necessary for the proper performance of the Services.
- 10.9. Consultant will not combine its business operations in any way with the City's business operations and each party shall maintain their operations as separate and distinct.

#### **11.0 ASSIGNMENT**

Except as provided in section 22.0 hereof, Consultant shall not assign or delegate this Agreement or any portion thereof, or any monies due or to 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 ten (10) days in advance of the termination date. In the event of such termination, the Consultant will be paid based on the Compensation provisions in Section 4 for 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 This Agreement shall be deemed entered into in Boulder County, Colorado, and shall be governed by and interpreted under the laws of the State of Colorado. Any action arising out of, in connection with, or relating to this Agreement shall be filed in the District Court of Boulder County of the State of Colorado, and in no other court. Consultant hereby waives its right to challenge the personal jurisdiction of the District Court of Boulder County of the State of Colorado over it.



## **17.0 COMPLIANCE WITH LAWS**

- 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 Consultant acknowledges that the City of Louisville Code of Ethics provides that independent contractors who perform official actions on behalf of the City which involve the use of discretionary authority shall not receive any gifts seeking to influence their official actions on behalf of the City, and that City officers and employees similarly shall not receive such gifts. Consultant agrees to abide by the gift restrictions of the City's Code of Ethics.

## **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:

Carlisle Thompson, LLC  
Attn: Connie Brice  
405 W Sequoia Spur  
Georgetown, TX 78628  
Telephone: (407)-353-27872  
Email: [connie@carlislethompson.com](mailto:connie@carlislethompson.com)

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.

## **21.0 NO THIRD PARTY BENEFICIARIES**

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

## **22.0 SUBCONTRACTORS**

Consultant may utilize subcontractors identified in its qualifications submittal to assist with non-specialized works as necessary to complete projects. Consultant will submit any proposed subcontractor and the description of its services to the City for approval. The City will not work directly with subcontractors.

## **23.0 AUTHORITY TO BIND**

Each of the persons signing below on behalf of any party hereby represents and warrants that such person is signing with full and complete authority to bind the party on whose behalf of whom such person is signing, to each and every term of this Agreement.

## 24.0 ADDITIONAL CONTRACT PROVISIONS FOR FEDERAL AWARDS

The parties hereby incorporate those FEMA Contract Provisions set forth in Exhibit B as if fully set forth herein. In the event of any conflict between the provisions of Exhibit B and the main text of the Agreement, Exhibit B shall control.

In witness whereof, the parties have executed this Agreement to be effective on the date first above written.

CITY OF LOUISVILLE,  
a Colorado Municipal Corporation

By:   
Dennis Maloney, Mayor

Attest:   
Meredyth Muth, City Clerk

CONSULTANT:  
Carlisle Thompson, LLC

By: Connie Brice  
Title: President

## **Exhibit A – Scope of Services & Consultant Service Pricing**

May 30, 2023

Emily Hogan  
Assistant City Manager  
City of Louisville

RE: Proposal for DR 4634 Insurance Reconciliation and Project Closeout

Dear Ms. Hogan:

Per your request, Carlisle Thompson, LLC has prepared scope and costs for the DR 4634 projects. The proposed scope is as follows:

- ❖ Review City's insurance statement of loss and insurance payments received
- ❖ Reconcile and align actual insurance proceeds against FEMA anticipated insurance proceeds for each project worksheet.
- ❖ Coordinate with City and CO DHSEM representative on most efficient approach for insurance reconciliation
- ❖ Recommend adjustment to projects based on insurance reconciliation
- ❖ Attend status meeting with City to provide update on insurance reconciliation, and attend meetings with CO DHSEM, as requested
- ❖ Review project expenses and assist with project closeouts, as requested
- ❖ Assist City with any other PA related tasks, as requested

We estimate the completion of this scope of work will require \$20,000. (See NOTE, page 2)

Please contact Stephen Brice at [sdbrice@carlislethompson.com](mailto:sdbrice@carlislethompson.com) or Johan Barrios at [jobarrios@carlislethompson.com](mailto:jobarrios@carlislethompson.com) for any questions or comments. Thank you for considering us for this work. We look forward to supporting the City in closing out the Marshall Fire (DR-4634) projects.

Sincerely,



Stephen Brice  
Vice President



## Project Positions and Rates

| Project Positions                    | Hourly Rate* | Estimated Percentage of Hours |
|--------------------------------------|--------------|-------------------------------|
| Project Manager                      | \$195.00     | 35%                           |
| Grant/Insurance Specialist           | \$160.00     | 35%                           |
| Grant Analyst                        | \$130.00     | 10%                           |
| Junior Consultant                    | \$100.00     | 10%                           |
| Accounting Tech/Admin                | \$78.00      | 10%                           |
| Professional (Engineer or Estimator) | \$185.00     | As Needed                     |
| Appeals Specialist                   | \$250.00     | As Needed                     |

*\*Rates do NOT include travel costs. Should personnel be required to be on-site, Carlisle Thompson will submit estimated travel expenses for review and pre-approval.*

NOTE: Due to the many variables, unknown, it is difficult at best to estimate the number of hours and associated costs to complete the insurance reconciliation. There are scenarios that the number of hours could be 30-50 hours, and it is possible that our efforts could be close to 200 hours.

Our approach will be to have Jo and an insurance specialist focus on the project. Jo will work closely with CO DHSEM to only complete the work necessary to reconcile the insurance proceeds, avoid any duplication of benefits, and efficiently closeout each PA recovery grant.

Jo will meet with the City designate to update progress, project hours and cost every two weeks.



**Exhibit B – FEMA Contract Provisions**  
**2 C.F.R. § 200, Appendix II**  
**Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**



## FEMA CONTRACT PROVISIONS

### TERMINATION FOR CAUSE AND CONVENIENCE

If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner their obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the Owner shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Contractor under this contract shall, at the option of the Owner, become the Owner's property and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Contractor shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the contract by the Contractor and the Owner may withhold any payments to the contractor for the purpose of set-off until such times as the exact amount of damages due to the Owner from the Contractor is determined.

The Owner may terminate this contract at any time by giving at least ten (10) days' notice in writing to the Contractor. If the contract is terminated by the Owner as provided herein, the Contractor will be paid for the time provided and expenses incurred up to the termination date.

### BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the Contractor or the Contractor's subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this contract. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

### EQUAL EMPLOYMENT OPPORTUNITY

**During the performance of this contract, the contractor agrees as follows:**

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
  - a. Employment, upgrading, demotion, or transfer
  - b. Recruitment or recruitment advertising
  - c. Layoff or termination

- d. Rates of pay or other forms of compensation
- e. Selection for training, including apprenticeship

The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
4. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

8. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

## CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

1. *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. *Withholding for unpaid wages and liquidated damages.* (GRANT RECIPIENT OR SUBRECIPIENT) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

## CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

### Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to (APPLICANT NAME) and understands and agrees that (APPLICANT NAME) will, in turn, report each violation as required to assure

notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

#### Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to (APPLICANT NAME) and understands and agrees that (APPLICANT NAME) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

#### DEBARMENT AND SUSPENSION

1. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters.
3. This certification is a material representation of fact relied upon by the Owner. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Owner, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## BYRD ANTI-LOBBYING AMENDMENT

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

## PROCUREMENT OF RECOVERED MATERIALS

1. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired -
  - a. Competitively within a timeframe providing for compliance with the contract performance schedule
  - b. Meeting contract performance requirements; or
  - c. At a reasonable price.
2. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site,  
<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
3. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

## ACCESS TO RECORDS

1. The Contractor agrees to provide (APPLICANT NAME), (PASS THROUGH ENTITY NAME), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
2. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
4. In compliance with the Disaster Recovery Act of 2018, the applicant and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.



## **DHS SEAL, LOGO, AND FLAGS**

“The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.”

## **COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS**

“This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.”

## **NO OBLIGATION BY FEDERAL GOVERNMENT**

“The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

## **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

“The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor’s actions pertaining to this contract.”

## **PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES**

### **Prohibitions**

1. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
2. Unless an exception in the following section of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
  - i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
  - ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
  - iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
  - iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications



equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

#### Exceptions

1. This clause does not prohibit contractors from providing—
  - i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
  - ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
2. By necessary implication and regulation, the prohibitions also do not apply to:
  - i) Covered telecommunications equipment or services that:
    - a. Are not used as a substantial or essential component of any system; and
    - b. Are not used as critical technology of any system.
  - ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

#### Reporting requirement

1. In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in the following paragraph of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
2. The Contractor shall report the following information pursuant to the preceding paragraph of this clause:
  - i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
  - ii) Within 10 business days of submitting the information in paragraph (C)(b)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

#### Subcontracts

1. The contractor shall insert the substance of this clause, including this paragraph, in all subcontracts and other contractual instruments.

#### TERMINATION FOR CAUSE

**\*\*CLAUSE MUST BE INCLUDED THAT IS PURSUANT TO APPLICABLE LOCAL POLICIES/PROCEDURES**

## **NOT APPLICABLE TO PUBLIC ASSISTANCE**

### **DAVIS-BACON ACT**

1. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
2. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
3. Contractors are required to pay wages not less than once a week.

### **COPELAND ANTI-KICKBACK ACT**

1. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
2. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these contract clauses.
3. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

**SUBJECT: APPROVAL OF DESIGNATION OF PLACES FOR POSTING  
NOTICES FOR PUBLIC MEETINGS**

**DATE: JANUARY 2, 2024**

**PRESENTED BY: MEREDYTH MUTH, CITY CLERK**

**SUMMARY:**

Section 24-6-402(2)(c) of the Colorado Open Meetings Law requires all public bodies of the City designate the public place or places for posting of notices of public meetings. The designation must be made at the local body's first regular meeting of each calendar year. Staff requests City Council approve the following locations for the posting of meeting notices for 2024:

- City Hall, 749 Main Street
- Police Department/Municipal Court, 992 West Via Appia
- Recreation/Senior Center, 900 West Via Appia
- Library, 951 Spruce Street

Pursuant to the Home Rule Charter, meeting notices and agendas are also published on the City's web site at [www.LouisvilleCO.gov](http://www.LouisvilleCO.gov).

**FISCAL IMPACT:**

N/A

**PROGRAM/SUB-PROGRAM IMPACT:**

This helps meet the goal of the Governance & Administration Sub-Program to ensure transparent governance.

**RECOMMENDATION:**

Approve designation of posting locations as listed above.

**ATTACHMENTS:**

None.

**SUBJECT:** APPROVAL OF RESOLUTION NO. 1, SERIES 2024 – A  
RESOLUTION LEVYING GENERAL PROPERTY TAXES FOR  
THE YEAR 2023, TO HELP DEFRAY THE COSTS OF  
GOVERNMENT FOR THE CITY OF LOUISVILLE, COLORADO  
FOR THE 2023 BUDGET YEAR

**DATE:** JANUARY 2, 2024

**PRESENTED BY:** JEFF DURBIN, CITY MANAGER  
RYDER BAILEY, CPA, FINANCE DIRECTOR

**SUMMARY:**

Staff is requesting Council approval of the 2024 Property Tax Mill Levies, in alignment with previously presented 2024 Budget adoption.

**BACKGROUND:**

Council Adopted the 2024 Citywide Budget on November 6<sup>th</sup>. At that time, final assessed values from the Boulder County Assessor were not available. While preliminary assessed values were utilized in the budget process, in order to determine exact mill levies, final assessed values are needed.

Staff received final assessed values on or before January 3rd, and is requesting Council approve the following mill levies and accompanying resolution.

- City General Operating Mill Levy - 5.184 mills
- Recreation Center Debt Service Fund Mill Levy - 1.375 mills  
Total Mill levies in 2024 - 6.559

This is a 17.33% reduction over the prior year's (2023) Total Mill levies (7.934).

The 2024 Adopted Budget can be found on our City's website, linked below.

- Monday, November 6<sup>th</sup> – (Council Meeting) Adopted Budget Presentation  
<https://www.louisvilleco.gov/home/showdocument?id=40240&t=638345309484093320>

**RECOMMENDATION:**

Staff recommends City Council approve the resolution setting the mill levy.

**ATTACHMENTS:**

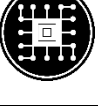
1. Resolution No. 1, Series 2024

**SUBJECT: RESOLUTION NO. 1, SERIES 2024**

**DATE: JANUARY 2, 2024**

**PAGE 2 OF 2**

**STRATEGIC PLAN IMPACT:**

|                                     |                                                                                                                                       |                                     |                                                                                                                           |
|-------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> |  <b>Financial Stewardship &amp; Asset Management</b> | <input checked="" type="checkbox"/> |  <b>Reliable Core Services</b>           |
| <input type="checkbox"/>            |  <b>Vibrant Economic Climate</b>                     | <input type="checkbox"/>            |  <b>Quality Programs &amp; Amenities</b> |
| <input type="checkbox"/>            |  <b>Engaged Community</b>                            | <input type="checkbox"/>            |  <b>Healthy Workforce</b>                |
| <input type="checkbox"/>            |  <b>Supportive Technology</b>                        | <input type="checkbox"/>            |  <b>Collaborative Regional Partner</b>   |

**RESOLUTION NO. 1  
SERIES 2024**

**A RESOLUTION LEVYING GENERAL PROPERTY TAXES FOR THE YEAR  
2023, TO HELP DEFRAY THE COSTS OF GOVERNMENT FOR THE CITY OF  
LOUISVILLE, COLORADO FOR THE 2024 BUDGET YEAR**

**WHEREAS**, the City Council of the City of Louisville has adopted the annual budget for the 2024 budget year in accordance with the Local Government Budget Law, on November 6, 2023; and

**WHEREAS**, the amount of money necessary to balance the budget for general operating purposes from property tax revenue is \$4,655,095; and

**WHEREAS**, the amount of money necessary from property tax revenue to balance the budget for the estimated debt service payments for the approved 2017 General Obligation Recreation Center Bonds is \$1,300,000; and

**WHEREAS**, the 2023 final net valuation for assessment for the City of Louisville as certified by the County Assessor is \$973,385,100; and

**WHEREAS**, the City of Louisville is exempt from the statutory property tax revenue limitation (5.5% limit) due to the voter approval of Ballot Issue 2A on November 6, 2001; and

**WHEREAS**, the City of Louisville is exempt from the fiscal year spending limitation imposed by Article X, Section 20, to the Colorado Constitution, approved by the voters on November 3, 1992, due to the voter approval of Ballot Issue 2A on November 6, 2001.

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

**SECTION 1.** That for the purpose of meeting all general operating expenses of the City of Louisville during the 2024 budget year, there is hereby levied a tax of 5.184 mills upon each dollar of the total valuation for assessment of all taxable property within the City for the year 2023.

**SECTION 2.** That for the purpose of meeting payments for bonded indebtedness of the City of Louisville during the 2024 budget year, there is hereby levied a tax of 1.375 mills upon each dollar of the total valuation for assessment of all taxable property within the City for the year 2023.

**SECTION 3.** That the City Clerk is hereby authorized and directed to immediately certify to the County Commissioners of Boulder County, Colorado, the mill levies for the City of Louisville as herein above determined and set.

**PASSED AND ADOPTED** this 2<sup>nd</sup> day of January, 2024.

\_\_\_\_\_  
Christopher M. Leh, Mayor

ATTEST:

\_\_\_\_\_  
Meredyth Muth, City Clerk



**SUBJECT: DISTRIBUTION OF 2024 OPEN GOVERNMENT PAMPHLET**

**DATE: JANUARY 2, 2024**

**PRESENTED BY: MEREDYTH MUTH, CITY CLERK**

**SUMMARY:**

Section 4-16 (b) of the Home Rule Charter requires the City to “publish and update a pamphlet or other summary of Articles 4 and 5 of this Charter, and other laws relating to citizen participation in municipal government.” The pamphlet or summary shall be provided to each member of a public body at its first meeting of the calendar year.”

**FISCAL IMPACT:**

N/A

**PROGRAM/SUB-PROGRAM IMPACT:**

This helps meet the goal of the Governance & Administration Sub-Program to ensure transparent governance.

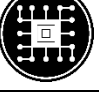
**RECOMMENDATION:**

N/A

**ATTACHMENTS:**

1. 2024 Open Government Pamphlet

**STRATEGIC PLAN IMPACT:**

|                                     |                                                                                     |                                                     |                                     |                                                                                     |                                         |
|-------------------------------------|-------------------------------------------------------------------------------------|-----------------------------------------------------|-------------------------------------|-------------------------------------------------------------------------------------|-----------------------------------------|
| <input type="checkbox"/>            |  | <b>Financial Stewardship &amp; Asset Management</b> | <input checked="" type="checkbox"/> |  | <b>Reliable Core Services</b>           |
| <input type="checkbox"/>            |  | <b>Vibrant Economic Climate</b>                     | <input type="checkbox"/>            |  | <b>Quality Programs &amp; Amenities</b> |
| <input checked="" type="checkbox"/> |  | <b>Engaged Community</b>                            | <input type="checkbox"/>            |  | <b>Healthy Workforce</b>                |
| <input type="checkbox"/>            |  | <b>Supportive Technology</b>                        | <input type="checkbox"/>            |  | <b>Collaborative Regional Partner</b>   |





# *OPEN GOVERNMENT & ETHICS PAMPHLET 2024*

*City Clerk's Office  
749 Main Street  
Louisville CO 80027  
[ClerksOffice@LouisvilleCO.gov](mailto:ClerksOffice@LouisvilleCO.gov)  
303.335.4536*





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## Citizen Participation in Government

The City of Louisville encourages citizen involvement and participation in its public policy process. There are many opportunities for citizens to be informed about and participate in City activities and decisions. All meetings of City Council, and of appointed Boards and Commissions, are open to the public and include an opportunity for public comments. No action or substantive discussion on an item may take place unless that item has been specifically listed as an agenda item for a regular or special meeting. Some opportunities for you to participate include:

### **Reading and inquiring about City Council activities and agenda items, and attending and speaking on topics of interest at public meetings**

#### *City Council Meetings:*

- Regular meetings are generally held the first and third Tuesdays of each month at 6:00 PM in the City Council Chambers, located on the second floor of City Hall, 749 Main Street;
- Study sessions are generally held the second and fourth Tuesdays of each month at 6:00 PM in the Library Meeting Room, located on the first floor of the Library, 951 Spruce Street;
- Regular meetings include a remote participation option via Zoom, are broadcast live on Comcast Channel 8, and are available on demand on the City's website;
- Special meetings may be held occasionally on specific topics. Agendas are posted a minimum of 48 hours prior to the meeting.

*Meeting Agendas for City Council meetings, other than special meetings, are posted a minimum of 72 hours prior to the meeting at the following locations:*

- City Hall, 749 Main Street
- Police Department/Municipal Court, 992 West Via Appia
- Recreation/Senior Center, 900 West Via Appia
- Louisville Public Library, 951 Spruce Street
- City website at [www.LouisvilleCO.gov](http://www.LouisvilleCO.gov)

*Meeting packets with all agenda-related materials for regular meetings are available 72 hours prior to each meeting and may be found at these locations:*

- Louisville Public Library Reference Area,
- 951 Spruce Street,
- City Clerk's Office, City Hall, 749 Main Street,
- City website at [www.LouisvilleCO.gov](http://www.LouisvilleCO.gov)

You may receive eNotifications of City Council news as well as meeting agendas and summaries of City Council actions by registering for eNotifications on the City's web site at [www.LouisvilleCO.gov](http://www.LouisvilleCO.gov).

Meeting minutes of all regular and special meetings are available in the City Clerk's office and on the City's website ([www.LouisvilleCO.gov](http://www.LouisvilleCO.gov)) once they are approved.

Information about City activities and projects, as well as City Council decisions, is included in the *Community Update* newsletter, mailed to all City residents and businesses. Information is also often included in the monthly eNewsletter.

### **Communicating Directly with the Mayor and City Council Members**

Contact information for the Mayor and City Councilmembers is available at [www.LouisvilleCO.gov](http://www.LouisvilleCO.gov), as well as at City Hall, the Louisville Public Library, and the Recreation/Senior Center. You may email the Mayor and City Council as a group at [CityCouncil@LouisvilleCO.gov](mailto:CityCouncil@LouisvilleCO.gov).

Mayor's Town Meetings and City Council Ward Meetings are scheduled periodically. These are informal meetings at which all residents, points of view, and issues are welcome. These meetings are advertised at City facilities and on the City's website ([www.LouisvilleCO.gov](http://www.LouisvilleCO.gov)).

### **Mayor or City Council Elections**

City Council members are elected from three Wards within the City and serve staggered four-year terms. There are two Council representatives from each ward. The mayor is elected at-large and serves a four-year term. City Council elections are held in November of odd-numbered years. For information about City elections, including running for City Council, please contact the City Clerk's Office, at [ClerksOffice@LouisvilleCO.gov](mailto:ClerksOffice@LouisvilleCO.gov) or 303.335.4536.

## **Serving as an Appointed Member on a City Board or Commission**

The City Council makes Board and Commission appointments annually. Some of the City's Boards and Commissions are advisory, others have some decision-making powers. The City Council refers questions and issues to these appointed officials for input and advice. (Please note the Youth Advisory Board has a separate appointment process.)

The City's Boards and Commissions are:

- Board of Adjustment
- Building Code Board of Appeals
- Cultural Council
- Historic Preservation Commission
- Historical Commission
- Library Board of Trustees
- Local Licensing Authority
- Open Space Advisory Board
- Parks & Public Landscaping Advisory Board
- Planning Commission
- Recreation Advisory Board
- Revitalization Commission
- Sustainability Advisory Board
- Youth Advisory Board

Board information, meeting agendas, and schedules are available on the City's website ([www.LouisvilleCO.gov](http://www.LouisvilleCO.gov)).

Agendas for all Board and Commission meetings are posted a minimum of 72 hours prior to each meeting at these locations:

- City Hall, 749 Main Street
- Police Department/Municipal Court, 992 West Via Appia
- Recreation/Senior Center, 900 West Via Appia
- Louisville Public Library, 951 Spruce Street
- City web site at [www.LouisvilleCO.gov](http://www.LouisvilleCO.gov)

Copies of meeting packets containing agenda-related materials are available at least 72 hours prior to each meeting and may be found at the following locations:

- Louisville Public Library Reference Area, 951 Spruce Street;
- City Clerk's Office, City Hall, 749 Main Street
- City web site at [www.LouisvilleCO.gov](http://www.LouisvilleCO.gov)

## **Planning Commission**

The Planning Commission evaluates land use proposals against zoning laws and holds public hearings as outlined in City codes. Following a public hearing, the Commission makes a recommendation of approval or denial to the City Council for all land use proposals.

- Regular Planning Commission meetings are held at 6:30 PM on the second Thursday of each month.
- Overflow meetings are scheduled for 6:30 PM on the 4th Thursday of the month as needed.
- Study Sessions are held occasionally as needed.
- Regular meetings include a remote participation option via Zoom, are broadcast live on Comcast Channel 8, and are available on demand on the City's website.

## **Open Government Training**

All City Council members and members of a permanent Board or Commission are required to participate in at least one City-sponsored open government-related seminar, workshop, or other training program at least once every two years.

## **Open Meetings**

The City follows the Colorado Open Meetings Law ("Sunshine Law") as well as additional open meetings requirements found in the City's Home Rule Charter. These rules and practices apply to the City Council and appointed Boards and Commissions (referred to as a "public bodies" for ease of reference). Important open meetings rules and practices include the following:

### **Regular Meetings**

All meetings of three or more members of a public body (or a quorum, whichever is fewer) are open to the public.

All meetings of public bodies must be held in public buildings and public facilities accessible to all members of the public. Meetings may be held electronically under specific circumstances.

All meetings must be preceded by proper notice. Agendas and agenda-related materials are posted

at least 72 hours in advance of the meeting at the following locations:

- City Hall, 749 Main Street
- Police Department/Municipal Court, 992 West Via Appia
- Recreation/Senior Center, 900 West Via Appia
- Louisville Public Library, 951 Spruce Street
- On the City web site at [www.LouisvilleCO.gov](http://www.LouisvilleCO.gov)

### **Study Sessions**

Study sessions are also open to the public however, study sessions have a limited purpose:

- Study sessions are to obtain information and discuss matters in a less formal atmosphere;
- No preliminary or final decision or action may be made or taken at any study session; further, full debate and deliberation of a matter is to be reserved for formal meetings. If a person believes in good faith that a study session is proceeding contrary to these limitations, they may submit a written objection. The presiding officer will then review the objection and determine how the study session should proceed.
- A written summary of each study session is prepared and is available on the City's website.

## **Executive Sessions**

The City Charter also sets out specific procedures and limitations on the use of executive sessions. These rules, found in Article 5 of the Charter, are intended to further the City policy that the activities of City government be conducted in public to the greatest extent feasible, in order to assure public participation and enhance public accountability. The City's rules regarding executive sessions include the following:

### **Timing and Procedures**

The City Council and City Boards and Commissions may hold an executive session only at a regular or special meeting. No formal action of any type, and no informal or "straw" vote, may occur at any executive session. Rather, formal actions,

such as the adoption of a proposed policy, position, rule or other action, may only occur in open session.

Prior to holding an executive session, there must be a public announcement of the request and the legal authority for convening in closed session. There must be a detailed and specific statement as to the topics to be discussed and the reasons for requesting the session.

The request must be approved by a supermajority (two-thirds of the full Council, Board, or Commission). Prior to voting on the request, the clerk reads a statement of the rules pertaining to executive sessions. Once in executive session, the limitations on the session must be discussed and the propriety of the session confirmed. If there are objections and/or concerns over the propriety of the session, those are to be resolved in open session.

Once the session is over, an announcement is made of any procedures that will follow from the session.

Executive sessions are recorded, with access to those tapes limited as provided by state law. Those state laws allow a judge to review the propriety of a session if in a court filing it is shown that there is a reasonable belief that the executive session went beyond its permitted scope. Executive session records are not available outside of a court proceeding.

### **Authorized Topics**

For City Council, an executive session may be held only for discussion of the following topics:

- Matters where the information being discussed is required to be kept confidential by federal or state law;
- Certain personnel matters relating to employees directly appointed by the Council, and other personnel matters only upon request of the City Manager or Mayor for informational purposes only;
- Consideration of water rights and real property acquisitions and dispositions, but only as to appraisals and other value estimates and strategy for the acquisition or disposition; and

- Consultation with an attorney representing the City with respect to pending litigation. This includes cases that are actually filed as well as situations where the person requesting the executive session believes in good faith that a lawsuit may result, and allows for discussion of settlement strategies.

The City's Boards and Commissions may only hold an executive session for consultation with its attorney regarding pending litigation.

## Ethics

Ethics are the foundation of good government. Louisville has adopted its own Code of Ethics, which is found in the City Charter and which applies to elected officials, public body members, and employees. The Louisville Code of Ethics applies in addition to any higher standards in state law. Louisville's position on ethics is perhaps best summarized in the following statement taken from the City Charter:

*Those entrusted with positions in the City government must commit to adhering to the letter and spirit of the Code of Ethics. Only when the people are confident that those in positions of public responsibility are committed to high levels of ethical and moral conduct, will they have faith that their government is acting for the good of the public. This faith in the motives of officers, public body members, and employees is critical for a harmonious and trusting relationship between the City government and the people it serves.*

The City's Code of Ethics (Sections 5-6 through 5-17 of the Charter) is summarized in the following paragraphs. While the focus is to provide a general overview of the rules, it is important to note that all persons subject to the Code of Ethics must strive to follow both the letter and the spirit of the Code, so as to avoid not only actual violations, but public perceptions of violations. Indeed, perceptions of violations can have the same negative impact on public trust as actual violations.

## Conflicts of Interest

One of the most common ethical rules visited in the local government arena is the "conflict of interest rule." While some technical aspects of the rule are discussed below, the general rule under the Code of Ethics is that if a Council, Board, or Commission member has an "interest" that will be affected by his or her "official action," then there is a conflict of interest and the member must:

- Disclose the conflict, on the record and with particularity;
- Not participate in the discussion;
- Leave the room; and
- Not attempt to influence others.

An "interest" is a pecuniary, property, or commercial benefit, or any other benefit the primary significance of which is economic gain or the avoidance of economic loss. However, an "interest" does not include any matter conferring similar benefits on all property or persons similarly situated. (Therefore, a City Council member is not prohibited from voting on a sales tax increase or decrease if the member's only interest is that he or she, like other residents, will be subject to the higher or lower tax.) Additionally, an "interest" does not include a stock interest of less than one percent of the company's outstanding shares.

The Code of Ethics extends the concept of prohibited interest to persons or entities with whom the member is associated. In particular, an interest of the following persons and entities is also an interest of the member: relatives (including persons related by blood or marriage to certain degrees, and others); a business in which the member is an officer, director, employee, partner, principal, member, or owner; and a business in which member owns more than one percent of outstanding shares.

The concept of an interest in a business applies to profit and nonprofit corporations, and applies in situations in which the official action would affect a business competitor. Additionally, an interest is deemed to continue for one year after the interest has ceased. Finally, "official action" for purposes of the conflict of interest rule, includes not only legislative actions, but also administrative actions and "quasi-judicial" proceedings where the entity is acting like a judge in applying rules to the specific



rights of individuals (such as a variance request or liquor license). Thus, the conflict rules apply essentially to all types of actions a member may take.

### **Conflicts**

In addition to its purchasing policies and other rules intended to secure contracts that are in the best interest of the City, the Code of Ethics prohibits various actions regarding contracts. For example, no public body member who has decision-making authority or influence over a City contract can have an interest in the contract, unless the member has complied with the disclosure and recusal rules. Further, members are not to appear before the City on behalf of other entities that hold a City contract, nor are they to solicit or accept employment from a contracting entity if it is related to the member's action on a contract with that entity.

### **Gifts and Nepotism**

The Code of Ethics, as well as state law, regulates the receipt of gifts. City officials and employees may not solicit or accept a present or future gift, favor, discount, service or other thing of value from a party to a City contract, or from a person seeking to influence an official action. There is an exception for the "occasional nonpecuniary gift" of \$15 or less, but this exception does not apply if the gift, no matter how small, may be associated with the official's or employee's official action, whether concerning a contract or some other matter. The gift ban also extends to independent contractors who may exercise official actions on behalf of the City.

The Code of Ethics also prohibits common forms of nepotism. For example, no officer, public body member, or employee shall be responsible for employment matters concerning a relative. Nor can they influence compensation paid to a relative, and a relative of a current officer, public body member or employee cannot be hired unless certain personnel rules are followed.

### **Other Ethics Rules of Interest**

Like state law, Louisville's Code of Ethics prohibits the use of non-public information for personal or private gain. It also prohibits acts of advantage or

favoritism and, in that regard, prohibits special considerations, use of employee time for personal or private reasons, and use of City vehicles or equipment, except in same manner as available to any other person (or in manner that will substantially benefit City). The City also has a "revolving door" rule that prohibits elected officials from becoming City employees either during their time in office or for two years after leaving office. These and other rules of conduct are found in Section 5-9 of the Code of Ethics.

### **Disclosure, Enforcement, and Advisory Opinions**

The Code of Ethics requires that those holding or running for City Council file a financial disclosure statement with the City Clerk. The statement must include, among other information, the person's employer and occupation, sources of income, and a list of business and property holdings.

The Code of Ethics provides fair and certain procedures for its enforcement. Complaints of violations may be filed with the City prosecutor; the complaint must be a detailed written and verified statement. If the complaint is against an elected or appointed official, it is forwarded to an independent judge who appoints a special, independent prosecutor for purposes of investigation and appropriate action. If against an employee, the City prosecutor will investigate the complaint and take appropriate action. In all cases, the person who is subject to the complaint is given the opportunity to provide information concerning the complaint.

Finally, the Code allows persons who are subject to the Code to request an advisory opinion if they are uncertain as to applicability of the Code to a particular situation, or as to the definition of terms used in the Code. Such requests are handled by an advisory judge, selected from a panel of independent, disinterested judges who have agreed to provide their services. This device allows persons who are subject to the Code to resolve uncertainty before acting, so that a proper course of conduct may be identified. Any person who requests and acts in accordance with an advisory opinion issued by an advisory judge is not subject to City penalty, unless material facts were omitted or misstated in the request. Advisory opinions are posted for public



inspection; the advisory judge may order a delay in posting if the judge determines the delay is in the City's best interest.

Citizens are encouraged to contact the City Clerk's Office with any questions about the City's Code of Ethics or to request a copy. A copy of the Code is also available at the City's website ([www.LouisvilleCO.gov](http://www.LouisvilleCO.gov)).

## **Other Laws on Citizen Participation in Government**

Preceding sections of this pamphlet describe Louisville's practices intended to further citizen participation in government. Those practices are intended to further dissemination of information and participation in the governing process. Some other laws of interest regarding citizen participation include:

### **Initiative and Referendum**

The right to petition for municipal legislation is reserved to the citizens by the Colorado Constitution and the City Charter. An initiative is a petition for legislation brought directly by the citizens; a referendum is a petition brought by the citizens to refer to the voters a piece of legislation that has been approved by the City Council. In addition to these two petitioning procedures, the City Council may refer matters directly to the voters in the absence of any petition. Initiative and referendum petitions must concern municipal legislation—as opposed to administrative or other non-legislative matters. By law the City Clerk is the official responsible for many of the activities related to a petition process, such as approval of the petition forms, review of the signed petitions, and consideration of protests and other matters. There are minimum signature requirements for petitions to be moved to the ballot; in Louisville, an initiative petition must be signed by at least five percent of the total number of registered electors. A referendum petition must be signed by at least two and one-half percent of the registered electors.

### **Public Hearings**

In addition to the opportunity afforded at each regular City Council meeting to comment on items not on the agenda, most City Council actions provide opportunity for public comment through a public hearing process. For example, the City Charter provides that a public hearing shall be held on every ordinance before its adoption. This includes opportunities for public comment prior to initial City Council discussion of the ordinance, as well as after Council's initial discussion but before action. Many actions of the City are required to be taken by ordinance, and thus this device allows for citizen public hearing comments on matters ranging from zoning ordinances to ordinances establishing offenses that are subject to enforcement through the municipal court.

Additionally, federal, state, and/or local law requires a public hearing on a number of matters irrespective of whether an ordinance is involved. For example, a public hearing is held on the City budget, the City Comprehensive Plan and similar plans, and a variety of site-specific or person-specific activities, such as annexations of land into the city, rezonings, special use permits, variances, and new liquor licenses. Anyone may provide comments during these hearings.

### **Public Records**

Access to public records is an important aspect of citizen participation in government. Louisville follows the Colorado Open Records Act (CORA) and the additional public records provisions in the City Charter. In particular, the Charter promotes the liberal construction of public records law, so as to promote the prompt disclosure of City records to citizens at no cost or no greater cost than the actual costs to the City.

The City Clerk is the custodian of the City's public records, except for police records which are handled by the Police Department. The City maintains a public policy on access to public records, which includes a records request form, a statement of fees, and other guidelines. No fee is charged for the inspection of records or for locating or making records available for copying, except in cases of voluminous requests or dated records, or when the

time spent in locating records exceeds two hours. No fees are charged for the first 25 copies requested or for electronic records.

Many records, particularly those related to agenda items for City Council and current Board and Commission meetings, are available directly on the City's website ([www.LouisvilleCO.gov](http://www.LouisvilleCO.gov)). In addition to posting agenda-related material, the City maintains a communication file (email) for the City Council which is available on the City's website ([www.LouisvilleCO.gov](http://www.LouisvilleCO.gov)).

CORA lists the categories of public records that are not generally open to public inspection. These include, for example, certain personnel records and information, financial and other information about users of City facilities, privileged information, medical records, letters of reference, and other items listed in detail in CORA. When public records are not made available, the custodian will specifically advise the requestor of the reason.

Citizens are encouraged to review the City's website ([www.LouisvilleCo.gov](http://www.LouisvilleCo.gov)) for information, and to contact the City with any questions regarding City records.

## **Public Involvement Policy**

Public participation is an essential element of the City's representative form of government. To promote effective public participation City officials, advisory board members, staff and participants should all observe the following guiding principles, roles and responsibilities:

### **Guiding Principles for Public Involvement**

**Inclusive not Exclusive** - Everyone's participation is welcome. Anyone with a known interest in the issue will be identified, invited and encouraged to be involved early in the process.

**Voluntary Participation** - The process will seek the support of those participants willing to invest the time necessary to make it work.

**Purpose Driven** - The process will be clearly linked to when and how decisions are made. These links will be communicated to participants.

**Time, Financial and Legal Constraints** - The process will operate within an appropriate time frame and budget and observe existing legal and regulatory requirements.

**Communication** - The process and its progress will be communicated to participants and the community at-large using appropriate methods and technologies.

**Adaptability** - The process will be adaptable so that the level of public involvement is reflective of the magnitude of the issue and the needs of the participants.

**Access to Information** - The process will provide participants with timely access to all relevant information in an understandable and user-friendly way. Education and training requirements will be considered.

**Access to Decision Making** - The process will give participants the opportunity to influence decision making.

**Respect for Diverse Interests** - The process will foster respect for the diverse values, interests and knowledge of those involved.

**Accountability** - The process will reflect that participants are accountable to both their constituents and to the success of the process.

**Evaluation** - The success and results of the process will be measured and evaluated.

### **Roles and Responsibilities - City Council**

City Council is ultimately responsible to all the citizens of Louisville and must weigh each of its decisions accordingly. Councilors are responsible to their local constituents under the ward system; however they must carefully consider the concerns expressed by all parties. Council must ultimately meet the needs of the entire community—including current and future generations—and act in the best interests of the City as a whole.

During its review and decision-making process, Council has an obligation to recognize the efforts and activities that have preceded its deliberations. Council should have regard for the public involvement processes that have been completed in support or opposition of projects.

## **Roles and Responsibilities - City Staff and Advisory Boards**

The City should be designed and run to meet the needs and priorities of its citizens. Staff and advisory boards must ensure the Guiding Principles direct their work. In addition to the Guiding Principles, staff and advisory boards are responsible for:

- ensuring that decisions and recommendations reflect the needs and desires of the community as a whole;
  - pursuing public involvement with a positive spirit because it helps clarify those needs and desires and also adds value to projects;
  - fostering long-term relationships based on respect and trust in all public involvement activities;
  - encouraging positive working partnerships;
  - ensuring that no participant or group is marginalized or ignored;
  - drawing out the silent majority, the voiceless and the disempowered; and being familiar with a variety of public involvement techniques and the strengths and weaknesses of various approaches.
- identifying their concerns and issues early in the process;
  - providing their names and contact information if they want direct feedback;
  - remembering that no single voice is more important than all others, and that there are diverse opinions to be considered;
  - making every effort to work within the project schedule and if this is not possible, discussing this with the proponent without delay;
  - recognizing that process schedules may be constrained by external factors such as limited funding, broader project schedules or legislative requirements;
  - accepting some responsibility for keeping themselves aware of current issues, making others aware of project activities and soliciting their involvement and input; and
  - considering that the quality of the outcome and how that outcome is achieved are both important.

*Updated December 2023*

## **All Participants**

The public is also accountable for the public involvement process and for the results it produces. All parties (including Council, advisory boards, staff, proponents, opponents and the public) are responsible for:

- working within the process in a cooperative and civil manner;
- focusing on real issues and not on furthering personal agendas;
- balancing personal concerns with the needs of the community as a whole;
- having realistic expectations;
- participating openly, honestly and constructively,
- offering ideas, suggestions and alternatives;
- listening carefully and actively considering everyone's perspectives;

This pamphlet is prepared pursuant to the Home Rule Charter of the City of Louisville.

This is a compilation of Articles 4 and 5 of the Charter of the City of Louisville and is available at all times in the City Clerk's Office, 749 Main Street, Louisville, Colorado, and on the City's web site at [www.LouisvilleCO.gov](http://www.LouisvilleCO.gov).

This pamphlet is also provided to every member of a public body (board or commission) at that body's first meeting each year.

**SUBJECT: SWEARING IN OF PRESIDING MUNICIPAL JUDGE AND CITY ATTORNEY**

**DATE: JANUARY 2, 2024**

**PRESENTED BY: MEREDYTH MUTH, CITY CLERK**

**SUMMARY:**

Every two years, the City Council appoints a City Attorney and a Presiding Municipal Judge as allowed per Section 9 of the Home Rule Charter. On October 17, 2023 the City Council conducted an evaluation of the Municipal Judge and City Attorney. On December 5, the Council voted to continue the services of David Thrower as Presiding Municipal Judge and Kelly PC as City Attorney and approved contracts for 2024 – 2025.

**FISCAL IMPACT:**

All costs for these positions have been accounted for in the 2024 budget.

**PROGRAM/SUB-PROGRAM IMPACT:**

These appointments help the City achieve goals of the administrative and legal support sub-programs to ensure inclusive, responsive, transparent, friendly, fiscally responsible, effective, and efficient governance, administration and support.

**RECOMMENDATION:**

N/A

**ATTACHMENTS:**

None

**STRATEGIC PLAN IMPACT:**

|                          |                                                                                     |                                                     |                                     |                                                                                     |                                         |
|--------------------------|-------------------------------------------------------------------------------------|-----------------------------------------------------|-------------------------------------|-------------------------------------------------------------------------------------|-----------------------------------------|
| <input type="checkbox"/> |  | <b>Financial Stewardship &amp; Asset Management</b> | <input checked="" type="checkbox"/> |  | <b>Reliable Core Services</b>           |
| <input type="checkbox"/> |  | <b>Vibrant Economic Climate</b>                     | <input type="checkbox"/>            |  | <b>Quality Programs &amp; Amenities</b> |
| <input type="checkbox"/> |  | <b>Engaged Community</b>                            | <input type="checkbox"/>            |  | <b>Healthy Workforce</b>                |
| <input type="checkbox"/> |  | <b>Supportive Technology</b>                        | <input type="checkbox"/>            |  | <b>Collaborative Regional Partner</b>   |

**SUBJECT: PROCLAMATION - DR. MARTIN LUTHER KING – 2024**

**DATE: JANUARY 2, 2024**

**PRESENTED BY: MONAI MYLES, EQUITY, DIVERSITY, AND INCLUSION  
MANAGER**

**SUMMARY:**

Dr. Martin Luther King Jr. Day is recognized annually on the third Monday of January. By commemorating Dr. Martin Luther King Jr. Day, the City of Louisville has the opportunity to reflect on King’s values of non-violence, beloved community, and justice and the role these values play in city government, as well as the steps we can take each day to bring us closer to living out our ideals.

**FISCAL IMPACT:**

None

**RECOMMENDATION:**

Recognize Dr. Martin Luther King Jr. Day in the City of Louisville, CO.

**ATTACHMENT(S):**

1. Dr. Martin Luther King Proclamation - 2024

**STRATEGIC PLAN IMPACT:**

|                                     |                                                                                                                                         |                          |                                                                                                                             |
|-------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|--------------------------|-----------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/>            |  <b>Financial Stewardship &amp; Asset Management</b> | <input type="checkbox"/> |  <b>Reliable Core Services</b>           |
| <input type="checkbox"/>            |  <b>Vibrant Economic Climate</b>                     | <input type="checkbox"/> |  <b>Quality Programs &amp; Amenities</b> |
| <input checked="" type="checkbox"/> |  <b>Engaged Community</b>                            | <input type="checkbox"/> |  <b>Healthy Workforce</b>                |
| <input type="checkbox"/>            |  <b>Supportive Technology</b>                        | <input type="checkbox"/> |  <b>Collaborative Regional Partner</b>   |



## **Dr. Martin Luther King Jr. Day Proclamation January 2024**

**WHEREAS**, Dr. Martin Luther King Jr. devoted his life to the advancement of civil rights and public service, and believed in a nation of freedom and justice for all, and challenged all citizens to live up to the purpose and potential of America; and,

**WHEREAS**, a guiding principle for Dr. King's work was nonviolence, once considered the highest form of activism and radical change, which in its basic truth is the way to transform unjust systems and broken relationships; and,

**WHEREAS**, Dr. King declared, "We shall not...relinquish our privilege and our obligation to love. This is the only way to create the beloved community," outlining his vision for beloved community as one in which our global community practices justice, peace, love, and connection; and,

**WHEREAS**, Dr. King and the activists of the Civil Rights Movement risked and sacrificed their lives to transform public policy from segregation to integration, resulting in the repeal of state laws mandating racial segregation in the South known as the "Jim Crow Laws," the passage of the federal Civil Rights Act of 1964, the Voting Rights Act of 1965, and other anti-discrimination laws aimed at ending economic, legal, and social segregation in America, and leading to Dr. King winning the Nobel Peace Prize on December 10, 1964; and,

**WHEREAS**, the theme of the King Center this year is 'Shifting the Cultural Climate through the Study and Practice of Kingian Nonviolence' a strategic approach to challenging injustice, navigating conflict, and creating more compassionate, constructive cultures; and,

**WHEREAS**, the movement to recognize Dr. King's legacy as a federal holiday began four days after his assassination, yet took 15 years of struggle before his birthday was finally approved as a federal holiday, and an additional 17 years for it to be recognized in all 50 states; and,



**WHEREAS,** Dr. Martin Luther King Jr. Day is an opportunity for us to recognize his teachings in seeing the commonality of our dreams, our hopes, and our fears — the threads, truth, and dignity that binds together as human beings — and to encourage each citizen to take part in service that will benefit our communities and neighborhoods; and,

**NOW, THEREFORE, BE IT RESOLVED** that the City of Louisville City Council hereby proclaims the third Monday of the month of January, as

Dr. Martin Luther King Jr. Day

and recognizes same as a day to seek inspiration for personal and collective action by honoring the legacy of Dr. Martin Luther King Jr. and by observing this United States federal holiday.

DATED this 2<sup>nd</sup> day of January, 2023

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Christopher M. Leh, Mayor

ATTEST:

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Meredyth Muth, City Clerk

**SUBJECT:** RESOLUTION NO. 2, SERIES 2024 – A RESOLUTION  
APPROVING A SECOND AMENDMENT TO THE SALES TAX  
REVENUE SHARING INTERGOVERNMENTAL AGREEMENT  
WITH THE TOWN OF SUPERIOR REGARDING A TEMPORARY  
WAIVER OF TAX REVENUES DUE TO THE CITY FOR  
PURPOSES OF PROVIDING A BUSINESS INCENTIVE

**DATE:** JANUARY 2, 2024

**PRESENTED BY:** AUSTIN BROWN, INTERIM ECONOMIC VITALITY MANAGER

**SUMMARY:**

The City of Louisville and the Town of Superior have a sales tax revenue sharing Intergovernmental Agreement (IGA) for the South Property, an area that previously had been in the City of Louisville. A map of this area is attached for reference along with the IGA (*Attachment #1*). The IGA provides that the Town of Superior will share with Louisville 50% of the sales tax revenue collected in the revenue sharing area (based on a 2.7% sales tax rate).

Bigsby's Folly Winery & Restaurant intends to purchase Block 4 in Downtown Superior and construct a 7,500 square foot event-based restaurant concept. Bigsby's Folly is a family-owned business that has operated successfully in Denver's River North Art District since 2017. The proposed expansion to Superior includes a total capital investment of \$6.7M. It's anticipated that the business will create 45 new jobs with an average pay of \$30-\$65+ per hour. Additional information on the Bigsby's Folly project is included as *Attachment #2*.

Since Block 4 is within the IGA area, both Louisville and Superior would receive sales tax revenues of 1.35% from the new business. In June 2023, Superior entered into an incentive agreement with Bigsby's Folly, which will provide a rebate of the Town's 1.35% portion of Sales Tax Revenues collected from the Company for the first ten years of operation following the certificate of occupancy, not to exceed \$1,000,000.

Superior has requested through the letter included as *Attachment #3* that City Council support new development in the revenue sharing area by providing a rebate of up to 100% of the City's 1.35% sales tax rate, similar to Louisville's existing Business Assistance Program (BAP). Following direction from City Council, the City Attorney has drafted a second amendment to the IGA and a resolution for Council review. These items are included as *Attachment #4* and *Attachment #5*, respectively.

Per Council direction, staff is proposing a 50% rebate of the City's 1.35% sales tax rate. This is consistent with the 50% rebate that the City typically offers through its BAP. A typical BAP agreement would rebate 50% of the City's 3.0% retail sales tax rate for up

to a 10-year period. Under this BAP structure, the City rebates back to the Company 50% of the 3.0% sales tax that the Company remitted to the City the previous year.

The recommendation to waive 50% of the City's 1.35% sales tax rate would result in Louisville receiving 0.675% in sales tax revenue from the Bigsby's project. When combined with Superior's 100% rebate of its 1.35% sales tax rate, Bigsby's Folly would receive a total of 2.025% of the effective 2.7% sales tax rate back (1.35% rebated from Superior and 0.675% waived from Louisville).

Under the proposed amendment, the City would temporarily waive 50% of the 1.35% sales tax revenues that it would normally collect. The temporary waiver would be in effect until the City has waived \$500,000 in tax revenues; 10 years from the commencement date; or the total sum of rebates received by the Company (from both Louisville and Superior) reaches \$1,000,000, whichever occurs first. The amendment requires that all revenues must be used by Superior to provide rebates to the Company as dictated by its Incentive Agreement.

Additionally, the amendment stipulates that the project must be completed by December 31, 2026. If the project has not been completed by this date, the agreement becomes void. Finally, in the event that the company is required to reimburse Superior for any reason under the terms of its Incentive Agreement, Superior will reimburse to Louisville 25% of any reimbursement that it receives from the company.

**FISCAL IMPACT:**

The subject parcel is currently vacant and not generating any sales tax revenue. Based on estimates provided by the company, Bigsby's Folly projects \$20,333,333.33 in total retail sales over its first 5 years of operation. When accounting for the City's 50% share of the 2.7% sales tax rate, the company would owe approximately \$274,500 in taxes to the City over this time period. Under the proposed IGA amendment, Louisville would collect \$137,250 in retail sales tax while waiving the remaining \$137,250 during this initial 5-year period. The City would continue to waive 50% of its sales tax revenue for another 5 years or until either of the caps included in the amendment has been met. Following the termination of the agreement through any of the means outlined in the amendment, the City would go back to collecting 100% of its 50% share of the 2.7% sales tax rate.

| Projected New Sales (Gross Retail) |                  |
|------------------------------------|------------------|
| Year 1                             | \$ 2,481,481.48  |
| Year 2                             | \$ 3,333,333.33  |
| Year 3                             | \$ 4,074,074.07  |
| Year 4                             | \$ 4,962,962.96  |
| Year 5                             | \$ 5,481,481.48  |
| Total                              | \$ 20,333,333.33 |

**SUBJECT: RESOLUTION NO. 2, SERIES 2024**

**DATE: JANUARY 2, 2024**

**PAGE 3 OF 3**

| Total Sales (First 5 Years) | Detail of Taxes   | Amount Paid   | Rebate % | Rebate Amount |
|-----------------------------|-------------------|---------------|----------|---------------|
| \$ 20,333,333.33            | City Sales- 1.35% | \$ 274,500.00 | 50%      | \$ 137,250.00 |

**PROGRAM/SUB-PROGRAM IMPACT:**

The recommended Business Assistance Agreement supports the Business Retention & Development sub-program objective to retain a diverse mix of businesses that provide good employment opportunities for Louisville residents and the Economic Prosperity Program Goal to promote a thriving business climate that provides job opportunities, facilitates investment, and produces reliable revenue to support City services.

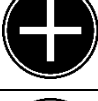
**RECOMMENDATION:**

Staff recommends approval of the second amendment to the IGA with the Town of Superior.

**ATTACHMENT(S):**

1. Resolution Approving a Second Amendment to the Intergovernmental Agreement
2. Second Amendment to Intergovernmental Agreement
3. Intergovernmental Agreement between Louisville and Superior and Map
4. Bigsby's Folly Presentation
5. Letter of Request from Superior

**STRATEGIC PLAN IMPACT:**

|                                     |                                                                                                                                         |                          |                                                                                                                             |
|-------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|--------------------------|-----------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/>            |  <b>Financial Stewardship &amp; Asset Management</b> | <input type="checkbox"/> |  <b>Reliable Core Services</b>           |
| <input checked="" type="checkbox"/> |  <b>Vibrant Economic Climate</b>                     | <input type="checkbox"/> |  <b>Quality Programs &amp; Amenities</b> |
| <input type="checkbox"/>            |  <b>Engaged Community</b>                            | <input type="checkbox"/> |  <b>Healthy Workforce</b>                |
| <input type="checkbox"/>            |  <b>Supportive Technology</b>                        | <input type="checkbox"/> |  <b>Collaborative Regional Partner</b>   |

**RESOLUTION NO. 2  
SERIES 2024**

**A RESOLUTION APPROVING A SECOND AMENDMENT TO THE SALES TAX  
REVENUE SHARING INTERGOVERNMENTAL AGREEMENT WITH THE TOWN OF  
SUPERIOR REGARDING A TEMPORARY WAIVER OF TAX REVENUES DUE TO  
THE CITY FOR PURPOSES OF PROVIDING A BUSINESS INCENTIVE**

**WHEREAS**, Louisville and Superior are parties to that certain Intergovernmental Agreement, executed July 21, 1997, and effective upon ratification by the voters of Louisville and Superior at the jurisdictions' respective elections in November 1997, as amended by that certain First Amendment to Intergovernmental Agreement, dated February 15, 2005 (collectively, the "IGA"); and

**WHEREAS**, under the IGA, Superior agreed, *inter alia*, to share with Louisville fifty percent (50%) of the revenues generated from Superior's existing 2.7% sales tax imposed upon taxable transactions within the South Property (as such term is defined in the IGA); and

**WHEREAS**, in the summer of 2023, Superior adopted an Enhanced Sales Tax Incentive Program ("ESTIP"), for the purpose of encouraging the establishment and substantial expansion of retail sales tax generating businesses within Superior, with an emphasis on Downtown Superior; and

**WHEREAS**, following its adoption of the ESTIP, in June 2023, Superior entered into an incentive agreement ("Incentive Agreement") with Bigsby's Folly Winery & Restaurant (the "Company"), which Incentive Agreement will provide a rebate of Superior's portion of enhanced sales tax revenues collected from the Company until the earlier of (i) 10 years after issuance of the certificate of occupancy, or (ii) the total sum of rebates under the Incentive Agreement reaches \$1,000,000 (the "Rebate Period"); and

**WHEREAS**, the Company plans to purchase the property known as "Block 4" in Downtown Superior (the "Project Location") and construct a 7,500 square foot, event-based restaurant concept (the "Project"), at an estimated cost of \$6,700,000; and

**WHEREAS**, the Company anticipates the Project will be a regional draw, and create 45 new jobs with an average wage of \$30–\$65 per hour; and

**WHEREAS**, Superior has requested that Louisville temporarily waive its right to receive up to 100% of the City's portion of enhanced sales tax revenues collected from the Company in connection with the Project during the Rebate Period, so that enhanced sales tax revenues subject to such temporary waiver may be rebated to the Company by Superior pursuant to the terms and conditions of the Incentive Agreement; and

**WHEREAS**, in response to Superior's request, the City Council finds it appropriate to waive its right to receive only half (50%) of the City's share of enhanced Tax Revenues collected from the Company in connection with the Project during the Rebate Period, such that the City will continue to receive the remaining half (50%) of the City's share during the Rebate Period; and

**WHEREAS**, the City Council finds that the Project, if successful, may attract other, sales-tax-generating businesses to the South Property, thus increasing the sales tax revenues shared by the City and Superior under the IGA, and, therefore, desires to grant Superior's request, subject to the terms and conditions of the Second Amendment accompanying this resolution; and

**WHEREAS**, the City Council by this resolution desires to approve the Second Amendment and authorize its execution.

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

1. The Second Amendment to Intergovernmental Agreement (the "Amendment), regarding the City's temporary waiver of its right to receive certain sales tax revenues from Superior to provide a business incentive, is hereby approved in essentially the same form as the copy of such Amendment accompanying this Resolution.

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

**PASSED AND ADOPTED** this 2<sup>nd</sup> day of January, 2024.

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Christopher M. Leh, Mayor

ATTEST:

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Meredyth Muth, City Clerk

## SECOND AMENDMENT TO INTERGOVERNMENTAL AGREEMENT

This **SECOND AMENDMENT TO INTERGOVERNMENTAL AGREEMENT** ("Second Amendment") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_ ("Effective Date"), by and between the **City of Louisville** ("Louisville" or the "City"), and the **Town of Superior** ("Superior") (each a "Party" and collectively, the "Parties").

**WHEREAS**, Louisville and Superior are parties to that certain Intergovernmental Agreement, executed July 21, 1997, and effective upon ratification by the voters of Louisville and Superior at the jurisdictions' respective elections in November 1997, as amended by that certain First Amendment to Intergovernmental Agreement, dated February 15, 2005 (collectively, the "IGA"); and

**WHEREAS**, under the IGA, Superior agreed, *inter alia*, to share with Louisville fifty percent (50%) of the revenues generated from Superior's existing 2.7% sales tax (the "Tax Revenues") imposed upon taxable transactions within the South Property (as such term is defined in the IGA); and

**WHEREAS**, in the summer of 2023, Superior adopted an Enhanced Sales Tax Incentive Program ("ESTIP"), for the purpose of encouraging the establishment and substantial expansion of retail sales tax generating businesses within Superior, with an emphasis on Downtown Superior; and

**WHEREAS**, following its adoption of the ESTIP, in June 2023, Superior entered into an incentive agreement ("Incentive Agreement") with Bigsby's Folly Winery & Restaurant (the "Company"), which Incentive Agreement will provide a rebate of Superior's portion of enhanced Tax Revenues collected from the Company until the earlier of (i) 10 years after issuance of the certificate of occupancy, or (ii) the total sum of rebates under the Incentive Agreement reaches \$1,000,000 (the "Rebate Period"); and

**WHEREAS**, the Company plans to purchase the property known as "Block 4" in Downtown Superior (the "Project Location") and construct a 7,500 square foot, event-based restaurant concept (the "Project"), at an estimated cost of \$6,700,000; and

**WHEREAS**, the Company anticipates the Project will be a regional draw, and create 45 new jobs with an average wage of \$30–\$65 per hour; and

**WHEREAS**, Superior has requested that Louisville temporarily waive its right to receive up to 100% of the City's share of enhanced Tax Revenues collected from the Company in connection with the Project during the Rebate Period, so that enhanced Tax Revenues subject to such temporary waiver may be rebated to the Company by Superior pursuant to the terms and conditions of the Incentive Agreement; and

**WHEREAS**, in response to Superior's request, the City Council finds it appropriate to waive its right to receive only half (50%) of the City's share of enhanced Tax Revenues



collected from the Company in connection with the Project during the Rebate Period, such that the City will continue to receive the remaining half (50%) of the City's share during the Rebate Period; and

**WHEREAS**, finding that the Project, if successful, may attract other, sales-tax-generating businesses to the South Property, thus increasing the sales tax revenues shared by the Parties under the IGA, the Louisville City Council has agreed to grant Superior's request, subject to the terms and conditions of this Second Amendment.

**NOW THEREFORE**, in consideration of the foregoing and the mutual promises contained herein and in the Agreement, the Parties agree as follows:

1. Temporary Waiver. Subject to the terms and conditions hereinafter set forth, commencing on the first day of the month following the day the Company begins retail sales to the public from the Project Location ("the Commencement Date"), the City shall temporarily waive its right under the IGA to receive half (50%) of that certain portion of the City's share of Tax Revenues generated from taxable transactions occurring within the Project Location and collected by Superior and falling under the definition of "enhanced sales tax" set forth in the Incentive Agreement, without regard to any amendments following such agreement's effective date (the "Temporary Waiver"), until the occurrence of the *earlier* of the following events: (i) the City has waived \$500,000 in Tax Revenues to which the City would otherwise be entitled under the IGA; (ii) 10 years has elapsed from the Commencement Date; or (iii) the total sum of enhanced Tax Revenues rebated by Superior under the Incentive Agreement reaches \$1,000,000. All Tax Revenues subject to the Temporary Waiver must be used by Superior for the sole purpose of providing eligible rebates to the Company under the Incentive Agreement. Superior shall ensure that the Company uses the rebated Tax Revenues subject to the Temporary Waiver solely for the purposes permitted under the Incentive Agreement, the expansion of which permitted purposes shall require the City's prior, express written consent. Following the expiration or termination of the Temporary Waiver, the Parties shall resume their respective rights and obligations under the IGA, such that Superior will pay, and the City will receive, the City's portion of Tax Revenues collected by Superior from taxable transactions occurring within the Project Location as required by the IGA.
2. Inspection of Records. To the greatest extent allowed by law, Louisville and its agents shall have the right to inspect and audit the applicable records of Superior to verify the amount of any payment made to the Company under the Incentive Agreement, whether paid out of Tax Revenues subject to the Temporary Waiver or otherwise, and each Party shall cooperate and take such actions as may be necessary to allow such inspections and audits.
3. Effect of Change in Tax Rate. Any subsequent increase in the general sales tax rate above the rate imposed on the Project Location on the Effective Date shall not

affect the amount of Tax Revenues subject to the Temporary Waiver, which will continue to be based upon the 2.7% sales tax rate applicable to the Project Location on the Effective Date.

4. Entire Agreement. This Second Amendment shall constitute the entire agreement between the City and Superior and supersedes any prior agreements between the Parties and their agents or representatives, all of which are merged into and revoked by this Second Amendment, with respect to its subject matter.
5. Contact Information. Contact information for the Parties is as follows:

**If to Superior:**

Town of Superior  
124 E. Coal Creek Drive  
Superior, CO 80027

**If to Louisville:**

Louisville City Hall  
Attn: Economic Vitality  
749 Main Street  
Louisville, CO 80027

6. Termination. Notwithstanding anything herein to the contrary, this Second Amendment shall terminate and become void and of no force or effect if, by December 31, 2026, the Company has not completed the Project (as evidenced by a successful final inspection and Superior's issuance of certificate of occupancy for the Project) and commenced retail sales to the public at the Project Location.
7. Reimbursement. In the event the Company is required under the Incentive Agreement to reimburse Superior for any reason (e.g., Company's, and/or its successors' or assigns', failure to operate the business for the requisite ten (10) year period), and subject to Section 9 hereof, Superior shall pay to the City 25% of the total funds reimbursed to Superior by the Company. Superior shall use all commercially reasonable remedies available to Superior to enforce any reimbursement rights it may have against Company under the Incentive Agreement, at law, and in equity.
8. Annual Appropriation. Nothing in this Second Amendment shall be deemed or construed as creating a multiple fiscal year obligation on the part of the City or Superior within the meaning of Colorado Constitution Article X, Section 20 or any other constitutional or statutory provision, and the Parties' obligations hereunder are expressly conditional upon annual appropriation by the City Council and Superior Board of Trustees, in their sole discretion.

9. Governing Law; Venue. This Second Amendment shall be governed and construed in accordance with the laws of the State of Colorado. Any action arising out of, in connection with, or relating to this Second Amendment shall be filed in the District Court of Boulder County of the State of Colorado and in no other court or jurisdiction.
10. Legal Challenge; Escrow. In the event of any legal challenge to this Second Amendment or the Incentive Agreement, the City shall have the option to suspend the Temporary Waiver during the pendency of such legal challenge. Superior shall provide the City with written notice of any legal challenge to the Incentive Agreement within 5 days of being served with a complaint. The Parties covenant that neither will initiate any legal challenge to the validity or enforceability of this Second Amendment. Upon suspension of the Temporary Waiver pursuant to this Section, any funds subject to the suspended Temporary Waiver shall be escrowed in a separate Superior account.
11. Assignment. Neither Party may assign any of the obligations, benefits or provisions of this Second Amendment in whole or in any part without the express written authorization of the other Party; provided that, this Section shall not be construed to prevent Superior from making rebates to Company in accordance with the Incentive Agreement and subject to the terms and conditions of this Second Amendment. Any purported assignment, transfer, pledge, or encumbrance made without such prior written authorization shall be void.
12. No Joint Venture. Nothing in this Second Amendment is intended or shall be construed to create a joint venture between the City and Superior, and neither Party shall be liable or responsible for any debt or obligation of the other Party, including without limitation any debt or obligation established under the Incentive Agreement.

**IN WITNESS WHEREOF** the Parties have executed this Second Amendment as of the Effective Date.

**TOWN OF SUPERIOR**

**CITY OF LOUISVILLE**

By: \_\_\_\_\_  
Mark Lacis, Mayor

By: \_\_\_\_\_  
Christopher M. Leh, Mayor

ATTEST:

ATTEST:

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Lydia Yecke, Town Clerk

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Meredyth Muth, City Clerk

## INTERGOVERNMENTAL AGREEMENT

This Agreement is made and entered into, and becomes effective as provided in paragraph 12, between the City of Louisville, Colorado ("Louisville"), and the Town of Superior, Colorado ("Superior"), each a municipal corporation of the State of Colorado.

### I. Findings

WHEREAS, The City Council of Louisville and the Board of Trustees of Superior find that:

A. Pursuant to Colorado Constitution Article XIV, Section 18(2)(a) and C.R.S. §29-1-201, et seq., Louisville and Superior may cooperate or contract with each other to provide any function, service or facility lawfully authorized to each, and any such contract may provide for the sharing of costs, the imposition of taxes, and the incurring of debt; and

B. Pursuant to C.R.S. §29-20-101, et seq., Louisville and Superior are authorized and encouraged to cooperate or contract with each other for the purposes of planning or regulating the development of land; and

C. Louisville and Superior may, pursuant to state law and an intergovernmental agreement, provide for revenue sharing; and

D. Louisville finds that it has the authority to make the promises, enter into the agreements, and perform the functions, set forth herein, and Superior finds that it has the authority to make the promises, enter into the agreements, and perform the functions, set forth herein; and

E. This Agreement resolves, in a mutually satisfactory and cooperative manner, issues which have been of concern between Louisville and Superior for several years; and

F. Because of the proximity of Louisville and Superior, the nature and quality of development within the properties affected by this Agreement will affect each party and their revenues; and

G. Resolution of the long-standing issues between Louisville and Superior would be hindered without the revenue-sharing provisions of this Agreement; and

H. Louisville finds that it, and Superior finds that it, has a commitment to planned and orderly growth; to regulating the location of activities and development which may result in increased demands for its services; to reducing and avoiding, where possible, friction between the two parties; to promoting the economic viability of their respective communities; and to raising revenue sufficient to meet the needs of their citizens; and

I. U.S. 36 provides a logical boundary between Louisville and Superior; and

J. It is in the best interest of each municipality to jointly plan improvements to the Superior/Louisville interchange of U.S. 36 at McCaslin Boulevard (the "Interchange") and its capacity to handle traffic generated by existing and anticipated development within each municipality.

## **II. Rights and Obligations**

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, Louisville and Superior agree as follows:

1. Disconnection of South Property by Louisville. Louisville agrees to disconnect from Louisville, pursuant to the provisions of state law, the property described on Exhibit A, consisting of approximately eighty (80) acres located east of McCaslin Boulevard and south of U.S. 36 (the "South Property"). Louisville shall request that the existing owners of the South Property sign an application, in a form acceptable to both parties, to have the South Property disconnected from Louisville, and Louisville shall proceed to implement the disconnection after approval of this Agreement pursuant to Paragraph 12. If any owner of the South Property fails to properly execute the disconnection application prior to August 16, 1997, either party may decide not to place this Agreement before its voters as provided in Paragraph 12. The South Property has been zoned by Louisville for commercial retail use and Louisville would derive substantial revenue and other benefits if the South Property was developed for commercial retail uses within the boundaries of Louisville. However, the City Council of Louisville finds that disconnection of the South Property is appropriate given the revenue sharing and land use provisions of this Agreement.

2. Disconnection of North Property by Superior. Superior agrees to disconnect from Superior, pursuant to the provisions of state law, the property on the north side of U.S. 36 of approximately five acres which is within the boundaries of the Town of Superior and is described in Exhibit B (the "North Property"). Superior shall request that the existing owner(s) of the North Property sign an application, in a form acceptable to both parties,

to have the North Property disconnected from Superior after approval of this Agreement pursuant to Paragraph 12. If the existing owner(s) fail to take such action, Superior's obligation to disconnect will continue and will apply to any subsequent owners. If any owner of the North Property fails to sign the disconnection application prior to August 16, 1997, either party may decide not to place this Agreement before its voters as provided in Paragraph 12.

3. Annexation of South Property. If the South Property is annexed to Superior, then the following shall apply:

a. Superior shall not allow any residential use on the South Property, except that up to eight acres of the South Property may be developed for residential retirement/senior housing in one or more buildings not exceeding the height limitation applicable to commercial buildings on the South Property.

b. Superior shall not permit development of other than retail uses on thirty-four (34) acres of the South Property.

c. Superior shall share with Louisville, fifty (50) percent of the amount of revenues received by Superior from application of a 2.7 percent sales tax rate to retail sales made by businesses located within the South Property. Such amount shall be paid to Louisville quarterly pursuant to a process to be agreed upon by the Louisville City Administrator and the Superior Town Manager. To the extent allowed by Colorado law, Louisville shall have the right to inspect the applicable records of Superior to verify the amount of any payment made or due; and Superior and Louisville shall cooperate and take such actions as may be necessary to allow such inspection.

d. Upon annexation of the South Property, Superior will have jurisdiction over the South Property. This Agreement shall continue to apply to the South Property after annexation by Superior. To the extent this Agreement conflicts with any future Superior ordinance, resolution, motion, or contract, this Agreement controls.

4. Annexation of North Property by Louisville. After disconnection of the North Property from Superior, Louisville may, but is not required to, annex the North Property, except that Louisville may not proceed to annex the North Property until after the parties determine that the North Property is not necessary for U.S. 36 right-of-way or other improvements related thereto. If the North Property is annexed to Louisville, then the following shall apply:

a. Louisville shall not permit any residential use on the North Property.



b. If Louisville zones the North Property for sales tax generating uses, then Louisville shall share with Superior, fifty (50) percent of the amount of revenues received by Louisville from application of a 2.7 percent sales tax rate to retail sales made by businesses located within the North Property. Such amount shall be paid to Superior quarterly pursuant to a process to be agreed upon by the Louisville City Administrator and the Superior Town Manager. To the extent allowed by Colorado law, Superior shall have the right to inspect the applicable records of Louisville to verify the amount of any payment made or due; and Superior and Louisville shall cooperate and take such actions as may be necessary to allow such inspection.

c. Upon annexation of the North Property, Louisville will have jurisdiction over the North Property. This Agreement shall continue to apply to the North Property after annexation by Louisville. To the extent this Agreement conflicts with any future Louisville ordinance, resolution, motion, or contract, this Agreement shall control.

5. Changes in Sales Tax Rates. An increase in the Louisville or Superior sales tax rates shall not affect the payments to be made pursuant to paragraph 3 or 4 in these Rights and Obligations; those payments will continue to be based upon the sales tax rates described in paragraphs 3 and 4. If Louisville reduces (by means other than pledging or earmarking revenues) its generally applicable 2.7 percent sales tax rate or Superior reduces (by means other than pledging or earmarking revenues) its generally applicable 2.7 percent sales tax rate, the payments to be made to the other party pursuant to paragraph 3 or 4, as applicable, shall be calculated based upon revenues received from fifty percent of the reduced rate.

6. Other Obligations of Superior. Superior acknowledges that certain obligations of Superior existing prior to this Agreement may affect the future sales tax revenue to be retained by Superior. However, Superior warrants that no such pre-existing obligations (whether related to Superior Metropolitan Districts No. 1, 2, or 3, or the Superior Urban Renewal Authority, or any other entity or person), nor any future obligations that Superior may enter into, will reduce or affect in any manner the payments due Louisville pursuant to paragraph 3.c. of these Rights and Obligations.

7. Other Obligations of Louisville. Louisville acknowledges that certain bond obligations of Louisville existing prior to this Agreement may affect the future sales tax revenue to be retained by Louisville. This Agreement is a subordinate obligation for the purposes of these pre-existing bond obligation ordinances. However, Louisville warrants that no such pre-existing obligations,

nor any future obligations that Louisville may enter into, will reduce or affect in any manner the payments due Superior pursuant to paragraph 4.b. of these Rights and Obligations.

8. U.S. 36 as Annexation Boundary. Louisville agrees not to annex property located south or west of U.S. 36, and Superior agrees not to annex property located north or east of U.S. 36.

9. No Impairment. Neither Louisville nor Superior shall impair the rights of the other, without the other's consent, to share in the revenues to be collected and shared as described in this Agreement.

10. Cooperation. Louisville and Superior agree to devote their best efforts, to cooperate as necessary, and to exercise good faith in implementing the provisions of this Agreement.

11. No Third-Party Rights. This Agreement is made solely for the benefit of the parties hereto, and is not intended to nor shall it be deemed to confer rights to any persons or entities not named as parties hereto.

12. Election. The parties agree that both Louisville and Superior will place this Agreement on the municipal ballot for November of 1997 requesting voters of the respective municipalities to ratify this Agreement.

Should the voters in either municipality fail to approve this Agreement, then this agreement shall be null and void and the parties are under no obligation under this Agreement to effectuate the disconnections pursuant to Paragraphs 1 and 2. This Agreement shall become effective upon approval by the voters in both municipalities.

13. Transportation Issues. The parties recognize that it is in the best interest of each municipality to jointly plan to reconstruct the interchange. Louisville and Superior shall cooperate to jointly design, construct, and finance a one time reconstruction of the interchange which may be completed in phases. Such cooperation shall include formation of a Committee consisting of at least two members of the Louisville City Council, two members of the Superior Board of Trustees, and one staff member of each municipality, to recommend the design, construction process, and financing of interchange reconstruction. The parties shall determine the "Louisville portion" and the "Superior portion" of the total costs of the interchange reconstruction after consideration of all sources of revenue available including, but not limited to, federal, state, private, and other local sources. The Louisville portion shall be credited five million dollars as a result of previous interchange improvements. To calculate the respective parties' portions of the cost of the interchange reconstruction, the following formula shall be used: the total

cost of the reconstruction less all other non-party sources of revenue less an initial Superior portion of \$5 Million dollars with the remainder split equally between the parties (as an example: assume a \$20 Million total cost less \$6 Million non-party sources and less an initial Superior portion of \$5 Million (representing Louisville's previous payments toward the interchange) with the remainder (\$9 Million) split equally between the parties at \$4.5 Million each. Under this example, Louisville's portion is \$4.5 Million and Superior's portion is \$9.5 Million.) Other discussion items for the committee shall include, but not be limited to, McCaslin Boulevard, U.S. 36, and 88th Street. This committee shall be convened consistent with this Agreement for the purpose of discussing the issues as they apply to both entities.

14. Commitment of sales tax revenue. As additional consideration for the sharing of sales tax revenue by Superior, Louisville agrees that the portion of the sales tax paid to it pursuant to Paragraph 3(c) shall be used first towards Louisville's portion of the interchange reconstruction.

15. Non-Compliance. If either party fails to comply with the provisions of this Agreement, the other party, after providing written notification to the noncomplying party and upon the failure of the noncomplying party to achieve compliance within ninety (90) days after said notice, may at its option either terminate this Agreement or maintain an action in a court of competent jurisdiction in Boulder County for specific performance, injunctive, or other relief.

16. Term and Termination. This Agreement shall remain in effect until amended or terminated by agreement of the parties. It is the intent of the parties that this Agreement shall remain in effect for the longest period of time permitted by law because any adverse revenue effects to Louisville resulting from disconnection of the South Property, and any adverse revenue effects to Superior resulting from disconnection of the North Property, shall continue indefinitely after the disconnections.

17. Colorado Laws. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

18. Governmental Authority. Louisville and Superior shall comply with any and all otherwise applicable and valid state, federal or local laws or regulations in relation to this Agreement.

19. Waiver. A waiver of a breach of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or another provisions of this Agreement.

20. Notices. All notices or other communications hereunder shall be sufficient given and shall be deemed given when personally delivered, or after the lapse of ten business days following mailing by certified mail, postage prepaid, addressed as follows:

To Louisville:

City of Louisville  
749 Main Street  
Louisville, Colorado 80027  
Attn: City Administrator

To Superior:

Town of Superior  
124 E. Coal Creek Drive  
Superior, CO 80027  
Attn: Town Manager

21. Effect of Invalidity. If any portion of paragraph 3.c. or 4.b. of these Rights and Obligations is finally held invalid or unenforceable by a court of competent jurisdiction as to either party or as to both parties, the parties agree to take such action(s) as may be necessary to achieve to the greatest degree possible the intent of the affected paragraph(s). If no such action is possible, the adversely affected party may provide notice to the other party that the adversely affected party has determined to cause the entire agreement to be terminated as of the date of such notice. In such event, upon receipt of such notice, neither party shall be required to perform as provided herein and this agreement shall be terminated. Such termination shall apply prospectively only, and each party shall retain any benefits received pursuant to this Agreement prior to termination. If any portion of any other paragraph of this Agreement is finally held invalid or unenforceable by a court of competent jurisdiction as to either party or as to both parties, such invalidity or unenforceability shall not affect the other paragraphs of this Agreement, except that any similar right or obligation of the other party shall be deemed invalid.

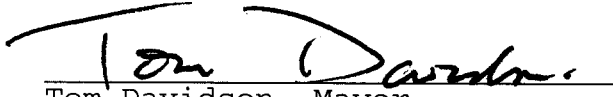
22. Amendments. This Agreement may be amended in writing only by the mutual agreement of the governing bodies of the parties hereto.

23. Reliance by the Parties. Louisville and Superior understand that each is relying upon all of the promises made by the other in this Agreement, and each agrees (i) not to assert to any court or other body the invalidity or unenforceability of any portion of this Agreement unless such challenge is based upon a change in the law occurring after the effective date of this Agreement; (ii) to promptly notify the other party of any legal action which might affect this Agreement; (iii) to allow the other party to participate in such legal action as the other party deems appropriate, consistent with court rules; and (iv) to defend the Agreement in such legal action to the maximum extent consistent

with law and court rules.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

CITY OF LOUISVILLE, COLORADO

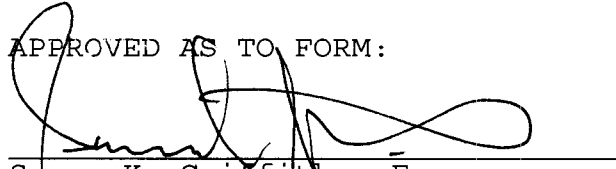
  
Tom Davidson, Mayor

Approved by the Louisville City  
Council, July 17, 1997

ATTEST:

  
Dave Clabots, City Clerk

APPROVED AS TO FORM:

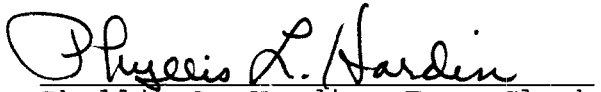
  
Susan K. Griffiths, Esq.  
Griffiths & Tanoue, P.C.  
Louisville City Attorney

TOWN OF SUPERIOR, COLORADO

  
Ted T. Asti, Mayor

Approved by the Superior Board of  
Trustees, July 21, 1997

ATTEST:

  
Phyllis L. Hardin, Town Clerk

APPROVED AS TO FORM:

  
Kathleen E. Haddock, Esq.

Dietze and Davis, P.C.  
Superior Town Attorney

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PARCEL A:

A TRACT OF LAND LOCATED IN THE W1/2 OF THE NW 1/4, SECTION 19, TOWNSHIP 1 SOUTH, RANGE 69 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Commencing at the W1/4 corner of said Section 19;  
thence North 01°02'38" West, along the West line of the W1/2 of the NW1/4 of said Section 19, a distance of 1317.08 feet to the Southwest corner of the W1/2 of the NW1/4 of said Section 19, said corner also being the Southwest corner of that tract of land conveyed from Mrs. Martha Minks to John B. Williams, et al., by deed recorded January 16, 1895, in Book 163 at Page 500; thence continuing along the boundaries of said tract conveyed in Book 163 at Page 500 the following courses and distances:  
thence North 88°56'37" East, 164.55 feet to the Easterly line of that tract of land described on Film 545 as Reception No. 794230 (McCaslin Boulevard), the TRUE POINT OF BEGINNING,  
thence continuing North 88°56'37" East, 231.45 feet to the Southeast corner of said tract;  
thence North 00°12'54" West, 330.00 feet to the Northeast corner of said tract;  
thence South 88°56'37" West, 169.80 feet to the Easterly line of that tract of land conveyed from Andrew Malczyk to the County of Boulder by deed recorded August 19, 1970 on Film 707 as Reception No. 951934;  
thence North 00°10'22" East, along the Easterly line of said tract conveyed as Reception No. 951934 and along the Easterly line of that tract of land conveyed from Rosalinda Ruffenach and Chris C. Rosenbaum to Mrs. Valandin Pankaski by deed recorded June 9, 1908 in Book 327 at Page 435, a distance of 330.72 feet to the South line of Ruffenach and Rosenbaum's Addition to Superior as shown by the recorded plat of said subdivision;  
thence North 88°54'00" East along the South line of said subdivision 830.38 feet to the Westerly line of that tract of land conveyed from Andrew Malczyk to the State Highway Department of the State of Colorado by deeds recorded November 21, 1950 in Book 878 at Page 274 and at Page 275;  
thence Southeasterly, along the Westerly line of said tract conveyed in Book 878 at Page 274 and Page 275 and along the arc of a curve to the right 303.21 feet, said curve having a radius of 5630.00 feet and a chord that bears South 53°26'43" East, 303.18 feet to the East line of said W1/2 of NW1/4 of Section 19;  
thence South 00°03'04" West along the East line of said W1/2 of the NW1/4 of Section 19, a distance of 1696.38 feet to the most Northerly corner of that tract of land described on Film 1249 as Reception No. 545559;



thence South  $72^{\circ}24'06''$  West, 351.46 feet along the  
Northwesterly line of said tract of land described on Film  
1249 as Reception No. 545559 to the most Easterly corner of  
that tract of land described on Film 1249 as Reception No.  
545209;

thence South  $74^{\circ}02'20''$  West, 579.88 feet to the most  
Southerly corner of said tract of land described on Film  
1249 as Reception No. 545209;

thence North  $09^{\circ}36'00''$  West, along the Westerly line of said  
tract of land described on Film 1249 as Reception No. 545209  
and along the Westerly line of a tract of land described on  
Film 1249 as Reception No. 206 to the Northwest corner of  
said tract of land described on Film 1249 as Reception No.  
545206;

thence North  $09^{\circ}20'18''$  West, 1331.84 feet along the Easterly  
line of that tract of land described on Film 545 as  
Reception No. 794230 (McCaslin Boulevard) to the TRUE POINT  
OF BEGINNING.

**PARCEL B:**

Those parts of the East one-half of the Northwest one-quarter of Section 19, Township 1 South, Range 69 West of the 6th P.M., County of Boulder, State of Colorado, located South and West of the right-of-way for U.S. Highway 36, excepting for Coal Creek Cemetery, being more particularly described as follows:

That part of the East One-Half of the Northwest One-Quarter of Section 19 lying South of U.S. Highway 36, being more particularly described as follows: Commencing at the North One-Quarter Corner of Section 19, T. 1 S., R. 69 W. of the 6th P.M., as monumented by a found, unmarked aluminum cap from which the Northwest Corner of said Section 19, as monumented by a found 2-inch diameter pipe with aluminum cap marked L.S. 2149, bears South  $89^{\circ}07'56''$  West; Thence South along the center line of said Section 19 South  $00^{\circ}24'29''$  West a distance of 2647.50 feet to the Center One-Quarter Corner of said Section 19 as monumented by a pin and cap marked L.S. 12046, the POINT OF BEGINNING;

Thence South  $89^{\circ}20'42''$  West along the center line of said Section 19 a distance of 1297.62 feet;

Thence North  $00^{\circ}00'41''$  East along the West line of the East One-Half of the Northwest One-Quarter of said Section 19 a distance of 1797.26 feet to a point on the Southerly right-of-way of U.S. Highway 36 said point lying 2.61 feet Southeasterly of a Colorado Department of Highways right-of-way monument;

Thence departing said West line and along the said Southerly right-of-way line on a curve to the right, having a radius of 5630.00 feet, a chord which bears South  $48^{\circ}13'59''$  East and an arc length of 703.06 feet to a point of tangency;

Thence continuing along said right-of-way South  $44^{\circ}39'20''$  East a distance of 1105.37 feet to a point on the north-south center line of said Section 19;

Thence departing said right-of-way and along said north-south center line South  $00^{\circ}24'29''$  West a distance of 72.73 feet to the Northeast corner of the Coal Creek Cemetery;

Thence departing said center line the following courses around said cemetery:

South  $89^{\circ}56'01''$  West a distance of 247.50 feet;  
Thence South  $00^{\circ}24'29''$  West a distance of 264.00 feet;  
Thence North  $89^{\circ}56'01''$  East a distance of 247.50 feet to a point lying on the said north-south center line;  
Thence South  $00^{\circ}24'29''$  West a distance of 191.40 feet to the POINT OF BEGINNING.

A tract or parcel of land No. 29X of the Department of Transportation, State of Colorado, Project No. T 170-1(0) containing 5.089 acres, more or less in the SW 1/4 of Section 18 & the NW 1/4 of Section 19, Township 1 South, Range 69 West, of the Sixth Principal Meridian, in Boulder County, Colorado, said tract or parcel of land being more particularly described as follows:

Beginning at the NW corner of Section 19, T. 1 S., R. 69 W., of the 6th PM: Thence N. 88° 39' 10" E., along the North line of Section 19, a distance of 1300.02 feet along the North line of said Section to the True Point of Beginning:

1. Thence N. 88° 39' 10" E., along the north line of Section 19, a distance of 6.00 feet to the northeasterly right of way line of State Highway 36 (November 1990);
2. Thence S. 0° 11' 30" E., along said right of way line, a distance of 583.76 feet to an angle point in the northeasterly right of way line, said point being marked by a rebar with cap LS #9329;
3. Thence N. 45° 58' 01" W., a distance of 1122.11 feet to the northeasterly right of way line of said State Highway 36;
4. Thence S. 67° 46' 35" E., along said right of way line, a distance of 400.32 feet to a point being marked by a rebar with cap LS #9329;
5. Thence N. 88° 39' 30" E., continuing along said right of way line, a distance of 426.97 feet to a point being marked by a rebar with cap LS #9329;
6. Thence S. 1° 23' 20" E., continuing along said right of way line, a distance of 54.94 feet, more or less, to the True Point of Beginning.

The above described parcel contains 5.089 acres/221,694 square feet, more or less.

Subject to all streets and alleys as platted on Map of Ruffenach and Rosenbaum's addition to Superior. As filed in Plat Book #3 on page 28, in Boulder County.

All bearings are based on a line connecting the NW corner of Section 19, T. 1 S., R. 69 W., 6th PM (Alum. Cap LS #2132) and the N. 1/4 corner of Section 19 (Alum. Cap LS #illegible) as Bearing N. 88° 39' 10" E.

## FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT

This First Amendment to Intergovernmental Agreement ("Amendment") is made and entered into to be effective the 15<sup>th</sup> day of February, 2005, between the City of Louisville, Colorado ("Louisville") and the Town of Superior, Colorado ("Superior") (collectively the "Parties") as the first amendment to the Intergovernmental Agreement between the Parties effective upon certification of the election results of the November 1997 election (the "Agreement").

WHEREAS, the Parties entered into the Agreement, *inter alia*, to provide for sharing of sales taxes on the South Property, which Property was disconnected from Louisville and annexed to Superior; and

WHEREAS, the Agreement limits the amount of residential development on the South Property; and

WHEREAS, it is in the interest of both Parties that sales taxes on the South Property be maximized for the benefit of both Parties; and

WHEREAS, Superior is working with a developer that is willing to develop the South Property for a mixed-use development that includes multi-family housing, which housing will provide opportunities for persons to live and work in the area, thus maximizing the use of and revenue generation from non-residential portions of the development; and

WHEREAS, Superior has represented that this mixed-use development on the South Property is not to contain more than 2,000 dwelling units, and the Town will require a minimum of 250,000 square feet of retail, sales-tax generating development; and

WHEREAS, Louisville is not taking a position on the appropriateness or density of residential uses within Superior; and

WHEREAS, the Parties desire to amend the land use standards of the Agreement that are applicable to the South Property, to allow for additional residential development on the South Property, to set a minimum square footage of retail, sales-tax generating uses, and to provide for a phasing plan requiring the concurrent development of residential and retail uses on the South Property; and

WHEREAS, such amended land use standards shall be applicable to the South Property and enforceable as provided in the Agreement and C.R.S. §29-20-105; and

WHEREAS, the Parties desire to amend the Agreement to prevent either party from soliciting existing businesses to relocate from one jurisdiction to the other; and

WHEREAS, the Parties recognize that the South Property has not developed since the IGA was created and that this Amendment will make the South Property more attractive to the existing development market for the benefit of both Parties; and

WHEREAS, the Parties are authorized by law, including but not limited to C.R.S. §29-1-201 et seq. and C.R.S. §29-20-105, to enter into the agreements, and perform the functions, set forth herein.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements contained herein, the Parties agree as follows:

A. Subparagraphs a and b of Paragraph 3 of the Agreement are amended to read in full as follows:

3. Annexation of South Property. If the South Property is annexed to Superior, then the following shall apply:

- a. No more than eight acres of the South Property may be developed for residential retirement/senior housing in one or more buildings not exceeding the height limitation applicable to commercial buildings on the South Property. The balance of the South Property may be developed as a "mixed use" area to include residential dwelling units, office, retail and other uses, subject to provisions hereof.
- b. There shall be a minimum of 250,000 square feet of retail, sales-tax generating development on the South Property. Superior shall require construction of a minimum of 250,000 square feet of retail, sales-tax generating development on the South Property as part of its approval of the Preliminary PD/Zone District Plan for development on the South Property, and Superior shall not permit or approve any development that does not contain such minimum amount of retail, sales-tax generating square footage (exclusive of the retirement/senior housing permitted under 3.a, above). With its approval of the Preliminary PD/Zone District Plan for development on the South Property, Superior shall fix the total number of permitted residential dwelling units

(exclusive of the retirement/senior housing permitted under 3.a, above) to be developed on the South Property. With such approval, Superior shall also require a phasing plan requiring that certificates of occupancy are issued for at least 125,000 square feet of the retail, sales-tax generating development before certificates of occupancy are issued for more than 30 percent of the total number of permitted residential dwelling units or 500 dwelling units, whichever is more, but not to exceed 700 dwelling units (exclusive of the retirement/senior housing permitted under 3.a, above). Additionally, in no event shall certificates of occupancy be issued for 100 percent of the total number of permitted residential dwelling units (exclusive of the retirement/senior housing permitted under 3.a, above) or 2000 dwelling units, whichever is less, prior to issuance of certificates of occupancy for 250,000 square feet of retail, sales-tax generating development.

B. Paragraph 9 of the Agreement is amended to read in full as follows:

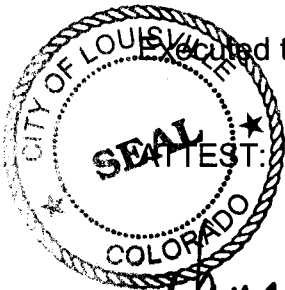
9. No Impairment. Neither Louisville nor Superior shall impair the rights of the other, without the other's consent, to share in the revenues to be collected and shared as described in this Agreement. Further, in recognition of Superior's interest in securing a stable sales tax base, Louisville shall not solicit any retail business located and operating in Superior's jurisdiction by incentives in order to encourage physical relocation of such business to Louisville within five years of the date of issuance of the certificate of occupancy for the 125,000<sup>th</sup> square feet of retail development on the South Property. In recognition of Louisville's interest in securing a stable sales tax base, Superior shall not solicit any retail business located and operating in Louisville's jurisdiction by incentives in order to encourage physical relocation of such business to Superior within five years of the date of issuance of the certificate of occupancy for the 125,000<sup>th</sup> square feet of retail development on the South Property. For purposes of this paragraph, "incentive" is limited to sales tax increment financing, sales tax reimbursements or waivers of fees charged to similarly situated development by the jurisdiction; and "physical relocation" means closing an existing sales tax generating retail operation in one jurisdiction in order to open the same retail operation in the other jurisdiction.

C. Paragraph 14 of the Agreement is amended to read in full as follows:

14. Sales Tax Revenue. The amount of sales tax revenues from the South Property to be shared with Louisville pursuant to this Agreement, and the amount of sales tax revenues from the North Property to be shared with Superior pursuant to this Agreement, shall not be affected or reduced by any sales tax increment finance plan, and neither party shall implement any sales tax increment finance plan that would have such effect.

D. Except as specifically amended herein, the Agreement shall remain in full force and effect.

Executed to be effective as of the date first set forth above.



Nancy Varra  
Nancy Varra, City Clerk

CITY OF LOUISVILLE

By: [Signature]  
Charles L. Sisk, Mayor

APPROVED AS TO FORM:

By: [Signature]  
Light, Harrington & Dawes, P.C.  
City Attorney

TOWN OF SUPERIOR

ATTEST:

Phyllis L. Hardin  
Phyllis L. Hardin, Town Clerk

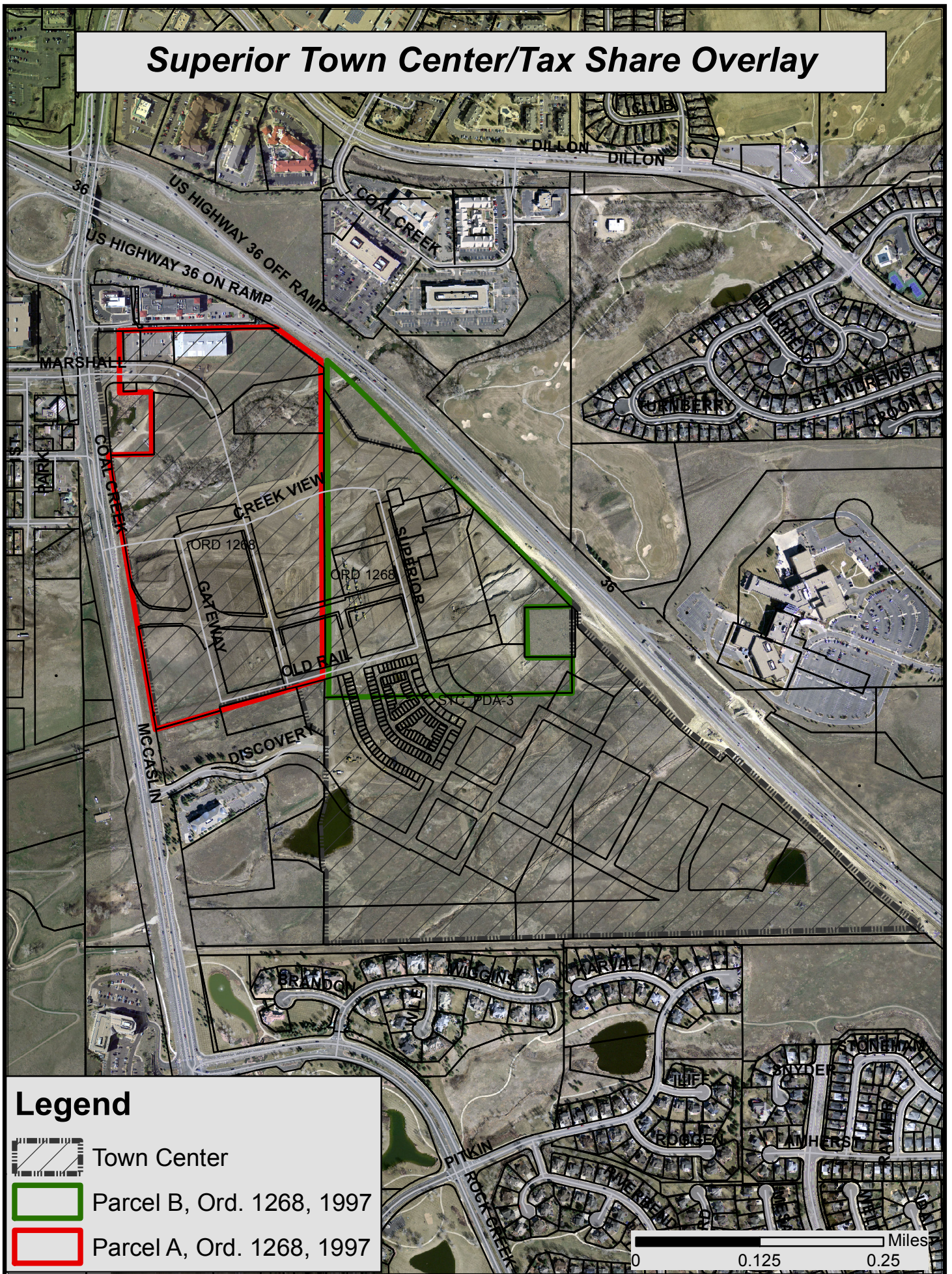
By: [Signature]  
Mark Hamilton, Mayor

APPROVED AS TO FORM:

By: [Signature]  
Dietze and Davis, P.C.  
Town Attorney



# Superior Town Center/Tax Share Overlay







## **BIGSBY'S FOLLY**

### Craft Winery and Restaurant



**Town Hall Meeting**  
December 5, 2023

## **The Bigsby's Folly Story**

- "Do The Same Thing for Wine that Brewpubs did for Beer"
- Create Comfortable, Relaxed Environment to Enjoy Time with Family & Friends
- Commenced Operations in 2017-7 years of Successful Operation
- Innovative Restaurant, Winery and Event Venue Combination with Full Bar
- Award-Winning Napa Valley Winemaker



# A Compelling Community Response

- 4.7 rating on OpenTable & Google
- Rated “Best New Bar” in Westword
- Over 23K Followers on Instagram, 4x more than any other Colorado Winery and most restaurants
- Strong philanthropic commitment, Morris Animal Foundation



- Sustainability is key to our operations
- 700 Local Wine Club Members



## Our Vision For The Community



Create a Compelling Landmark & Visible Draw to our Exit from US 36



Construct an Activated Rooftop Terrace to Enjoy the Best Views in Town



Design a Comfortable, Relaxed Environment to Serve as the Local “Gathering Spot”



Build Separate Event Space to Attract from Surrounding Communities & Beyond









August 10, 2023

Jeff Durbin, City Manager  
City of Louisville  
749 Main Street  
Louisville, CO 80027

Mayor Dennis Maloney and City Councilmembers  
City of Louisville  
749 Main Street  
Louisville, CO 80027

Re: Intergovernmental Agreement (IGA) with Town of Superior and Business Incentive for Bigsby's Folly Winery & Restaurant

Dear City Manager Durbin, Mayor Dennis Maloney and City Councilmembers:

Like municipalities in our region and across the state, both Louisville and Superior rely on sales tax revenue to fund the provision of essential services to our residents and business communities. Superior has over recent years considered adopting an incentive program to help amplify retail sales tax generating business presence here and encourage job creation. Recognizing the value of implementing a program to incentivize business growth here through an incentive program similar to other jurisdictions here, the Town Board s adopted an Ordinance this summer to establish the Town's Enhanced Sales Tax Incentive Program (ESTIP).

The Town's sales tax incentive program Ordinance states our intent is to encourage the establishment and substantial expansion of retail sales tax generating businesses within the Town with an emphasis on Downtown Superior.

The Town Board unanimously approved an incentive agreement with Bigsby's Folly Winery & Restaurant in June. The agreement is consistent with our program goals and will provide a rebate of the Town's 1.35% sales tax collected from Bigsby's Folly for ten years, not to exceed \$1,000,000. As part of the agreement, the Town is also working with Bigsby's Folly to reduce Town-imposed application, permit, and development fees. The incentive agreement with Bigsby's Folly meets the ESTI criteria and significantly contributes to meeting Town Board goals – activating Downtown Superior and creating a sense of place, promoting development opportunities and enhancing financial stability.

Estimated five-year sales taxes revenues from the restaurant are summarized below:

|                     | Year 1   | Year 2   | Year 3   | Year 4   | Year 5   |
|---------------------|----------|----------|----------|----------|----------|
| Sales Tax Estimates | \$33,500 | \$45,000 | \$55,000 | \$67,000 | \$74,000 |

Bigsby's Folly Winery & Restaurant is a family-owned business interested in expanding to a new location in Downtown Superior. Bigsby's Folly has operated successfully since 2017 in Denver's River North Art District. They reported over \$3.5M net sales in 2022 and have more than 700 local Wine Club Members. Bigsby's Folly intends to purchase Block 4 in Downtown Superior and construct a 7,500 square foot, event-based restaurant concept that will be a regional draw. The total capital investment of this project is estimated to be \$6.7M and the business will create 45 new jobs with an average pay of \$30-\$65+ per hour. For more information about Bigsby's Folly, visit <https://www.bigsbysfolly.com/>.

The Town's Intergovernmental Agreement (IGA) with Louisville, initially approved in 1997 and amended in 2005, encompasses approximately 80 acres of Downtown Superior. With this IGA we agreed to share the sales tax revenue on the South Property of the DTS project area, which during this era was disconnected from Louisville and annexed to Superior. The agreement stated it was in the interest of both parties to maximize the sales tax on the property. The sales tax rate at the time of the IGA was 2.7%. Revenue generated from the 2.7% from the property is to be shared equally with Louisville pursuant to the agreement.

Recognizing the mutual interest both of our jurisdictions have in the success of the DTS project, and Louisville's strong record of supporting and attracting businesses through the Business Assistance Program to offer rebates and incentives similar to the Town's program, the Town is requesting Louisville build on the partnership established with the IGA to support Bigsby's Folly as they establish their operation in Downtown Superior's South Property area. We would ask that Louisville consider rebating the City's portion of the sales tax generated by Bigsby's Folly for ten years in order to reach the target incentive of a not-to-exceed amount of \$1,000,000.

By rebating the City's portion of the sales tax (estimated at approximately \$275,000 over the first five years), Louisville would be contributing to the success of the DTS project and help bring to our region a premier, new event and dining venue. The event business is a significant element of the business model for Bigsby's Folly and is projected to bring an influx of new visitors to our corridor, many of which will need overnight stays and will shop and dine in both our communities.

The IGA ties the economic development goals of our communities to the success of the DTS project, and this rebate would serve as an important catalyst to reach our mutual objectives. Thank you for your time and attention to these matters. We request to meet with Louisville staff to discuss timing, agreement format and details.

Respectfully,

Town of Superior, Board of Trustees

Mark Lacis, Mayor

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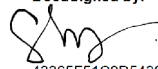
Neal Shah, Mayor Pro-tem

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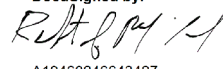
Jenn Kaaoush, Trustee

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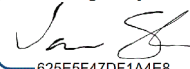
Stephanie Miller, Trustee

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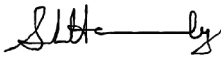
Bob McCool, Trustee

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Jason Serbu, Trustee

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Sandie Hammerly, Trustee

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cc: Matthew G. Magley, Town Manager  
Jill Mendoza, Economic Development Manager, Town of Superior  
April Kroner, Economic Vitality Manager, City of Louisville



**SUBJECT: 2024-2029 SOLID WASTE COLLECTION REQUEST FOR  
PROPOSAL CRITERIA AND KEY CONTRACT POINTS**

**DATE: JANUARY 2, 2024**

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

**SUMMARY:**

Staff is preparing to advertise the Request for Proposal (RFP) for renewal of the City's residential solid waste collection program.

Information based upon input from City Council and the Finance Committee in April of 2023 has been finalized and is summarized in the attached presentation of program background and key RFP contract considerations.

Key dates as part of this process are as follows:

1. Monday January 8, 2024 – 1<sup>st</sup> Proposal Advertisement
2. Monday January 15, 2024 – 2nd Proposal Advertisement
3. Monday, January 22, 2024, 10:00 am - A pre-proposal meeting will be held in City Hall, Council Chambers, located at 749 Main Street, Louisville, Colorado 80027.
4. Thursday, January 25, 2024, 5:00 pm – Deadline for Questions. Questions should be referred to Kurt Kowar at [kurtk@louisvilleco.gov](mailto:kurtk@louisvilleco.gov).
5. Monday, January 29, 2024, 5:00pm - Addendum Issued as Necessary.
6. **Friday, February 2, 2024, 4:00pm** – Proposal Submittal Deadline.
7. Early February, 2024 – Staff Review and Recommendations Developed.
8. Late February/Early March, 2024 – City Council Review/Award.
9. Week of September 2<sup>nd</sup>, 2024 – Initial Service Begins per Contract Schedule.

**FISCAL IMPACT:**

The residential solid waste collection program is a pass-through cost from the selected vendor to the residents. This is managed through the solid waste fund and is a net neutral cost in regards to City Budgets.

**PROGRAM/SUB-PROGRAM IMPACT:**

Enable residents to dispose of their solid waste in a convenient, environmentally responsible, cost effective manner.

**RECOMMENDATION:**

Approve RFP Criteria as provided.

**ATTACHMENT(S):**

1. Presentation/Information

**STRATEGIC PLAN IMPACT:**

|                                     |                                                                                                                                       |                                     |                                                                                                                           |
|-------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> |  <b>Financial Stewardship &amp; Asset Management</b> | <input checked="" type="checkbox"/> |  <b>Reliable Core Services</b>           |
| <input type="checkbox"/>            |  <b>Vibrant Economic Climate</b>                     | <input checked="" type="checkbox"/> |  <b>Quality Programs &amp; Amenities</b> |
| <input type="checkbox"/>            |  <b>Engaged Community</b>                            | <input type="checkbox"/>            |  <b>Healthy Workforce</b>                |
| <input type="checkbox"/>            |  <b>Supportive Technology</b>                        | <input type="checkbox"/>            |  <b>Collaborative Regional Partner</b>   |

# City Council RFP Final Criteria Review Residential Solid Waste Collection

City of Louisville, Colorado

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*January 2, 2024*



“Enable residents to dispose of their solid waste in a convenient, environmentally responsible, cost effective manner.”

*– Louisville Solid Waste Subprogram Objective*

*5 Year Solid Waste Contract Value ~ \$7,000,000*



# City Single Hauler Program Beginnings

---

- ❖ 2009 Program Starts
- ❖ Created to minimize destructive impact on City Streets from Trash Trucks
- ❖ 1 Trash Truck = 1,000 cars.  
Average residential street has 100 - 500 cars per day
- ❖ Incentivize Recycling
- ❖ Offer Composting





# City Single Hauler Overall Program Background

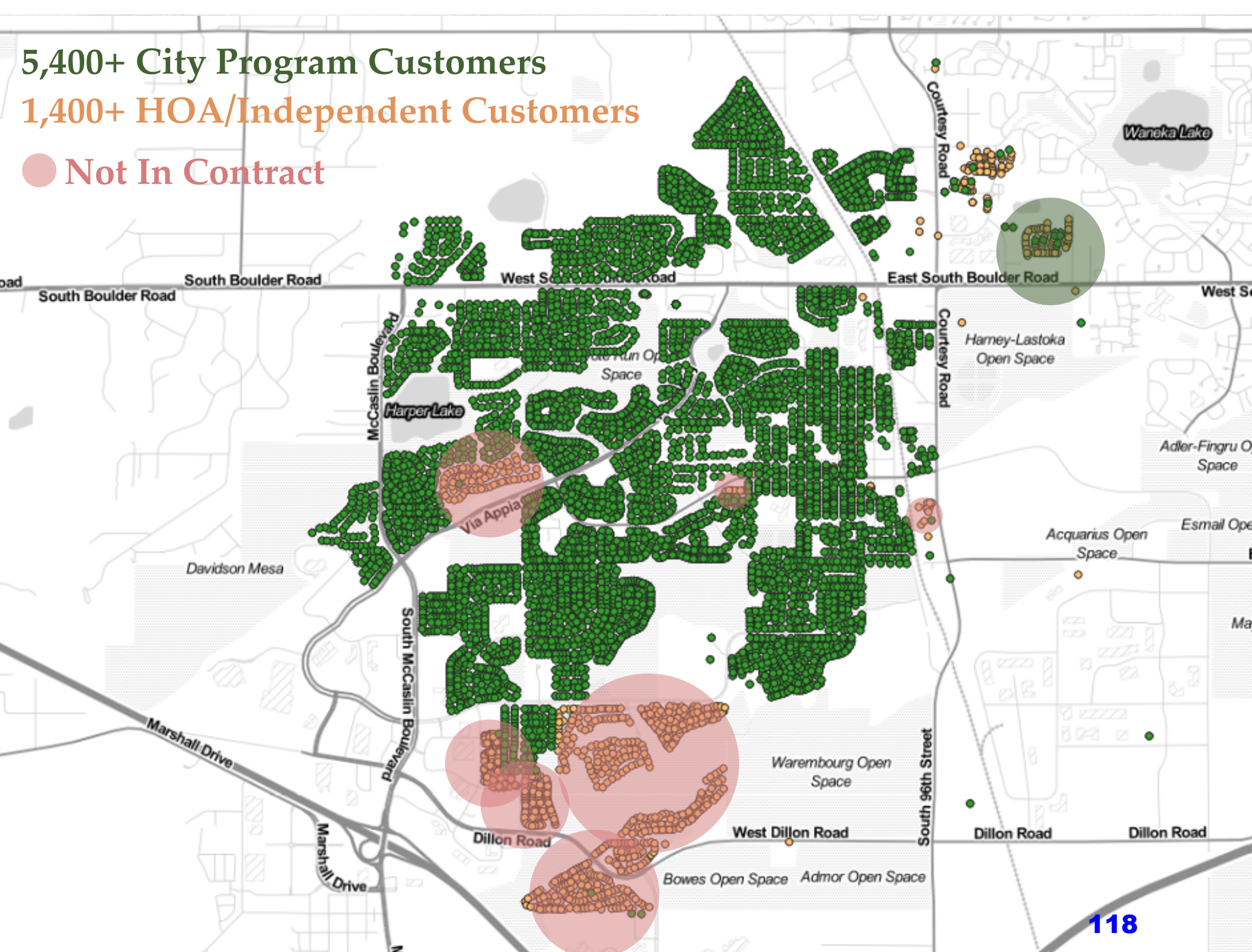
|             | Contractor          | Pay As You Throw<br>Incentive (PAYT) | Recycle                                 | Compost                                 | Service Days          |
|-------------|---------------------|--------------------------------------|-----------------------------------------|-----------------------------------------|-----------------------|
| Pre 2009    | Varied              | None                                 | Unknown                                 | Unknown                                 | Varied                |
| 2009 - 2014 | Western<br>Disposal | 80%                                  | Up to 96g<br>Included                   | 100%                                    | Thursday              |
| 2014 - 2019 | Western<br>Disposal | 80%                                  | Up to 96g<br>Included                   | 100%<br>2018 - \$3.82, \$7.64, \$11.46  | Thursday              |
| 2019 - 2024 | Republic<br>Service | 100%                                 | Up to 96g<br>Included                   | Up to 96g<br>Included                   | Tue - Fri             |
| 2024 - 2029 | TBD                 | 100%                                 | Up to 96g<br>Included<br><b>Weekly?</b> | Up to 96g<br>Included<br><b>Weekly?</b> | Base Bid<br>Tue - Fri |



5,400+ City Program Customers

1,400+ HOA/Independent Customers

● Not In Contract





# City Residential Solid Waste Diversion

---

| 2017      | 2020      | 2022      |
|-----------|-----------|-----------|
| <b>56</b> | <b>53</b> | <b>58</b> |

% of City Program  
Waste is **Landfilled**

| 2017      | 2020      | 2022      |
|-----------|-----------|-----------|
| <b>25</b> | <b>24</b> | <b>23</b> |

% of City Program  
Waste is **Recycled**

| 2017      | 2020      | 2022      |
|-----------|-----------|-----------|
| <b>19</b> | <b>23</b> | <b>19</b> |

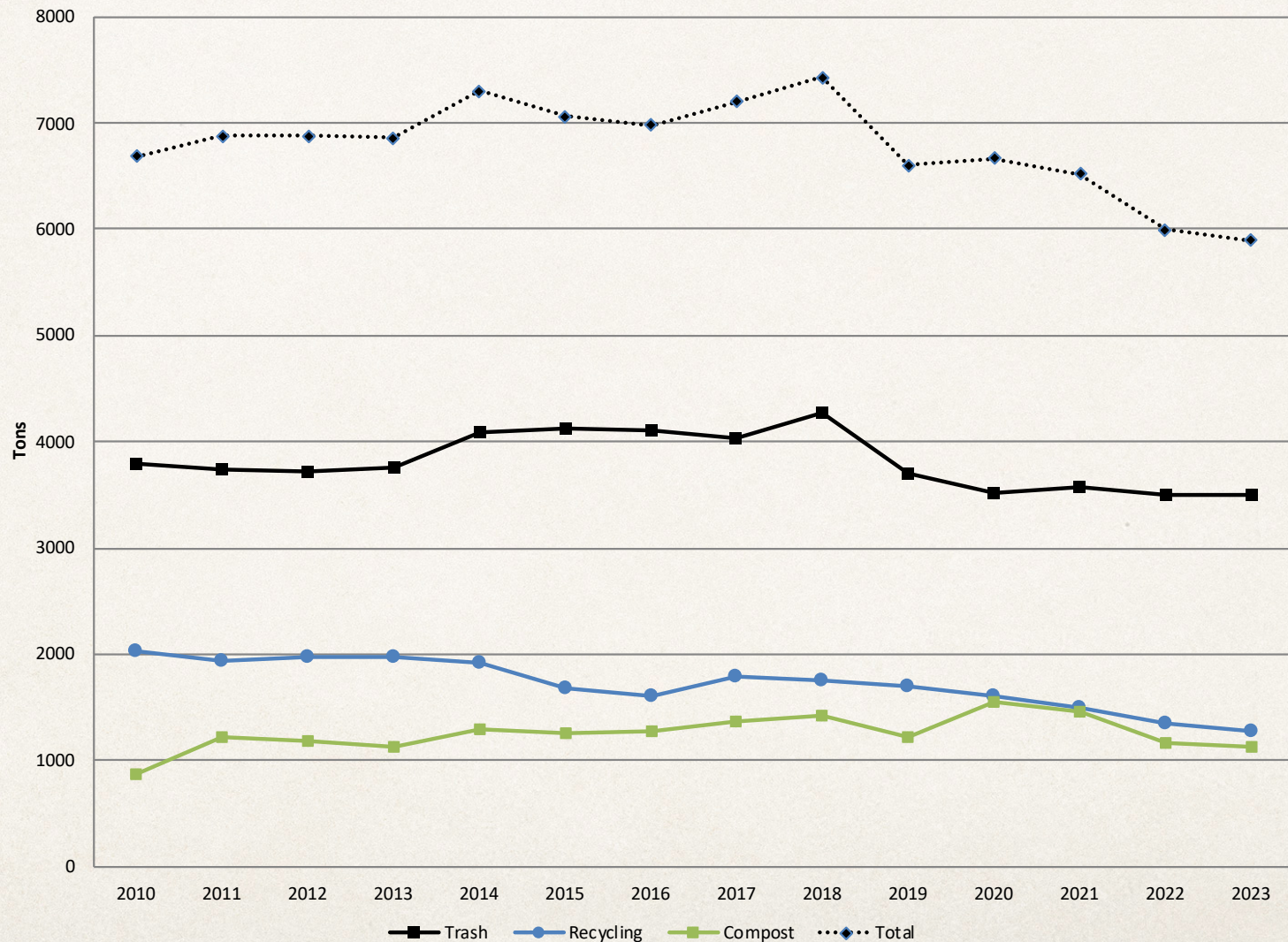
% of City Program  
Waste is **Composted**

| 2017       | 2020       | 2022       |
|------------|------------|------------|
| <b>44%</b> | <b>47%</b> | <b>42%</b> |

**Diversion**



# City Residential Solid Waste Diversion by Year

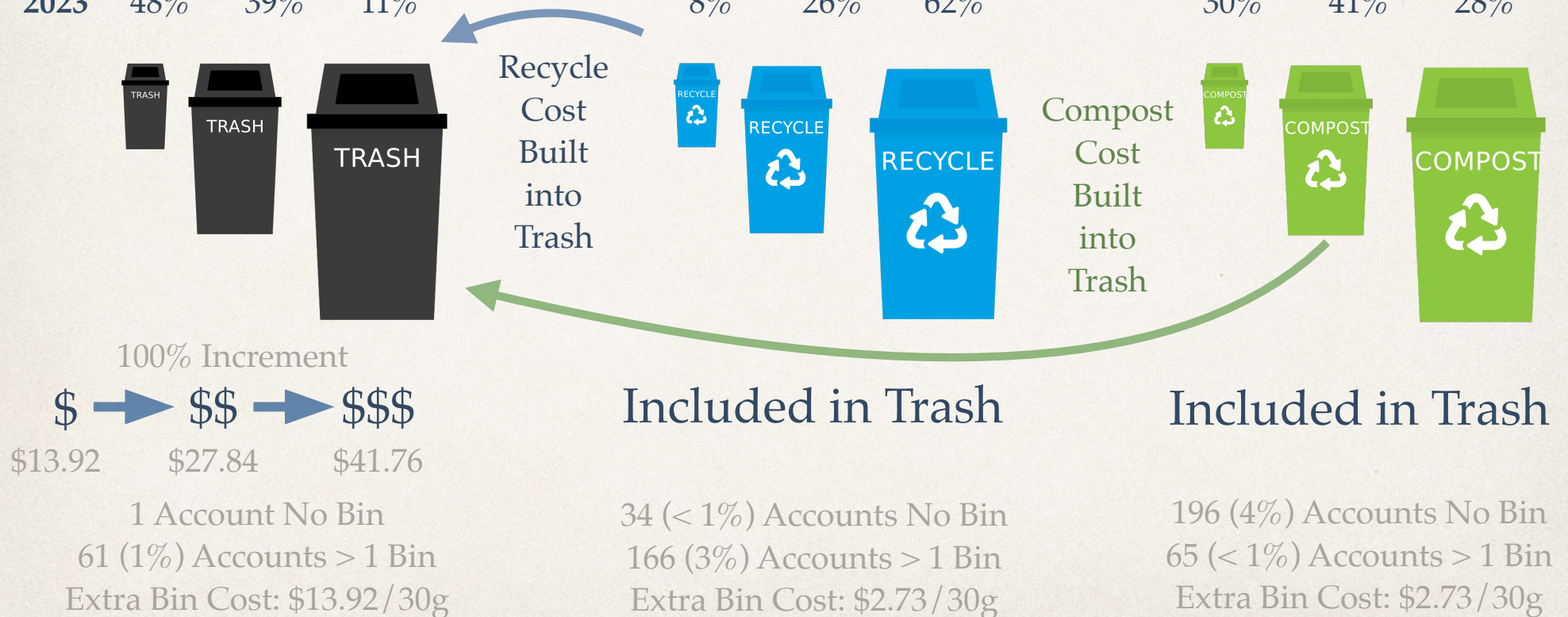




# What Affects Pricing?

## Current Rate Structure

|      |     |     |     |  |     |     |     |  |     |     |     |
|------|-----|-----|-----|--|-----|-----|-----|--|-----|-----|-----|
| 2013 | 40% | 48% | 10% |  | 14% | 26% | 57% |  | 45% | 46% | 8%  |
| 2018 | 45% | 43% | 10% |  | 12% | 26% | 58% |  | 45% | 41% | 10% |
| 2021 | 49% | 39% | 10% |  | 11% | 26% | 60% |  | 38% | 41% | 20% |
| 2023 | 48% | 39% | 11% |  | 8%  | 26% | 62% |  | 30% | 41% | 28% |





# Proposed Bid Structure

|                       | Service Days | Trash                                                                             | Recycling            | Compost              | Equipment                 |
|-----------------------|--------------|-----------------------------------------------------------------------------------|----------------------|----------------------|---------------------------|
| Base Bid<br>(Current) | Tue - Fri    |  | Included<br>Biweekly | Included<br>Biweekly | Natural Gas               |
| Alt. #1               | Other        |  | Included<br>Biweekly | Included<br>Biweekly | Natural Gas               |
| Alt. #2               | -            |                                                                                   | Included<br>Biweekly | Included<br>Weekly   | Natural Gas               |
| Alt. #3               | -            |                                                                                   | Included<br>Weekly   | Included<br>Weekly   | Natural Gas               |
| Alt. #4               | -            |                                                                                   |                      |                      | Electric or GHG<br>Offset |



# 2024 RFP Criteria

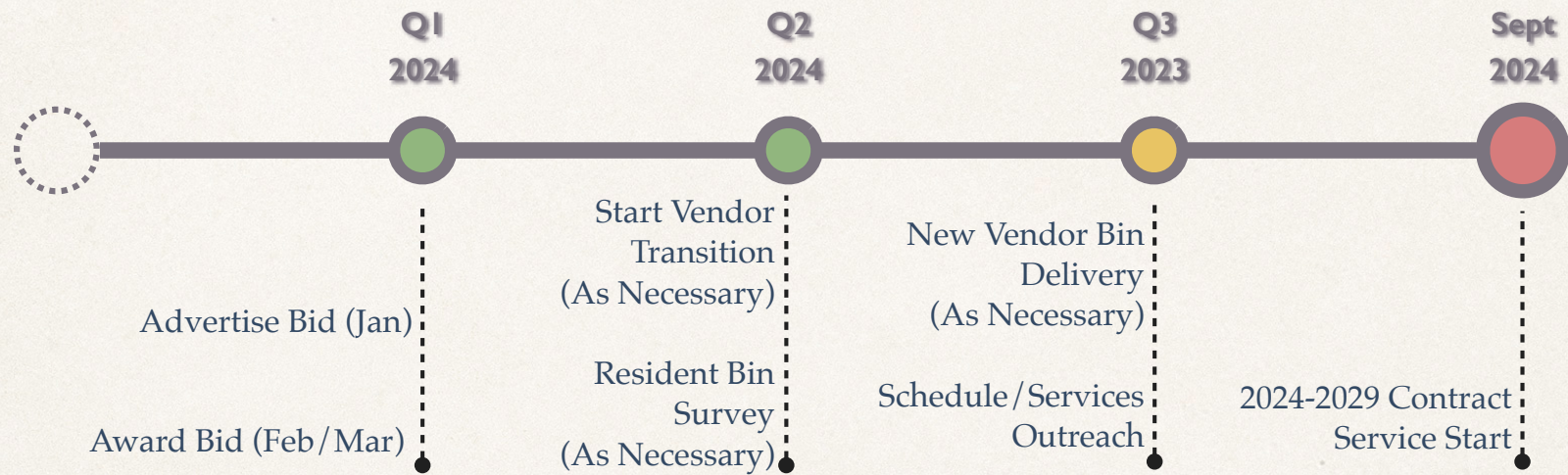
|                          |         |                     |          |           |               |                             |        |
|--------------------------|---------|---------------------|----------|-----------|---------------|-----------------------------|--------|
| Points                   | 60      | 10                  | 5        | 10        | 5             | 10                          | 100    |
| Percent of Overall Score | 60%     | 10%                 | 5%       | 10%       | 5%            | 10%                         | 100%   |
| Contractor               | Pricing | Additional Services | Schedule | Equipment | RFP Interview | Customer Service Commitment | Totals |
| Company X                | TBD     | TBD                 | TBD      | TBD       | TBD           | TBD                         | TBD    |
| Company Y                | TBD     | TBD                 | TBD      | TBD       | TBD           | TBD                         | TBD    |

$$\text{Price Score} = \frac{(\text{5 Yr Total Low Bid} \times 60)}{\text{5 Yr Evaluated Bid}}$$



# 2024 RFP Schedule

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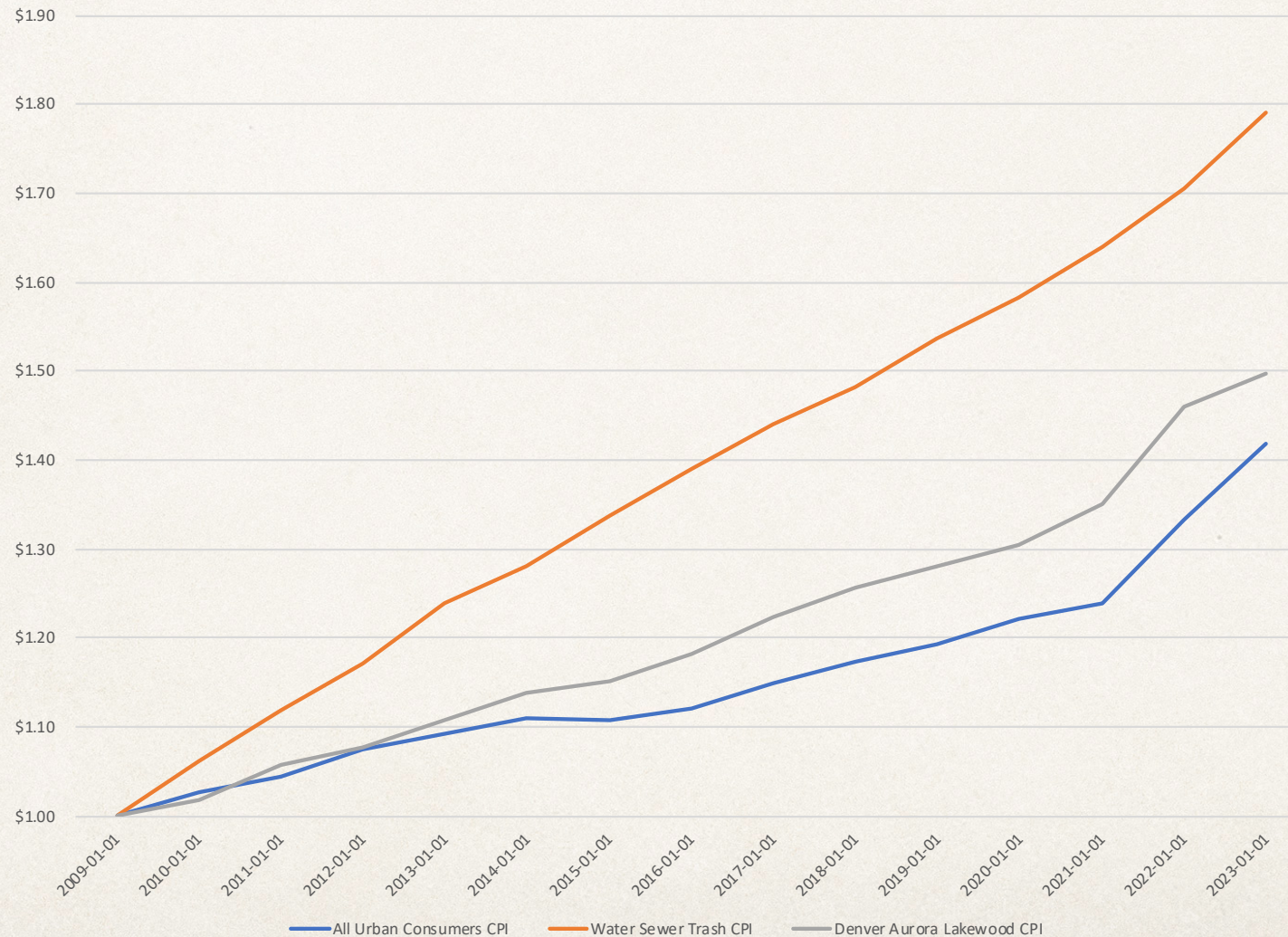
# Annual Increase Index

2009-2018 AUC CPI Increases

2019-2021 DAL CPI Increases

2022 WST CPI Increase (4.42% vs DAL 8.58%)

|               | All Urban<br>Consumers | Denver Aurora<br>Lakewood | Water Sewer<br>Trash |
|---------------|------------------------|---------------------------|----------------------|
| 2009-2013     | 11.02%                 | 28.05%                    | 13.74%               |
| 2014-2018     | 7.41%                  | 20.00%                    | 12.56%               |
| 2019-2022     | 18.92%                 | 16.46%                    | 17.00%               |
| 2009-2023 Avg | 2.55%                  | 2.94%                     | 4.25%                |





# Contract Key Points

---

- ❖ Term: 5 Years
- ❖ Annual Price Increase: WST Index
- ❖ Cost
- ❖ Communications Proposal
- ❖ Customer Service Proposal
- ❖ Fleet: Natural Gas, Electric, GHG Offsets
- ❖ Proposed Additional Services: Leaf/Branch Pickup, Bulk Pickup, Etc.
- ❖ Schedule: Tue - Fri vs Proposed Other
- ❖ Frequency of Recycle or Compost - Biweekly vs Weekly



**SUBJECT:** RESOLUTION NO. 3, SERIES 2024 – A RESOLUTION  
APPROVING A REVOCABLE LICENSE AGREEMENT FOR THE  
INSTALLATION OF FIBER OPTIC CABLES AND CONDUIT  
WITHIN CITY RIGHTS-OF-WAY IN CONNECTION WITH THE  
INTREPID FIBER NETWORK

**DATE:** JANUARY 2, 2024

**PRESENTED BY:** CAMERON FOWLKES, CITY ENGINEER  
PAULINA BENNETT, INFORMATION TECHNOLOGY DIRECTOR

**SUMMARY:**

Intrepid Fiber has proposed the construction of a fiber-to-the-home network within Louisville, which would provide residents and businesses with increased access to and options for ultra-high-speed (gigabit) internet service. Intrepid would also partner with the City to expand our internal (“dark”) fiber infrastructure, increasing resiliency and connectivity between City facilities at a substantial cost savings.

City Staff was contacted by Intrepid Fiber in October of 2022 to explore the possibility of building a fiber-to-the-home network within Louisville. Staff met with Intrepid on many occasions to go over details of the installation and finalize an agreement for Council approval.

To reduce construction impacts on community members, staff requested that Intrepid Fiber provide strands of dark fiber to several locations. These locations were previously identified for future buildout by staff. See attachment 4 for a map of existing fiber and proposed connections.

Intrepid Fiber will provide 6 strands of dark fiber for exclusive use by the City to the following locations with no recurring monthly charge:

- Sewer lift stations at Takoda and North End Subdivisions.
- Traffic signals at Paschal/Highway 42, Short/Highway 42
- Raw water pump station at Harper Lake.
- Golf Course, Recreation Center, Community Park, Cottonwood Park, and Heritage Park.

Additionally, Intrepid Fiber will provide 2” conduit between the Library and North End Lift Station for exclusive use by the City. This infrastructure would advance the City’s goal of completing a redundant fiber ring network and lay the groundwork for the City to provide additional connectivity in the future.



**SUBJECT: RESOLUTION NO. 3, SERIES 2023**

**DATE: JANUARY 2, 2024**

**PAGE 2 OF 2**

Intrepid Fiber has completed projects with similar agreements in Pueblo, Northglenn, Westminster, and Littleton.

**FISCAL IMPACT:**

By partnering with Intrepid Fiber, the City would save \$250,000-\$500,000 in installation costs for fiber connections to several City owned facilities.

**PROGRAM/SUB-PROGRAM IMPACT:**

This effort supports Utilities, Transportation, and Parks.

**RECOMMENDATION:**

Staff recommends City Council pass the resolution and execute the revocable license agreement with Intrepid Fiber.

**ATTACHMENT(S):**

1. Resolution No. 3, Series 2024
2. Revocable License Agreement
3. Intrepid Fiber Presentation
4. Map of City fiber optic network

**STRATEGIC PLAN IMPACT:**

|                                     |                                                                                     |                                                     |                                     |                                                                                     |                                         |
|-------------------------------------|-------------------------------------------------------------------------------------|-----------------------------------------------------|-------------------------------------|-------------------------------------------------------------------------------------|-----------------------------------------|
| <input checked="" type="checkbox"/> |  | <b>Financial Stewardship &amp; Asset Management</b> | <input checked="" type="checkbox"/> |  | <b>Reliable Core Services</b>           |
| <input checked="" type="checkbox"/> |  | <b>Vibrant Economic Climate</b>                     | <input checked="" type="checkbox"/> |  | <b>Quality Programs &amp; Amenities</b> |
| <input type="checkbox"/>            |  | <b>Engaged Community</b>                            | <input type="checkbox"/>            |  | <b>Healthy Workforce</b>                |
| <input checked="" type="checkbox"/> |  | <b>Supportive Technology</b>                        | <input type="checkbox"/>            |  | <b>Collaborative Regional Partner</b>   |

**RESOLUTION NO. 3  
SERIES 2024**

**A RESOLUTION APPROVING A REVOCABLE LICENSE AGREEMENT FOR THE  
INSTALLATION OF FIBER OPTIC CABLES AND CONDUIT WITHIN CITY RIGHTS-  
OF-WAY IN CONNECTION WITH THE INTREPID FIBER NETWORK**

**WHEREAS**, BIF IV Intrepid OpCo LLC (“Intrepid”), a telecommunications provider owning and operating fiber networks, desires to license from the City portions of City-owned rights-of-way for the installation of fiber optic cables and conduit; and

**WHEREAS**, in exchange for the use of such City-owned rights-of-way, Intrepid will install and construct additional conduit and fiber for the City’s use and pay building permit and right-of-way permit fees for the installation of Intrepid facilities; and

**WHEREAS**, a revocable license agreement between the City and Intrepid has been proposed for such purposes; and

**WHEREAS**, the City Council finds that the proposed agreement is in the best interests of the City and its citizens, and by this resolution desires to approve the agreement and authorize its execution.

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

1. The proposed Revocable License Agreement between the City of Louisville and BIF IV Intrepid OpCo LLC (the “Agreement”) 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 Agreement on behalf of the City, and the Mayor is hereby further authorized to negotiate and approve such revisions to the Agreement as the Mayor determines are necessary or desirable for the protection of the City, so long as the essential terms and conditions of the Agreement are not altered.

3. The Mayor, City Manager, City Clerk, and City staff are hereby authorized to execute all documents and do all other things necessary on behalf of the City to provide for performance of the obligations of the City under the Agreement.

**PASSED AND ADOPTED** this 2<sup>nd</sup> day of January, 2024.

---

Christopher M. Leh, Mayor

ATTEST:

---

Meredyth Muth, City Clerk

## REVOCABLE LICENSE AGREEMENT

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Louisville, a Colorado Municipal Corporation (hereinafter referred to as "City") and BIF IV Intrepid OpCo LLC (hereinafter referred to as "Licensee").

WITNESSETH:

WHEREAS, City is a Colorado home rule city organized and existing under and by virtue of Article XX of the Colorado Constitution and possesses plenary power and authority over the use and occupation of the public rights of way within its corporate boundaries; and

WHEREAS, Licensee represents and warrants: (a) that it is a Telecommunications Provider" as that term is defined in Section 7 of Article I; and (b) that it operates within the geographical boundaries of the City of Louisville; and

WHEREAS, Licensee provides its Telecommunications Services to customers over a network owned, controlled, or leased by Licensee which lines are authorized pursuant to franchise, license agreement or revocable permit; and

WHEREAS, Licensee may wish to install Facilities upon or within certain public rights of way within the corporate boundaries of the City in order to provide Telecommunications Services; and

WHEREAS, City is authorized under the constitution and laws of the State of Colorado to grant consent to Telecommunications Providers to occupy the public rights of way for such purposes; provided, however, the same shall not be nor constitute the granting of a local franchise under Article XI of the City of Louisville Home Rule Charter (the "Charter"), nor shall same ever become or ripen into any franchise; and

WHEREAS, as part of the consideration for Licensee's use of the City's public rights of way, Licensee has agreed to install and dedicate to the City certain fiber and conduit for municipal use in accordance with this Agreement; and

WHEREAS, the City and Licensee have agreed to be bound by the terms and conditions set forth herein which shall govern Licensee's use of the public rights of way and the City Project (defined below);

NOW, THEREFORE, in consideration of the foregoing recitals and the terms, conditions, and mutual promises set forth herein, the parties agree as follows:

### ARTICLE I - DEFINITIONS

As used in this License Agreement, the following terms, phrases, and words shall be ascribed the following meanings, unless the context indicates otherwise. As used in this License Agreement, the word "shall" is mandatory, and the word "may" is permissive. Words not defined



herein shall be given their common and ordinary meanings, consistent with the context in which such words are used and the purposes of this License Agreement.

1. "Telecommunications Act" shall mean the Telecommunications Act of 1996 (47 U.S.C. §151, et seq.), as amended.

2. (a) "Facilities" means all physical components of the Licensee used to provide Telecommunications Services which are located, or to become located pursuant to this License Agreement, within the City and are reasonably necessary, useful or convenient to provide Telecommunications Services within the territorial boundaries of the City, including without limitation, poles, wires, cables, pipes, underground conduits, ducts, manholes, vaults, fiber optic cables and devices, switches, equipment boxes and sheds and other structures and appurtenances. This term shall also include any Facilities which were installed under any prior License Agreement between the City and Licensee.

(b) "Leased Facilities" means all physical components used by Licensee to provide Telecommunications Services which are leased to Licensee by third parties who are authorized by separate instruments to maintain same within Rights of Way within the City.

3. "Account" shall mean each telephone or telecommunications access line or twisted pair equivalent provided by or on behalf of Licensee, if Licensee provides any type of local exchange service, at a customer's premises over which the customer may send or receive any telephone, telegraph, fax, data, video or other similar telecommunications signals; except that "Account" shall not include any customer line used solely for receipt of cable television programming. Provision of a T1 or DS1 line furnished by Licensee to a customer which is connected to switched access service or local exchange service shall be counted as twenty-four (24) accounts; provision of a T3/DS3 shall be counted as six hundred seventy-two (672) accounts.

4. "Jurisdiction" shall mean within the corporate boundaries of the City of Louisville as now or hereafter constituted.

5. "Rights of Way" shall mean all streets, roadways, sidewalks and alleys, and all other areas reserved for present or future use by the public, as a matter of right, for the purpose of vehicular or pedestrian travel as defined in Section 17.08.410 of the Louisville Municipal Code.

6. "LMC" shall mean the Municipal Code of the City of Louisville, as amended, and as same may be amended in the future.

7. "Telecommunications Provider" shall (1) have the meaning as that term is defined under Colorado and federal law, including but not limited to § 38-5.5-102(3), C.R.S. and 47 U.S.C. § 153(51) and (2) also include, solely for the purposes of this Agreement, the term "broadband provider" as that term is defined in § 38-5.5-102(1.3), C.R.S., except that for purposes of this Agreement this term shall not include a cable operator.

8. "Telecommunications Services" shall (1) have the meaning as that term is defined under Colorado and federal law, including but not limited to 47 U.S.C. § 153(53) and (2) also

include, solely for the purposes of this Agreement, the term “broadband service” as that term is defined in § 38-5.5-102(1), C.R.S., except that for purposes of this Agreement this term shall not include cable services.

9. “Wireless Communications Facility” or “WCF” means a facility used to provide personal wireless services as defined at 47 U.S.C. Section 332 (c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services.

10. “Fiber” means six (6) strand, single mode, dark fiber capable of achieving ten (10) gigabits per second (Gbps) connection speeds, unless a different specification and/or performance standard is approved in accordance with Article IV, Section 3 hereof.

11. “City Fiber” means fiber provided, constructed and installed by Licensee and dedicated to the City for the City’s exclusive use.

12. “Shared Fiber” means fiber provided, constructed and installed by Licensee, and dedicated to the City for shared use with Licensee.

13. “City Conduit” means conduit provided, constructed and installed by Licensee and dedicated to the City for the City’s exclusive use.

14. “City Project” has the meaning set forth in Article IV, Section 3.

## ARTICLE II - CONDITIONAL CONSENT GRANTED

1. Subject to Licensee's compliance at all times with all of the terms and conditions of this License Agreement, all of the ordinances referenced herein, all applicable local, state and federal laws, and further subject to the City's lawful exercise of its police power (including, but not limited to, zoning, subdivision, permit and building code requirements) and the City's prior and superior right to usage for municipal purposes, City hereby grants to Licensee, insofar as it has or may have the requisite power and authority to do so, a non-exclusive and revocable license to make reasonable use of those specific portions of the Rights of Way depicted in Exhibit A, attached hereto and incorporated herein by this reference (the “Premises”), for the sole purposes of constructing, installing, operating, maintaining, repairing, replacing, and removing Licensee's Facilities. Should Licensee desire to expand the Premises, Licensee shall submit an application for a right-of-way permit pursuant to Chapter 12.12 of the Louisville Municipal Code. The City’s Director of Public Works, or the Director’s designee (the “Director”), may grant, grant with conditions, or deny such request in such official’s discretion. The Director shall notify Licensee of the decision in writing. If the Director issues the permit, then the Licensee shall prepare, and submit to the Director for approval, an updated exhibit (in form similar to Exhibit A), depicting the whole of the Premises, including the extended area, to replace the diagram attached hereto as Exhibit “A.” The updated Exhibit “A” shall be attached to and become a part of this Agreement, without the need for a formal written amendment, upon the Director’s written approval of the same, and the area described and depicted thereon shall be deemed to form the Premises. The foregoing notwithstanding,

the Licensee must separately obtain consent from the Colorado Department of Transportation with respect to state highways. The Premises, including any approved expansions thereof, is being licensed to Licensee “as-is” without warranty of any kind, express or implied, including any warranty of merchantability or fitness for a particular purpose. Within thirty (30) days following the installation or relocation of any communication conduit, fiber optic cable, and/or appurtenant facilities within the Premises, Licensee shall provide the City with detailed drawings showing the as-built location of such Facilities. As-built drawings may be provided electronically.

2. The license granted herein to make reasonable use of the Rights of Way shall not be deemed to be a franchise, nor an exclusive license or right, and the City reserves the right to make or grant a similar use of the Rights of Way to any other person or persons, including one or more other Telecommunications Providers. Licensee understands and agrees that the license granted hereunder is granted subject to prior franchise agreements and subject to all easements and other interests of record applicable to the Premises. Licensee shall be solely responsible for coordinating its activities hereunder with the holders of such franchise agreements or of such easements or other interests of record, and for obtaining any required permission for such activities from such holders if required by the terms of such franchises or easements or other interests.

3. The City retains the following rights in regard to this license:

(a) To revoke the license and consent hereby granted for misuse, non-use or failure of Licensee to comply with the provisions hereof;

(b) To use, control and regulate the use of the City streets, roads, easements, other public places and the Rights of Way, and the space above and beneath the same;

(c) To require the removal or relocation of any of the Facilities from the Rights of Way if necessary or desirable for any public or municipal purpose or project, as determined at the sole discretion of the City, which judgment must be exercised in a reasonable manner; and

(d) To require a separate permit for each site or excavation upon which Licensee would otherwise be required to obtain such a permit under Chapter 12.12 of the LMC. Each permit application shall include information as to the appearance, size, description, proposed location of, and any other information pertinent to, any aerial installations proposed for attachment to existing light poles, which installations require the City’s written approval, in addition to application to and approval from the owner of the subject pole(s) (e.g., Xcel Energy or Lumen, as applicable). Aerial installations proposed for attachment to light poles must comply with all requirements of Chapter 17.42 of the LMC applicable to “small cell facilities,” excepting any requirements the City’s Director of Public works has waived in writing upon a finding that such requirements are not applicable to, or are unnecessary for, the City’s review of the aerial installations proposed in the permit application. Notwithstanding the foregoing, the City’s Director of Public Works may not waive the requirements that require the installation to utilize camouflage and concealment design techniques, and that limit the height of each installation to the height of the existing infrastructure on which it is mounted *plus* no more than five (5)

additional feet. Licensee shall accompany each permit application with a detailed public information plan, for City review and approval, which plan shall contain, at minimum, a description of Company's planned efforts to provide regular progress updates to Louisville residents while the work performed under the permit is ongoing, such as a webpage, mailed notices, flyers, or a combination thereof, and the method by which Licensee will answer resident questions concerning the work performed under the permit. When approved by the City, the terms of each permit and public information plan will be automatically incorporated into this License Agreement as if fully set forth herein, without further action by the parties.

(e) To enter into the Premises at any time during the term of this License Agreement for any purpose of the City. If such entry requires disturbance of Licensee's Facilities, the City shall provide Licensee with at least three (3) days written notice and shall perform underground locates as required by Colorado law, except in the case of emergencies, in which the City shall endeavor to provide Licensee with notice as soon as practically possible. The City shall not be required to repair or replace any such disturbance. The City shall have the right to place improvements on the Premises.

4. The license granted herein to make reasonable use of the Premises shall not be deemed to grant authorization to construct or operate Wireless Communications Facilities. Authorization to utilize the Rights of Way for Wireless Communications Facilities must be obtained through separate authorization specifically permitting the use of the Rights of Way for Wireless Communications Facilities.

### ARTICLE III - SCOPE

The license and consent granted by this License Agreement confers only the right to make reasonable use of the Premises for Licensee's provision of Telecommunications Services, and it is expressly understood and agreed to by Licensee that Licensee shall not operate a private telecommunications network, Wireless Communications Facilities, nor operate as a "cable operator" as that term is defined under federal law (47 U.S.C. §522(5)), nor shall it provide or offer to provide "cable services" as that term as defined under federal law (47 U.S.C. §522(6)), without proper local, state and federal authorization, as required by law.

### ARTICLE IV – FEES AND OTHER CONSIDERATION

1. **Building Permit and Right of Way Permit Fees** – Licensee shall pay in advance to Licensor any building permit fees and right of way permit fees as outlined in Titles 12 and 15 of the LMC; provided that, such fees are waived for work specifically integrated into the City Project (defined in subsection 3(a), below).

2. **Payment of Fees to Licensor** – Licensee shall pay Licensor the Fees specified in this Section in the form of a money transfer or a check made out to the order of the City of Louisville City and sent to:



City of Louisville  
Attn: Finance Director  
749 Main Street  
Louisville, CO 80027

**3. City Fiber & Conduit.**

(a) As additional consideration to the City for the License granted hereunder to Licensee, Licensee agrees to construct, install, and dedicate to the City for municipal purposes (the “City Project”):

(i) Approximately one (1) mile of City Fiber at the location(s) described and depicted on Exhibit B, attached hereto and incorporated herein by this reference;

(ii) Approximately four and one half (4.5) miles of Shared Fiber at the location(s) described and depicted on Exhibit B.

(iii) Approximately one (1) and three-tenths (3/10) of one mile (1.3 miles) of City Conduit, with handholes at the locations described and depicted on Exhibit B.

(b) All Fiber installed as part of the City Project must be six (6) strand, single mode, dark fiber capable of achieving ten (10) gigabits per second (Gbps) connection speeds unless a different specification and/or performance standard is approved in writing by the City Manager in advance of the subject installation.

(c) All City Fiber and Shared Fiber shall be installed within Licensee Facilities, unless otherwise stated in this Agreement, including subsection (d) below, or an exhibit hereto, and shall be operated and maintained by Licensee in accordance with Exhibit B, attached hereto and incorporated herein by this reference.

(d) The City Conduit and City Fiber installed within such City Conduit shall be dedicated to the City for the City’s exclusive use upon construction completion, by bill of sale or other written instrument acceptable to the City, and upon the City’s written acceptance of the same, the City shall own and be responsible for maintenance of such City Conduit and all City Fiber installed within such conduit.

(e) Licensee shall perform its obligations under this Section in accordance with Article VII hereof and the terms and conditions of any applicable permits. The parties shall cooperate in good faith to develop a timeline for completion of the City Project by no later than December 31, 2026, unless the City agrees in writing to extend such completion deadline.

**ARTICLE V - OCCUPATION TAX & E911 SURCHARGES**

1. To the extent Licensee operates as a local exchange provider, as defined by §40-15-102(18), C.R.S. and/or as an interexchange provider, as defined by §40-15-102(11), C.R.S. the following provisions shall apply:

(a) Licensee understands and acknowledges that City had heretofore adopted a Telephone Utilities Tax as codified in Chapter 3.26 of the LMC. In its provision of local exchange services, whether directly or through resale, Licensee agrees to be bound by and comply with said Ordinance, including payment of the tax in an amount equal to \$8.00 per annum for each Account, payable monthly in twelve (12) equal installments. In providing local exchange services, Licensee hereby expressly agrees that it is and constitutes a telephone utility within the meaning of Chapter 3.26 of the LMC and Licensee irrevocably waives and relinquishes any right it has or may have to claim or assert that said LMC provisions are invalid under law or should not be applied to Licensee, including, without limitation, any claim that said provisions violates any provision of state law or the Telecommunications Act.

(b) Pursuant to Chapter 3.30 of the LMC, the City has imposed an emergency telephone charge ("E911 Charge") of \$0.75 per month per exchange access facility, wireless communications access and interconnected voice-over-internet-protocol service provided within the Jurisdiction, as authorized by §29-11-100.5, et seq., C.R.S. Licensee agrees to collect the E911 Charge from its customers and promptly remit same monthly to City as provided by §29-11-103(1), C.R.S.

#### ARTICLE VI - SALES AND USE TAXES

1. Licensee agrees to obtain a sales and use tax license from the City and to comply with all provisions of Chapter 3.20 of the LMC relating to sales and use taxes.

2. Licensee acknowledges and agrees that to the extent Licensee sells telecommunications services to customers within the City, including the provision of interstate telephone access service and interlata access service, such service is taxable by City pursuant to Chapter 3.20 of the LMC, and Licensee shall collect such taxes from its customers and promptly remit same to the City in accordance with Chapter 3.20 of the LMC.

#### ARTICLE VII - USE OF PREMISES

1. Facilities shall be located, installed and maintained so that none of the Facilities endanger the lives, health or safety of persons, or interfere with any public improvements the City or other governmental entities (including any storm water, sanitary sewer or water utilities or enterprises) have in place or may deem proper to make, nor shall the location, installation or maintenance of the Facilities hinder or obstruct the use of the streets or other public ways for their public purposes, including but not limited to vehicular and pedestrian traffic. All Facilities shall be so located as to cause minimum interference with the rights and reasonable convenience of property owners of property which adjoins any Right of Way.

2. Prior to commencement of construction of any portion of its telecommunications system within the City (other than Leased Facilities), Licensee shall furnish to the City the general schematic plans for its Facilities, including system route maps, renderings of equipment boxes and structures, engineering, traffic control, and landscaping plans. In addition, the Licensee shall assess

and report on the impact of its proposed construction on the City environment. Such plans and reports may be reviewed by the City to ensure, (a) that all applicable laws including building and zoning codes and air and water pollution regulations are complied with, (b) that aesthetic and good planning principles have been given due consideration, and (c) that adverse impact on the environment has been minimized. The Licensee shall comply with all regulatory requirements of the City lawfully binding on the Licensee and shall incorporate all other reasonable changes to its plans requested by the City, consistent with the provisions of Chapter 12.12 of the LMC.

3. Not less than thirty (30) days prior to construction of any Facilities within the Premises at any specific location, Licensee shall furnish the City's Director of Public Works with detailed plans for such Facilities including detailed location drawings and final architectural, engineering, traffic control and landscaping plans. Prior to commencing construction, Licensee shall: (a) obtain written approval of the City's Director of Public Works of the construction plans, (b) procure appropriate excavation permits pursuant to Chapter 12.12 of the LMC, or permits required pursuant to any similar ordinance adopted by City in the future, (c) pay all review fees associated with such permits in addition to the fees set forth in Article IV of this Agreement, and (d) comply with all requirements of said Chapter 12.12 of the LMC, including the terms of said permits.

4. All construction, excavation, maintenance and repair work done by Licensee shall be done in a workmanlike and expeditious manner which minimizes the inconvenience to the City, the general public and individuals. Licensee shall be liable for any damage to the City or City owned property caused by Licensee's failure to act in a timely manner. All such construction, excavation, maintenance and repair work done by Licensee shall comply with all applicable codes of the City and the State of Colorado, and Licensee shall be responsible for obtaining all applicable permits and licenses. The City shall have the right to inspect all construction or excavation work to ensure compliance with applicable codes and permits, and may order Licensee to perform corrective work. All public and private property disturbed by Licensee's activities shall be promptly restored by Licensee at its expense to substantially its former condition, subject to inspection by the City's Director of Public Works or their designee and compliance by Licensee with reasonable remedial action required by said official pursuant to the inspection. Licensee shall be liable to City for the full cost of restoring any public property not promptly remedied by Licensee as required by said official.

5. The installation, maintenance, renovation, repair, replacement and removal of Facilities by Licensee shall be subject to regulation by City including as to (a) the location of Facilities in or upon the streets, alleys and dedicated easements, (b) the disturbance and reconstruction of pavement, sidewalks, and surface of streets, alleys, dedicated easements and driveways, (c) the timing and scheduling of work, and (d) the temporary closure of portions of streets and alleys. All Facilities shall be designed and installed so as to cause a minimal amount of interference with public property, water mains, sewer mains, electric and natural gas facilities, streetlights, traffic signals, and all other municipal or authorized public use of the Rights of Way. The Director of Public Works, or designee, may direct and require Licensee to locate its Facilities within a defined telecommunications corridor within any street or other Right of Way or otherwise at a specific location to minimize interference with other facilities or utilities. Licensee shall install and maintain its Facilities in such manner as to minimize interference with trees, natural features

and vegetation. Whenever feasible, as determined in the reasonable discretion of the Director of Public Works, Licensee shall enter into pole-sharing and conduit-sharing agreements with third parties in order to co-locate its wires and cables upon poles or within conduit of other Telecommunications Providers or utilities in accordance with applicable City ordinances and requirements.

6. Licensee shall, upon reasonable notice and at its sole cost and expense, remove, locate and relocate its Facilities in, on, over or under any Rights of Way in such manner as City may at any time require for the purpose of facilitating the construction, reconstruction, maintenance, repair, or change in grade of any street, sidewalk, public improvement or City project, or for the purpose of promoting the efficient operation of any such public improvement or project, or for the purpose of facilitating the vacation and/or redevelopment of Right of Way by the City. In the event Licensee fails to act within a reasonably allocated time, the City may cause Licensee's Facilities to be relocated, and Licensee shall be liable to City for the costs thereof. In the event City causes Licensee's Facilities to be relocated, City shall be held harmless for any damages incurred to Licensee's Facilities during such relocation.

7. Except where specifically authorized by the Director of Public Works, all of Licensee's Facilities located within Rights of Way shall be located underground. In locations where wires or cables of franchisees of City or of authorized local exchange carriers are presently located above-ground, the City Engineer will allow Licensee's Facilities to also be located above-ground. At the City Engineer's discretion, underground installation may be required in certain areas where above-ground facilities currently exist. Thereafter, and notwithstanding that any such authorization had been given, should the City subsequently determine for any area of the City that telephone or telecommunications wires, cable television cables or electric utility wires located above ground shall be relocated underground, Licensee shall, upon reasonable notice, at its sole cost and expense, relocate its Facilities below ground in cooperation with other affected interests. In the event Licensee fails to act within a reasonable allocated time the City may cause Licensee's Facilities to be relocated, and Licensee shall be liable to City for the costs thereof. In the event City causes Licensee's Facilities to be relocated, City shall be held harmless for any damages incurred to Licensee's Facilities during such relocation.

8. Licensee agrees to take such actions as necessary to maintain the communication conduit and/or fiber optic cable in good and safe condition at all times. Licensee further agrees to comply at all times with the ordinances, resolutions, rules, and regulations of the City in Licensee's use and occupancy of the Premises. If Licensee fails to comply with its obligations under this Agreement, the City may take such measures as it determines necessary to bring the Premises into compliance, and the cost of any such measures shall be paid by the Licensee. The City shall have no responsibility, liability, or obligation with respect to the safety or security of any person on account of Licensee's use of the premises or any personal property placed or located on, at, or in the Premises by Licensee, it being acknowledged and understood by Licensee as between Licensee and the City that the safety and security of any such persons and property is the sole responsibility and risk of Licensee.

9. Any and all activities of Licensee as authorized hereunder shall be performed in accordance with all applicable City of Louisville laws, ordinances, rules, regulations, required



permits, and design and construction standards. Licensee agrees it shall not, in the exercise of its rights hereunder, introduce into or store, generate or dispose any hazardous substance (as defined under any state or federal law) on or within the Premises, any City Conduit, or Rights of Way.

10. Within thirty (30) days following the installation or relocation of any Facilities within the Premises, Licensee shall provide the City with detailed drawings showing the as-built location of such Facilities. As-built drawings may be provided electronically.

11. Licensee shall provide the City on an annual basis by November 30 of each calendar year a report providing the City with the location of all of Licensee's Facilities installed pursuant to this Agreement as of the date of such annual report. Upon completion of the installation of Licensee's Facilities as set forth herein, Licensee shall provide the City with a map identifying the locations of all of Licensee's Facilities and Licensee's completed system within the City, which map shall be accompanied with as-built drawings.

12. After execution of this Agreement, Licensee shall join and associate with the notification association of owners and operators of underground facilities in accordance with the requirements of Article 1.5 of Title 9, Colorado Revised Statutes. Prior to undertaking any excavation within the Rights of Way, Licensee shall comply with the notice requirements of said Article.

#### ARTICLE VIII - ADDITIONAL CITY REGULATION

1. The City expressly reserves its right and duty to adopt, from time to time, in addition to the provisions herein contained, such Charter provisions, ordinances and rules and regulations as may be deemed necessary by the City to promote the health, safety and welfare of its inhabitants and their property.

2. If, during the term of this License Agreement, the City is authorized pursuant to Colorado Law to collect compensation for use of the Rights of Way by Telecommunications Providers and the City enacts an ordinance concerning the use of Rights of Way which requires compensation for the use of the Rights of Way from any class of Telecommunications Providers on a competitively neutral and nondiscriminatory basis within such class, then Licensee shall, in accordance with the terms of such ordinance, pay such compensation.

#### ARTICLE IX - COORDINATION AND CONDUIT/POLE SHARING

1. In order to minimize disruption to vehicular traffic and inconvenience to the public, and to enable the limited width of Rights of Way to be apportioned among all utilities, Telecommunications Providers and other interests needing to locate or maintain facilities in the Rights of Way for the benefit of the public, it is imperative that pole sharing and conduit sharing be encouraged to the greatest extent possible. In furtherance of such purposes, Licensee agrees that it shall reasonably cooperate with City, authorized utilities and other local exchange carriers in placing conduit within the Rights of Way and in sharing unused space within underground conduits owned by Licensee, and upon poles or other above ground facilities owned by Licensee.

2. Whenever the Licensee intends to install new underground conduit or replace existing underground conduit, Licensee shall provide City and all utilities, cable television franchisees, authorized Telecommunications Providers, and local exchange carriers authorized to use the Rights of Way, with sixty (60) days advance written notice in order to permit the additional contemporaneous installation of conduit by City, and such utilities, cable television franchisees, authorized Telecommunications Providers, and local exchange carriers. If City desires additional conduit installed, it will so notify the Licensee and the City shall be responsible for the additional incremental expense for installing such additional conduit. If a utility, cable television franchisee, authorized Telecommunications Provider, or local exchange carrier desires additional conduit installed, it will so notify the Licensee in writing at least ten (10) days prior to the proposed construction date, and such party requesting the additional conduit shall be responsible for a pro-rata expense for installing such additional conduit. This section is intended to maximize the coordination of facilities located within rights of way, and is not intended to govern routine connections of customers to installed network not involving significant line extension nor other excavations of limited scope.

3. Notwithstanding anything to the contrary in paragraph 2 of this Article, in order to minimize disruption to the public and enable use of the public rights of way for public purposes, in connection with any installation of underground conduit by Licensee, City may request Licensee to install one additional conduit for exclusive use by City for public and municipal purposes. In any such case, Licensee shall install the conduit as requested and the City shall reimburse Licensee only for the cost of the conduit and associated handholes and pull boxes for the conduit, and for the additional incremental expense for installing such additional conduit, handholes and pullboxes.

#### ARTICLE X - INDEMNIFICATION

1. Licensee shall install, construct, maintain and operate its telecommunications system in a safe manner providing reasonable protection against injury or damage to any and all persons or property. Licensee specifically agrees to indemnify, defend and hold City harmless from all claims, costs, demands, suits, reasonable expert witness and attorneys' fees, court costs, and other reasonable costs of defense and judgments to the extent the same arise from, in whole or in part, Licensee's negligent acts or omissions of failure to comply with the provisions of this License Agreement, and from all damages or penalties to the extent arising out of the installation, construction, operation, or maintenance of Licensee's telecommunications system, whether or not any act or omission complained of is authorized, allowed, or prohibited by this License Agreement, except to the extent such damages or penalties result from the intentional or willful and wanton misconduct of the City. City shall not be liable for, and Licensee shall indemnify, defend and hold the City harmless from all costs, damages and claims to the extent arising from or relating to delay by Licensee in performing its obligations hereunder, for any cause whatsoever, except for the intentional or willful and wanton misconduct of the City, other users of the Rights of Way, or a force majeure event. Licensee shall have sole control over the defense, investigation and settlement of any such claims, however, Licensee shall not enter into any compromise or settlement which imposes any obligation or liability on the City without the prior written consent of the City. In the event Licensee fails to timely assume the defense of any such claim which has been properly and promptly tendered to Licensee, Licensee also hereby agrees to pay all reasonable expenses of the City incurred by the City in defending itself with regard to any such damages,

claims or penalties, including all out-of-pocket expenses, attorney' fees, and the reasonable value of any services rendered by any employees of the City.

2. The City will provide notice to the Licensee of the pendency of any claim or action against the City arising out of the operations of the Licensee, the exercise by the Licensee of its rights under this License Agreement or the performance thereof by the Licensee. The Licensee shall thereafter be required to appear and defend any such claim or action. Nothing herein stated shall limit the Licensee's obligation of full indemnification of the City hereunder.

#### ARTICLE XI - INSURANCE

Prior to commencement of any installation of Facilities under this License Agreement, Licensee shall procure and thereafter continuously maintain, for as long as this License Agreement remains in effect, at Licensee's expense, Commercial General Liability ("CGL") insurance written on ISO form CG 00 01 01 96, or a substitute form providing equivalent coverage, with a limit of not less than \$2 Million per occurrence, covering liability arising from premises, operations, independent contractors, personal injury, products completed operations, and liability assumed under an insured contract, on an occurrence basis. Under the terms of the required CGL policy, this License Agreement shall be defined as an insured contract. The policy shall identify the City as an additional insured, shall contain a waiver of right of subrogation against City and a severability of interests provisions, and shall have all necessary endorsements to provide coverage without exclusion for explosion, collapse and underground property damage hazards. A certificate of insurance shall be filed with the City's Director of Public Works prior to commencement of installation of Facilities, which evidences compliance with the policy requirements stated above and provides for thirty (30) days prior written notice to City prior to cancellation or material change of any insurance referred to therein. In the event the certificate states that it confers no rights upon the certificate holder, the City may require Licensee to furnish a complete copy of the policy including all declarations and endorsements. Failure on the part of Licensee 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 this License Agreement and the License granted herein, 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 Licensee to the City upon demand. 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 or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101 et seq., C.R.S., as from time to time amended, or otherwise available to the City, its officers, or its employees.

#### ARTICLE XII - TERM

Unless sooner terminated as provided herein, the term of this License Agreement shall be for a period of five (5) years from and after the date of the Agreement. The Parties may mutually agree in writing to renew this Agreement at expiration of the initial term.

#### ARTICLE XIII - REMEDIES, TERMINATION, REMOVAL

1. In the event of any breach of the terms of this License Agreement by Licensee, each of which terms are deemed material, City shall have the right to obtain one or more of the following remedies, which are expressly agreed to be cumulative, and the exercise of any one (1) or more of them shall not be dependent upon the exercise of any other remedy, nor does the exercise of any one or more of them constitute any bar or limitation to the exercise of any other: (a) specific performance or injunctive relief, (b) monetary damages, and (c) termination. In the event City is required to commence an action to enforce its rights under this License Agreement or to obtain remedies provided above and the party which substantially prevails therein, shall be entitled to recover its costs, including reasonable attorneys' fees and expert witness fees.

2. Before terminating the License Agreement for cause on account of any default by Licensee, City shall provide Licensee with written notice of the default and afford Licensee a reasonable period in which to cure the default.

3. In the event Licensee abandons the telecommunications system installed under the terms of this License Agreement or a certain part thereof or fails to use it for a period of one (1) year, or in the event the term of this License Agreement expires, or the Agreement is terminated or is canceled for any reason, then Licensee shall remove its telecommunications system, or the abandoned portions thereof in the case of a partial abandonment, at its expense. As an alternative to removal, if mutually agreed to by Licensee and the City, the ownership of the telecommunications system (or abandoned portions) may be transferred to the City, in which event, all obligations and liabilities of Licensee under this Agreement in connection with the portion of the telecommunications system so transferred to the City shall terminate.

4. City or Licensee may cancel this Agreement at any time upon ninety (90) days' written notice to the other party, subject to the indemnification requirements of this Agreement, the removal provisions set forth in Section 3 above, and any other provisions that survive the termination of this Agreement.

#### ARTICLE XIV - NOTICES

Except as otherwise provided herein, notice under this License Agreement shall be deemed sufficient if provided in writing and mailed by US certified mail, return receipt requested or delivered by a nationally recognized courier, and shall be deemed effective upon actual receipt or refusal of delivery, and shall be addressed to the respective party as follows:

If to the City:                      Office of the City Manager  
                                                 Attn: City Manager  
                                                 749 Main Street  
                                                 Louisville, CO 80027

with a copy to:                      Public Works  
                                                 Attn: City Engineer  
                                                 749 Main Street  
                                                 Louisville, CO 80027



If to Licensee: BIF IV Intrepid OpCo LLC  
11001 W. 120<sup>th</sup> Ave, Suite 305  
Broomfield, CO 80021  
Attention: Chief Construction Officer

with a copy to: BIF IV Intrepid OpCo LLC  
11001 W. 120<sup>th</sup> Ave, Suite 305  
Broomfield, CO 80021  
Attention: Regulatory

#### ARTICLE XV - EFFECT OF MORE FAVORABLE LICENSE AGREEMENTS

In the event that any wireline Telecommunications Provider offering Telecommunications Services, other than cable services, for a fee to the public, or to such classes of users as to be effectively available to the public is, following the execution of this License Agreement, granted consent to use the City's Rights of Way pursuant to terms and conditions which, if applied to Licensee, would be more favorable than those included herein, Licensee shall notify City of such terms and conditions and Licensee shall have the option to renegotiate with City with respect to such terms and conditions.

#### ARTICLE XVI - MISCELLANEOUS

1. This License Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. No provision of this License Agreement shall confer rights or benefits upon any person not a party hereto.

2. In the event that any term or provision of this License Agreement is declared to be illegal, invalid, or unconstitutional, then that provision shall be deemed to be deleted from this Agreement and have no force or effect and this Agreement shall thereafter continue in full force and effect, as modified.

3. This License Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado, without reference to its conflicts of law principles. Venue for any legal action brought hereunder shall be in the federal or state courts for Boulder County, Colorado, and in no other court, for purposes of any litigation related to the License Agreement and irrevocably waives any defense of an inconvenient forum to the maintenance of any action or proceeding in any such court, any objection to venue with respect to any such action or proceeding and any right of jurisdiction on account of the place of residence or domicile.

4. Any and all provisions of this License Agreement which, by their nature, would reasonably be expected to be complied with or performed after the expiration or termination of this License Agreement, including without limitation the removal of Licensee Facilities and Licensee's indemnification obligations, shall survive and be enforceable after the expiration or termination of this License Agreement.

5. The covenants and agreements contained in this Agreement are for the benefit of the City and Licensee only, and do not create any obligations or duties to persons not parties hereto.

6. No amendments, changes or modifications to this Agreement shall be valid except if the same are in writing and signed by a duly authorized representative of each of the parties. Neither party shall assign any of its rights hereunder without the prior written consent of the other party.

7. This License Agreement, including any Exhibits, contains the entire agreement between the parties and supersedes all prior and contemporaneous communications, understandings, and agreements with respect to the subject matter hereof, whether written or oral, expressed or implied. No other agreement, statement, promise, or practice between the parties relating to the License Agreement shall be binding upon the parties.

#### ARTICLE XVII - SIGNATURES

The persons signing this License Agreement on behalf of Licensee represent and warrant that such persons and Licensee have the requisite power and authority to enter into, execute and deliver this License Agreement and that this License Agreement is a valid and legally binding obligation of Licensee enforceable against Licensee in accordance with its terms. This License Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of such components together shall constitute one and the same instrument.

#### ARTICLE XVIII - FORCE MAJEURE

Neither party shall be liable for its failure to perform any of its obligations hereunder if such failure is caused by an Act of God, labor strike, fire, earthquake, power blackouts, pandemics, epidemics, or any other cause beyond its reasonable control and without its fault or negligence.

#### ARTICLE XIX- LAWS GOVERNING/VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, and applicable federal law. Venue for any proceeding brought pursuant to this Agreement shall be in the District Court located in Adams County, Colorado.

#### ARTICLE XX - COUNTERPARTS; ELECTRONIC DISPOSITION

This Agreement may be executed in multiple counterparts, each of which constitutes an original hereof. Regardless of the number of counterparts, all shall constitute only one agreement. In making proof of this Agreement, it is not necessary to produce or account for more counterparts than are necessary to show execution by or on behalf of all parties. Furthermore, the original of this Agreement, including the signature page, may be scanned and stored in a computer database or similar device, and any printout or other output readable by sight, the reproduction of which is shown to accurately reproduce the original of this Agreement, may be used for any purpose as if it were the original, including proof of the content of the original writing.

ARTICLE XXI - PUBLIC DISCLOSURE

The Licensee acknowledges that this Agreement is public record within the meaning of the Colorado Open Records Act, C.R.S. § 24-72-200.1 *et seq.* as same may be amended, and accordingly may be disclosed to the public.

ARTICLE XXII - AMENDMENT

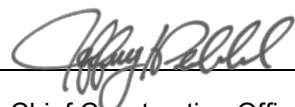
This Agreement may not be amended except pursuant to a written instrument signed by both parties.

ARTICLE XXIII - ENTIRE AGREEMENT

This Agreement represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof, supersedes all prior oral negotiations between the parties, and can be amended, supplemented, modified or changed only by an agreement in writing which makes specific reference to this Agreement and which is signed by the party against whom enforcement of any such amendment, supplement, modification or change is sought.

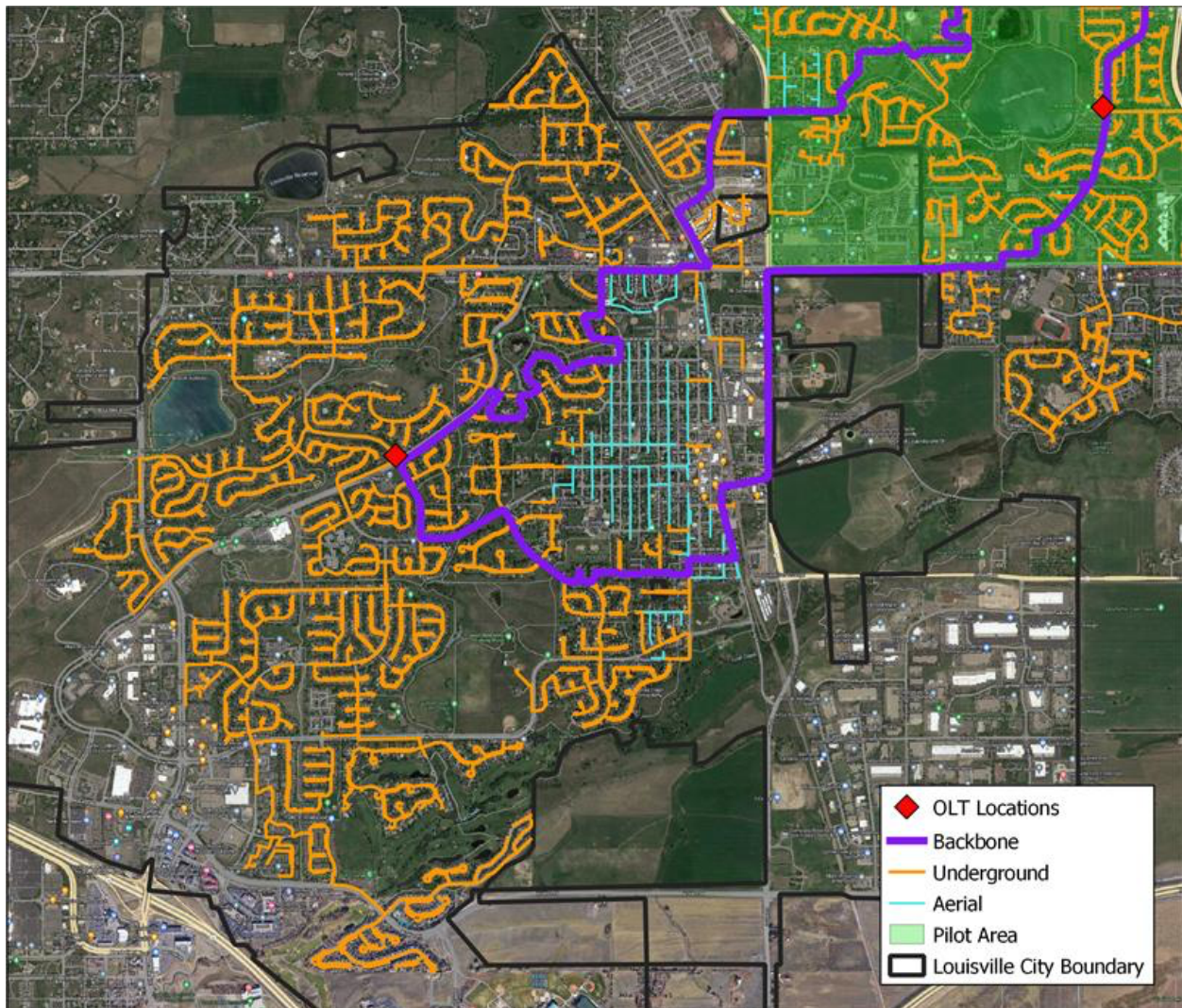
IN WITNESS WHEREOF, Licensee and the City have executed this Agreement as of the date first above written and under the laws of the State of Colorado.

|                                        |                                                |
|----------------------------------------|------------------------------------------------|
| ATTEST:                                | CITY OF LOUISVILLE,<br>a municipal corporation |
| <br>_____<br>Meredyth Muth, City Clerk | <br>By: _____<br>Christopher M. Leh, Mayor     |

|                  |                                                                                                                                         |
|------------------|-----------------------------------------------------------------------------------------------------------------------------------------|
| ATTEST:          | LICENSEE:<br>BIF IV Intrepid Opco LLC                                                                                                   |
| <br>Title: _____ | <br>By:  _____<br>Title: Chief Construction Officer |

## EXHIBIT A

Description: This Exhibit A shall cover the proposed Licensee network within the City boundaries as depicted on the following map:



Licensee shall construct a fiber network consisting of the following:

- Underground Installation: Two (2) through (4) 0.75" HDPE SDR 11 conduits, including fiber optic cables of various sizes and access vaults as required
- Aerial Installation: One (1) 1/4" strand, attached with hardware as approved by the pole owner, with fiber optic cables of various sizes dual-lashed to the messenger

Details of the underground installations will be requested to the City via the permitting process. Licensee shall also have the ability to expand the scope of the network into new developed areas within the City with review and approval by the City.

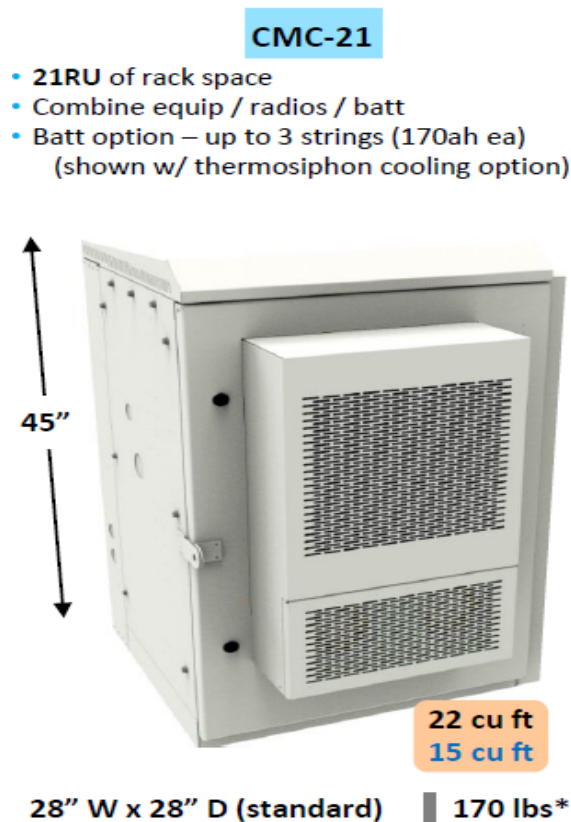


This license shall include approximately 75 miles of underground construction and 7 miles of aerial installation. The underground construction shall be completed by horizontal directional drilling. The aerial installation shall be completed via application, approval, and attachment via Xcel Energy and Lumen and comply with all stated requirements. No incremental new poles will be added as part of this process.

#### Location of the Optical Line Terminal Cabinet:

For the purposes of aggregating traffic within the City, licensee shall install one (1) optical line terminal (OLT) cabinet. The OLT shall be located at the northeast corner of the intersection of Via Appia Way and Tyler Avenue. The final location shall be subject to review by the City and Xcel Energy power availability. The cabinet to be installed shall be as follows:

- Commscope CMC-21 Optical Line Terminal Cabinet, including a Nokia 7360 FX-8 and other associated Optical Equipment





## EXHIBIT B

This Exhibit to the License Agreement between the City of Louisville, a Colorado Municipal Corporation (the "City") and BIF IV Intrepid OpCo LLC (the "Licensee") is intended to define the construction, configuration, and operation of a dark fiber network (the "Network") connecting multiple locations within the City. All provisions of the Agreement shall apply to and survive this Exhibit unless otherwise specifically identified.

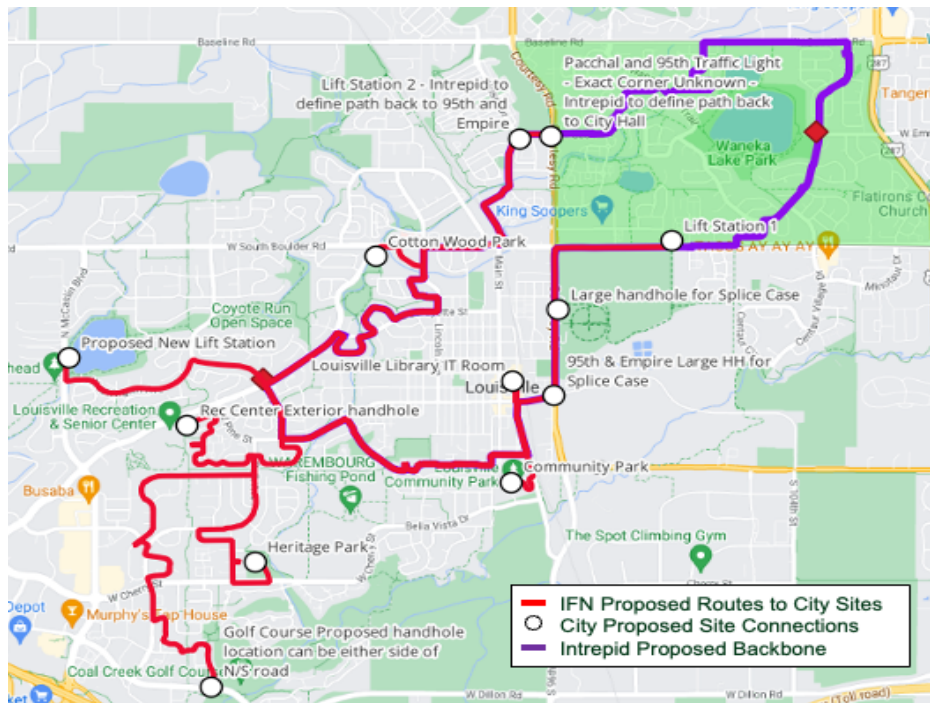
### ARTICLE I – SCOPE OF SERVICES

The City's dark fiber network shall include connection to the following locations:

| From                    | To                        | Description |
|-------------------------|---------------------------|-------------|
| Louisville Library      | Lift Station 1            | 2" conduit  |
| Golf Course Proposed HH | Rec Center Exterior HH    | 6 fibers    |
| Louisville Library      | Paschal & 95th            | 6 fibers    |
| Louisville Library      | Lift Station 2            | 6 fibers    |
| Louisville Library      | Cottonwood Park           | 6 fibers    |
| Louisville Library      | Heritage Park             | 6 fibers    |
| Louisville Library      | Proposed New Lift Station | 6 fibers    |
| Louisville Library      | Community Park            | 6 fibers    |

All demarcation points of services shall be further defined in the Service Order and/or as-built drawings.

Network Map:



## ARTICLE II – NETWORK MAINTENANCE

Licensee shall provide Routine Maintenance and Non-Routine Maintenance defined as follows:

- **Routine Maintenance:** Licensee agrees to take such actions as necessary to maintain the communication conduit and/or fiber optic cable in good and safe condition at all times, including subscription to the Colorado 811 system, locating of network facilities, and repair of damages to the network.
- **Non-Routine Maintenance:** Licensee shall perform troubleshooting and restoral of the network, including, but not limited to, repairs required due to cable cuts, fires, remodeling work or other acts of third parties or Force Majeure events. City shall use commercially reasonable efforts to determine that any disruption in the functionality of the Dark Fiber Service is not on the City's side of the Demarcation Point. After verifying that the problem is not on City's side of the Demarcation Point, Customer may call Licensee toll-free on (844) 380-8090 or email [info@intrepidfiber.com](mailto:info@intrepidfiber.com) to open a Support Ticket.
- **Fiber Restoration:** Following receipt of City notification of support request, Licensee shall use its best efforts to respond on-site (if necessary) to the affected location(s) within two (2) hours of acknowledging a Support Ticket, provided Licensee has all necessary access to the City location(s). In the event of a cable failure, Licensee shall use its best efforts to begin service restoration following identification of such failure as quickly as possible. Further, Licensee shall use commercially reasonable efforts to restore the functionality of the services as quickly as possible. During any outage, Licensee shall contact City on a regular basis, to update the status of restoration.
- **Relocation:** City acknowledges and agrees that, after the Activation Date, Licensee may be required (i) by any governmental authority under the power of eminent domain or otherwise, (ii) by the grantor or provider of any underlying right, (iii) by any other person having the authority to so require, or (iv) by the occurrence of any Force Majeure Event, to relocate the Segment(s) of the Licensee network. City shall work in good faith to minimize the impacts of relocations to the Licensee's network when such requests are originated by City.
- **As-Built:** Within thirty (30) days following the installation or relocation of any Facilities within the Premises, Licensee shall provide the City with detailed drawings showing the as-built location of such Facilities.

## ARTICLE III – NETWORK MONITORING

Licensee shall provide Network Monitoring via Licensee's Network Operations Center ("NOC"). This NOC shall monitor its network and perform cable and conduit maintenance and repair, on a twenty-four (24) hour per day, seven (7) days per week basis (24x7). As Licensee is not actively monitoring the dark fiber network, City shall provide notice to the Licensee of any potential outages or service impairments for review and attention by Licensee. City shall contact NOC Services at 877-252-2249 or [mnoc-nar@list.nokia.com](mailto:mnoc-nar@list.nokia.com). Any changes to emergency contacts shall be provided by Licensee to City as they occur.

#### ARTICLE IV – COST OF SERVICES

Licensee agrees to Construct and Provision the Network at No Cost as Described in Article I, including:

- **Scope of Services:** Licensee agrees to provide the Network as Described in Article I to City at no cost.
- **No Charge:** Licensee acknowledges and agrees that there shall be no charge, fee, or cost associated with the construction and provisioning of these Services to City.
- **No Hidden Costs:** Licensee shall not impose any hidden fees, incidental charges, or additional costs on City in connection with the provision of the Services.



City of Louisville  
City Council Overview

January 2, 2024





# Company Overview



# Intrepid Summary

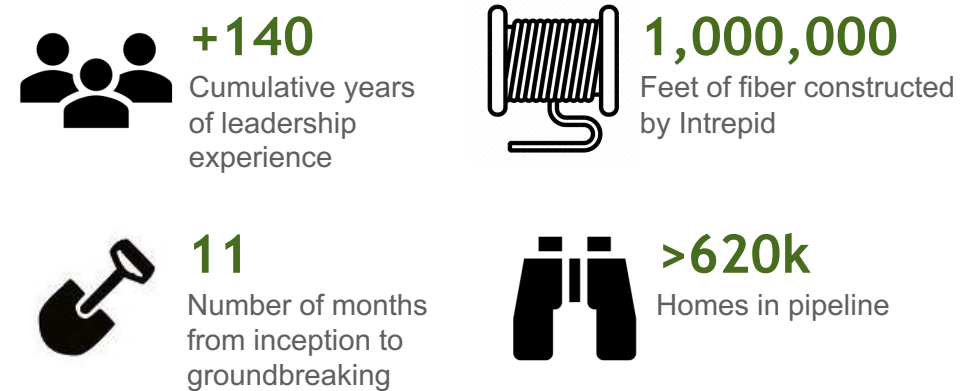
In 2021, Brookfield launched Intrepid Fiber Networks, a new Fiber-to-the-Home platform with a Wholesale Open Access Model, similar to open access frameworks in Europe. Our mission is to deliver world-class-fiber to communities throughout the United States to meet the broadband demands of the future

Led by CEO Jack Waters, former CTO of Level 3 and COO of Zayo Group, Intrepid has built out a strong executive leadership team

## Highlights

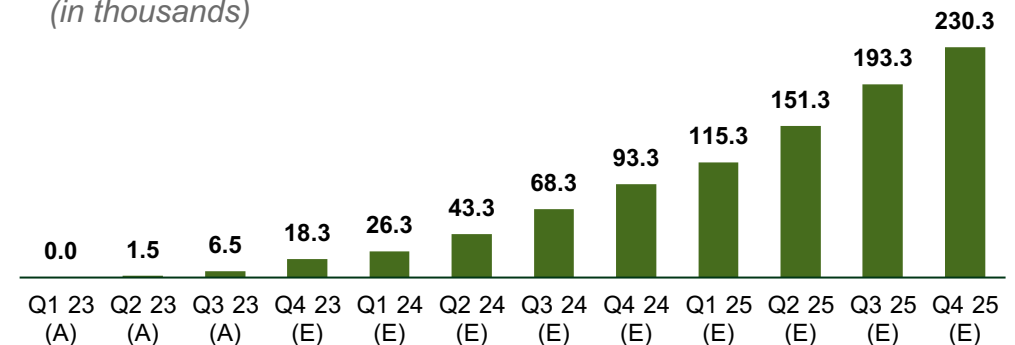
|                     |                                                                                                                                                                          |
|---------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Platform to Scale   | Intrepid has <b>built a scalable platform</b> to evaluate, design, construct, and install networks                                                                       |
| Deep Relationships  | The <b>leadership team has deep industry relationships</b> and a large network to leverage to scale and rapidly problem solve                                            |
| Experienced Sponsor | Brookfield is a highly experienced sponsor with an established track record, with <b>over \$35 billion of capital deployed</b> in global data infrastructure investments |
| Advanced network    | Intrepid's <b>pure fiber, wholly-owned network</b> enables the fastest and most reliable services. The network architecture is cutting-edge and future-proof             |

## Intrepid At a Glance



## Current Households Plan

(in thousands)



# Brookfield's Global Scale

*We are one of the world's largest investors, owners and operators of critical infrastructure assets*

**US\$850B**

Assets Under Management

**~200,000**

Operating Employees

**1,200+**

Investment Professionals

**100+**

Years of Operating Expertise



Renewable Power  
& Transition

**\$79B**



Infrastructure

**\$161B**



Private Equity

**\$141B**



Real Estate

**\$272B**



Credit

**\$150B**

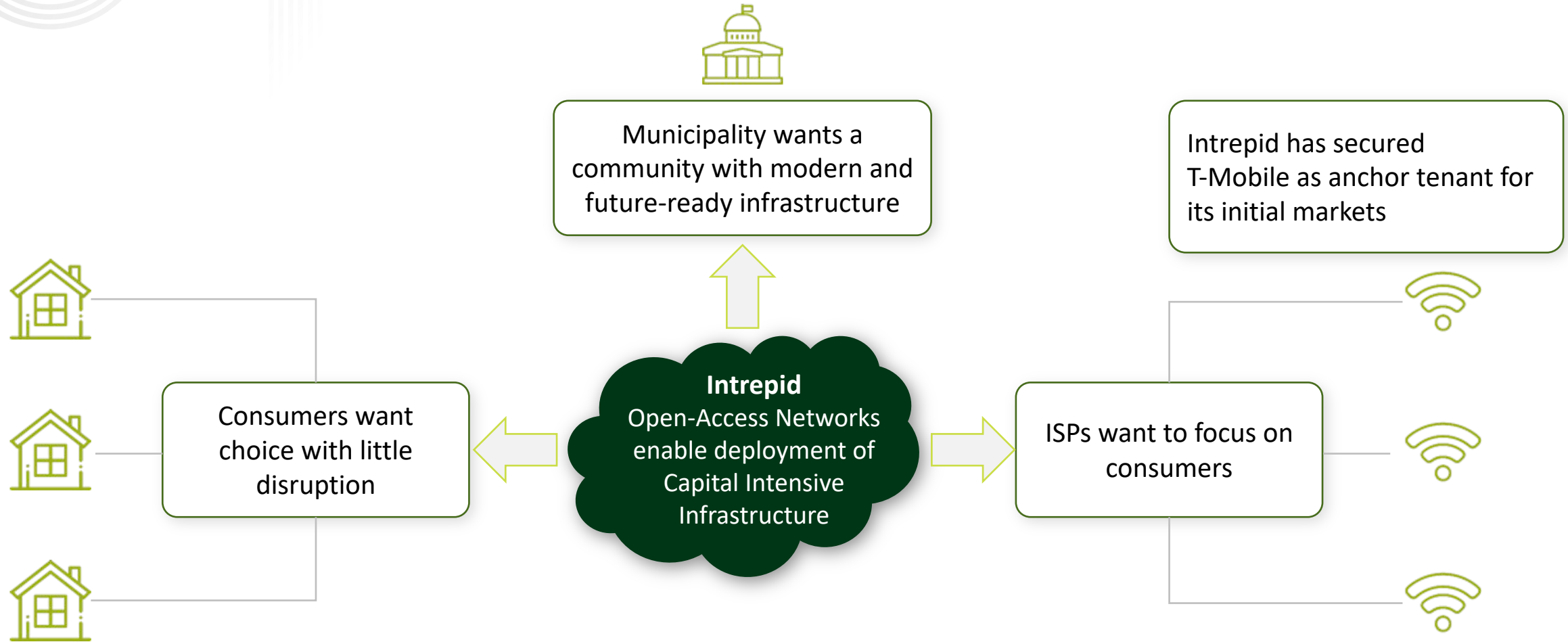


Insurance  
Solutions

**\$47B**

# Wholesale Open-Access Networks

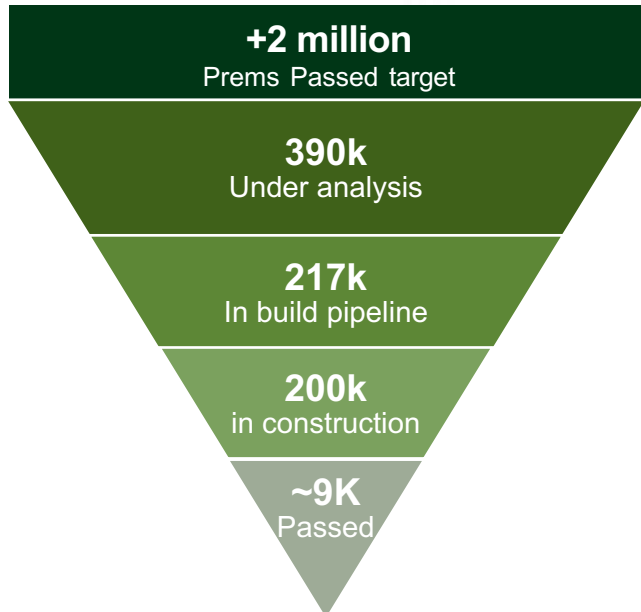
Intrepid's business model aligns incentives for all parties



# Key Milestones

Significant milestones despite being in operation for less than 24 months

## Key figures (projected EOY 2023)



Network Ambition



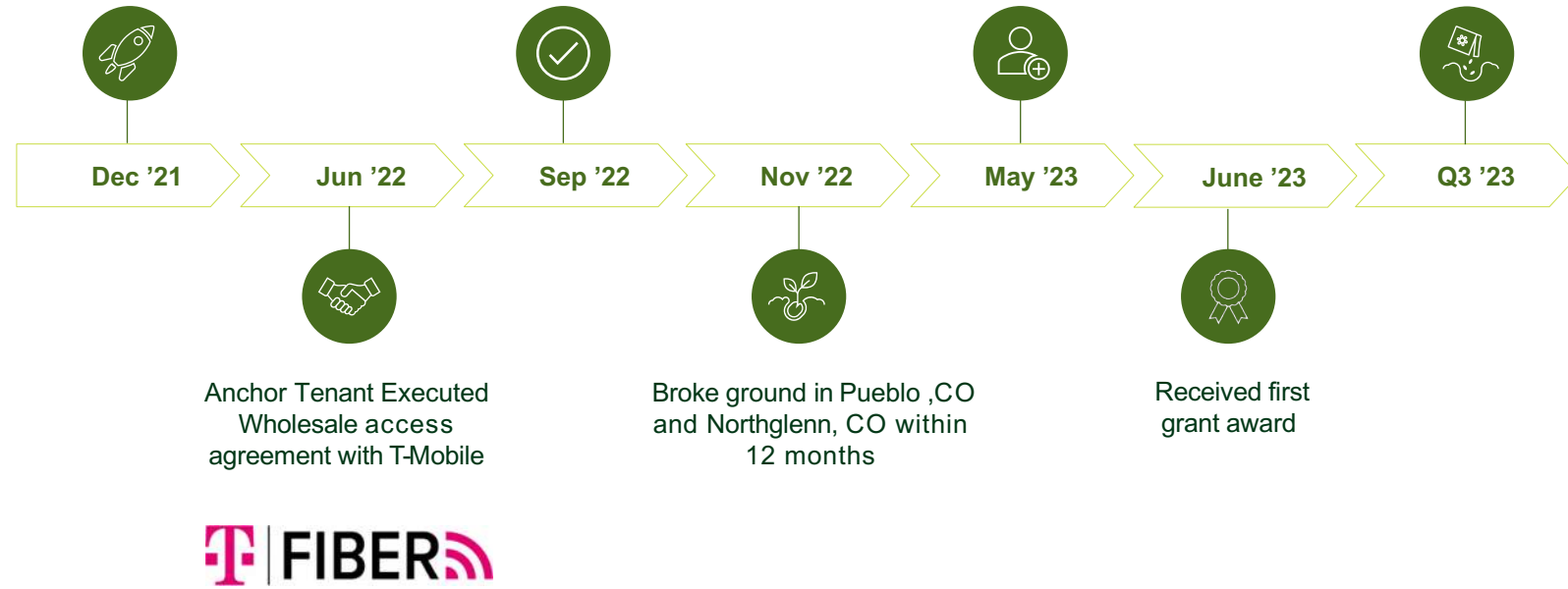
## Key Milestones



Founded in Dec 2021 with a mandate for greenfield FTTH expansion under a wholesale, open access framework



Obtained IC approval from Brookfield for inaugural markets



# Team of Seasoned Executives

Comprised of industry veterans that bring a wealth of telecommunications experience

Long-tenured group of telecom operators with an impressive track record in developing and deploying fiber networks

Decades of industry experience combined with strategic industry relationships across key regions of the country

Tremendous market knowledge with proven ability to execute on detailed growth plans

Led by a forward-thinking management team, the company began aggressively building its fiber network in 2022 to stay ahead of market trends



**Jack Waters**  
CEO



Jack Waters has 35+ years of experience in telecoms & business Infrastructure, where he has raised \$1bn. As COO at Zayo Group, oversaw network businesses, contributing to exit value of ~\$14B. Holds B.S. and M.S. in Electrical Engineering, and has served on FCC's Technology Council



**Dave Cooper**  
CTO



Dave brings 25+ years in telecom, specializing in large-scale fiber-optic and IP networks. Was SVP at Lumen Technologies, leading Edge Computing and global network architecture. Owns five U.S. Patents in Optical Switching and Routing. Holds a BA and MBA from California State University



**Tim Bruny**  
CFO



Tim has 20+ years of finance related experience in telecoms. As VP at Lumen Technologies, led cost transformation saving over ~\$1B annually through automation and vendor negotiations. Holds a B.S. in Business Administration from Colorado State University



**Jeff Polachek**  
CCO



Jeff has 25+ years in Telecom and Construction, leading in Engineering, Network Operations, and Service Delivery. As VP at Lumen Technologies, oversaw multi-year, \$1B capital infrastructure deployment across North America. Holds a B.S. in Civil and Environmental Engineering from Pennsylvania State University



**Christopher Marsh**  
CIO



Christopher has over 25 years of experience within the telecommunications industry with a focus on BSS/OSS application development and transformation. He has held executive leadership positions within Engineering, Operations, and Product with an emphasis on enabling Order Management and Care



**Shane Peverill**  
VP, Business Development



Shane has over 15 years in telecom, focused on the engineering, construction, and deployment of fiber networks. Oversaw development of a Program Management office that sold \$350M worth of turn-key network deployment nationwide. Holds a Bachelor of Commerce in Management from Saint Mary's University



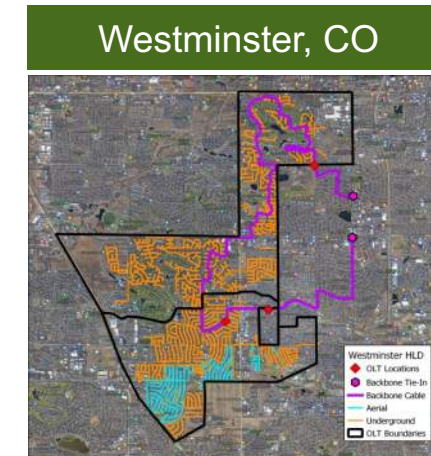
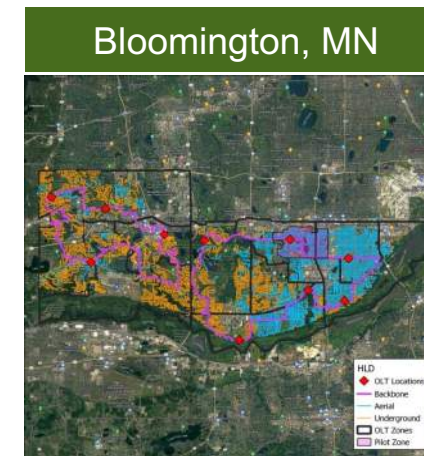
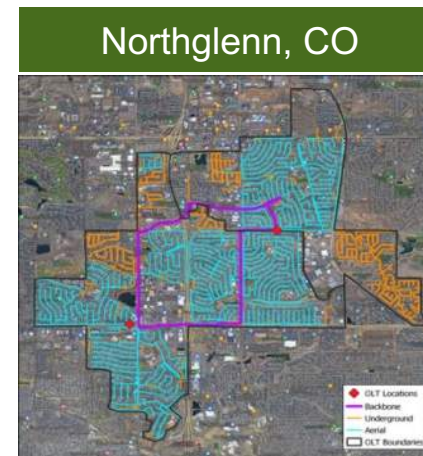
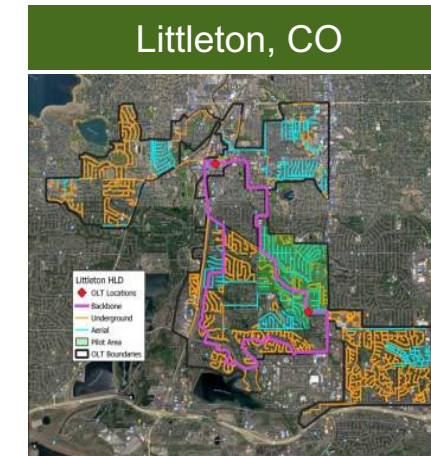
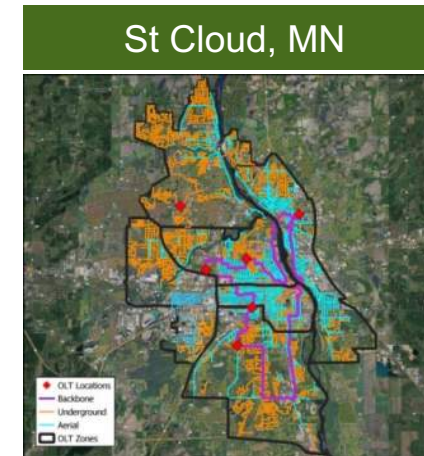
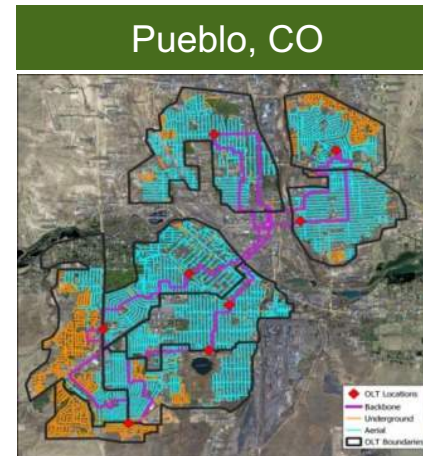
# Active Market Builds

Construction is in progress in six inaugural markets in Colorado and Minnesota

Intrepid has successfully kicked off Construction in six markets simultaneously. This is a huge achievement in the span of just over 18 months.

These builds have all been staffed with local Intrepid personnel to oversee progress, safety and quality.

| Market          | Mileage      |            | Homes          |               |
|-----------------|--------------|------------|----------------|---------------|
|                 | Underground  | Aerial     | SFU            | MDU           |
| Pueblo, CO      | 102          | 249        | 36,380         | 5,191         |
| Northglenn, CO  | 35           | 73         | 9,391          | 4,080         |
| St Cloud, MN    | 265          | 147        | 28,446         | 14,476        |
| Bloomington, MN | 418          | 248        | 46,000         | 21,663        |
| Westminster, CO | 108          | 18         | 9,916          | 5,004         |
| Littleton, CO   | 129          | 17         | 10,118         | 3,903         |
| <b>Total</b>    | <b>1,057</b> | <b>752</b> | <b>140,251</b> | <b>54,317</b> |





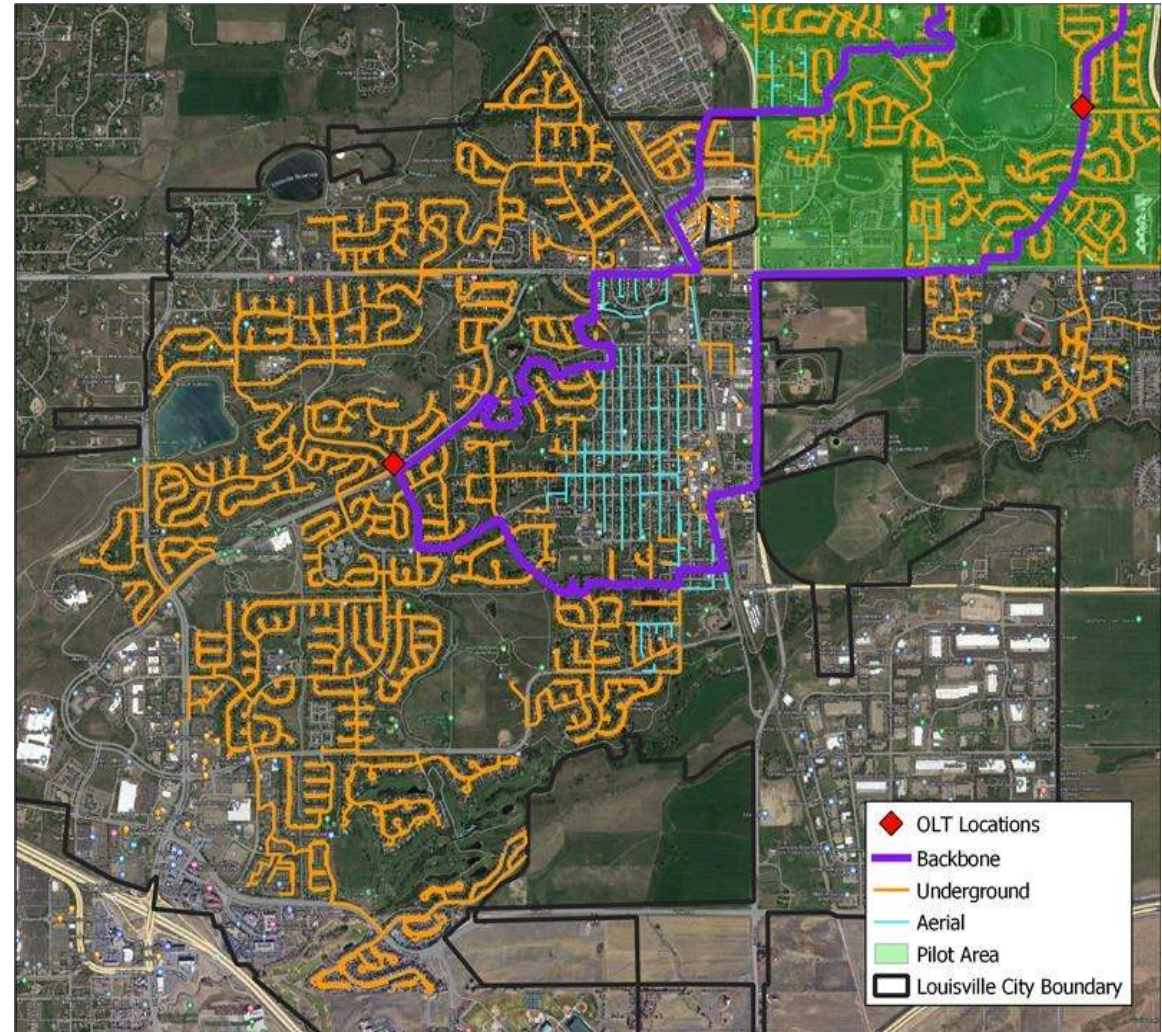
# Build Plan



# Louisville Network Summary

- Vendor: Network Infrastructure Construction (Nicxco)  
Colliers Engineering
- Underground: 683,345' / 129 miles (88%)
- Aerial: 89,733' / 17 miles (12%)
- Backhaul: Zayo Leased fiber into Denver
- Pole Owner(s): Xcel Energy / Lumen

| HHP Breakdown | Homes | %   |
|---------------|-------|-----|
| Total         | 7,040 |     |
| SFU           | 6,855 | 97% |
| Small MDU     | 22    |     |
| Medium MDU    | 54    |     |
| Large MDU     | 109   | 3%  |



# Installation Methods

## Aerial Installation

- Attachment to existing utility poles
- Applies in areas with existing overhead infrastructure

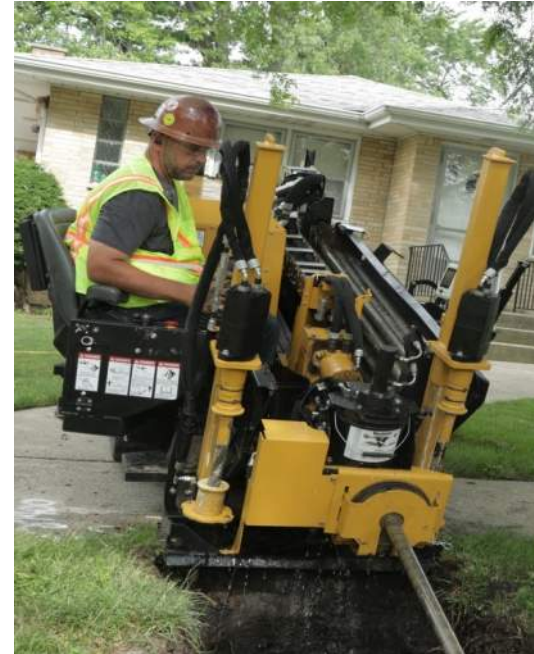


### Facilities Installed:

- One (1) 0.25" strand, attached with hardware as approved by pole owner
- Fiber optic cables of various sizes attached to strand via lashing wire

## Underground Installation

- Typical method is directional boring
- Vaults / handholes are installed by open excavation



### Facilities Installed:

- Two (2) through four (4) 0.75" HDPE SDR11 conduits, including fiber optic cables of various sizes
- Access vaults at splice points and terminals, with flower pots at property lines



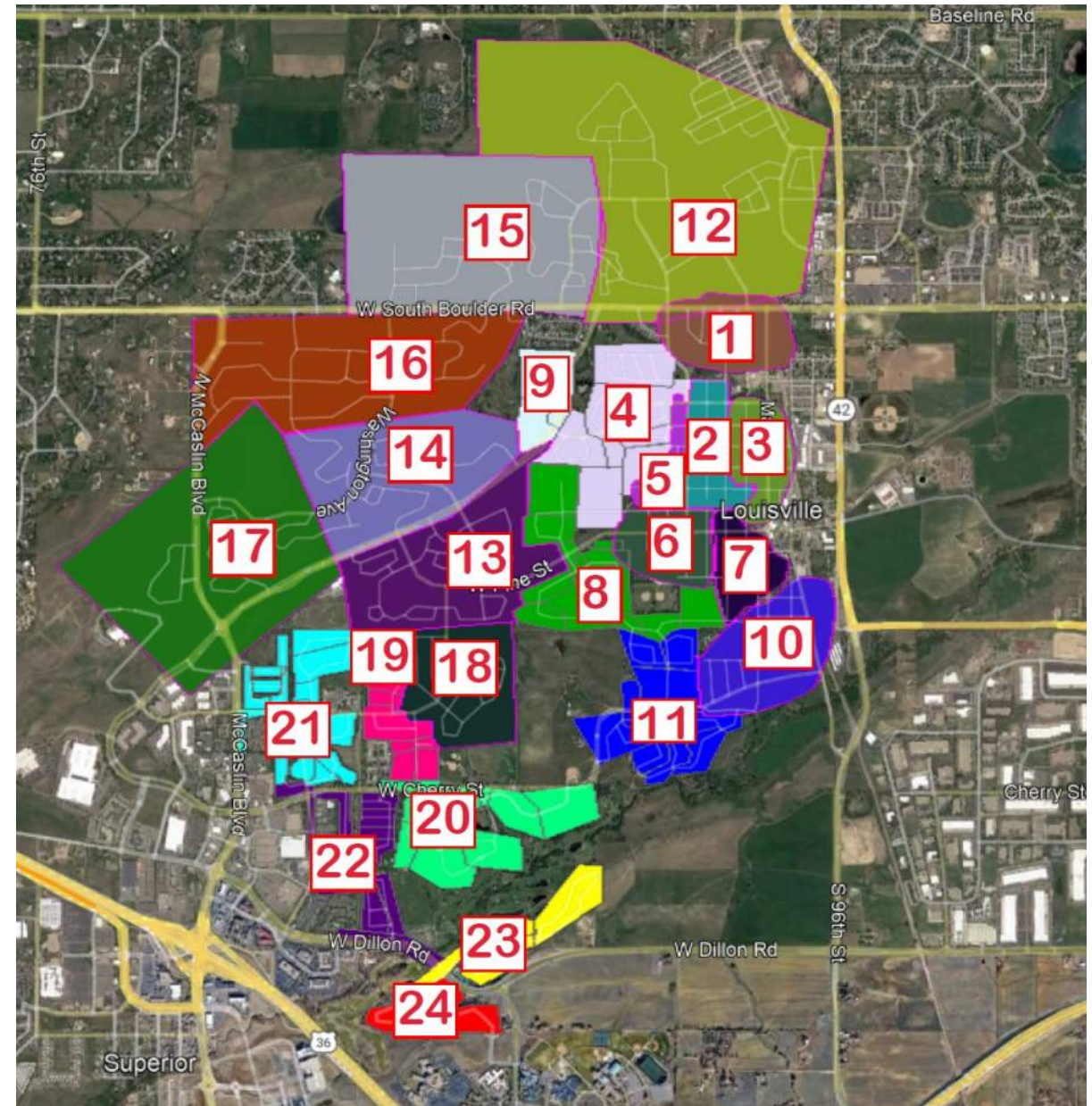
# Build Plan

## High-Level Project Milestones

- Engineering – Began in March 2023 with ~40% completed
- Complete connections to backhaul provider – March 2024
- Establish OLT connectivity – May 2024
- Extend reach from the network by subdivision – June 2024 through June 2026

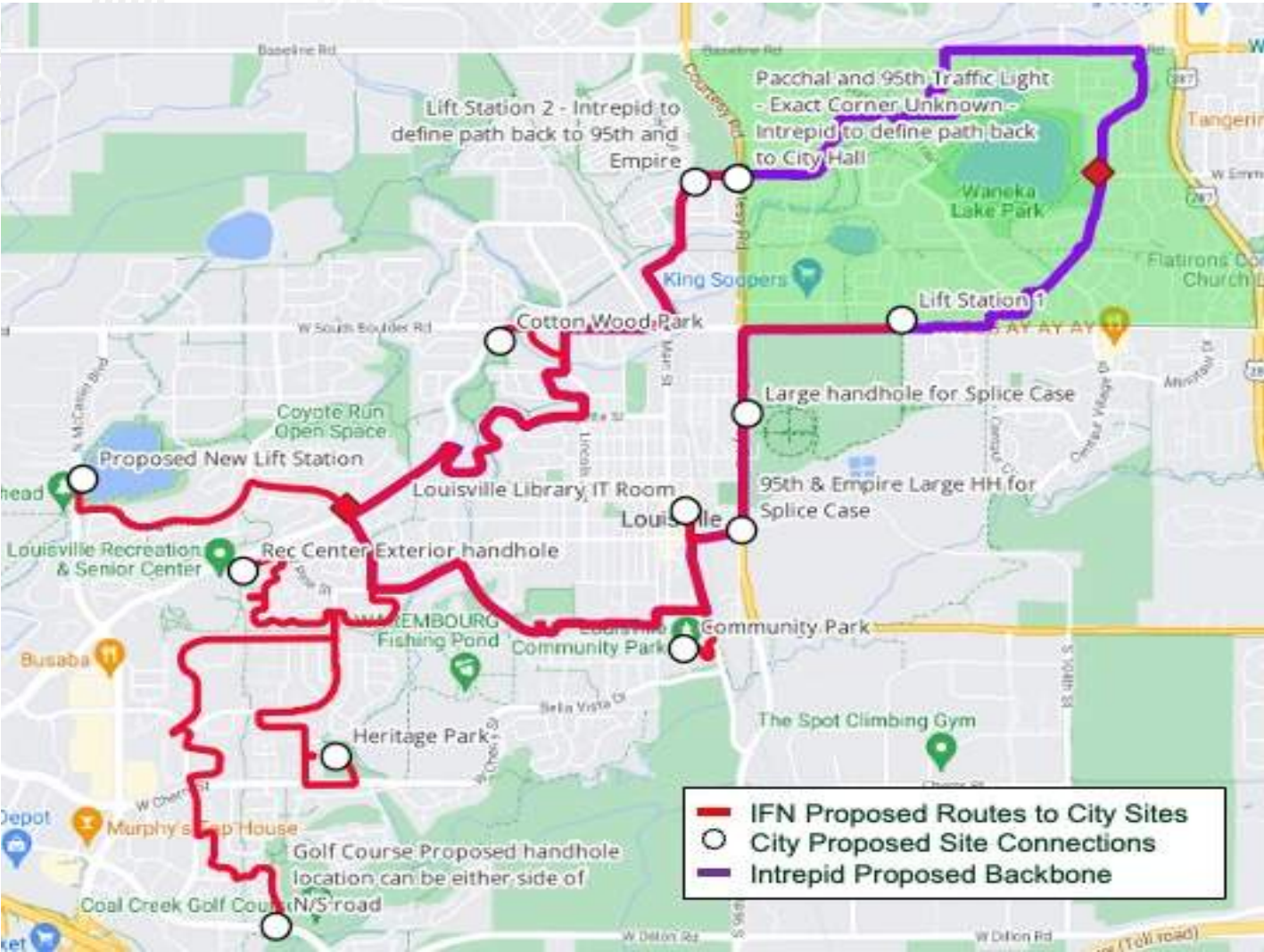
## Project Will Be Completed By Neighborhood

- Build plan will be phased – construction will begin from the OLT placed in Area 1 and then extend incrementally outward
- Build will be phased over 2 years from groundbreaking to minimize community impact
- Construction of a typical subdivision is 45 to 60 days
- Restoration of the work areas will be completed in parallel to construction to maintain resident satisfaction





# City of Louisville Connectivity



| From                    | To                        | Description |
|-------------------------|---------------------------|-------------|
| Louisville Library      | Lift Station 1            | 2" conduit  |
| Golf Course Proposed HH | Rec Center Exterior HH    | 6 fibers    |
| Louisville Library      | Paschal & 95th            | 6 fibers    |
| Louisville Library      | Lift Station 2            | 6 fibers    |
| Louisville Library      | Cottonwood Park           | 6 fibers    |
| Louisville Library      | Heritage Park             | 6 fibers    |
| Louisville Library      | Proposed New Lift Station | 6 fibers    |
| Louisville Library      | Community Park            | 6 fibers    |

# OLT Cabinet

## CMC-21

- 21RU of rack space
- Combine equip / radios / batt
- Batt option – up to 3 strings (170ah ea)  
(shown w/ thermosiphon cooling option)







# Community Outreach

# Community Notification

Intrepid's **Community Notification Plan** includes

- Information Hotline at (844) 380-8090
- Intrepid Website at <https://www.intrepidfiber.com>
- Community Engagement:
  - Door hangers
  - Yard signs
  - Contractor signage and branding
  - Restoration instructions
  - Project website with FAQs
- Community Outreach
- Issue Resolution and Tracking





# Intrepid Door Hanger

- Notification placed directly on each door
- Hangers placed during all construction activities and during design when backyard access is required
- Knock on the door when easement access is required
- Placement of hangers tracked and managed to ensure documentation of each address
- Special instructions (watering, etc.) provided as necessary upon completion of construction

***Placement of door hangers will be timed with planned activities, preferably within 48-72 hours of construction taking place***



**intrepid**

Intrepid Fiber Networks and [vendor name] are partnering to bring our fiber-to-the-home network to your community.

Here's what you need to know

- Construction in public rights-of-way: 7:00 am to 5:00 pm, Monday-Friday
- Minimal impact on holidays, weekends, and after hours
- Our goal: Minimize disruption to roads and sidewalks
- High-speed internet service available after construction

Once the construction is complete, high-speed internet access through our state-of-the-art 100% fiber optic network will soon be available.

For more details, FAQs, and updates, visit [www.intrepidfiber.com](http://www.intrepidfiber.com). Feel free to contact us with any questions or inquiries. Thank you for your understanding, patience, and cooperation.



844.380.8090

# Intrepidfiber.com

[About](#)[Construction](#)[Careers](#)[Contact](#)

## Boldly Advancing Community Infrastructure

Intrepid is paving the way for the  
connected, modernized digital  
infrastructure of tomorrow



# Intrepid Lawn Sign

- Lawn signs placed at entrance and egress of neighborhoods
- A-frame signs in place during construction with contact information posted
- Hotline and website monitoring for questions and requests by Intrepid personnel
- All signage removed upon completion of construction
- Notifications of new service offerings



The image shows a template for an Intrepid Lawn Sign. The sign is rectangular with a white background. At the top, the word "intrepid" is written in a large, lowercase, green sans-serif font. Below the logo, the sign is divided into two main sections by a vertical line. The left section has a green background with white text. It starts with a paragraph: "Intrepid Fiber Networks is working hard to bring our fiber-to-the-home network to your community." followed by "Here's what you need to know:". Below this is a bulleted list: "• Construction in public rights-of-way: 7:00 am to 5:00 pm, Monday through Friday", "• Minimal impact on holidays, weekends, and evenings", and "• Our goals: Minimize disruption to roads and sidewalks, and restore yards and landscaping to previous condition". At the bottom of this section is another paragraph: "Once construction is complete, high-speed internet access through our state-of-the-art 100% fiber optic network will soon be available." The right section also has a green background with white text. It starts with a paragraph: "For more details, FAQs, and updates, visit [www.intrepidfiber.com](\"http://www.intrepidfiber.com\"). Feel free to contact us with any questions or inquiries." followed by "Thank you for your understanding, patience, and cooperation." Below this is the phone number "844.380.8090" and a QR code.

**intrepid**

*Intrepid Fiber Networks* is working hard to bring our fiber-to-the-home network to your community.

Here's what you need to know:

- Construction in public rights-of-way: 7:00 am to 5:00 pm, Monday through Friday
- Minimal impact on holidays, weekends, and evenings
- Our goals: Minimize disruption to roads and sidewalks, and restore yards and landscaping to previous condition

Once construction is complete, high-speed internet access through our state-of-the-art 100% fiber optic network will soon be available.

For more details, FAQs, and updates, visit [www.intrepidfiber.com](http://www.intrepidfiber.com). Feel free to contact us with any questions or inquiries.

Thank you for your understanding, patience, and cooperation.

**844.380.8090**





# Issue Response and Resolution

## Intrepid Response Plan Processes

- Intake via Hotlines and Websites
- Creation of a response ticket
- Review of response ticket actions
- Timely resolution of repair items

***Targeted response within 24 hours  
and resolution in 48-72 hours***

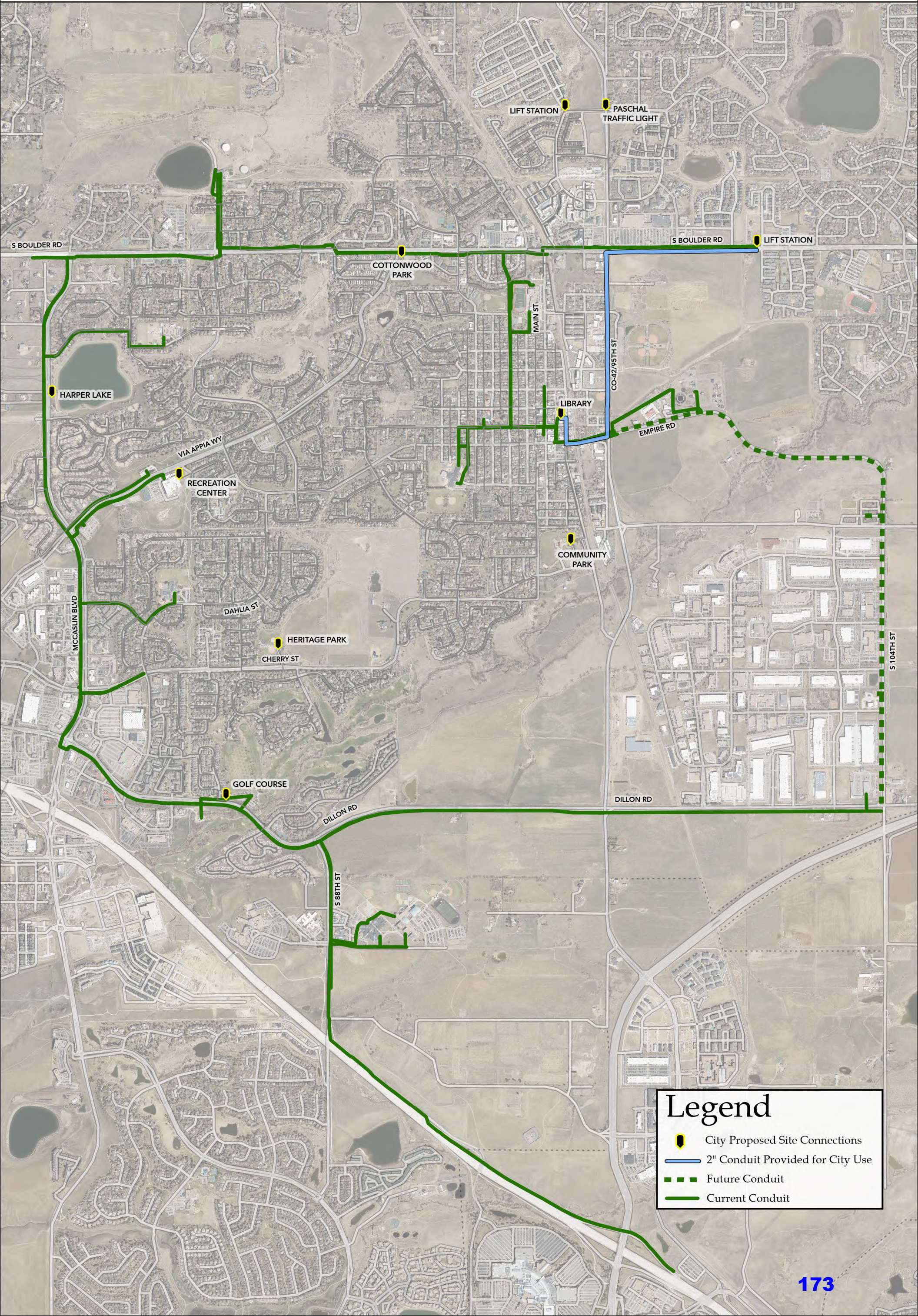
The screenshot displays the Intrepid Case Management System interface for Case CS0001020. The top navigation bar includes links for All, Favorites, History, and Workspaces, along with a search bar and a 'Case - CS0001020' label. Below the navigation bar, there is a 'Manage Attachments' section showing a file named 'dialPad.mp3'. A timeline indicates the case began 4 weeks ago and was updated 2 weeks ago. The main content area is divided into two columns. The left column contains fields for Number (CS0001020), Channel (Dialpad), Account, Product, Partner Contact, and Parent. The right column contains fields for Needs attention, Opened (2023-09-07 13:51:46), Priority (4 - Low), Assignment group (Construction Case Team), Assigned to (Brian Madding), Service Organization, and Partner. Below these fields, the 'Short description' states: 'Dialpad: Construction & Operations has a new voicemail from (612) 709-4824 - 0:58'. The 'Description' section contains a detailed message from the customer, including their phone number, time of call, and a request for service. At the bottom of the interface, there are tabs for 'Notes' and 'Resolution Information', and a 'Watch list' section.





**Thank You**





Legend

 City Proposed Site Connections

 2" Conduit Provided for City Use

 Future Conduit

 Current Conduit